SENATE—*Tuesday, October 13, 1970*

NOTICE

There will be no editions of the Congressional Record printed during the adjournment unless otherwise ordered by the Joint Committee on Printing.

Members of Congress desiring to purchase reprints of material submitted for Record printing during the adjournment may do so through the Congressional Record Clerk, Room H–112, in the Capitol.

These reprints may be ordered during the adjournment; they will be published subsequently in the Record.

By order of the Joint Committee on Printing.

SAMUEL N. FRIEDEL, Chairman.

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

The Reverend John A. Limberakis, pastor, Church of the Annunciation, Greek Orthodox Parish of Philadelphia, Elkins Park, Pa., offered the following prayer:

We turn heart and mind, O Lord God and Heavenly Father, to offer fervent supplication of praise and thanksgiving for Thy beneficence bestowed upon our Nation. Envelop with Thine infinite protection this august body of Senators. and their pages who serve them so diligently. Inspire them to discharge their duties with uprightness so that the concerns of this great Nation may be met in accordance with the spirit of Thy holy statutes.

We pray that our Nation, among the nations of the earth, may provide that leadership which remains consistent with the moral precepts of our Founding Fathers. Make us sensitive to the things that are yet unsolved and which bring so much anguish to our fellow man here and in faraway places. Grant us strength to proceed with singleness of purpose to those resolutions which Thy justice and love would condone.

Enable us to appreciate the vigor of youth, the prudence of age, and in unison lead us, we beseech Thee, toward those imperatives incumbent upon us.

Unto Thee are due all honor and glory, to the Father, and the Son, and the Holy Spirit, now and forevermore. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., October 13, 1970.

To the Senate:

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

RICHARD B. RUSSELL,
President pro tempore.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, October 12, 1970, be dispensed with.

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

CONGRESSIONAL RECORD—PRINTING DURING ADJOURNMENT

Mr. JORDAN of North Carolina. Mr. President, may I direct the attention of the Members of the Senate to the box appearing in the upper left-hand corner of today's edition of the CONGRESSIONAL RECORD, outlining the printing procedures applicable to the CONGRESSIONAL RECORD during the adjournment.

In the manner prescribed, Members will retain the prerogative to purchase the reprinting of material as though it had already been published in the CONGRESSIONAL RECORD, thereby assuring their privilege of having such reprints produced by the Government Printing Office. In all instances those reprints will be published in the CONGRESSIONAL RECORD subsequently.

Apropos of the general intent not to print any editions of the CONGRESSIONAL RECORD during the adjournment, it should be noted that in the event the Joint Committee on Printing is advised by the Public Printer that a noticeable accumulation of the copy has been received by the CONGRESSIONAL RECORD Clerk for inclusion in the Extensions of Remarks, a printing will be ordered forthwith.

The Joint Committee would consider it imperative to take such an action in order to preclude the possibility of adversely affecting the timely production of those editions of the CONGRESSIONAL RECORD which will be scheduled for printing following the return of the Congress from its adjournment on November 16.

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of measures on the calendar to which there is no objection, beginning with Calendar No. 1327 through Calendar No. 1334.

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

REMOVAL OF SNOW AND ICE FROM SIDEWALKS IN THE DISTRICT OF COLUMBIA

The bill (S. 3748) to provide for the removal of snow and ice from the paved sidewalks of the District of Columbia, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 3748

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the District of Columbia Council is authorized to make all such reasonable and usual police regulations as it may deem necessary to require every person in charge or control of any building, lot, or parcel of land in the District of Columbia, fronting or abutting on a paved sidewalk, whether as owner, tenant, occupant, or lessee, within eight hours after the ceasing to fall of any snow or sleet, to remove and clear away, or cause to be removed and cleared away, such snow or ice from so much of said sidewalk as is in front of or abuts on said building, lot, or parcel of land; but in the event of inability to remove such accumulation of snow and ice without injury to the sidewalk, by reason of the hardening of said accumulation, the Council may by regulation make it the duty of said person, within the first eight hours after the snow or sleet ceases to fall, to make such sidewalks reasonably safe for travel, or cause them to be made reasonably safe for travel by sprinkling thereon abrasives or other appropriate substances, and, as soon thereafter as the weather shall permit, to clean said sidewalks, or cause them to be cleaned.

SEC. 2. Upon failure of the owner or person in charge or control of the abutting property to remove, or cause to be removed, any accumulation of snow or ice from the sidewalk on which such property abuts, or to sprinkle thereon abrasives or other appropriate substances, when circumstances do not permit the removal of same without damage to the sidewalk, within eight hours after the ceasing to fall of any snow or sleet, the Commissioner or his designated agent may in his discretion authorize the removal of such accumulated snow or ice, or the sprinkling of abrasives thereon, without any other notice to the owner of the property than is provided by the falling of the snow or sleet.

SEC. 3. The cost of the removal of accumulated snow or ice by the District of Columbia shall be assessed by the Commissioner or his designated agent as a tax against the abutting property: *Provided,* That the taxes authorized to be levied and collected under this Act may be paid without interest within sixty days from the date such tax was levied. Interest of one-half of 1 per centum for each month or part thereof shall be charged on all unpaid amounts from the expiration of sixty days from the date such tax was levied. Any such tax may be paid in three equal installments with interest thereon. If any such tax or part thereof shall remain unpaid after the expiration of two years from the date such tax was levied, the property against which said tax was levied may be sold for such tax or unpaid portion thereof with interest and penalties thereon at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general real estate taxes, if said tax with interest and penalties thereon shall not have been paid in full prior to said sale.

SEC. 4. The Act entitled "An Act providing for the removal of snow and ice from the paved sidewalks of the District of Columbia", approved September 16, 1922 (42 Stat. 845; D.C. Code, title 7, ch. 8), is repealed.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1310), 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 (S. 3748) is to provide a more effective snow removal law than the current law—the act approved September 16, 1922 (42 Stat. 845; D.C. Code, title 7, ch. 8)—by authorizing the District of Columbia Council to make all usual and reasonable regulations requiring removal of snow and ice from paved sidewalks, with the costs of such removal to be assessed as a tax against the abutting property in case of noncompliance.

The regulations made pursuant to this proposed legislation would not extend the police power of the District of Columbia to operations of the Federal Government.

NEED FOR LEGISLATION

The current snow removal law, enacted in 1922, requires that any person (including the District government and agents of the United States) in charge or control of any building or lot of land within the fire limits of the District of Columbia, fronting or abutting on a paved sidewalk, shall, within the first eight hours of daylight after the ceasing to fall of any snow or sleet, remove from such sidewalk the accumulated snow or ice, or cause it to be removed. If the snow or ice cannot be removed without damage to the sidewalk, then the hardened snow or the ice shall be sprinkled with sand or ashes so as to make such area reasonably safe for travel, and such area shall be thoroughly cleaned as soon thereafter as the weather shall permit.

When the persons in charge or control of lots or buildings abutting sidewalk areas (other than areas adjacent to District or Federally owned or leased property) fail to remove the snow or sleet therefrom or to make such areas reasonably safe for travel by sprinkling them with sand or ashes, the District government is authorized to remove the sleet or snow from such areas. In cases where, under the foregoing, the District takes the indicated action, the corporation counsel is authorized to sue for and recover from the defaulting persons the cost to the District of Columbia of removing the sleet or snow or making reasonably safe areas of the sidewalks covered by ice or hardened snow.

Experience has indicated that the provisions under existing law are unworkable. The funds available to the District for snow removal have never been sufficient to permit the District to remove the snow and ice from the sidewalks throughout the city, as well as from the roadways. The draft bill solves this problem by authorizing the Commissioner to assess the cost of removal by the city as a tax against the abutting property, as in the case of work done by the District on unsafe or insanitary buildings. Additionally, under existing law the duty imposed upon the corporation counsel of bringing and prosecuting such civil suits as might be required to obtain judgments for the cost of such snow and ice removal, with the further work of attempting to collect the judgments after they were obtained, would, if such authority were exercised, necessitate a considerable addition to the staff of the office of the corporation counsel, and, also, would impose a very considerable burden on the District of Columbia court of general sessions.

HISTORY OF THE LEGISLATION

S. 3748 represents the most recent effort to provide an effective snow removal law for the District of Columbia. Beginning in 1895, Congress on four occasions enacted bills dealing with snow removal, and the former Board of Commissioners on one occasion adopted a snow removal regulation. However, none of these efforts has proved satisfactory.

The present law, enacted by Congress in 1922, seeks to deal with the problem by requiring the owner or occupant of the property abutting a paved sidewalk to remove or make safe any snow or ice on the sidewalk. In the event any such person fails within a specified time to take the required action, then the District government is required to remove the snow or ice or make the sidewalk safe, and must then sue to recover the cost of such work, together with a penalty not exceeding $25. Obviously, the requirements of existing law are unworkable. The District does not have the funds or the manpower to remove the snow and ice from the sidewalks throughout the city, as well as from the roadways. And neither the District government nor the courts can handle the large number of suits that would have to be filed if the District undertook generally to proceed in accordance with existing law.

Seeking to remedy the current situation, the bill (S. 3748) was introduced by Senator Bible April 23, 1970, at the request of the District government. Hearings were held by the Judiciary Subcommittee July 27, 1970, at which time a representative of the office of the District of Columbia Corporation Counsel testified in support of the legislation. No opposition to the bill has been made known to the committee. This bill is one of the priority legislative items submitted to the Congress by the District government.

RELATING TO OFFENSES AGAINST HOTELS, MOTELS, AND OTHER COMMERCIAL LODGINGS IN THE DISTRICT OF COLUMBIA

The bill (H.R. 10335) to revise certain provisions of the criminal laws of the District of Columbia relating to offenses against hotels, motels, and other commercial lodgings, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1131), 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. 10335) is to strengthen the provisions of certain criminal laws in the District of Columbia relating to persons who defraud hotel, motel, or other commercial lodging proprietors by means of forgery, issuance of bad checks, or by departing without payment for the goods or services received.

PROVISIONS OF THE BILL

Existing law, enacted in 1901 (District of Columbia Code sec. 22–1301; 31 Stat. 1326), provides criminal penalties for defrauding lodging proprietors and relates to the "value of money or property" but not to "services" provided to a guest or patron. Section 1 of the bill would make the provisions of law, as otherwise amended, equally applicable to "services."

The fines which may be assessed under this section where the amount of value involved is less than $100, are increased from $200 to $1,000.

The amendments in section 1 also provide that whoever obtains from a commercial lodging proprietor items of value or credit by the use of false pretenses in the amount of $100 or more commits a felony. The penalties provided are a fine of not more than $3,000 or imprisonment of not more than 3 years, or both. If the unpaid amount is less than $100, the offense is a misdemeanor with penalties of a fine of not more than $1,000 or imprisonment of not more than 1 year, or both.

The amendment further provides that when proof is given that a person obtained the items of value or the credit and failed to make full payment on demand, or when such person departed and removed his baggage without the consent of the proprietor and without payment of any amounts due, such proof is prima facie evidence of the intent to defraud.

Section 1 of the bill provides, in further amendment, that whoever registers under a false name or address with intent to defraud shall be guilty of a misdemeanor. It is not the intent that the act of so registering be an offense, but only where such act is accompanied with the intent to defraud the proprietor of the lodging establishment.

A problem frequently confronting the commercial lodging proprietor is where a guest has shown clear intent to leave the premises without paying his bill. If the amount involved makes the offense a misdemeanor, an arrest may not be accomplished without a warrant unless the misdemeanor is committed in the presence of a police officer. If steps are taken to secure a warrant to effect an arrest, the guest most probably will have fled the jurisdiction. Section 2 of the bill would remedy this situation by providing that a police officer may make an arrest for such misdemeanor without a warrant.

The final section of the bill amends existing law relating to crimes involving the issuance of checks, drafts, and orders for the payment of money (act of July 1, 1922, 42 Stat. 82, District of Columbia Code sec. 22–1410) so as to make the terms of the law applicable to modern situations and credit practices. The amendment in section 3 would make the terms of the present law applicable to "other instruments." The amendment also provides that where the amount involved in such acts exceeds $100, the offense shall be a felony, the penalties for which shall be a fine of not more than $3,000 or imprisonment of not less than 1 year or more than 3 years or both. Where the amount involved in the offense is less than $100 it is a misdemeanor and punishable by a fine of not more than $1,000 and imprisonment of not more than 1 year or both.

HISTORY OF THE LEGISLATION

A hearing on the bill (H.R. 10335) was held by the Judiciary Subcommittee April 28, 1970 at which time a representative of the Office of the District of Columbia Corporation Counsel and the executive vice president of the Hotel Association of Washington, D.C., testified on the legislation.

TAXATION IN THE DISTRICT OF COLUMBIA IN THE CASE OF THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

The bill (H.R. 14982) to provide for the immunity from taxation in the District of Columbia in the case of the International Telecommunications Satellite Consortium, and any successor organization thereto, was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1312), 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. 14982) is to provide complete immunity from all District of Columbia taxation for the International Telecommunications Satellite Consortium (INTELSAT), its foreign participants, and any successor organization to INTELSAT.

The proposed legislation will not affect in any way the tax liability of the U.S. participant in INTELSAT, the Communications Satellite Corp. This corporation (COMSAT), which was incorporated under the laws of the District on February 1, 1963, receives and is liable in the District for taxes on approximately 53 percent of INTELSAT's net income. The bill expressly excludes COMSAT from applicability of the exemptions sought by this legislation.

DESCRIPTION OF INTELSAT

INTELSAT is a 75-nation consortium formed in 1964 to establish a global commercial communications satellite system. It was created under terms of an intergovernmental agreement and a related special agreement between the member telecommunications entities, both of which opened for signature in Washington in 1964. The U.S. participant is the Communications Satellite Corp. (ComSat), which was designated by the President pursuant to the Communications Satellite Act of 1962.

INTELSAT exists in large measure because of U.S. initiative and support. In furtherance of the national policies set forth in the Communications Satellite Act, we have fostered and supported its growth and development. INTELSAT's technical achievements have made an effective, operating commercial communication satellite system available to countries around the world in less than 5 years.

Most of the 74 foreign members of INTELSAT are governments or government communications ministries. Some foreign partners, however, are either private corporations or entities wholly owned by governments but entirely separate in form, that is, government-owned corporations.

Under existing laws, foreign governments or ministries are not subject to District of Columbia taxes, but foreign private or governmental corporations could conceivably be taxed while the substantial majority were not, and such a situation could adversely affect the operation of the system.

THE EFFECTS OF THE BILL

The adoption and promulgation of this bill will clarify the tax situation in several areas. The proposed legislation is directed primarily at the District of Columbia franchise tax (District of Columbia Code, title 47, sec. 1580). This law imposes a franchise tax on every corporation and unincorporated business which carries on or engages in trade or business in the District. The measure of the tax is "that portion of the net income of the corporation and unincorporated business as is fairly attributable to any trade or business carried on or engaged in within the District and such other net income as it derived from sources within the District."

INTELSAT is managed by a corporation located in the District, but its primary business—and consequent source of revenues—is operating satellites in outer space to work with earth stations around the world. Since little, if any, business revenue is generated in the District, and that portion of it which accrues to foreign government members of INTELSAT is exempt from taxation, the tax loss in this particular case would be *de minimis* from the viewpoint of District government revenues. As a matter of fact, the District of Columbia government has advised your committee that the enactment of H.R. 14982 would not result in any significant revenue loss to the District.

In addition to the franchise tax, the proposed legislation is also directed at real property tax, license tax, sales tax, and other similar taxes which might be enacted.

Your committee was advised that INTELSAT does not presently own any property in the District, and does not contemplate acquiring any in the future. Hence no potential real property taxes would be lost by the District by this exemption. Likewise, the revenue loss from the exemption from personal property tax, sales and use tax, and the unincorporated business license tax, would apparently be insignificant.

Further, the proviso in section 2 makes it clear that the exemption from taxes shall not apply to any property which shall not be used for the purposes of INTELSAT and any successor organization, not to any income, operations or other transactions which shall not be related to the purpose of said consortium or successor organizatoin. The purpose of this proviso is to establish that the ownership or operation of such a communications satellite system is exempt from District of Columbia taxation, regardless of whether INTELSAT or its successor, or any foreign participants therein, are "carrying on or engaging in any trade or business within the District" or receiving income "from sources within the District," within the meaning of section 47–1580 of the District of Columbia Code, and regardless of whether such system would otherwise be subject to tax.

FEDERAL EXEMPTION ALREADY GRANTED

During the 90th Congress a companion bill to H.R. 14982 was introduced to establish exemptions for INTELSAT from Federal taxation.

This bill was passed and was signed into law on October 22, 1968, as Public Law 90–622 (82 Stat. 1311). Passage of H.R. 14982 will bring the District of Columbia law into agreement with the Federal law on this subject.

NEED FOR THE LEGISLATION

Your committee urges early Senate approval of this bill (H.R. 14982). Negotiations are currently underway among the 75 member countries of INTELSAT concerning, inter alia, the location of the permanent headquarters of the INTELSAT organization. The INTELSAT headquarters is presently located in the District, and it would be in the national interest to continue to have INTELSAT located in the United States, and in the District of Columbia. Other countries which grant tax exemption in such cases are desirous of having the headquarters of INTELSAT within their borders, and the State Department has stated that it would be in a stronger position of assuring the continued location of the headquarters in Washington if this legislation is enacted.

The State Department has also suggested that passage of this legislation would be helpful in reducing the pressure from other member countries for immunity provisions that would be unacceptable to the United States.

LIABILITY OF HOTELS, MOTELS, AND SIMILAR ESTABLSHMENTS IN THE DISTRICT OF COLUMBIA

The Senate proceeded to consider the bill (H.R. 10336) to revise certain laws relating to the liability of hotels, motels, and simliar establishments in the District of Columbia to their guests which had been reported from the Committee on the District of Columbia with an amendment on page 6, line 20, after the word "section", strike out "1236" and insert "1261".

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. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1313), 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. 10336, is to revise certain civil laws in the District of Columbia Code relating to the liability of (1) commercial lodging proprietors for the property of their guests or patrons, (2) the lien rights of such business establishments as to the property of their guests and patrons, and (3) to improve the procedures for the disposal of unclaimed personal property left with such lodging operators.

PROVISIONS OF THE BILL

Section 1 of the bill provides for a limitation on the liability of operators of commercial lodging establishments for the property of their guests.

A lodging establishment may limit its liability if it provides a suitable depository for the safekeeping of personal property, displays conspicuous notice of the availability of such depository, and notice of the limitation on the proprietors' liability if valuable personal property is not placed in such depository. When personal property of a guest or patron is placed in a designated depository for safekeeping, the maximum liability of the lodging establishment for loss or destruction of, or damage to, property shall be the fair market value of the property but not in excess of $1,000. This limitation on liability does not apply to losses to personal property retained by a guest in his room if the property left in his room is such as is usual or prudent for a guest to keep in his room.

This section of the bill likewise limits the liability of the lodging establishment for loss of, damage to, or destruction of property placed in a checkroom. If the checkroom is conspicuously designated as such place for depositing personal property, and such designation is likewise accompanied with a printed copy of this section of the act, the proprietor is liable only for the fair value of the property but not to exceed $200.

PROTECTION OF LIEN RIGHTS

The lien rights of commercial lodging establishments would be strengthened by the amendments to existing law provided in section 2 of the bill.

Existing law provides that the lodging establishment shall have a lien upon, and may retain possession of, baggage and effects of any guest or patron who fails to make payment for any amount due. If such lien is exercised, and the property retained excedes the value of $50, then the lodging establishment must institute a court proceeding for handling the sale of the property held under the lien.

The amendments in section 2 would provide the lodging establishment with a lien on any personal property in possession of a guest, the value of which does not exceed $1,000. When property has been retained under the provisions of this section, and the owner of such property fails to pay the amount due for lodging, food, or value received by the guest within 30 days, the property retained may be sold at a public sale.

Prior to such sale, demand shall be made by registered or certified mail for the payment of the amount due, and notice of such sale published once a week for 3 successive weeks in a daily newspaper in the District of Columbia. Such notice shall (1) state that the sale is to satisfy the lien; (2) state the amount of the charges including any storage charges; (3) state the day, time, and place of the sale; and (4) give a description of the property, along with a full and complete description and information concerning any motor vehicle which may be included in the notice of sale. Notice of such sale shall also be given to any person having an interest, lien, or other claim on a motor vehicle which is recorded by registration within any State. A notice of sale must precede the sale by at least 15 days.

The proceeds of any such sale shall be applied (1) to cover the expenses of storage and sale of the property; (2) to discharge any security interest, lien, or other claim in order of priority provided for by the law; and (3) any remainder paid to the party entitled if the party is known and can be located or otherwise at the end of 1 year after the date of sale the remainder shall be paid to the government of the District of Columbia.

SALE OF UNCLAIMED PROPERTY

Personal property of guests at a lodging establishment, which had been deposited for safekeeping, checked, or left otherwise unclaimed for a period of 90 days or more, may be disposed of under the provisions of section 3 of the bill. The provisions of this section regarding the sale of such property are similar to those described above for the execution of a lien, except that no sale may be conducted in less than 90 days plus a 15-day period of notice. The residue of any such sale after satisfaction of all other claims in order of priority provided by law is to be paid within a reasonable time to the government of the District of Columbia.

The final section of the bill, section 4, as amended, provides the necessary technical amendments to existing law.

HISTORY OF THE LEGISLATION

The bill (H.R. 10336) passed the House February 24, 1970, and was subsequently referred to the Senate District Committee. A hearing on the bill was held April 28, 1970, at which time a representative of the Office of the District of Columbia Corporation Counsel and the executive vice president of the Hotel Association of Washington, D.C., testified on the bill.

VALIDATION OF CERTAIN DEEDS IMPROPERLY ACKNOWLEDGED OR EXECUTED IN THE DISTRICT OF COLUMBIA

The Senate proceeded to consider the bill (H.R. 13565) to validate certain deeds improperly acknowledged or executed (or both) that are recorded in the land records of the Recorder of Deeds of the District of Columbia which had been reported from the Committee on the District of Columbia with an amendment on page 1, line 8, after the figure "1,", strike out "1962," and insert "1969,".

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. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91-1314), 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. 13565) is to validate certain deeds and acknowledgments recorded in the land records of the District of Columbia prior to January 1, 1969.

NEED FOR THE LEGISLATION

The bill (H.R. 13565) has the effect of correcting certain specified defects which may have occurred inadvertently in the execution and acknowledgment of deeds affecting property transactions. In validating the records of the Office of the Recorder of Deeds prior to January 1, 1969, in the manner prescribed, the bill has the further effect of removing potential clouds on the titles of properties conveyed in the District.

Under present law, documents recorded prior to January 1, 1902, have been validated (District of Columbia Code, sec. 45-408) despite certain defective acknowledgments and executions. The seven classes of defects corrected by existing law are: executions or acknowledgments by married women, by attorneys in fact, and before specified officials in foreign jurisdictions, as well as those wherein certain agents failed to declare the execution to be the act of the grantor; and those not having certain technicalities of acknowledgment.

There has been no legislation to cure defective acknowledgments and executions in the District of Columbia since 1902.

Your committee believes it is in the public interest that such inadvertent and technical defects in titles to real property be cured by appropriate legislation such as the reported bill, which follows the practice in many States.

HISTORY OF THE LEGISLATION

The bill (H.R. 13565) was passed by the House on October 27, 1969, and, subsequently, referred to the Senate District Committee. A hearing on the bill was conducted by the Judiciary Subcommittee on April 28, 1970, at which time a representative of the office of the Corporation Counsel of the District of Columbia presented testimony favoring enactment of the bill. The bill has also received the endorsement of the District of Columbia Metropolitan Area Land Title Association. No opposition to the bill has been made known to the committee.

COMMITTEE AMENDMENT

Your committee has amended the bill (H.R. 13565) by providing that the date before which deeds improperly acknowledged or executed may be validated be changed to January 1, 1969. This amendment is in accordance with the recommendation of the Commissioner of the District of Columbia and coincides with the bill as originally reported by the House District Committee (Report No. 91-589).

MAJOR PROVISIONS OF THE BILL

The bill (H.R. 13565) provides for validation of acknowledgments and executions recorded in the District of Columbia prior to January 1, 1969, that contain any of the seven categories of defects enumerated in existing law.

In addition, it amends the category dealing with technicalities of acknowledgment. The present law, in this respect, relates only to omission of the legal certificate as to the official character of the person taking the acknowledgment. This provision is amended to include also omission of the seal of the notary public before whom the acknowledgment was taken; failure to follow the prescribed form in the certificate of acknowledgment; acknowledgment before persons not properly authorized; and omission of official designation of the person taking the oath.

The bill also provides a safeguard against abuse of such validations. It states that it shall not be construed to validate deeds for which the acknowledgment or execution has been obtained by fraud or misrepresentation.

DISTRICT OF COLUMBIA ADMINISTRATION OF ESTATES ACT

The Senate proceeded to consider the bill (S. 3747) to amend the District of Columbia Code to increase the jurisdictional amount for the administration of small estates, to increase the family allowance, to provide simplified procedures for the settlement of estates, and to eliminate provisions which discriminate against women in administering estates which had been reported from the Committee on the District of Columbia with amendments on page 2, line 1, after the word "TO", strike out "CHAPTER 21 OF"; in line 2, after the figure "20", insert "AND TITLE 15"; in line 8, after the word "thereof", strike out "$1,500."; and insert "$2,500."; after line 9, strike out:

SEC. 102. Section 20-2105 of the District of Columbia Code (relating to fees for the administration of small estates) is amended by striking out "$5" and "25 cents" and inserting in lieu thereof "$15" and "$1.00" respectively.

And, in lieu thereof, insert:

SEC. 102. (a) Section 15-707(a) of the District of Columbia Code, as amended by section 144(10)(A) of the District of Columbia Court Reorganization Act of 1970, is amended by striking out "Superior Court" and inserting in lieu thereof "court having jurisdiction over probate matters in the District of Columbia."

(b) Section 15-707(b) of the District of Columbia Code, as amended by section 144(10)(A) of the District of Columbia Court Reorganization Act of 1970, is amended to read as follows:

"(b) Where the estate does not exceed five hundred dollars in value the Register of Wills shall receive no fees, and where the estate does not exceed twenty-five hundred dollars in value the fees may not exceed fifteen dollars."

(c) The amendments made by subections (a) and (b) of this section shall take effect on the first day of the seventh calendar month which begins after the date of enactment of the District of Columbia Court Reform and Criminal Procedure Act of 1970.

SEC. 103. The last sentence of section 20-2105 of the District of Columbia Code (relating to the administration of small estates) is amended to read as follows: "The Register of Wills may demand and receive for services performed by him under this chapter such fees as shall be set by the court having jurisdiction over probate matters in the District of Columbia."

On page 3, at the beginning of line 19, strike out "(1)"; in line 20, after the word "thereof", strike out "$1,500", and"; and insert "$2,500."; and after line 21, strike out:

(2) by striking out in the third sentence of subsection (a) "$200" and inserting in lieu thereof "$600".

So as to make the bill read:

S. 3747

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 Administration of Estates Act".

TITLE I—AMENDMENTS TO TITLE 20 AND TITLE 15 OF THE DISTRICT OF COLUMBIA CODE

SEC. 101. Sections 20–2101, 20–2102, 20–2106, and 20–2107 of the District of Columbia Code (relating to the administration of small estates) are each amended by striking out "$500" each place it appears and inserting in lieu thereof "$2,500".

SEC. 102. (a) Section 15–707(a) of the District of Columbia Code, as amended by section 144(10)(A) of the District of Columbia Court Reorganization Act of 1970, is amended by striking out "Superior Court" and inserting in lieu thereof "court having jurisdiction over probate matters in the District of Columbia."

(b) Section 15–707(b) of the District of Columbia Code, as amended by section 144(10)(A) of the District of Columbia Court Reorganization Act of 1970, is amended to read as follows:

"(b) Where the estate does not exceed five hundred dollars in value the Register of Wills shall receive no fees, and where the estate does not exceed twenty-five hundred dollars in value the fees may not exceed fifteen dollars."

(c) The amendments made by subsections (a) and (b) of this section shall take effect on the first day of the seventh calendar month which begins after the date of enactment of the District of Columbia Court Reform and Criminal Procedure Act of 1970.

SEC. 103. The last sentence of section 20–2105 of the District of Columbia Code (relating to the administration of small estates) is amended to read as follows: "The Register of Wills may demand and receive for services performed by him under this chapter such fees as shall be set by the court having jurisdiction over probate matters in the District of Columbia."

TITLE II—AMENDMENTS TO SECTION 19–101 OF THE DISTRICT OF COLUMBIA CODE

SEC. 201. Section 19–101 of the District of Columbia Code (relating to the family allowance) is amended—

By striking out in subsection (a) and subsection (e) "$500" and inserting in lieu thereof "$2,500".

TITLE III—TRANSFER OF TITLE TO MOTOR VEHICLES

SEC. 301. Section 2 of title IV of the District of Columbia Revenue Act of 1937, as amended (D.C. Code, sec. 40–102) is further amended by adding at the end of subsection (d) thereof the following:

"When the only assets of a decedent's estate requiring administration consist of not more than two motor vehicles, the Commissioner of the District of Columbia may upon proof satisfactory to him that all debts and taxes owed by the decedent have been paid or provided for, transfer the title to such motor vehicles to the person or persons entitled thereto or their nominee; and in such case, no administration of the decedent's estate, or other proceedings, need be had. In the event that any of the persons entitled to the transfer of title hereunder shall be a minor, the custodian or the legal guardian of said minor may nominate transferees on behalf of such minor."

TITLE IV—AMENDMENTS TO SECTION 20–334 OF THE DISTRICT OF COLUMBIA

SEC. 401. Section 20–334 of the District of Columbia Code (relating to the order of preference of persons entitled to administer estates) is amended—

(1) by striking out in clause (3) of subsection (a) "the father shall be preferred; and, where there is no father, the mother shall be preferred", and inserting in lieu thereof "the father or mother shall be preferred"; and

(2) by deleting in such subsection (a), clauses numbered (5), (9), and (10), and redesignating clauses numbered (6), (7), and (8) as (5), (6), and (7), respectively.

TITLE V—SALES OF REALTY WITHOUT REFERENCES TO THE AUDITOR

SEC. 501. Section 20–1106 of the District of Columbia Code (relating to the authority of the court regarding sales of realty) is amended—

(1) by inserting in the third sentence immediately after the word "or" the following: ", except where consents have been filed with the court as hereinafter provided,"; and

(2) by adding the following:

"Upon a proper showing by the fiduciary of an estate that the personal estate of a decedent is insufficient to meet all of the aforesaid charges and that all or part of the decedent's real estate must be sold to pay all or part of the said charges, the court may order the sale of all or any part of said real estate without reference to the auditor, provided all persons who have an interest in the real estate to be sold shall have filed with the court their consents to sale thereof. In the event a person having an interest in the said real estate is not sui juris, the court may accept on his behalf the consent of a fiduciary duly appointed for the estate of said person, or may appoint a guardian ad litem who shall have the right to file a consent on behalf of said person"; and

(3) by adding at the end of the section heading, immediately following the word "report", a semicolon and "sales without reference to the auditor".

SEC. 502. The item relating to section 20–1106 in the analysis of chapter 11 is amended by inserting immediately before the period at the end of the word "report", a semicolon and "sales without reference to the auditor".

The amendments were agreed to.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1315), 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 (S. 3747) is to update and modify procedures dealing with the settlement of estates in the District of Columbia in order that they might more accurately reflect current economic conditions and that those persons wishing to settle small estates may do so in an expeditious manner with a minimum of cost. Your committee feels that this legislation is essential for the District of Columbia to maintain a realistic legal framework for the transaction of probate matters, as well as those settlements which do not require the probate process.

Title I of the bill increases from $500 to $2,500 the jurisdictional amount under which small estates may be administered pursuant to procedures of Chapter 21 of the District of Columbia Code. This title also authorizes the court having probate jurisdiction in the District of Columbia to set fees charged by the Register of Wills for administering estates either in probate or under the provisions of the Administration of Small Estates Act of the District of Columbia Code.

Title II of the bill amends section 19–101 of the District of Columbia Code to increase from $500 to $2,500 the amount of the family allowance to which a surviving spouse is entitled out of the personal estate of a decedent for the personal use of such spouse and any minor children.

Title III of the bill permits the transfer of title to not more than two automobiles registered in the name of a decedent without necessity of formal administration of the estate in cases where the automobiles are the only assets of the estate requiring administration.

Title IV of the bill amends that provision of law relating to the order of preference to be utilized by the probate court in granting letters of administration, so as to delete certain provisions requiring the appointment of males over females or a femme sole over a married woman.

Title V of the bill will eliminate the necessity of a reference to the auditor for the sale of the real estate of a decedent in those cases where it is satisfactorily shown to the court that there is a deficiency of personal estate to pay debts, expenses, taxes and legacies, provided consents to the sale are obtained from all interested parties.

NEED FOR LEGISLATION

The bill (S. 3747) contains five titles designed to update and to some extent modify existing procedures estabilshed for the administration of estates in the District of Columbia. Most of the changes in existing law concern estates in which the assets are limited and provide for the expeditious and relatively inexpensive administration of such estates. In addition to meeting the need for the improvement in procedures for handling small estates, this bill also more accurately reflects the purchasing power of the dollar today as compared with that of 1949 when the original jurisdictional amount for small estates was established at $500. Raising the jurisdictional amount to $2,500 for both small estates and family allowances also follows the pattern set in other States which have recently increased the maximum limit for small estates and family allowances, including Maryland and Virginia.

Title 1 amends sections 20–2101, 20–2102, and 20–2106 of the District of Columbia Code to increase from $500 to $2,500 the jurisdictional amount under which small estates may be administered pursuant to the simplified procedures of chapter 21 of the Code. Section 20–2107 of the District of Columbia Code is also amended by title I to increase from $500 to $2,500 the maximum penalty for the filing of a false affidavit or for violations of an order of the Probate Court.

Under existing law the surviving spouse or minor children of a person who dies leaving an estate consisting only of personal property of value not exceeding $500 may petition the probate court for an order which, among other things, eliminates the necessity of a formal administration of the estate or the probate of a will. Also under existing law the person entitled to be preferred in the appointment of an administrator may, in the case of a person who dies intestate leaving an estate consisting only of personal property of a value not in excess of $500, and there is no surviving spouse or minor child, similarly petition the probate court for an order waiving formal administration and permitting an expeditious settlement of the estate.

Also under this title the court having jurisdiction over probate matters in the District of Columbia is given the authority to set the fees charged by the Register of Wills for the administration of small estates as well as those which are probated. Section 15–707(b) of the D.C. Code is amended to limit the maximum fee to $15 where the estate does not exceed $2,500, and no fee may be charged for estates of under $500 which are probated.

Title II of the bill amends section 19–101 of the D.C. Code to increase from $500 to $2,500 the amount of the family allowance to which a surviving spouse is entitled out of the per-

sonal estate of a decedent for the personal use of such spouse and any minor children.

The small estates and family allowance provisions were enacted into law by the act approved June 24, 1949 (63 Stat. 269). Your committee believes that changes in economic conditions since that time have acted to make the present amounts of $500 unrealistic in terms of present day values and requirements. The interrelation of the maximum for the administration of a small estate with the family allowance amount appears to make it desirable, in order to more accurately reflect the current cost of living, that an increase in both the small estates maximum and the family allowance now be made.

The proposed increase in the jurisdictional amount for small estates should materially aid in relieving the probate court as well as the Office of the Register of Wills of the detailed procedures and the time-consuming processes now required in the administration of all estates having assets of more than $500, and additionally provide a greater number of persons with this relatively inexpensive and expeditious method of winding up the affairs of a decedent. The proposed increase in the family allowance to a more realistic sum of $2,500 should prove to be of significant benefit to the surviving spouse and dependent children whose needs are most immediate and pressing.

Title III of the bill amends section 2 of title IV of the District of Columbia Revenue Act of 1937 (50 Stat. 680), as amended (D.C. Code, sec. 40–102), to permit the transfer of title to not more than two automobiles registered in the name of a decedent without the necessity of formal administration of the estate in cases where the automobiles are the only assets of the estate requiring administration.

Until title to the vehicle is transferred to a new owner, the vehicle may not lawfully be operated. This means, of course, that a vehicle on which a family is dependent for its transportation and which is titled only in the name of the decedent, cannot lawfully be used by that family until the estate has been administered. Accordingly, in order to make it possible to transfer title to the vehicle promptly so as to allow it to be used legally by the person or persons entitled thereto, title III amends the District of Columbia Revenue Act of 1937 to authorize the Commissioner of the District of Columbia, upon proof that all debts and taxes owed by the decedent have been paid or provided for, to transfer the title to the vehicle to the person or persons entitled to it.

Title IV amends that provision of law relating to the order of preference to be utilized by the probate court in granting letters of administration, so as to delete certain provisions requiring the appointment of males over females or a femme sole over a married woman. These distinctions are outdated and discriminatory, and the removal is a desirable improvement in the law.

Title V of the bill amends section 20–1106 of the District of Columbia Code by adding a fifth sentence thereto to provide for the sale of the real estate of a decedent situated in the District of Columbia without reference to the auditor of the U.S. District Court. Existing law authorizes the probate court to require the sale of the realty of a decedent whenever necessary for the payment of funeral expenses, debts, costs of administration, taxes, and legacies. Prior to approval of the sale of such realty, the auditor of the court must have ascertained and reported the debts and legacies, the deficiency of personal assets, and the real estate necessary to be sold for the payment of such charges and legacies.

Title V will eliminate the necessity of a reference to the auditor in those cases where it is satisfactorily shown to the court that there is a deficiency of personal estate to pay debts, expenses, taxes, and legacies, and provided consents to the sale are obtained from all interested parties and that all interested parties are sui juris.

Reference to the auditor in all instances where there is a deficiency of personality is a time-consuming and often expensive process. In most cases there are no objections by the parties in interest where it is evident that such a sale is necessary. The proposed amendment is permissive. Should the court or the Register of Wills entertain any question as to the allegations of the parties involved, reference to the auditor would be required in accordance with present law.

HISTORY OF THE LEGISLATION

The bill (S. 3747) was introduced by Senator Bible April 23, 1970, at the request of the District of Columbia government. Hearings on the bill were held by the Judiciary Subcommittee July 27, 1970, at which time the bill received the support of the District of Columbia government and the Bar Association of the District of Columbia. No opposition to the legislation was presented to the committee. This bill is one of the priority legislative items submitted by the District government to the Congress.

COMMITTEE AMENDMENTS

Your committee amended section 101 of title I of the bill to increase the jurisdictional amount under which small estates may be administered to $2,500 rather than the $1,500 figure in the bill as originally proposed. This action was taken in part on the recommendation of the District of Columbia Bar Association which testified at the hearing on the bill that a larger jurisdictional amount would be desirable to be consistent with the amounts established in the surrounding jurisdictions. The jurisdictional amount for the administering of small estates is $2,000 in Maryland and $2,500 in Virginia. The District government does not object to this increase.

Section 102 of title I was amended to reflect the intent of Congress to allow the court having probate jurisdiction the latitude of establishing the fees charged by the Register of Wills for the administration of estates. Section 144(10)(A) of the District of Columbia Court Reorganization Act of 1970 amends section 15–707(a) of the District of Columbia Code by authorizing the newly established Superior Court to set the fees charged by the Register of Wills for services performed in the administration of estates. However, since the complete transfer of probate jurisdiction will not occur until 30 months after the effective date of the District of Columbia Court Reorganization Act of 1970, it was necessary to add this corrective amendment to prevent one court from setting fees for an activity not within its jurisdiction.

Subsection (b) of section 102 was added to amend the District of Columbia Court Reorganization Act of 1970, section 144(10)(A), to make it conform with the provisions of this bill (S. 3747) limiting the maximum fees charged by the Register of Wills for the administration of small estates. The amendment limits the maximum fee to $15 for estates not exceeding $2,500 in value and provides that no fees will be charged for the administration of estates which do not exceed $500. Your committee feels that this is a reasonable limitation on the amount the Register of Wills may charge for services performed, and at the same time provides the flexibility necessary to establish fees which are pro rated according to the size of the estate.

Under the current provisions of the D.C. Code (sec. 15–707(b)) the Register of Wills may not charge for services connected with the administration of estates which do not exceed $200 in value, and may not receive more than $10 for the administration of estates which do not exceed $500 in value. Your committee feels that the upward adjustment of the amount below which no fees may be charged and the increase in the maximum amount that can be charged for the administration of smaller estates is made necessary by the increase in the maximum amount under which an estate may be handled without necessity of probate and the increased number of estates which are of less than $500 in value.

Subsection (c) of section 102 is a conforming amendment which provides that the provisions of subsections (a) and (b) will take effect concurrently with the District of Columbia Court Reorganization Act of 1970.

Section 103 was added to allow the court having probate jurisdiction the same flexibility in setting fees for the administration of small estates (under D.C. Code 20–2105) as it has in establishing the fees charged by the Register of Wills for estates which are probated. Your committee feels that this provision, coupled with the earlier section, will eliminate the necessity of the District government seeking congressional authority each time conditions warrant an adjustment in the fees charged by the Register of Wills for the administration of estates.

Section 201 of title II was amended to increase the amount of the family allowance from $500 to $2,500, rather than $1,500 as in the legislation submitted by the District government. In testimony before the Judiciary Subcommittee both the officials of the District government and representatives of the D.C. Bar Association stated that the interrelation of the maximum for the administration of small estates and the family allowance makes it desirable that the same figure apply in both cases. Therefore, since the maximum amount for small estates administration was increased to $2,500, your committee has also raised the amount of family allowance to $2,500. The District government has notified the committee that it has no objection to this increase.

Subsection (2) of section 201 was deleted by your committee because the necessity for increasing the amount of the family allowance which may be subjected to the payment of funeral expenses from the present $200 to $600 was not demonstrated by any evidence presented for the committee's consideration. Under current provisions of the D.C. Code the executor or administrator of an estate may authorize $600 for payment of funeral expenses, and for good cause shown the court, an additional $400 allowance may be made. Under special circumstances then, the total amount that may be made available for payment of funeral expenses is $1,200. Your committee felt this was sufficient compensation especially in consideration of the fact that the total amount of the family allowance is often very small and insufficient to meet the immediate and pressing needs of the surviving spouse or children.

Finally, your committee has amended the bill in a technical fashion to reflect the inclusion of amendments to title 15 of the District of Columbia Code in title 1 of the bill.

DISTRICT OF COLUMBIA CRIMINAL ACTIVITIES ACT OF 1970

The Senate proceeded to consider the bill (S. 3749) relating to crime in the District of Columbia, which had been reported from the Committee on the District of Columbia with amendments, on page 1, after line 6, strike out:

SEC. 101. Section 14 of the Act approved July 8, 1932 (47 Stat. 650, 654; D.C. Code, sec. 22–3214), relating to the possession of certain dangerous weapons, is amended

(a) by inserting "Molotov cocktail," immediately after "switch blade knife," in subsection (a); and

(b) by striking out "with a blade longer than three inches," in subsection (b) and inserting in lieu thereof ", an incendiary device such as a firebomb, fire torch, flare gun, or flare gun cartridge,".

And, in lieu thereof, insert:

SEC. 101. Subsection (b) of section 14 of the Act approved July 8, 1932 (47 Stat. 650, 654; D.C. Code, sec. 22–3214(b)), relating to the possession of certain dangerous weapons, is amended by striking out "or knife with a blade longer than three inches" and inserting in lieu thereof "knife".

On page 2, after line 10, strike out:

TITLE II—PROHIBIT ASSAULTS ON FIREMEN AND REDUCE PENALTY FOR RESISTING ARREST

SEC. 201. Section 432 of the Revised Statutes relating to the District of Columbia, as amended (D.C. Code, sec. 22–505), is amended to read as follows:

"SEC. 432. (a) Whoever assaults any officer or member of any police force operating in the District of Columbia, or any officer or member of any fire department operating in the District of Columbia, or any officer or employee of any penal or correctional institution of the District of Columbia, or any officer or employee of the government of the District of Columbia charged with the supervision of juveniles being confirmed pursuant to law in any facility of the District of Columbia, whether such institution or facility is located within the District of Columbia or elsewhere, while engaged in or on account of the performance of his official duties, shall be fined not more than $5,000 or imprisoned not more than five years or both.

"(b) Whoever in the commission of any of the acts referred to in subsection (a) uses a deadly or dangerous weapon shall be imprisoned not more than ten years."

And, in lieu thereof, insert:

TITLE II—PROHIBIT ASSAULTS ON FIREMEN

SEC. 201. Subsection (a) of section 432 of the Revised Statutes relating to the District of Columbia (D.C. Code, sec. 22–505(a)) is amended by inserting "or any officer or member of any fire department operating in the District of Columbia," immediately after "District of Columbia" where the term first appears.

On page 3, after line 14, strike out:

TITLE III—FORFEITURE OF CONVEYANCES USED IN NARCOTIC VIOLATIONS

SEC. 301. Section 17 of the Uniform Narcotic Drug Act approved June 30, 1968 (D.C. Code, sec. 33–423), is amended by inserting the subsection designation "(a)" immediately before the first word of such section and by adding the following new subsection:

"(b) Any conveyance, including an aircraft, vehicle, or vessel, which is used, or intended for use, in violating any provision of this Act shall be subject to seizure by any member of the Metropolitan Police force or the United States Park Police, or by the United States marshal for the District of Columbia or any of his deputies, and any such conveyance so seized, regardless of its value, shall be proceeded against in the District of Columbia Court of General Sessions by libel action brought in the name of the District of Columbia by the Corporation Counsel or any of his assistants, and shall, unless good cause be shown to the contrary, be forfeited to the District of Columbia and shall be made available for the use of any agency of the government of the District of Columbia, or otherwise disposed of as the District of Columbia Council may, by regulation, provide, except that (a) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under this Act unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this Act; and (b) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of the District of Columbia, or of any State. If there be any bona fide lien against the property so forfeited, the government of the District of Columbia may make payment of such lien and retain the property, or the property shall be disposed of by public auction. The proceeds of the sale of such property shall be available, first, for the payment of all expenses incident to such forfeiture; and, second, for the payment of such liens; and the remainder shall be deposited in the Treasury of the United States to the credit of the District of Columbia. To the extent necessary, liens against said property so forfeited shall, on good cause shown by the lienor, be transferred from the property to the proceeds of the sale of the property."

On page 5, at the beginning of line 11, change the title number from "IV" to "III"; at the beginning of line 14, change the section number from "401" to "301"; at the beginning of line 19, change the section number from "402" to "302"; on page 9, at the beginning of line 3, change the title number from "V" to "IV"; and at the beginning of line 4, change the section number from "501" to "401"; so as to make the bill read:

S. 3749

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 Criminal Activities Act of 1970".

TITLE I—DANGEROUS WEAPONS ACT AMENDMENT

SEC. 101. Subsection (b) of section 14 of the Act approved July 8, 1932 (47 Stat. 650, 654; D.C. Code, sec. 22–3214(b)), relating to the possession of certain dangerous weapons, is amended by striking out "or knife with a blade longer than three inches" and inserting in lieu thereof "knife".

TITLE II—PROHIBIT ASSAULTS ON FIREMEN

SEC. 201. Subsection (a) of section 432 of the Revised Statutes relating to the District of Columbia (D.C. Code, sec. 22–505(a)) is amended by inserting "or any officer or member of any fire department operating in the District of Columbia," immediately after "District of Columbia" where the term first appears.

TITLE III—DISTRICT OF COLUMBIA AUTHORIZED TO ADHERE TO INTERSTATE PAROLE AND PROBATION COMPACT

SEC. 301. As used in this title, the term "State" means any of the several States of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the District of Columbia, and the term "Governor" means the chief executive officer of any such jurisdiction.

SEC. 302. The Commissioner of the District of Columbia is hereby authorized to execute a compact on behalf of the District of Columbia with any of the States legally joining therein in the form substantially as follows:

"A COMPACT

"Entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America (4 U.S.C. 112) given to states (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam and the District of Columbia) to enter into compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies.

"The contracting states solemnly agree:

"(1) That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called 'sending state'), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called 'receiving state'), while on probation or parole, if

"(a) Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

"(b) Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person's being sent there.

"Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

"A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

"(2) That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

"(3) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be taken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of the states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state: *Provided, however,* That if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such a state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

"(4) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

"(5) That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

"(6) That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

"(7) That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in

writing of its intention to withdraw from the compact to the other states party hereto."

TITLE IV—SEPARABILITY

SEC. 401. If any provision of his Act (including the amendments made by this Act), or the application thereof to any person or circumstances be held invalid, the remainder of this Act and the application of the provision to other persons or circumstances shall not be affected thereby.

The amendments were agreed to.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91-1316), explaining the purposes of the measure.

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

In title I, section 101 is amended to read:

SEC. 101. Subsection (b) of section 14 of the Act approved July 8, 1932 (47 Stat. 650, 654; D.C. Code, sec. 22-3214(b)), relating to the possession of certain dangerous weapons, is amended by striking out "or knife with a blade longer than three inches" and inserting in lieu thereof "knife".

Title II is amended to read as follows:

TITLE II—PROHIBIT ASSAULTS ON FIREMEN

SEC. 201. Subsection (a) of section 432 of the Revised Statutes relating to the District of Columbia (D.C. Code, sec. 22-505(a)) is amended by inserting "or any officer or member of any fire department operating in the District of Columbia," immediately after "District of Columbia" where the term first appears.

Title III of the bill, relating to the forfeiture of conveyances used in narcotics violations, is omitted.

On page 6, line 1, strike out "Title IV" and insert "Title III".

On page 6, line 4, strike out "Sec. 401" and insert "Sec. 301".

On page 6, line 9, strike out "Sec. 402" and insert "Sec. 302".

On page 10, line 1, strike out "Title V" and insert "Title IV".

On page 10, line 2, strike out "Sec. 501" and insert "Sec. 401".

PURPOSE OF THE BILL

The purpose of the bill (S. 3749) is to amend statutes relating to the possession of certain dangerous weapons and interference with firemen in the performance of their duties. In addition, the bill authorizes the Commissioner of the District of Columbia to enter into the Interstate Parole and Probation Compact.

NEED FOR LEGISLATION

This bill (S. 3749) is needed to correct certain deficiencies that now exist in the District of Columbia Criminal Code with respect to possession of certain dangerous weapons, assaults on firemen in the performance of their duties, and to authorize the District to enter into the Interstate Parole and Probation Compact with the other States.

Under title I of the bill all knives would be classified as dangerous weapons when coupled with the intent to use them unlawfully against another. Under the current statute only knives with blades "3 inches or longer" are considered dangerous weapons, thus a person possessing a smaller knife, even with the intent to use it unlawfuly against another, is excluded from prosecution under the possession of dangerous weapons provisions in the code. Your committee feels that this situation should be corrected with legislation to eliminate the potential for not prosecuting a case on the grounds of a technicality.

Title II, expanding existing law relating to assaults on policemen and corrections officers so as to include firemen, is necessary by reason of the rather considerable number of assaults on firemen responding to emergency calls. The Fire Department reports that during the first 6 months of 1970 there were 10 reported incidents of this kind, and 57 during calendar year 1969.

At the present time assault on a fireman or interference with a fireman while he is performing his duties in connection with extinguishing a fire are not the subject of specific statute. Prosecution must be brought under the general assault, disorderly conduct, or rioting statutes. Title II would rewrite subsection (a) of section 432 of the Revised Statutes relating to the District of Columbia (D.C. Code, sec. 22-505(a)), presently applying to assaults on police officers and employees of penal, correctional, or juvenile institutions, and extend its coverage specifically to officers and members of the District of Columbia Fire Department and any other fire department operating in the District of Columbia.

In emergency situations involving interference with firemen in the performance of their duties, prompt and effective enforcement of a statute specifically covering these situations is necessary to prevent widespread destruction of property. No change is proposed in the penalty provision applicable to one who uses a deadly or dangerous weapon in the commission of any of these offenses (D.C. Code, sec. 22-505(b)). Whether violent or nonviolent, the penalty provided for one who uses a deadly or dangerous weapon in the commission of any of the acts specified is imprisonment for not more than 10 years.

Your committee feels strongly that firemen in the District of Columbia should be provided with the same statutory protection from assault as are policemen and corrections officers.

Title III would authorize the District of Columbia to become a signatory member of the Interstate Parole and Probation Compact, thereby enabling the District to participate in a nationwide program in which the States, Puerto Rico, and the Virgin Islands cooperate and serve as each other's agent in the supervision of persons on probation or parole.

The compact is applicable to all adult probationers and parolees. It would enable the District of Columbia to place its potential parolees, mandatory releasees, and probationers in their resident jurisdictions in a more orderly and effective manner. It would also provide for the more orderly placement, return, and control of adult probationers and parolees who come from other jurisdictions to live in the District of Columbia.

Adherence to the compact, as authorized by this legislation, would also enable law enforcement agencies in the District of Columbia to remove fugitives and violators from the District of Columbia with greater speed and less cost than at the present time. Authorities in other jurisdictions would also be better able to return parolees and probationers from other jusirdictions to the District of Columbia when such persons have been declared to be violators.

The District of Columbia is the only remaining jurisdiction eligible to become a signator to the pact that has not done so. Enactment of this legislation and signing of the compact will provide for the more uniform administration of parole and probation procedures throughout the United States.

Title IV would provide that if any provision of this act were held invalid, the other provisions would not be affected thereby.

HISTORY OF THE LEGISLATION

The bill (S. 3749) was introduced by Senator Bible April 23, 1970, at the request of the District government. A hearing on the bill was held July 27, 1970, before the Judiciary Subcommittee at which time a representative of the Office of the District of Columbia Corporation Counsel and the Chairman of the D.C. Board of Parole and Probation testified in support of the bill. No opposition to the bill was presented to the committee.

COMMITTEE AMENDMENTS

Your committee amended title I of the bill to eliminate the provision which would have included "molotov cocktails" and other incendiary devices in the District of Columbia Code provision which prohibits the carrying of dangerous weapons if there is intent to use them unlawfully.

The District of Columbia Court Reform and Criminal Procedure Act of 1970, which was signed into law July 29, 1970, contains in section 209 a new section to be added to the Dangerous Weapons Act, making it an offense to manufacture, transfer, use, possess, or transport a molotov cocktail, defined broadly to include all incendiary devices other than those lawfully and commercially manufactured primarily for the purpose of illumination, construction work, or other lawful purpose. Accordingly, since this problem in the criminal code is taken care of in the Court Reform and Criminal Procedure Act, there is no longer need to include it in S. 3749. The District government has no opposition to this amendment.

Title II of the bill was amended to simply include firemen in the provision of the District of Columbia Code (sec. 22-505) relating to assaults on policemen and corrections officers in the performance of their duties. As originally drafted by the District government, this provision would, in addition to including firemen in the section relating to assaults on policemen and corrections officers, have substantially rewritten the statute to eliminate language with respect to resisting, opposing, impeding, intimidating, or interfering with a policeman or corrections officer.

However, in view of the fact that section 206 of the Court Reform and Criminal Procedure Act amends existing law relating to assaults on policemen and corrections officers to add at the end thereof a statement that—

It is neither justifiable nor excusable cause for a person to use force to resist an arrest when such arrest is made by an individual he has reason to believe is a law enforcement officer, whether or not such arrest is lawful.

It would now seem inappropriate to delete this language or any of that language in the current statute. The District government concurs in this amendment.

Your committee has amended the bill by eliminating title III from the bill as originally introduced. This title provides that vehicles used in any violation of the Uniform Drug Act approved June 30, 1968 (D.C. Code, sec. 33-423), would be subject to seizure by members of the Metropolitan Police Department, the Park Police or any other U.S. law enforcement officer. The committee deleted this provision from the bill because of the consideration Congress is now giving to new, comprehensive narcotics legislation. The issue of which offenses may be serious enough to warrant seizure of motor vehicles is still undecided, along with many others. Therefore, the committee felt it best to delay final action on this provision until it can be determined exactly how it might conform with the final result of the current deliberations on narcotics legislation.

Should additional legislation be warranted following passage of the Federal narcotics bill, your committee will report this provision to the Senate as separate legislation.

Finally, your committee has amended the bill by renumbering title IV as title III, and title V as title IV consistent with the elimination of the original title III. In addition the appropriate section numbers have been changed to reflect the renumbering of the titles.

MINAM RIVER CANYON WILDERNESS AREA

The Senate proceeded to consider the bill (S. 1142) to authorize and direct the Secretary of Agriculture to classify as a wilderness area the national forest lands adjacent to the Eagle Cap Wilderness Area, known as the Minam River Canyon and adjoining area, in Oregon, and for other purposes which had been reported from the Committee on Interior and Insular Affairs with amendments on page 1, line 5, after the word "containing", strike out, "not to exceed one hundred thousand acres in the Wallowa-Whitman National Forest in Oregon adjacent to the Eagle Cap Wilderness Area, known as the Minam River Canyon and adjoining area, in township 1 south, range 41 east; township 1 south, range 42 east; township 2 south, range 41 east; township 2 south, range 42 east; township 3 south, range 41 east; township 3 south, range 42 east; township 4 south, range 41 east; township 4 south, range 42 east of the Willamette meridian.", and insert "approximately eighty thousand acres within the Wallowa-Whitman National Forest in Oregon in the Minam River drainage adjacent to the Eagle Cap Wilderness as generally depicted on a map entitled 'Proposed addition to the Eagle Cap Wilderness dated August 1970' which is on file and available for public inspection in the Office of the Chief, Forest Service, Department of Agriculture."; on page 2, line 14, after the word "the", strike out "Congress" and insert "Interior and Insular Affairs Committees of the United States Senate and the House of Representatives"; in line 16, after the word "the", insert "addition to the"; in line 18, after the word "this", strike out "Act." and insert "Act: *Provided,* That correction of minor clerical and typographical errors in such legal description and map may be made."; in line 2, after the word "such" strike out "wilderness area" and insert "addition"; in line 22, after the word "the", where it appears the first time, insert "Eagle Cap Wilderness of the"; and in line 25, after "1964", strike out "(78 Stat. 890)." and insert "(78 Stat. 890), except that any reference in the Wilderness Act to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act."; so as to make the bill read:

S. 1142

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture is hereby authorized and directed to classify as additional wilderness those national forest lands containing approximately eighty thousand acres within the Wallowa-Whitman National Forest in Oregon in the Minam River drainage adjacent to the Eagle Cap Wilderness as generally depicted on a map entitled "Proposed addition to the Eagle Cap Wilderness dated August 1970" which is on file and available for public inspection in the Office of the Chief, Forest Service, Department of Agriculture. The Secretary of Agriculture shall promptly after such classification transmit to the Interior and Insular Affairs Committee of the United States Senate and the House of Representatives a map and legal description of the addition to the wilderness area and such description shall have the same force and effect as if set forth in this Act: Provided, That correction of minor clerical and typographical errors in such legal description and map may be made. Upon its classification, such addition shall be deemed to be a part of the Eagle Cap Wilderness of the National Wilderness Preservation System and shall be subject to the same provisions and rules as those designated as wilderness areas by the Wilderness Act of September 3, 1964 (78 Stat. 890), except that any reference in the Wilderness Act to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

The amendments were agreed to.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1317), 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, S. 1142, as amended, would add up to 80,000 acres of the Minam River Canyon area to the 220,000-acre Eagle Cap Wilderness, located in the northeastern section of the State of Oregon, and which was established by the Wilderness Act of 1964. The Minam River Canyon area borders the northwest corner of the Eagle Cap Wilderness. The latter area embraces some of Oregon's highest peaks—up to 10,000 feet in elevation—and includes some of the best fishing waters in eastern Oregon.

DESCRIPTION

The Minam River itself is pure, cold, and crystal clear, splashing and wandering through spectacular multicolored canyon walls, merging with the Wallowa River at the town of Minam. Originating at Minam Lake on the alpine slopes of the north-central Wallowa Mountains, the Minam River courses nearly 50 miles and drains approximately 240 square miles.

The bill would designate as wilderness that part of the drainage within the Wallowa-Whitman National Forest, from the boundary, approximately 8 miles from the mouth of the Minam, upstream to the boundary of the Eagle Cap Wilderness. The elevation decreases from approximately 7,500 feet at Minam Lake to 2,540 feet where the Minam enters the Wallowa. In 1968 more than 5,000 persons enjoyed over 30,000 days of wilderness-type hunting and fishing in the Minam. This is one of the remaining quality elk hunting areas in Oregon where large mature bulls may still be found, and where trophy buck deer hunting is enjoyed by hunters willing to climb the steep and rugged ridges of the canyon. The river provides an important spawning and rearing area for a substantial run of Columbia River chinook salmon and steelhead. Other wildlife found in the canyon include cougar, mountain goat, bear, bobcat, fisher, marten, turkey, ptarmigan, bald eagle, and harlequin ducks.

Fears have been extensive that this area might be roaded, which could give rise to slides and earth movements that would cause siltation, result in destruction of the spawning beds of salmon, steelhead, and trout, and place barriers across natural game trails to prevent their use by the Minam River elk herd and other animals. The Minam fishery is of major significance. Steelhead, one of the most highly prized game fish in the Nation, enter the Columbia River from the Pacific Ocean in the summer months and reach the Minam and its tributaries the following May. Chinnook and some Coho salmon arrive and spawn in the summer and early fall. Formerly, 29 percent of the salmon which passed McNary Dam spawned in the Snake River system above Hells Canyon Dam. Now no fish are able to pass Hells Canyon Dam, giving greater importance to the remaining spawning areas in the lower rivers such as the Minam.

The beauty of the lower Minam is partly in its gentle character, and the ease with which people, especially families with children, can hike through the valley. There are numerous flats and parklike areas in the evergreen forests along the sparkling stream. The climate is superior to the high lakes and accessible during the spring and early summer when the higher regions are blocked by snowdrifts and flooding streams.

Two other canyon areas, the Little Minam and Bear Creek, are part of the Minam watershed, and offer remote wilderness experience, with unique beauty spots. They contain numerous meadows, family camping areas, and offer smaller waters for good fishing.

LEGISLATIVE HISTORY

The bill, S. 1142, was introduced by Senator Hatfield on February 25, 1969, and referred to the Senate Committee on Interior and Insular Affairs. Senator Packwood is a cosponsor of the legislation. Hearings were conducted in Washington on July 11, 1969, and field hearings at La Grande, Oreg., on July 27, 1970, by the Senate Subcommittee on Public Lands.

At the Washington hearing, as at La Grande, there was extensive support from conservation and outdoor organizations favoring inclusion of the Minam in the wilderness system. The Forest Service, at the Washington hearing, voiced objection on grounds that the area had not been subject to the review procedures set out in the Wilderness Act, and pointed out there were remaining stumps as evidence of old logging activity, and that there were two private resorts in the canyon each served by an airplane landing strip. There was enthusiastic local support for the proposal at the La Grande hearing, although lumbering, and other interests expressed concern that wilderness classification for the Minam might result in reduction of the allowable timber harvest on the area's national forest land. Prior and subsequent to the La Grande hearing the Senate committee received a large volume of correspondence from Oregon residents urging approval of S. 1142.

AMENDMENTS

The committee amended the bill to reduce the wilderness area authorization from a maximum of 100,000 to 80,000 acres. It also deleted the legal description of the area in favor of a map reference. A requirement that after classification the Secretary of Agriculture transmit to the Congress a map and legal description was changed to direct that these be submitted to the Interior and Insular Affairs Committees of the U.S. Senate and House of Representatives, provided that correction of minor clerical and typographical errors in such legal description and map may be made. Another amendment would make the area part of the Eagle Cap Wilderness.

EXECUTIVE SESSION

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

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

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

BUREAU OF MINES

The assistant legislative clerk read the nomination of Elburt Franklin Osborn, of Pennsylvania, to be Director of the Bureau of Mines.

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

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

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

LEGISLATIVE SESSION

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

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

AUTHORITY FOR CERTAIN COMMITTEES TO MEET DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Committee on Finance and the Subcommittee on Strategic Arms Limits Talks of the Committee on Armed Services be authorized to meet during the session of the Senate today.

Mr. GRIFFIN. Mr. President, reserving the right to object insofar as the Committee on Finance is concerned, several Senators have spoken to me about this. I take it upon my own responsibility to agree that there would not be any objection to the committee's sitting until the vote on the Ervin amendment occurs today, but I am not in a position to agree that the committee sit beyond that point.

Mr. MANSFIELD. Mr. President, I modify my request to contain that stipulation.

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

NOTICE OF INTENTION TO CALL UP PROPOSED OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Mr. MANSFIELD. Mr. President, if I may have the attention of the distinguished acting minority leader and the Senate, I think I should state that it is my intention, at an appropriate time this afternoon, to ask unanimous consent and, if need be, to move that the Senate proceed to the consideration of Calendar No. 1300, S. 2193, a bill to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for men and women, and so forth.

In this connection, I was approached by Members of the Republican side of the aisle early last week with the request that this particular proposal not be brought up last week but be put over until Monday of this week.

On returning from Montana, I find that objections have been entered, and I am disappointed and disturbed because I thought at least we had a tacit understanding to accommodate two Senators who were vitally interested in the proposal and who were not here on Thursday and Friday last, and as an accommodation to them, not thinking there would be any objection on yesterday, it was agreed to put it over until Monday. I find, on reading the RECORD, that objection has been raised. So I want to assure the distinguished acting minority leader and the Senate that it is my intention to try to bring it up this afternoon in one form or another because, in some way, somehow, the Senate will have to face up to this matter.

Mr. GRIFFIN. Mr. President, I appreciate the notice given by the distinguished majority leader concerning his intention so that it will be possible to contact those Senators who are keenly interested, some of whom unfortunately are not in the city today, and alert them. As I am sure the distinguished majority leader realizes, there are absent Senators on both sides of the aisle who are deeply and keenly interested in this legislation, some are for certain provisions and some are against them. To call the bill up at this point in the session presents a difficult and complex problem for many Senators. I appreciate the concern of the distinguished majority leader. I think he is justified in his reaction to the action on Monday, particularly since he made an adjustment last week to accommodate certain Senators I understand and I can appreciate his attitude today.

Mr. MANSFIELD. Mr. President, I appreciate the comments of the distinguished acting minority leader. However, it seems that we will be faced with a lot of problems like the one just enunciated—for example, the conference report on the farm bill. There will be Senators, I am sure, who will be absent and may delay the consideration of that bill. However, I personally would like to see it brought up. But if there are Senators in positions of significance and importance on this particular bill, the Senate will have to be prepared for any eventuality which may occur, regardless of how the majority leader personally feels on this matter.

I would, of course, hope that before we go out, we would be able to take up the appropriations for military construction for the Department of Defense. That is on the calendar. It is an important bill. I would hope that we would be able to clear the calendar as much as possible.

The way we are dillydallying and delaying and holding back and stalling, I do not know what we will do before we go out, let alone what we will do when we come back. We have a lot of business on the calendar. It is a heavy workload. There has been too much stalling and too much delay.

I hope that the Senate, regardless of individual campaigns, will face up to its responsibility and that Senators will be in attendance today and tomorrow so that the business of the Senate and of the Nation can be conducted as expeditiously as possible and, in that way, be disposed of one way or the other.

Mr. GRIFFIN. Mr. President, I am glad that the majority leader did not overlook in his comments the conference report on the farm bill.

The occupational health and safety bill is very important, and should be acted upon. It is equally important to the Nation as a whole that we take action on the farm legislation.

I was disappointed, as I know many other Senators were, when there was an indication that the conference report on the farm abill will not be taken up after the recess. Like the majority leader, I would hope that we could take action on both the farm bill and the occupational health and safety bill before the recess.

Mr. MANSFIELD. Mr. President, I want to assure the acting minority leader that the majority leader will do his very best to clear the calendar and dispose of as many of the conference reports as possible.

Unfortunately, situations arise which create difficulty. I must express my disappointment, for example, that the House has taken so long to face up to its consideration of the conference report on the farm bill. If I remember correctly, it was agreed to last Tuesday or Wednesday and is only being taken up in that body today.

We have a lot of things to consider—objections of individual Senators, the possibility that we may or may not have a quorum tomorrow. All things have to be taken into account to understand the situation which confronts the joint leadership at this time.

Mr. GRIFFIN. Mr. President, if the majority leader would permit an observation and then a request, it is my understanding that under the unanimous consent agreement entered into yesterday, there is only, as I recall, 10 minutes to a side available for debate on the proposed Ervin amendment to the equal rights amendment.

The ACTING PRESIDENT pro tempore. There is 5 minutes to the side on that amendment.

Mr. GRIFFIN. Mr. President, I am glad that the Senator from Indiana (Mr. BAYH) is on the floor—particularly in the light of a letter over his signature circulated this morning to Senators; a letter which includes this sentence: "Under the equal rights amendments, without any additional language, women would not be subject to the draft."

Since all of the legislative history, including the reports on this proposal issued by the Subcommittee on Constitutional Amendments, of which the distinguished Senator from Indiana is the chairman, contradict that statement, I would like to make a unanimous-consent request.

Before doing so, let me quote from a report dated December 16, 1969, issued by the subcommittee chaired by the Senator from Indiana, referring to affects of the equal rights amendment, if adopted. The report said:

> It could be expected that women will be equally subject to military conscription.

In view of the contradictory letter circulated this morning, I believe some time is needed to discuss this point. After conferring with the sponsor of the amendment, the distinguished Senator from North Carolina. I ask that there be at least 15 minutes allotted to the side for discussion of this very important amendment.

Mr. ERVIN. Mr. President, I was under the impression that there was 10 minutes to the side.

Mr. GRIFFIN. There is only 5 minutes to a side.

UNANIMOUS-CONSENT REQUEST

Mr. MANSFIELD. Mr. President, with the concurrence of all concerned, I ask unanimous consent that there be a time limitation of 30 minutes on the Ervin amendment, the time to be equally divided.

Mr. BAYH. Mr. President, with all due respect, I do not want to object. But if the majority leader will withhold that request for a moment——

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, I withhold my request for the time being.

COMMITTEE MEETING DURING SESSION OF THE SENATE TODAY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Committee on Banking and Currency be authorized to meet during the session of the Senate today.

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

REFERRAL OF BILL TO COMMITTEES

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the bill (S. 4451) to establish a national transportation trust fund and for other purposes, introduced by the Senator from Massachusetts (Mr. KENNEDY), be referred to the Committee on Commerce, and, if and when reported, it be referred to the Committees on Public Works, Banking and Currency, and Finance for their consideration of the subject matter in the bill coming within their respective jurisdictions. I do this by request.

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

ORDER OF BUSINESS

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. 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 OF BUSINESS

The ACTING PRESIDENT pro tempore. At this time, in accordance with the previous order, the able and distinguished Senator from Ohio (Mr. YOUNG) is recognized for not to exceed 15 minutes.

MURDER AT KENT STATE UNIVERSITY

Mr. YOUNG of Ohio. Mr. President, apparently only one Kent State student of 19,000 students at that fine university in Portage County adjoining my home in Cuyahoga County has made a statement that Ohio National Guardsmen were not to blame for the tragedy that occurred there last May 4. This 20-year-old student, James Young, of White River Junction, Vt., in an interview over a radio station in his State said that the Ohio National Guardsmen "had to fire to defend their lives." This fellow, James Young, either is gifted with an all-pervasive imagination or needs psychiatric treatment.

He claims he was looking out of the dormitory window 150 yards distant and that the students were an angry mob and guardsmen had to fire to defend their lives. He even added his speculation that if the guardsmen tried to fight their way out the angry mob would have beaten them to death. He stated they had no alternative but to shoot. This fellow even said that some of the students rioting were throwing pieces of concrete and links of pipe at the troops who were only about 20 feet away from the soldiers. He said the guardsmen had used up all their tear gas. If this fellow James Young were to testify in court stating under oath the fantastic story he gave out in that interview, he should and, very likely, would be indicted for the crime of perjury.

According to the report of the President's Commission on Campus Unrest:

> The leading edge of the crowd appeared to have advanced to a point no closer than 60 feet from the guardsmen, with the main body 180 to 225 feet away, before the gunfire began.

How could this one student possibly claim the guardsmen "had to fire to defend their lives?"

Also, the Commission reported:

> The national guardsmen on the Kent State campus were armed with loaded M–1 rifles—high-velocity weapons with a horizontal range of almost 2 miles. As they confronted the students, all that stood between a guardsman and firing was the flick of a thumb on the safety mechanism, and the pull of an index finger on the trigger. When firing began, the toll taken by these lethal weapons was disastrous.
>
> The guard fired amidst great turmoil and confusion, engendered in part by their own activities. But the guardsmen should not have been able to kill so easily in the first place. The general issuance of loaded weapons to law-enforcement officers engaged in controlling disorders is never justified, except in the case of armed resistance that trained sniper teams are unable to handle.
>
> This was not the case at Kent State, yet each guardsman carried a loaded M–1 rifle.
>
> Even if the guardsmen faced danger, it was not a danger which called for lethal force. The 61 shots by 28 guardsmen certainly cannot be justified. Apparently no order to fire was given, and there was inadequate fire-control discipline on Blanket Hill. The Kent State tragedy must surely mark the last time that loaded rifles are issued as a matter of course to guardsmen confronting student demonstrators.

This is a statement included in the report of the President's Commission on Campus Unrest.

Also, the extensive FBI investigation concluded:

> Most of the national guardsmen who did fire their weapons do not specifically claim that they fired because their lives were in danger. Rather, they generally state in their narrative that they fired after they heard others fire. We have reason to believe that the claim by the national guard that their lives were endangered by the students was fabricated subsequent to the event. The apparent volunteering by some guardsmen of the fact that their lives were not in danger gives rise to some suspicions. One guardsman admitted that his life was not in danger and that he fired indiscriminately into the crowd. He further stated that the guardsmen had gotten together after the shooting and decided to fabricate the story that they were in danger of serious bodily harm or death from the students.
>
> The guardsmen were not surrounded. Regardless of the location of the students following them, only a very few students were located between the guard and the commons. No guardsman claims he was hit with rocks immediately prior to the firing.

Last week at a time when I was in Europe this young man's statement was adverted to in a Senate speech. I agree with the statement made in that speech that if this 20-year-old student is called as a witness his only responsibility is to tell the truth.

Mr. President, seven investigative reporters of the Knight newspaper chain, publishers of the Akron Beacon Journal, Miami Herald, Detroit Free Press, and other nationally known metropolitan newspapers, were assigned to investigate the shooting on the commons of Kent State University on a beautiful sunshiny day, May 4, 1970, shortly after 12 noon at a time when classes were being held and also following the time when Governor Rhodes had called the Ohio National Guardsmen to Kent State University. This, despite the fact that President White of that university was not consulted and definitely did not want National Guardsmen on his university campus. He has so stated. These seven investigative reporters for 2 weeks interviewed students, National Guardsmen, townspeople of Kent, deputy sheriffs and members of the Ohio State Highway Patrol who were present on the campus and whose helicopters were flying back and forth over the dormitories throughout May 4. They reported:

> The two boys and two girls who were killed by bullets fired by national guardsmen did nothing that justifies their deaths. They threw no rocks nor were they politically radical. No sniper fired at the national guard. No investigative agency has yet found any evidence sufficient to support such a theory. The guardsmen fired without orders to do so. Some aimed deliberately at students, while others fired in panic or in follow-the-leader style. It was not necessary to kill or wound any students at the time of the shooting. The guardsmen had several other options which they did not exercise, including firing warning shots or marching safely away.

Mr. President, these investigative reporters stated in detail that the two girls and two boys who were killed were on the campus commons where they had every right to be. Not one was engaging

in any acts of violence at that time nor had they previously engaged in any acts of violence.

Also, Mr. President, under direction of Attorney General Mitchell and top officials of the Department of Justice, 100 FBI agents over a period of 2 weeks made a most thorough inquiry interrogating numerous witnesses including students, both boys and girls, faculty members, national guardsmen and officers, and hundreds of members of the Ohio Highway Patrol and citizens living near the Kent State University campus and officials and policemen of Kent. This, Mr. President, was a most thorough official investigation and it is stated that the summary of the report of officials of the Department of Justice covered 7,500 pages. This document has been signed by the Chief of the Civil Rights Section of the Department of Justice, Jerris Leonard.

Mr. President, some of the highlights and readily provable statements contained in this report are:

First. The shootings by national guardsmen were not necessary and not in order.

Second. No guardsmen had been hurt by flying rocks, and none was in danger of his life at the time of the shooting.

Third. The guardsmen had not run out of tear gas, as was widely reported at the time, and could have controlled the situation by using tear gas or making arrests.

Fourth. One guardsman fired at a student who was making an obscene gesture. A second fired at a student preparing to throw a rock. This notwithstanding that the distance separating the frontline of the guardsmen and this student and other students was so considerable that a thrown stone would not have struck any guardsman with sufficient force to cause injury. A third national guardsman is reported to have run around immediately after the incident shouting hysterically:

I shot two teenagers! I shot two teenagers!

Fifth. The memorandum of the FBI advised Ohio officials that six guardsmen could be held criminally responsible for their part in the shootings. And it listed the six by name, rank, unit, and home address.

It is evident that either James Young of Vermont is guilty of making outlandishly false allegations or he is unstable mentally. The 100 FBI agents and also the President's Commission on Campus Unrest in its report entitled "Special Report of Kent State Tragedy" clearly prove that James Young stands alone in giving out an interview and reporting his conclusions which are fantastically untrue and directly contrary to the facts. As to his allegation of students throwing rocks, links of pipes, and pieces of concrete at guardsmen when they were only 20 feet away from the soldiers, 100 FBI agents reported that of the four students killed and nine seriously wounded by National Guardsmen's bullets not one participated in any disorder in Kent or in the burning of the ROTC building on the commons of the university at any time during the preceding Friday, Saturday and Sunday nights. Also that there was no rioting on the campus of Kent State University at any time on May 4, that fatal day. Of the four students killed, Jeff Miller's body, according to the FBI report and according to the special report of the President's Commission on Campus Unrest, lay a distance of between 85 to 90 yards from the first line of guardsmen. Allison Krause fell some 110 yards distant. Sandy Scheuer, one of the first killed, was on the university commons walking to her speech therapy class. She was shot and killed at a distance 130 yards from the front line of guardsmen. Her school books lay on the ground beside her blood-stained body. Joseph Lewis who was wounded was closest of all the students to the front line of the guardsmen. He was about 60 feet from the front line of the guardsmen. He had thrown no rocks. He had resorted to no violence whatever. He made an obscene gesture and a guardsman named Shafer shot him.

John R. Cleary, also among those closest to the front line of National Guardsmen, was 110 feet distant. He was not facing the guardsmen. He was standing laterally to the guardsmen and the bullet entered his left upper chest at the side and exited from the right upper chest. This was a dum-dum bullet; outlawed and prohibited for use by members of our Armed Forces.

Donald MacKenzie was shot in the back of his neck. He was seriously wounded. He was 750 feet from the front line of National Guardsmen. The bullet entered the left rear of his neck.

Alan Canfora was in the parking lot 300 feet distant when he was shot.

James Dennis Russell was standing in an area 90 degrees removed from the location of the other students who were shot. He was 375 feet from the front line of National Guardsmen.

Thomas Grace was seriously wounded. He was at a distance of perhaps 300 feet from the guardsmen. Whether he was closer than that was immaterial. The guardsmen's bullet entered the rear of his left ankle and the bullet penetrated downward and this projectile disintegrated or exploded and parts of this projectile exited from the top of his foot.

Of all those 13 boys and girls killed and wounded only Joseph Lewis and Jeff Miller were shot from the front. Regarding seven of these young students the bullets entered from the side and four had their backs turned to the guardsmen. The bullets entered their bodies from the rear.

William Schroeder, an honor student from Lorain, Ohio, was killed while apparently in a prone position facing away from the guardsmen.

Douglas Wrentmore was 330 feet from the guardsmen. The bullet entered the left side of his right knee and existed on the right side of the knee inflicting a compound fracture of his right tibia.

Robert Stamps of Cleveland was also seriously wounded and no doubt permanently injured. He was 609 feet distant from the front line of national guardsmen. That distance is more than twice the length of a football field. The bullet struck him in the rear in the buttock about 3 inches below his belt, penetrated his body, missed his spinal column by about an inch, and exited from the front part of his body.

Also Dean Kahler who is still hospitalized and is paralyzed from his waist down was likewise facing away from the national guardsmen and at a distance of 300 feet.

Vice President AGNEW has stated that murder was committed at Kent State University by national guardsmen. He knows the facts. He stated that Ohio National Guard officers responsible should be charged with murder—not murder in the first degree but murder, he said. He stated that guardsmen overreacted. These killings and serious wounding of students, not one of whom had participated in any rioting, should be the subject of investigation by a special Federal grand jury to be convened later this year in the Federal Building in Cleveland to determine whether or not the civil rights of these students have been violated. This is in accord with U.S. Criminal Code 18, section 252.

Ohio National Guardsmen fired a volley of at least 61 shots. This is according to the report of the President's Commission on Campus Unrest.

The President's Commission on Campus Unrest, concluding its report, stated:

The indiscriminate firing of rifles into a crowd of students and the deaths that followed were unnecessary, unwarranted and inexcusable.

Then if James Young of White River Junction, Vt., is subpenaed he would be well advised to tell the truth and nothing but the truth; else he should be charged with the crime of perjury.

I yield the floor.

TRANSACTION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. At this time, in accordance with the previous order, the Senate will proceed, for a period of not to exceed 10 minutes, to the consideration of routine morning business, with a 3-minute limitation on speeches.

Mr. GRIFFIN. Mr. President, has the morning business been concluded?

The ACTING PRESIDENT pro tempore. This is in accordance with the previous order, in which the period for the transaction of routine morning business was limited to a total of 10 minutes, with a 3-minute limitation on speeches of individual Senators.

Is there morning business to be transacted?

TEMPORARY EXTENSION OF THE FEDERAL HOUSING ADMINISTRATION'S INSURANCE AUTHORITY—REPORT OF A COMMITTEE (S. REPT. NO. 91-1334)

Mr. PROXMIRE, from the Committee on Banking and Currency, reported an original joint resolution (S.J. Res. 242) to provide for the temporary extension of the Federal Housing Administration's insurance authority, and submitted a report thereon, which report was ordered to be printed.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the Senate pro-

ceed to the immediate consideration of the joint resolution, Senate Joint Resolution 242. It is necessary to dispose of this matter in the Senate today so that the House of Representatives may also consider the resolution and pass it before Congress adjourns tomorrow.

The ACTING PRESIDENT pro tempore. The joint resolution will be stated by title.

The assistant legislative clerk read the joint resolution (S.J. Res. 242) by title, as follows:

A Senate joint resolution to provide for a temporary extension of the Federal Housing Administration's insurance authority.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. PROXMIRE. Mr. President, under the law, certain FHA insurance authorizations were due to expire on October 1, 1970. When we realized it was impossible to have final action taken on 1970 housing legislation prior to October 1, a temporary extension of 30 days of these programs was authorized pursuant to Senate Joint Resolution 1366. At the time Senate Joint Resolution 1366 was considered, we were under the impression that Congress might adjourn by October 16 and we further felt that 1970 housing legislation would be disposed of prior to that date. Things have now changed, however, and we now know that 1970 housing legislation will not be considered until after the upcoming congressional recess. This being the case, another temporary extension of the FHA insurance authorizations is necessary if certain programs are to continue during the congressional recess and until 1970 housing legislation is finally disposed of by Congress. I hope that will be before December 1.

The FHA programs which would be extended by this resolution are:

FHA title I home improvement program.

FHA general mortgage insurance authorization covering section 203, single famliy sales housing, and section 207, multifamily rental housing, and so on.

FHA section 221 program, housing for moderate income and displaced famiies.

FHA section 809 program, single family housing for civilians employed at certain research and development installations.

FHA section 810 program, multifamily rental housing for civilians and armed service personnel at certain research and development installations.

FHA section 1002 insurance authorization for mortgages for land development.

FHA section 1101 insurance authorization for mortgages for group practice facilities.

The ACTING PRESIDENT pro tempore. The joint resolution is open to amendment.

Are there amendments to be offered?

Mr. ERVIN. Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. ERVIN. What is the pending business?

The ACTING PRESIDENT pro tempore. The clerk will please state the joint resolution by title.

The assistant legislative clerk read the joint resolution by title, as follows:

A Senate joint resolution to provide for the temporary extension of the Federal Housing Administration's insurance authority.

Mr. ERVIN. Mr. President, is there any controlled time on this matter?

The ACTING PRESIDENT pro tempore. No, it is not under controlled time. It was brought up by unanimous consent.

Mr. ERVIN. Mr. President, I wish to speak.

Mr. BAYH. Mr. President——

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. BYRD of West Virginia. Does the Senator understand that we are operating in the period for the transaction of routine morning business and that the Senator from West Virginia was recognized for 3 minutes?

Mr. ERVIN. I did not know that. I thought it was the morning hour.

Mr. BYRD of West Virginia. It is morning business. The Senator from Wisconsin obtained the floor and asked unanimous consent to consider a joint resolution.

Mr. ERVIN. I certainly would not want to interfere with the Senator from Wisconsin. I apologize. I thought he had yielded the floor.

Mr. PROXMIRE. No. I just wanted action on the joint resolution, which provides for an extension of 30 days for authority for certain FHA mortgage insurance.

The ACTING PRESIDENT pro tempore. The joint resolution is open to amendment.

If there be no amendment to be proposed, the question is on the engrossment and third reading of the joint resolution.

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

The joint resolution (S.J. Res. 242) was passed, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 2(a) of the National Housing Act is amended by striking out "November 1, 1970" in the first sentence and inserting in lieu thereof "December 1, 1970".

(b) Section 217 of such Act is amended by striking out "November 1, 1970" and inserting in lieu thereof "December 1, 1970".

(c) Section 221(f) of such Act is amended by striking out "November 1, 1970" in the fifth sentence and inserting in lieu thereof "December 1, 1970".

(d) Section 809(f) of such Act is amended by striking out "November 1, 1970" in the second sentence and inserting in lieu thereof "December 1, 1970".

(e) Section 810(k) of such Act is amended by striking out "November 1, 1970" in the second sentence and inserting in lieu thereof "December 1, 1970".

(f) Section 1002(a) of such Act is amended by striking out "November 1, 1970" in the second sentence and inserting in lieu thereof "December 1, 1970".

(g) Section 1101(a) of such Act is amended by striking out "November 1, 1970" in the second sentence and inserting in lieu thereof "December 1, 1970".

EQUAL RIGHTS FOR MEN AND WOMEN

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Mr. GRIFFIN. Mr. President, is my understanding correct that I am recognized for 3 minutes?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that when the Senate proceeds to the consideration of the Ervin amendment, instead of the 5 minutes agreed to yesterday on each side, there be 15 minutes of debate on each side before we proceed to vote.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. BAYH. I object, Mr. President, and ask unanimous consent that the morning hour be dispensed with at this time.

Mr. ERVIN. I object to that.

Mr. GRIFFIN. Mr. President, who has the floor?

The ACTING PRESIDENT pro tempore. The Senator from Michigan has the floor. Is there further morning business?

Mr. BAYH. I would like to try to accommodate all Members——

The ACTING PRESIDENT pro tempore. The Senator from Michigan still has the floor.

Mr. BAYH. If the Senator will yield for just one observation, I do not like to appear arbitrary, but, having sat here or stood here all day yesterday, trying to get this matter to a vote, it is rather difficult for me to understand now how any Senator can feel we did not have enough time to discuss it. If we could put aside the morning hour now——

Mr. GRIFFIN. Mr. President, who has the floor?

The ACTING PRESIDENT pro tempore. The Senator from Michigan has the floor.

Mr. GRIFFIN. The Senator from Indiana is speaking on my 3 minutes.

It is incredible to me that the Senate would move to a vote on an issue that will determine whether women are to be subject to the draft on the basis of a debate limited to 10 minutes. But, apparently, we are in that situation, and, because the Senator from Indiana will not agree even to a 15-minute extension, the Senate will be required to cast this very crucial and important vote after only 10 minutes of debate. I cannot understand it.

The situation disturbs me because I thought the Senator from Indiana conceded that the Equal Rights Amendment, if adopted, would subject women to the draft; and I thought he was in favor of that. Now, as a result of the letter delivered to Senators this morning, which included the sentence, "Under the Equal Rights Amendment, without any additional language, women would not be

subject to the draft," he raises a point which should be debated.

I say that because three different reports of the Subcommittee on Constitutional Amendments, chaired by the distinguished Senator from Indiana, including the report dated December 16, 1969, dealing with this matter, have each included this sentence:

It could be expected that women will be equally subject to military conscription.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senator from Michigan be permitted to proceed for 1 additional minute.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Mr. GRIFFIN. So, three reports which have been issued by the subcommittee chaired by the Senator from Indiana have stated in explicit language that the so-called equal rights amendment, if adopted, would subject women to the draft. Indeed, spokesmen for the several women's groups who testified in support of the so-called equal rights amendment made it clear that they believe it would subject women to the draft, and that was the position taken by the principal sponsor in the other House, my distinguished colleague from Michigan, Representative GRIFFITHS.

Now, we are confronted with a statement by the Senator from Indiana indicating that the amendment would not have the effect intended by its principal sponsor and most of its supporters. We are left with a serious question as to what the language of the proposed amendment really means.

We must resolve this doubt. Until this morning, I have assumed that Senators generally recognized and agreed with the views of witnesses testifying before the subcommittee, both pro and con, who stated flatly and unanimously, as I recall, that one effect of the so-called equal rights amendment would be to subject women to military conscription.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON LIMITATION ON BUDGET OUTLAYS FOR FISCAL YEAR 1971

A letter from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on fiscal year 1971 budget outlay limitations (with an accompanying report); to the Committee on Appropriations.

REPORT ON OVEROBLIGATION OF AN APPROPRIATION

A letter from the Chairmn, U.S. Atomic Energy Commission, reporting, pursuant to law, on the overobligation of an appropriation; to the Committee on Appropriations.

PROPOSED LEGISLATION TO AMEND THE CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT OF 1964 FOR CERTAIN EMPLOYEES

A letter from the Acting Director, Central Intelligence Agency, transmitting a draft of proposed legislation to amend the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, and for other purposes (with accompanying papers); to the Committee on Armed Services.

REPORT ON AIR FORCE MILITARY CONSTRUCTION CONTRACTS AWARDED WITHOUT FORMAL ADVERTISEMENT

A letter from the Secretary, Department of the Air Force, transmitting, pursuant to law, a report on the Air Force military construction contracts awarded by the Department without formal advertisement for the period January 1, 1970, through June 30, 1970 (with an accompanying report); to the Committee on Armed Services.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. SCOTT, from the Committee on the Judiciary, with amendments:

S. 1079. A bill consenting to the Susquehanna River Basin compact, enacting the same into law thereby making the United States a signatory party; making certain reservations on behalf of the United States, and for related purposes (Rept. No. 91–1333).

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

H.R. 18515. An act making appropriations for the Department of Labor, Health, Education, and Welfare, and related agencies, for the fiscal year ending June 30, 1971, and for other purposes (Rept. No. 91–1335).

By Mr. JACKSON, from the Committee on Interior and Insular Affairs, without amendment:

H.R. 9311. An act to declare that certain lands shall be held by the United States in trust for the Makah Indian Tribe, Washington (Rept. No. 91–1337);

H.R. 16811. An act to authorize the Secretary of the Interior to declare that the United States holds in trust for the Eastern Band of Cherokee Indians of North Carolina certain lands on the Cherokee Indian Reservation heretofore used for school or other purposes (Rept. No. 91–1336); and

H.R. 18298. An act to amend the Central Valley reclamation project to include Black Butte Project (Rept. No. 91–1338).

By Mr. McGOVERN, from the Committee on Interior and Insular Affairs, with an amendment:

H.R. 14984. An act to provide for the disposition of funds appropriated to pay judgments in favor of the Mississippi Sioux Indians in Indian Claims Commission dockets numbered 142, 359–363, and for other purposes (Rept. No. 91–1339).

By Mr. DOMINICK, from the Committee on Labor and Public Welfare, with amendments; rereferred to the Committee on Foreign Relations, by unanimous consent:

S. 939. A bill to amend the Higher Education Act of 1965 in order to provide for a U.S. Foreign Service Corps (Rept. No. 91–1340).

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

EXECUTIVE REPORTS OF COMMITTEES

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

By Mr. SPARKMAN, from the Committee on Banking and Currency:

David Ogden Maxwell, of Pennsylvania, to be General Counsel of the Department of Housing and Urban Development.

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

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

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

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

Lt. Gen. Jonathan Owen Seaman, Army of the United States (major general, U.S. Army), to be placed on the retired list, in the grade of lieutenant general;

Gen. Ferdinand Joseph Chesarek, Army of the United States (major general, U.S. Army) to be placed on the retired list in the grade of general; and

Lt. Gen. Austin Wortham Betts, Army of the United States (major general, U.S. Army), to be placed on the retired list in the grade of lieutenant general.

Mr. STENNIS. Mr. President, in addition, I report favorably 2,471 promotions in the Air Force in grade of major and below. Since these names have already been printed in the CONGRESSIONAL RECORD, in order to save the expense of printing on the Executive Calendar, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

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

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

George B. Aaron, and sundry other officers, for promotion in the Regular Air Force; and

William S. Harada, and sundry other persons, for appointment in the Regular Air Force.

By Mr. MAGNUSON, from the Committee on Commerce:

David S. Dennison, Jr., of Ohio, to be a Federal Trade Commissioner.

By Mr. EASTLAND, from the Committee on the Judiciary:

Nauman S. Scott, of Louisiana, to be a U.S. district judge for the western district of Louisiana;

Carl O. Bue, Jr., of Texas, to be a U.S. district judge for the southern district of Texas;

Robert H. Schnacke, of California, to be a U.S. district judge for the northern district of California;

James R. Miller, Jr., of Maryland, to be U.S. district judge for the district of Maryland;

Benjamin F. Butler, of New York, to be U.S. marshal for the eastern district of New York;

John William Mahan, of Montana, to be a member of the Subversive Activities Control Board;

Paul H. Roney, of Florida, to be a U.S. circuit judge, fifth circuit;

Samuel Conti, of California, to be a U.S. district judge for the northern district of California;

Gordon Thompson, Jr., of California, to be a U.S. district judge for the southern district of California;

J. Clifford Wallace, of California, to be a U.S. district judge for the southern district of California;

Peter T. Fay, of Florida, to be a U.S. district judge for the southern district of Florida;

James L. King, of Florida, to be a U.S. district judge for the southern district of Florida;

Gerald B. Tjoflat, of Florida, to be a U.S. district judge for the middle district of Florida;

Charles A. Moye, Jr., of Georgia, to be U.S. district judge for the northern district of Georgia;

William C. O'Kelley, of Georgia, to be a U.S. district judge for the northern district of Georgia;

C. Rhodes Bratcher, of Kentucky, to be a U.S. district judge for the western district of Kentucky;

Clarkson S. Fisher, of New Jersey, to be a U.S. district judge for the district of New Jersey;

John J. Kitchen, of New Jersey, to be a U.S. district judge for the district of New Jersey;

Frederick B. Lacey, of New Jersey, to be a U.S. district judge for the district of New Jersey;

Robert B. Krupansky, of Ohio, to be a U.S. district judge for the northern district of Ohio;

Nicholas J. Walinski, Jr., of Ohio, to be U.S. district judge for the northern district of Ohio;

George J. Long, Jr., of Kentucky, to be U.S. attorney for the western district of Kentucky; and

Lester Engler, of Arizona, to be U.S. attorney for the district of the Canal Zone.

BILLS AND A JOINT RESOLUTION INTRODUCED

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

By Mr. METCALF:

S. 4460. A bill entitled "National Public Employee Relations Act"; to the Committee on Labor and Public Welfare.

By Mr. SPARKMAN:

S. 4461. A bill for the relief of Mary Margaret Threadgill (Tran-Thi Hong); to the Committee on the Judiciary.

By Mr. MAGNUSON:

S. 4462. A bill for the relief of Merton A. Searle and George W. Bowers; to the Committee on the Judiciary.

By Mr. MAGNUSON (for himself and Mr. JACKSON, Mr. MOSS, Mr. MANSFIELD, Mr. PEARSON, and Mr. YOUNG of North Dakota) (by request):

S. 4463. A bill to provide a pool of general service railroad freight cars to be made available to shippers in any part of the country during times of regional car shortage and to be unrestrictedly available throughout the country according to the needs of shippers in the event of a general car shortage, and to assist in preventing or alleviating such shortages; to the Committee on Commerce.

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

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

S. 4464. A bill to amend the Interstate Commerce Act to promote acquisition of general service railroad rolling stock by providing the Secretary of Transportation with authority to aid common carriers by railroad and their car furnishing subsidiaries in acquiring such general service railroad rolling stock; to the Committee on Commerce.

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

By Mr. MAGNUSON (for himself, Mr. ANDERSON, Mr. CANNON, Mr. CRANSTON, Mr. FANNIN, Mr. GOODELL, Mr. GORE, Mr. GURNEY, Mr. HART, Mr. HOLLINGS, Mr. INOUYE, Mr. MCGEE, Mr. MCINTYRE, Mr. MANSFIELD, Mr. MCGOVERN, Mr. MURPHY, Mr. PACKWOOD, Mr. PASTORE, Mr. PEARSON, Mr. PELL, Mr. PERCY, Mr. RANDOLPH, Mr. STEVENS, Mr. TYDINGS, and Mr. YOUNG of Ohio);

S. 4465. A bill to establish a National Environmental Bank, to authorize the issuance of United States Environmental Savings Bonds, and to establish an Environmental Trust Fund; to the Committee on Banking and Currency.

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

By Mr. JORDAN of North Carolina:

S. 4466. A bill for the relief of Colleen Agatha Parkinson; to the Committee on the Judiciary.

By Mr. McGOVERN:

S. 4467. A bill for the relief of Sam C. H. Shum; to the Committee on the Judiciary.

By Mr. LONG:

S. 4468. A bill for the relief of Central Gulf Steamship Corp.; to the Committee on the Judiciary.

By Mr. JACKSON (for himself and Mr. STEVENS):

S. 4469. A bill to authorize the establishment of a system of National Indian Cultural and Ceremonial Shrines on federally owned lands which are used by, and which are of unique cultural and ceremonial significance to recognized American Indian tribes; to the Committee on Interior and Insular Affairs.

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

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

S. 4470. A bill to amend the Revised Organic Act of the Virgin Islands; to the Committee on Interior and Insular Affairs.

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

By Mr. HANSEN:

S. 4471. A bill for the relief of Alispa Rosita Bradley; to the Committee on the Judiciary.

By Mr. GURNEY:

S. 4472. A bill to preserve the concept of the neighborhood school in American public elementary and secondary education; to the Committee on Labor and Public Welfare.

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

By Mr. FANNIN:

S. 4473. A bill to provide for the conveyance of certain real property situated in the State of Arizona; to the Committee on Interior and Insular Affairs.

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

By Mr. HOLLINGS:

S. 4474. A bill for the relief of James Walton Owens, and his wife, Margaret; to the Committee on the Judiciary.

By Mr. PROXMIRE:

S.J. Res. 242. Joint resolution to provide for the temporary extension of the Federal Housing Administration's insurance authority; considered and passed, without amendment.

(The remarks of Mr. PROXMIRE when he reported the joint resolution appear earlier in the RECORD under the appropriate heading.)

S. 4463—INTRODUCTION OF NATIONAL FREIGHT CAR CORPORATION ACT: S. 4464—INTRODUCTION OF EQUIPMENT OBLIGATION INSURANCE ACT

Mr. MAGNUSON. Mr. President I introduce for appropriate reference two bills relating to the railroad industry. The first would create a quasi-governmental, nonprofit corporation to acquire and maintain a pool of general service freight cars to be made available to shippers in times of car shortages. The second bill would amend the Interstate Commerce Act to authorize the Secretary of Transportation to insure the railroad equipment obligations of railroads and their car-furnishing subsidiaries in order to promote acquisition of equipment. The following Senators have joined with me in sponsoring the National Freight Car Corporation Act: Senator JACKSON, Senator MOSS, Senator MANSFIELD, Senator PEARSON and Senator YOUNG of North Dakota.

Senators JACKSON and PEARSON have also joined me in sponsoring the Railroad Equipment Obligation Insurance Act.

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

Mr. MAGNUSON. Mr. President, in large measure, railroading is a sick industry. The largest road, the Penn Central, collapsed into reorganization last spring; ominous reports proclaim that even the relief from debt service provided thereby may not be enough to keep it operating. Federal money may be needed to pay its wages and suppliers. Other railroads stand in line behind it for aid.

Once proud passenger trains are only a memory from another era. The industry was not creative enough to deal with changing demands for transporting people. The Senate has proposed that the Federal Government pick up the challenge of passenger service with the National Rail Passenger Service Act of 1970.

For years, as we struggled with passenger service issues, the railroads pointed to freight service as their proper function and never lost an opportunity to tell us that the money they were making on freight was being absorbed by passenger service. It now appears, however, that even freight does not provide a secure underpinning for the railroads' health. Freight rate increase follows upon the heels of the previous increase. And each one diverts a little more traffic to other modes of transportation. We see the same pattern of requests for discontinuances of service with which we became familiar in the passenger service era repeating itself here.

Despite the continuing efforts by Congress, freight car shortages continue to exist and to grow worse. Industries in every region in every season now suffer with the farmers. Piles of products at factories join wheat piled on the ground for lack of shipment.

New car purchases by the railroads have not kept pace with the retirement of obsolete and wrecked cars, let alone the expanding needs of our economy. The fleet has declined by 14 percent in the past 10 years. It is significant to note that shippers and car companies have expanded their ownership of private cars in the last decade. They have lost faith in the ability of railroads to provide enough cars to service their needs. In addition to a dwindling car fleet, the railroads have been unable, because of fragmented ownership, to provide adequate utilization and distribution of the cars they do have.

Legislative efforts to improve car service must provide for more efficient utilization and better distribution of freight cars as well as for an enlarged fleet. It now appears necessary to embark upon a totally new approach which both en-

courages and assists the railroad industry in acquiring new cars through the private financing mechanism and insures improved utilization. Old concepts, even fortified by large amounts of Government money, are not likely to energize an industry frozen in the practices and ideas of the last century. The time has come to consider in detail what restructuring of the industry is necessary to meet modern needs. Let me emphasize that restructuring does not simply mean merging old roads, producing larger, but just as old and inadequate, roads.

The National Freight Car Corporation Act would establish a quasi-governmental corporation to own and operate a pool of general service railcars. The corporation would initially begin with acquisition of general service boxcars but then could develop a broader pool of any or all general purpose railcars which are in short supply and which are not equipped or built to make them usable for only one particular commodity. Initial capitalization would not be provided by Government funding, but rather by the railroads through a 50-cent surcharge on per diem charges on all foreign cars on their lines, to be repaid by 30-year debenture bonds bearing 8-percent annual interest. The success of this type of car pool would be assisted by providing a tax-free status for those operations limited exclusively to freight car shortages and by providing a Federal guarantee of the debt and interest of the corporation for capital and car building loans.

The car pooling corporation would be managed by an 11-man board of directors consisting of six railroad representatives, two shipper representatives appointed by the President, and three Government representatives.

The second bill is independent of the National Freight Car Corp., but is a complementary concept. It would provide assistance to individual railroads and their car-furnishing subsidiaries so that they could continue to purchase their own cars and upgrade their fleets. It would establish a Federal insurance program to assist them in obtaining private financing for the acquisition of freight cars and locomotives. It is modeled after the successful Federal ship mortgage insurance program contained in title XI of the Merchant Marine Act of 1936. That act has been so successful in encouraging the construction of U.S.-flag merchant vessels that the Senate last week acted to increase the ceiling on the program from $1 billion to $3 billion. The conditional sale agreements, equipment trust agreements, and other obligations of railroads and their 80-percent owned car furnishing subsidiaries would be insured through a revolving fund. A premium fee of one-fourth of 1 percent per annum of the unpaid principal balance of each insured obligation would be charged to build up the fund. All obligations would be secured by the rolling stock financed and must be payable within 30 years.

Both bills aim at prompt alleviation and eventual solution of the worsening car supply problems in this country. Both bills permit a pooling mechanism to achieve greater car utilization. In the National Freight Car Corp., the mechanism is provided by a federally chartered corporation. In the Railroad Equipment Obligation Insurance Act, it is provided through car-furnishing subsidiaries of railroads. Several existing railroad subsidiaries have achieved success in promoting car utilization through pooling of equipment among lines owning and using such fleets.

Either bill, or a combination of the most desirable features of both bills, could provide for planned distribution of general purpose cars more efficiently than is now possible with cars in fragmented, individual railroad ownership. The bills are not in competition with one another. The many other advantages of the pooling in acquisition, financing, distribution and repair of freight cars were carefully explained by General John P. Doyle in his 1967 article National Policy and the Rail Freight Car Shortage. The Doyle Report—National Transportation Policy Report of the Senate Committee on Commerce by its Special Study Group on Transportation Policies in the United States, June 25, 1961—also pointed out the benefits of pooling.

I have introduced the two bills in order to bring their concepts into the congressional forum for public analysis and scrutiny. The National Freight Car Corp., was drafted through efforts of the National Industrial Traffic League; the Railroad Equipment Obligation Insurance Act by the Association of American Railroads. The ideas of these two vitally involved segments of the public certainly deserve our consideration.

I would like to make clear, however, that I consider the two bills to be "working papers." They and any other reasonable ideas that come to light will be the starting points for our work on the subject next year. It follows, of course, that I am not committed to either bill and will welcome suggestions for their improvement. I will not be surprised to see changes or, perhaps, totally different approaches proposed as a result of hearings and deliberations on them.

I ask unanimous consent that the article by General Doyle and the text of the bills be printed in the RECORD at this point.

The bills, introduced by Mr. MAGNUSON (for himself and other Senators), were received, read twice by their titles, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

S. 4463

A bill to provide a pool of general service railroad freight cars to be made available to shippers in any part of the country during times of regional car shortage and to be unrestrictedly available throughout the country according to the needs of shippers in the event of a general car shortage, and to assist in preventing or alleviating such shortages

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 "National Freight Car Corporation Act of 1970"

PURPOSES

SEC. 2. The Congress hereby declares that the purposes of this Act are:

(a) To eliminate, insofar as possible, regional shortages of general service freight cars.

(b) To eliminate chronic nationwide shortages of general service freight cars and to alleviate seasonal or temporary nationwide shortages.

DEFINITIONS

SEC. 3. As used in this Act, unless the context requires otherwise:

(a) "General service freight car" means a plain, unequipped railroad car such as a boxcar, gondola car or flat car without special equipment or other features that would tend to limit its use to the transportation of a particular commodity. Any type of railroad car that is determined by the Board of Directors of the National Freight Car Corporation to be a general service freight car shall be considered to be such for the purpose of this Act.

(b) "Shipper" means any person, partnership, corporation or other legal entity that regularly ships freight in or on general service freight cars.

(c) "The Corporation" means the National Freight Car Corporation.

CREATION OF THE NATIONAL FREIGHT CAR CORPORATION

SEC. 4. There is hereby created a body corporate, to be known as the National Freight Car Corporation. It shall have succession until dissolved by Act of Congress, and shall maintain an office in the District of Columbia and be deemed to be a resident thereof subject to and governed by the District of Columbia Business Corporation Act to the extent consistent with this Act.

PURPOSES AND POWERS

SEC. 5. (a) The Corporation shall acquire and maintain a fleet of general service freight cars and make such cars available to common carrier railroads for use of shippers, as contemplated by this Act. Initially, this fleet shall consist entirely of general service boxcars, but when it is determined by the Board of Directors of the Corporation that the acquisition of other types of general service freight cars is in the interest of shippers and the railroad transportation system, then the Board may add other types of general service cars to the fleet.

(b) The Corporation shall have all of the powers allowed under the District of Columbia Business Corporation Act, including the power to acquire, own, use or convey real property. The Corporation shall also have the power to acquire property by condemnation for repair, maintenance and storage facilities and for other operating purposes, except that it shall not have power to condemn property that is already devoted to a public use or use by a common carrier or utility company. The Corporation shall keep its books and records in accordance with generally accepted accounting principles as determined by an accredited firm of certified public accountants appointed by the Board of Directors.

(c) The Corporation shall have the power to establish rates and collect charges for the use of its cars as provided in Section 9 hereof, and to establish car service rules and issue orders governing the use, movement and distribution of its cars, as provided in Section 10 hereof.

CAPITALIZATION

SEC. 6. (a) A per diem surcharge of 50 cents per car day is hereby levied upon all plain unequipped boxcars, Association of American Railroads mechanical designation XM. In the event that the surcharge as hereby levied or as subsequently reinstated in accordance with Section 5(c) of this Act is not paid when due, the Corporation may bring an action in any District Court for the United States to recover the amount due. The surcharge shall be paid to the Corporation by every common carrier railroad subject to Part I of the Interstate Commerce Act, except switching and terminal railroads, for each day that such a carrier accrues a car-hire charge payable to another railroad for use of the other railroad's type of XM boxcar, except that no one railroad, or group of railroads under common management and control, shall make total payments in excess of 10% of the total amount paid by all rail-

roads. The surcharge shall be payable on the tenth day of the second month succeeding the month in which the charge accrues, but shall accrue starting with the first day of the month following the effective date of this Act and continuing until the Board of Directors of the Corporation determines that not less than $10 million nor more than $30 million will be due or will have been paid to the Corporation as of a certain date, whereupon the surcharge will cease as of that date. If it should be determined that any one railroad, or any group of railroads under common management and control at the time of payment, has paid in excess of 10% of the total amount paid by all railroads, the Corporation shall refund the excess payments.

(b) In exchange for each 50 cents per diem surcharge payment the Corporation shall issue one share of stock without par value and which shall not bear or pay dividends, and one 50 cents par debenture, which shall bear and pay interest at the rate of 8 percent annually and the par value of which shall be due and payable December 31 of the thirtieth (30th) year after the date of issuance unless such date shall be a Saturday, Sunday or holiday, in which event said par value shall be payable the next full business day, which shall not be either a Saturday, Sunday, or holiday. Said debentures shall be debts of the Corporation but shall be subordinate to all other debts of the Corporation. Neither the par value nor the interest on said debentures shall be guaranteed by the United States of America or otherwise be construed to be within the provisions of Section 7 of this Act. In the event that adjustments are made between railroads under the railroad per diem rules, as in the case of a per diem reclaim by one railroad against another, the stock and debentures shall be issued to the railroad that actually bears the cost of the surcharge. The stock and debentures shall be transferable only between common carrier railroads subject to Part I of the Interstate Commerce Act, but in no event may any one railroad, or a group of railroads under common management and control, vote more than 10% of the outstanding stock.

(c) If the Board of Directors subsequently determines that additional capitalization is necessary, the surcharge may be reinstated by a vote of not less than nine of the eleven Directors for such period of time as such Directors shall find to be necessary to accomplish the purpose of this Act, and additional stock and debentures shall be issued in exchange therefor as in the case of the original issue. The surcharge may be made applicable to any type or types of general service freight car that has been or is to be acquired by the Corporation.

(d) In the event of partial or complete liquidation of the Corporation, any assets remaining after payment of the Corporation's obligations and expenses will be distributed pro-rata to the debenture holders up to the par value of their debentures, plus any due but unpaid interest, and the remainder will be paid into the Treasury of the United States and credited to miscellaneous receipts.

BOARD OF DIRECTORS

SEC. 7. (a) The Corporation shall have a Board of Directors consisting of eleven members, as follows:

The Secretary of Transportation or a person designated by him, in writing,

The Secretary of the Treasury or a person designated by him, in writing,

The Chairman of the Interstate Commerce Commission,

Two members representing shippers, to be appointed annually by the President of the United States,

Six members to be elected annually by the railroads that are stockholders of the Corporation, on the basis of one vote for each share of stock. Two of these six Directors shall be elected by stockholders affiliated with Eastern Railroad Territory (including New England), two by stockholders affiliated with Western Railroad Territory and two by stockholders affiliated with Southern Railroad Territory. No stockholder shall vote for Directors from more than one Territory.

(b) Since there will be no stockholder at the time the Corporation is created, the initial Board of Directors will include six members elected by the Directors of the Association of American Railroads, two being elected to represent each of the three railroad territories, and these six members of the Board will remain Directors of the Corporation until their successors are elected at the first meeting of stockholders as provided in the by-laws of the Corporation.

(c) Within 90 days after the effective date of this Act, the Board of Directors shall meet to adopt by-laws, elect officers and transact other business.

(d) Directors shall serve until their successors are elected or appointed. Vacancies shall be filed by election or appointment as provided in 6(a).

GUARANTEE OF BORROWED CAPITAL

SEC. 8. The Federal Government will not make any contribution to the capital of the Corporation or purchase any stock in the Corporation, and will not be responsible for the acts, defaults or debts of the Corporation except as set forth in this Section 7.

(a) In addition to its other powers, the Corporation is hereby empowered to incur debt for capital purposes, in such amounts and upon such terms and conditions as the Board of Directors shall determine, which may be backed by the general credit of the Corporation and secured by any or all of its assets, and shall be fully and unconditionally guaranteed both as to interest and principal by the United States of America.

(b) Debt may be incurred under this Section only by unanimous vote of the Board of Directors.

(c) Such debt may be incurred in the form of bonds, equipment trust certificates, conditional sale agreements or any other form of securities, agreements or obligations.

(d) Securities issued under this Section shall be lawful investments for all fiduciary, trust and public funds, and shall be issued in such form and under such terms and conditions as the Board of Directors may determine and shall not be subject to regulation by the Interstate Commerce Commission or the Securities and Exchange Commission. The limitations and restrictions as to a national or state bank dealing in, underwriting or purchasing investment securities for its own account, as provided in Title 12 U.S.C. § 24 and § 335, shall not apply to securities issued under this Section.

(e) In the event that the Corporation shall be unable to pay when due the principal or interest on any debt incurred in accordance with this Section, the Secretary of the Treasury shall pay to the creditor the amount due, which is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of such creditor.

TAXES

SEC. 9. For Federal income tax purposes, the Corporation shall be a tax-exempt nonprofit corporation. Any gifts to the Corporation shall be allowable as deductible contributions for Federal income tax purposes. The Corporation and its property shall be deemed to be instrumentalities of the United States engaged in furtherance of interstate commerce and shall be exempt from all state and local taxation.

CHARGES FOR USE OF FREIGHT CARS

SEC. 10. Charges for cars supplied by the Corporation shall be assessed on the same basis and at the same rates as the charges that are assessed for use of railroad owned cars at the same time under similar circumstances, except that the charges by the Corporation shall be increased by a surcharge in the form of a percentage. The Board of Directors shall establish from time to time the amount of such surcharge percentage. Such surcharge shall be set at a rate which in the judgment of a majority of the Board will most effectively enable the Corporation at least to earn sufficient income to pay all of its costs and expenses, including depreciation and debt carrying charges. In the event that charges established by the Board under this Section are not paid when due, the Board may request the Interstate Commerce Commission to enforce payment whereupon the Interstate Commerce Commission shall promptly make an investigation and, if it determines, with or without a hearing, that the charges are in accordance with this Act and are due and payable, shall order the charges to be paid with interest and if necessary shall enforce such order by the imposition of penalties as prescribed in Section 16(8)–(10) of the Interstate Commerce Act (49 U.S.C. § 16(8)–(10)).

CAR SERVICE RULES

SEC. 11. (a) The Board of Directors shall establish and may amend from time to time such just and reasonable car service rules, regulations and practices as shall in the judgment of the Board best serve the purposes for which the Corporation is established. Such rules, regulations and practices, and car distribution directions issued thereunder, shall take precedence over any conflicting rules, regulations or practices established by any railroad or group of railroads or by the Interstate Commerce Commission. Upon petition of any railroad affected by any such rule, regulation or practice the Interstate Commerce Commission shall make an investigation and, with or without a hearing, shall order any rule, regulation or practice that it finds not to be in conformity with this Act cancelled, annulled or amended, as the Commission shall find to be appropriate.

(b) In the event that any common carrier by railroad subject to Part I of the Interstate Commerce Act shall fail or refuse to obey or follow any rule, regulation or practice established under this Section, or any car distribution direction issued thereunder, such failure or refusal may be prosecuted by the Interstate Commerce Commission as provided in Section 16(8)–(10) of the Interstate Commerce Act, 49 U.S.C. § 16(8)–(10).

LIMITATION OF LIABILITY

SEC. 12. No person shall be liable to the Corporation for any loss or damage suffered by it on account of any action taken or omitted to be taken by that person as a director, officer or employee, of the Corporation in good faith, if that person relied upon financial statements of the Corporation represented to him to be correct by the President or by the officer of the Corporation having charge of its books of account, or stated in a written report by an independent public or Certified public accountant or firm of such accountants fairly to reflect the financial condition of the Corporation, or if that person considered the assets to be of their book value or relied upon the advice of legal counsel for the Corporation.

INITIAL REGISTERED OFFICE AND REGISTERED AGENT

SEC. 13. The initial agent of the Corporation shall be the Federal Railroad Administrator, Department of Transportation, Washington, D.C., and his office shall be the initial registered office.

REPORT TO CONGRESS

SEC. 14. The Board of Directors of the Corporation shall annually make a full report of its operations to the Speaker of the House of Representatives, who shall cause the same to be printed for the information of the Congress.

S. 4464

A bill to amend the Interstate Commerce Act to promote acquisition of general service railroad rolling stock by providing the Secretary of Transportation with authority to aid common carriers by railroad and their car furnishing subsidiaries in acquiring such general service railroad rolling stock

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 "Railroad Equipment Obligation Insurance Act of 1970".

SEC. 2. Congress finds that provision of modern, efficient freight cars and locomotives is a necessary part of our transportation system and that regional and nationwide shortages of such equipment exist.

SEC. 3. The Interstate Commerce Act is amended by adding the following new part at the end thereof:

"PART VI—DECLARATION OF PURPOSE

"SEC. 601. It is the purpose of this Part, by facilitating the enlistment of private capital, to provide for assistance to common carriers by railroad subject to the Interstate Commerce Act and their car furnishing subsidiaries in acquiring and maintaining adequate general service freight cars and locomotives and in such a manner to encourage the maintenance and growth of a private national transportation system adequate to meet the needs of the commerce of the United States, and of the national defense.

DEFINITIONS

"SEC. 602. For the purposes of this part—

"(a) 'Secretary' means the Secretary of Transportation.

"(b) 'Railroad' means a common carrier by railroad, as defined in section 1(3) of part 1 of this Act (40 U.S.C. 1(3)).

"(c) 'Car Furnishing Subsidiary' means a corporation at least 80 per cent of the voting stock of which is owned by one or more Railroads.

"(d) 'Rolling Stock' means (i) new or rebuilt standard gauge railroad freight cars suitable for use by more than one railroad in normal interchange under the Interchange Rule of the Association of American Railroads and (ii) standard gauge railroad locomotives.

"(e) 'Equipment Obligations' means bonds, notes, conditional sales agreements, equipment trust certificates, and other obligations issued or guaranteed by railroad or car furnishing subsidiaries to finance or refinance rolling stock.

"(f) 'Holder' means the holder of an equipment obligation, except that where a bank or trust company is acting as agent or trustee for the holder of the equipment obligation, such bank or trust company shall be deemed to be the holder.

"(g) 'Interest' means the interest or dividends payable pursuant to the provisions of an Equipment Obligation.

"(h) The term "obligor" includes the original borrower under an equipment obligation and his successors and assigns approved by the Secretary.

"FEDERAL RAILROAD EQUIPMENT OBLIGATION INSURANCE FUND

"SEC. 603. There is created a Federal Railroad Equipment Obligation Insurance Fund (hereinafter referred to as the 'fund') which shall be used by the Secretary as a revolving fund for the purpose of carrying out the provisions of this Act. Moneys in the fund shall be deposited in the Treasury of the United States to the credit of the fund or invested in bonds or other obligations of, or guaranteed as to principal and interest by, the United States.

"AUTHORIZATION OF SECRETARY TO INSURE EQUIPMENT OBLIGATION

"SEC. 604. (a) INSURANCE.—The Secretary, upon application by the obligor, is authorized to insure as hereinafter provided the interest on and the unpaid balance of the principal of, any Equipment Obligation offered to him which is eligible for insurance as hereinafter provided and, upon such terms as the Secretary may prescribe, is authorized to make commitments to insure any such obligation prior to the date of execution or disbursement thereon.

"(b) BENEFICIARY OF INSURANCE CONTRACTS.—Each insurance contract made under this section shall run to and be for the benefit of the holder of the equipment obligation.

"(c) PLEDGE OF UNITED STATES.—The faith of the United States is solemnly pledged to the payment of interest on and the unpaid balance of the principal amount of each equipment obligation insured under this Act.

"(d) LIMIT ON OUTSTANDING AMOUNT.—The aggregate unpaid principal amount of the equipment obligations insured under this section and outstanding at any one time shall not exceed $3,000,000,000.

"CONDITIONS AND LIMITATIONS

"SEC. 605. (a) No equipment obligation shall be insured under Section 604 of this Act unless—

"(1) the equipment obligation is secured by rolling stock to be financed or refinanced by such obligation;

"(2) the terms of such obligation require full payment within 30 years from the date thereof.

"(b) PREMIUM CHARGES.—The Secretary is authorized to fix a premium charge for the insurance of obligations under this Act at not exceeding one-quarter of 1 per centum per annum of the principal amount of the equipment obligation outstanding. Premium payments shall be made when moneys are first advanced under the obligation and on each anniversary date thereafter. All such premium charges shall be computed and shall be payable to the Secretary under such regulations as the Secretary may prescribe.

"(d) DISPOSITION OF MONEYS.—All moneys received under the provisions of Sections 601–608 of this Act shall be deposited in the fund.

"DEFAULTS

"SEC. 606. (a) RIGHTS OF HOLDER.—(1) In the event of any act or failure to act which gives the holder the right to accelerate the maturity of an equipment obligation, any such events being herein called defaults, and failure on the part of the obligor to remove and remedy the default within thirty days, the holder shall have the right (i) in the case of a default in respect of the payment of principal or interest or the payment of any amount to provide for the payment of premium charges for obligated insurance, to demand at or before the expiration of sixty days after any such default, and (ii) in the case of any other default, to demand at any time during the continuance of such default, payment by the Secretary of the unpaid principal amount of such obligation and of the unpaid interest thereon to the date of payment: *Provided,* That an assignment of the obligation be tendered to the Secretary at the time such demand is made. The Secretary may at any time during the continuance of any default notify the holder in writing, specifying the default, that by reason of such default the Secretary intends to terminate the insurance contract sixty days after such notice is received by the holder, and the holder shall be entitled to demand payment by the Secretary as above provided at any time during such sixty-day period, whether or not the default is removed and remedied, and if the holder shall fail to make such demand, the insurance contract may be terminated by the Secretary on or after the expiration of such period. Within a period of thirty days from the date of any such demand, the Secretary shall accept the assignment and promptly pay to the holder the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment: *Provided,* That, except in any case in which the Secretary has given notice of intention to terminate the insurance contract pursuant to the foregoing provisions, the Secretary shall not be required to accept such assignment if prior to the expiration of said thirty-day period he shall find that there was no default or that such default was removed and remedied prior to any such demand.

"(b) PAYMENTS; ISSUANCE OF NOTES OR OBLIGATIONS.—Any amount required to be paid by the Secretary pursuant to subsection (a) of this section shall be paid in cash. If at any time the moneys in the Federal Railroad Equipment Obligation Insurance Fund authorized by Section 603 of this Act are not sufficient to pay any amount the Secretary is required to pay by subsection (a) of this section, the Secretary is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States on comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations to be issued hereunder and for such purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transaction of the United States. Funds borrowed under this section shall be deposited in the Federal Railroad Equipment Obligation Insurance Fund and redemptions of such notes and obligations shall be made by the Secretary from such Fund.

"(c) FORECLOSURE PROCEEDINGS; ACTION AGAINST BORROWER OBLIGOR.—In the event the Secretary shall accept the assignment of an equipment obligation upon the default of the obligor pursuant to subsection (a)(1) of this section, he may institute foreclosure proceedings and in connection therewith repossess the rolling stock forthwith and take such other action against the obligor as, in his discretion, may be required to protect the interests of the United States or of the holder, as they may appear. Any suit may be brought in the name of the United States or in the name of the holder and the holder shall make available to the United States all records and evidence necessary to prosecute any such suit. If the Secretary shall determine that the interests of the United States do not require foreclosure of the obligation, he may make such agreement with the obligor as in the opinion of the Secretary will result in remedying the defaults. The Secretary shall have the right in his discretion to accept a conveyance of title to and possession of the rolling stock from the obligor, and in the event of a sale under foreclosure proceedings, may purchase the rolling stock for an amount not greater than the unpaid principal amount of such obligation and unpaid interest thereon. In the event the Secretary shall receive through the sale of the rolling stock an amount of cash in excess of any payment made to the holder under subsection (a)(1) of this section, and the expenses

of collection of such amount, he shall pay such excess to the borrower obligor.

"(d) SECRETARY TO COMPLETE AND SELL PROPERTY.—Notwithstanding any other provisions of law relating to the acquisition, handling or disposal of property by the United States, the Secretary shall have the right in his discretion to complete, recondition, renovate, repair, maintain, and sell property acquired by him pursuant to the assignment as provided in this section.

"(e) TERMINATION OR CANCELLATION OF INSURANCE CONTRACT; CONCLUSIVE EVIDENCE.—Any contract or commitment of insurance entered into by the Secretary under the provisions of this Act shall not be terminated, cancelled, or otherwise revoked for any reason, except as provided in this section of this Act, and shall be conclusive evidence that the obligation complies fully with the provisions of this Act and of the approval of the principal amount, interest rate, and all other terms of the obligation and of the holder or borrower and of the obligor or lender; and any contract or commitment of insurance so entered into shall be incontestable from the date as of which such contract of commitment is entered into, except for fraud, duress, or mutual mistake of fact.

MODIFICATIONS

"SEC. 607. The Secretary may consent to the modification of the provisions of an Equipment Obligation as to rate of interest, time of payment of interest or principal, security, or the terms and conditions of any contract or commitment of insurance which he shall have entered into pursuant to this part, or the renewal or extension or any such contract or commitment of insurance, whenever the Secretary shall determine it to be equitable to do so; provided, however, that such consent shall not be given unless any consent of the holder, which may be required pursuant to the provisions of an Equipment Obligation, shall have first been obtained."

APPROPRIATIONS

"SEC. 608. There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this subchapter."

The article presented by Mr. MAGNUSON is as follows:

NATIONAL POLICY AND THE RAIL FREIGHT CAR SHORTAGE

(By Maj. Gen. John P. Doyle)

(NOTE.—Anthony F. Arpais, lawyer; internationally known writer and speaker on transportation matters; formerly Vice President for International Affairs of REA Express; and Ex-Chairman of the Interstate Commerce Commission; is currently a consultant in the City of New York. He is regarded as a dean of transportation experts)

The subject of freight car ownership and utilization is of great importance to the railroads and to the national economy. For the railroads, freight cars are the primary source of revenue. As with all pieces of equipment, they earn nothing when idle or empty. Despite years of operating experience, the railroads have been able, it has been calculated, to move rail cars under load an average of only 6.2 percent of the useful life of a car.

The Congress and the Interstate Commerce Commission have struggled with the fact of car shortage for years. Incentive per-diem rates have been authorized in the hope of enlarging car ownership of terminal, bridge, and short-line railroads. Demurrage for delay of cars has been increased. The basic problems remain unanswered and the results are not satisfactory. Such measures do not go to the heart of the difficulty.

The author of this article, Major General John P. Doyle, has given many years to the study of transportation policy. He directed preparation of the widely respected report on National Transportation Policy for the Committee on Commerce of the U.S. Senate. Published in 1961, this exhaustive report, known as the "Doyle Report" included a discussion of car shortages. General Doyle here follows through with some very lively and imaginative suggestions for the cure of this persistent and difficult problem.

NATIONAL POLICY AND THE RAIL FREIGHT CAR SHORTAGE

Railroad freight car shortages have been with us a long time. Once seasonal, temporary and local in nature, shortages have become chronic and national in scope. Shipper complaints, Interstate Commerce Committee investigations and Congressional hearings have accomplished little more than fill page after page of printed reports. Once primarily an inconvenience to grain shippers, car shortages in the past year have directly affected producers and workers in other fields. It is not unreasonable to conclude that some basic fault in the system exists and that a new approach should be tried.

It is important to all discussions of transportation problems that we recognize and remember that government, through the centuries, has been determined that transportation must serve the reasonable needs of the people, whether as a result of private enterprise or otherwise.

Long before the United States became a nation, the peculiar nature of transport service and its effects upon the public had been recognized. Obligations designed primarily to foster security and carrier responsibility were imposed and, in England, became embedded in the common law.

With the advent of railroads the public interest in transportation led to government ownership of carriers, wholly or in part, in most countries of the world. From 1887 our nation followed the path of statutory regulation administered by an independent commission created by and responsible to the national legislature.

While our country fortunately opted for private ownership of carrier organizations it was early recognized that there were some things carriers could not do alone, either because of capital requirements or for other reasons. Our government has, consequently, assisted transportation in many ways since the days of the Cumberland Road. Rail land grants; artificial waterways; improved natural waterways; air line subsidies; merchant marine subsidies; air and water navigation aids; and the national airway, airport and highway programs are but some of the manifestations of public interest in transportation. That some of these things have been paid for wholly or in part by specific user charges while others have come from the public purse is immaterial to this discussion, important as it may be in the competitive arena.

It is interesting to note the different forms of government assistance and intervention. Once financial help was limited to providing the facility used by multiple diverse interests—roads, waterways—and this has expanded to include the airways and airports of today. Aid to specific carrier companies started with railroad land grants. It continued in merchant marine, airline and, now, transit operating subsidy. Although much early air transport design was largely an outgrowth of military bomber programs, equipment was generally left to the users, except for defense features of subsidized deep sea ships. Today we see government active in the design of high speed rail transport, the supersonic jet, federal aid highways and safety features of automobiles and trucks. All of this boils down to the fact, which seems obvious but is often ignored, that government will inevitably move to supply a need when, in its opinion, a vacuum exists—regardless of the reasons therefor. It seems that programs initiated by private enterprise can be assisted by government with a minimum of government control whereas those which are left to government initiation invite a high degree of governmental direction from the start.

At this point it would be well to define what is meant by general purpose freight cars as the term is used in this discussion. Some railroad men limit the meaning to plain box cars. That definition is not adequate here. In this paper a general purpose freight car is any type or size of car suitable for interchange and not restricted by special equipment installed therein to the transport of a particular commodity for a particular shipper.

It is recognized that general purpose cars can be placed in assigned service or be owned or leased by a shipper for his exclusive use. Unless there is a requirement for specialized installed equipment such practices tend to reduce the overall utilization of the car fleet except in the case of unit trains. There should be no thought of attempting to block the growth of specialized equipment which will increase the suitability of a car to serve individual shippers at a reasonable rate of utilization. If speed and convenience of loading and unloading; safety of the lading or other factors outweigh the cost of installed equipment and empty return the specialized car in assigned service is economically justified.

In any discussion of freight car shortage we should carefully avoid focusing all of our attention on the number of cars owned by any one railroad or in the total car fleet. There are many other factors which affect the ability of a shipper to obtain the type and size car he needs, when and where he wants it. Flexibility and utilization of the car supply are of vital importance and it is in these areas that fragmented ownership does the greatest damage. Nor should we blindly concentrate on statistics of bygone years. Railroading is a dynamic industry. Today railroads are moving greater tonnages over longer hauls than before, with fewer total cars. The optimum mix of the freight car fleet is changing, with less dependence on the plain box car. Less-carload traffic is moving to piggy-back or leaving the rails entirely. However, as long as economic loss is occasioned by inability to spot a suitable car where and when needed car shortage is a fact that cannot be wished away nor, without excessive, wasteful investment, cured simply by building more freight cars.

The railroads are not alone responsible for the car shortage. Some shipper practices contribute thereto. The general condition of our car building and car repair capacity is a factor. Where the railroads are at fault, most of the conditions stem from financial weakness or from causes beyond the control of any individual railroad and which can only be cured by concerted action, hopefully on railroad initiative. This is one area where the leadership of our new Department of Transportation and its Railroad Administration could be helpful. Regardless of the blame, however the total result is increasing shortages; static utilization and excessive overage equipment.

Shippers contribute to car shortages in a variety of ways. Sometimes more cars than needed are ordered so that, in times of shortage, the shipper is assured satisfaction of his real needs. When such orders are filled car days which could have been used by others are wasted. Some shippers fail to clean cars properly after unloading, thus forcing an additional switching operation to the cleaning track and delaying the car's availability. Some shippers use cars as an extension of their warehouse capacity by failing to unload promptly or by deliberately circuitous routing. General Tom Rice, President of the Atlantic Coast Line, used to tell a story about a string of his cars on a Florida siding during watermelon season—apparently being loaded. He congratulated his local agent but was told, "They're just using the cars for sorting. They'll ship by truck." Shippers normally operate their receiving

and shipping facilities on a forty-hour week while railroads operate around the clock. Lost car days are the inevitable result. The fact that some of these practices result in extra charges to the shipper is not material. The charges have proven inadequate deterrents. Car availability is compromised and the car fleet is not adequate to absorb the wasted car days.

Railroads could sharply curtail these wasteful practices if they would, but some seem to fear that a crackdown would alienate the shipper and loss of traffic would result.

Many shippers, of course, do everything in their power to avoid contributing to poor car utilization. They, along with the general public, suffer at the hands of the violators.

The railroad car building industry has had a long history of feast and famine. Orders for new rolling stock are among the most controllable of all railroad expenditures. These are among the first to get the axe when management is faced with reduced revenues. Lack of production stability over the years has retarded expansion and modernization of facilities. Laying off a trained work force is not only costly but it tends to drive the better men to other employment. A way must be found to smooth out the production peaks and valleys in this vital industry through production planning on a national scale over extended time periods.

It has been unfair and inaccurate to make railroad management the only whipping boy for car shortages in the public eye. As outlined above, shippers are due a share of the blame. Constructive mergers that would have reduced the fragmentation of the car fleet have been opposed by government because of what *might* happen, despite regulation. Government has helped syphon off needed revenue by insisting on favored rate treatment for itself and by creating a horde of unregulated for-hire competitors who pick and choose their traffic with no obligation to serve the public as a whole. Government has subsidized competitors through furnishing operating facilities free of charge. There can be, however, no question that the railroads as an industry have failed to do much that they could have done collectively, regardless of the fine records many of them have compiled as individuals.

It is interesting and encouraging to note that, at this writing, the railroads have accepted for implementation recommendations of the distinguished president of the New York Central, A. E. Perlman, which should lead to a truly national electronic car identification, data transmission and data processing system. This will be the essential tool for improved car utilization by doing away with the 70,000 "lost" cars whose whereabouts, at any given time, are not known. The Car Service Division of the Association of American Railroads if given the authority (which seems unlikely) should be able to program car distribution efficiently. The system will not, however, attack the other causative factors of car shortages.

There seems to be a basic difference in the railroad world that will not resolve itself and which, to date, has helped prevent industry accord on a plan to solve the car shortage question. This is the problem of non-owning roads. Railroads which originate substantially more traffic moving in interchange than they terminate favor high per diem, applied under current practices, because their interline per diem account is on the profit side. Roads which receive more traffic from interchange than they originate to go off-line in their own cars pay out more per diem than they receive and hence favor low per diem rates. Additionally, railroads terminating more traffic than they originate have, at all times, more cars on their tracks belonging to other railroads than they can load out. Economics dictates these cars be moved out as soon as possible to reduce per diem costs. Under such circumstances there is no incentive for a terminating railroad to own rail cars. The fact that, under fragmented ownership, car service rules of the Association of American Railroads specify that foreign cars be moved in the direction of the "home" road compromises the flexibility of car employment but is an unavoidable consequence of individual car ownership.

The fact of traffic imbalance, causing accumulation of cars on terminating roads, is a consequence of our national distribution of population, agriculture and industry; is beyond control of the railroads; and is basic to the problem of efficient total car utilization. It will not be changed by high per diem rates; high demurrage charges; by any system of mandatory car ownership quotas or in any other fashion short of planned national resettlement, which would be absurd. Since imbalance is with us the question is how to minimize its effects.

Railroads have long been aware of and sensitive to the problems of imbalance and non-owning roads. During the study of national transportation policy for the U.S. Senate published in 1961, the study group found evidence of a number of plans to attack the non-owning road question which were considered by the railroads. Each depended on compulsory ownership by individual railroads of a quota of freight cars to be determined and enforced by some outside agency. Each plan grounded and sank on this mandatory quota reef. As long as car ownership is fragmented the reasoning behind a mandatory quota is obvious. No railroad will buy cars in number or of a type it does not need, regardless of how badly they may be needed nationally. It is equally obvious that a private enterprise economy has no reasonable way to establish and enforce a mandatory ownership quota. The requirements of numbers, sizes and types of cars in the total car fleet can only be forecast on a national basis by an agency having a strong profit motive toward accurate and timely prediction.

One plan designed to avoid the mandatory quota called for the Federal Government to buy rail cars for lease to individual railroads as needed. Perhaps fortunately for private enterprise, this plan never received serious formal consideration. It would have transferred part of the capital costs of car supply to the taxpayer. Presumably, when not needed, the cars would have been returned to government yards for storage and maintenance. Responsibility for daily maintenance would have been divorced from ownership, probably resulting in higher bad-order rates. It is probable that railroad ownership would have declined even more than it did if cars could be rented more cheaply than the full cost of ownership. It would have forced an even greater involvement of government in operations.

Car service rules of the AAR were devised to overcome difficulties due to unbalanced interchange but, as the Interstate Commerce Commission has stated, the Car Service Division of AAR has no effective power and car service rules are honored as much in their breach as by observance. The ICC itself exercises redistribution powers only during a national emergency or, after-the-fact, when a shortage has become acute. It does nothing to avert shortages, its orders, in effect, share the shortage or, as some railroads have claimed, rob Peter to pay Paul. Such relief as the ICC affords is temporary in nature and does not deal with the basic causes of shortages.

While many of the causes of car shortage are beyond the control of railroads as presently organized they cannot escape responsibility for actions and failures to take action which have contributed to the problem. Each railroad management tends quite naturally to be most concerned with the well being of its own railroad. Secondarily it may be concerned with its connections, for in that direction lies reciprocity. Rarely, if ever, are managerial decisions based on needs of the national railroad system, the interests of which should take priority over the interests of any single rail entity.

It would be unfair to condemn this attitude in a private enterprise economy but this is not to say that, in the overriding public interest, it should not be modified. There is no *national* need for any railroad or for a rail system except as it serves a *national* requirement. There is a need for system thinking along public utility lines in railroad management, in the regulatory and promotional agencies and in the Congress. It is here, perhaps, that our new Department of Transportation and its Railroad Administration could make their greatest contribution toward realizing the full potential of rail transportation to the profit of all.

The "my road comes first" attitude has led to a wide variety of actions taken in the short range interest of individual roads but detrimental to the national system. A few examples include:

1. Failure to comply with car service rules, as previously mentioned.

2. Opposition to soundly conceived mergers or acquisitions which, as a by-product, would have helped concentrate car ownership and control.

3. A railroad originating little grain traffic stripped linings from boxcars, making them unsuitable for such traffic, to help insure prompt return to the home road.

4. Circuitous routing to maximize mileage on the originating road, thus causing unnecessary car miles and lack of car availability to serve other shipments.

5. Failure to correct an unnecessarily high national bad-order car rate. Some railroads have shown what can be done to keep cars in good running order.

6. Failure to standardize car design to the extent reasonably possible, thus increasing car costs and parts inventories. It is recognized that an increasing number of sizes and types is needed to serve public demand.

7. Location of storage yards and repair facilities for individual rather than system advantage.

The list is long and could be longer. The purpose, however, is to point up the need for collective action, not to indict individual managements. It is to be hoped that collective action will result from railroad initiative, as in the case of the Rail Data System previously mentioned.

There is much to be said on the credit side of rail managements as individual entities. The idea of marketing their services through customer satisfaction is replacing the concept of running a railroad for its own sake. Large capital investments are being made to improve the rail plant. Less is being said in favor of restriction of other modes and more of competition with them. Greatly increased expenditures for research are being made.

There has been a rebirth of innovation. Some managements, in the face of almost incredible opposition, have sought system improvement through consolidation. Some have succeeded. All of this is to the good. It should benefit the nation and some of the actions should improve car supply even if shortages remain. Most of it, however, has been predicated upon individual, rather than system, benefit.

Consideration of the long history of freight car shortages; the plans that have been suggested to cure them; the inability of the railroads to agree on any plan; the temporary, inadequate and non-conclusive actions of the regulatory agency to deal with a recurring problem, other than on a share-the-shortage, after-the-fact basis; and the reasonable public demand that car shortages be alleviated; leads to the conclusion that car shortages stem primarily from fragmented management of the national car fleet. This fragmented management is responsible for poor car utilization, averaging fifty miles per day; high bad-order rates, averaging five percent; and inadequate long-range planning

of car building and overhaul to meet projected requirements on a national scale.

Unification of car fleet management seems to be dependent on formation of a single car owning agency. Some may advocate a federal agency along the lines of an expanded Symes Plan but this appears both unnecessary and undesirable. The precedents of the Pullman Company and REA Express have provided a general pattern and the Car Service Division of AAR would provide the nucleus of a railroad controlled general purpose freight car owning company. The principle requirements for such a company would be that its charter insure that it dealt at arms length with each and every railroad, regardless of size. It would require the power and the will to penalize railroads and shippers who violate published car service rules.

Were a national freight car company to be formed, what would be its functions? What rolling stock would it own? What car building and repair facilities? Would it interfere in ownership of specialized cars for assigned service by individual railroads? Ownership or lease by shippers for their exclusive use? What about car leasing companies? The details of these and other questions including protection of the interests of small roads would have to be carefully worked out and specified in the charter.

Given a determined and cooperative approach, they could be. The general shape of the answers seems apparent today.

The basic function of a national freight car company would be to furnish on call to any railroad the number, type and size of freight cars specified by the railroad at the time and place desired. In the performance of this function the company would:

1. Own all general purpose freight cars, as defined above, suitable for interchange service.

2. Establish, maintain and operate storage yards at strategic locations as required.

3. Establish, maintain and operate car repair facilities and mobile teams of varying capabilities at strategic locations as required. The facilities should be available to service specialized cars owned by railroads and private owners on schedule or in emergencies as requested with reasonable expedition and at reasonable cost.

4. Standardize, centralize and operate car reporting service by electronic and other means.

5. Perform interline accounting services when railroad owned or privately owned cars move in interchange.

6. Establish a five year program of car replacement, to be updated annually.

7. Standardize details of car design and construction to the maximum degree practicable.

8. Enforce car service rules and collect penalties for violations thereof from carriers and shippers alike.

9. Direct the movement of empty cars in redistribution of car supply.

The national car owning company would not:

1. Own, operate or maintain locomotives other than yard switching equipment for its own use.

2. Furnish wrecker service. Assistance by the mobile car repair teams should be available to any railroad as required.

3. Own specialized cars or cars in assigned service.

4. Own extensive car building facilities in excess of capacity needed for repair.

5. Charge per diem to railroads during movement of empty cars for redistribution purposes. Rather it would pay railroads a switching and mileage charge for such movements.

Major changes should bring major benefits. The gains to be expected would include:

1. Equitable solution to the problem of non-owning roads.

2. Release of railroad capital for needed improvements to rail plant.

3. Planned distribution of the total general purpose car inventory matched with total requirements.

4. Planned car building and major overhaul programs based on centralized utilization and requirement forecasts of the total national requirements. Stabilization of the car building industry.

5. A planned distribution of car repair facilities avoiding both regional duplication and shortage of capacity. Reduction of national bad-order rate.

6. A major reduction of empty car miles resulting in improved utilization and lower costs. Avoid loss of flexibility due to the "home road" concept.

7. Development of the full national potential of electronic car identification, data transmission and processing so that the location, condition and availability of every car in the fleet would be instantly available.

8. Centralized car accounting.

9. Identification of system bottlenecks for corrective action, resulting in faster, more dependable service.

10. Improved standardization and modernization.

11. Improved emergency control of car supply. A built-in emergency "cushion" could be provided through planned utilization rates below the maximum possible, financed as a defense expenditure.

12. Reduction of duplicated storage tracks and yards.

13. Realistic penalties for shippers who fail to observe car service rules, uniformly applied without fear or favor.

14. A national car pool would be more flexible in adjusting to changing regional demands caused by changing customer requirements.

As in the case of the corporate charter the details of financing would have to be worked out. It is probable that some assurance of credit from government would be required. The depreciated value of rail cars should be paid to the present owners, part in cash and part in debentures of various terms. Such yards and associated plant, including car repair shops, as would be needed by the company, would be paid for in the same way. The company should have the right to refuse to purchase cars suitable only for salvage. Disputed evaluations should be subject to arbitration.

There is historic opposition on the part of the railroads to any form of national car pool and a tendency to depreciate the effect of car shortages. Some objections have been:

1. "Each railroad wants to control car supply to its shippers, especially in time of shortage." This is understandable, however, first come-first served is the rule and enforcement by an agency independent of the originating railroad would be easier than the present system.

2. "Railroads claim that a car pool would require all cars be brought to a high order of repair, engendering excessive costs." This presupposes that the management of a car pool would remain forever ignorant of local needs which, in this day of electronic data retrieval, is unrealistic. A high state of repair for the total fleet is a desirable long-range goal more likely to be achieved by pooling.

3. "Railroads cannot afford a car supply equal to serve peak requirements." From a national point of view, essential peak requirements must be met, even if priorities must be imposed by government. Fragmented ownership is less responsive to peak demands due to less flexibility than would exist in a national pool, in which the planned utilization rate could be adjusted to provide a total "cushion" at far less cost to the economy than if attempted by individual railroads.

4. "Railroad spokesmen claim it unreasonable to expect rails to meet all peak demands when no such requirement is placed on other modes of transport." In the public interest all modes should be able to meet emergency peaks within their sphere of service. Railroads draw the most concern because, though governmental actions seldom seem based thereon, rail transportation still is the essential backbone of national freight transportation.

5. "Car shortages usually effect only a short deferral of demands." This argument is likely to be quite unimpressive to owners whose grain deteriorates in the open; to lumber mill workers laid off because the product cannot be moved; or to those who lose sales because a public service facility cannot move their goods on time. This path seems to invite increased intervention by government.

6. "Car pooling would be a step in the direction of a single nationalized railroad system." Historically, in our country, nationalization has been proposed as an answer to specific failures or serious financial difficulties.

Chronic shortage on whatever scale must be interpreted as a shortcoming of the present system. Actions taken to relieve shortages through improved utilization, greater national flexibility and reduced system costs should tend to avoid, rather than invite, nationalization.

In summary, what we have had for many years is a history of declining total ownership and poor utilization. Despite all efforts, and the superior performance of some individual railroads, the industry has not made even a dent in the problem overall. It is time to try a new approach.

What is needed is management of the total general purpose car fleet as a single national asset. This, apparently, can be achieved only by an agency capable of dealing at arms length with individual railroads and shippers. Such an agency could, but need not, be an agency of government.

There is precedent for the concept of a railroad owned general purpose car company in the Pullman and REA Express Companies. Care in drawing the charter would be essential to protect the smaller railroads and to avoid past mistakes.

Enabling legislation might be required to avoid anti-trust problems and it is probable that some federal financial assistance in the form of long term loans would be necessary.

Finally, the public interest demands that the car shortage problem be solved while at the same time excessive investment in rolling stock is avoided and wasteful operating practices minimized. It could be done now—while there is yet time for railroad industry initiative.

REFERENCES AND ADDITIONAL READING

1. Public Law 89–430, 89th Congress (S. 1098, May 26, 1966; Senate Report No. 386, 89th Congress; and Hearings, Committee on Commerce, Freight Car Shortage Subcommittee, Serial No. 89–23. (All 1965)

2. "ICC Report on Car Shortage," *Traffic World*, June 27, 1964, p. 162; and Ex Parte 241, Investigation of Adequacy of Railroad Freight Car Ownership, Utilization, Distribution, Rules and Practices, ICC, June 22, 1964.

3. Freight Car Shortage, Hearings on S. 1063, Committee on Commerce, U.S. Senate, 88th Congress, June 17, 1963.

4. National Transportation Policy, Senate Report 445, 87th Congress, January 3, 1961.

5. Freight Car Shortage, Hearings on S. 886 and S. 1840, Committee on Commerce, U.S. Senate, 87th Congress, June 13, 1961.

6. Docket No. 29669, ICC, Car Service, Freight Cars, 268ICC 687, July 25, 1947.

STATEMENT OF SENATOR PEARSON IN SUPPORT OF BOXCAR LEGISLATION

Mr. PEARSON. Mr. President, I am happy to join the distinguished chairman of the Commerce Committee in cosponsoring these two bills.

The recurring boxcar shortage—perhaps more than any other matter—has been a subject of personal concern to me ever since I came to the Senate.

The chairman and I have held hearings, introduced legislation, prodded Federal agencies, and otherwise grappled with this problem for years. The shippers and carriers and consumers of this Nation have been well served by his leadership.

While I recognize that these proposals are serious and thoughtful efforts to improve our present situation, nevertheless I join Senator MAGNUSON with the understanding that these bills will serve as working papers for the committee. We are not wedded to any of the provisions of either proposal.

Speaking for the farmers and grain shippers of my State and the Middlewest, these bills, and the work involved in drafting them, are gratifying indications of the importance of bettering this Nation's ability to transport our essential commodities.

I thank the Senator for extending me this opportunity to join with him.

S. 4465—INTRODUCTION OF A BILL TO ESTABLISH NATIONAL ENVIRONMENTAL BANK

Mr. MAGNUSON. Mr. President, the growing concern and alarm over the fate of our environment is not only well-justified, it is overdue. As a nation we have moved from ignorance and apathy to the problems of pollution to a state of reasoned anxiety based on a knowledgeable understanding of the gravity of the threat presented. Such a cultural transformation is an essential step to survival, but it is only the first step. The second step necessitates a recognition that any meaningful inroad on environmental degradation requires a substantial and continued commitment of resources. The third step to environmental survival is an awareness that the problem of pollution can be effectively solved only by innovative restructuring of our institutions and by terminating inflexible, fragmented structures.

Mr. President, I introduce today, for appropriate reference, the Environmental Financing Act of 1970, which addresses itself to these three steps. This bill will provide the financial ability to insure a livable environment now and for future generations by authorizing and establishing an Environmental Bank, an Environmental Trust Fund, and environmental savings bonds. This bill will provide both a challenge and an unparalleled opportunity for all levels of government and for all citizens to join hands in their quest for ecological survival.

Increasingly, cities, States, and other public bodies are finding it difficult, if not impossible, to finance environmental programs. Inflation, with its invariable counterparts of tight money and high interest rates, voter rejection of bond issues, inability to secure good bond ratings, statutory interest rate ceilings, and the normal allocative priorities on spending are all imposing severe constraints both on the plans and the programs of local and State governments that are attempting to come to grips with the problems of pollution. As the list of unmet need continues to grow, the citizen is threatened by increased air, water, noise, and solid waste pollution. The Environmental Bank will assist these governmental units by providing long term, low interest loans for the construction of waste treatment plants, for the separation of combined storm-sewer systems, for the establishment and enforcement of air and noise pollution standards, for the creation and maintenance of solid waste disposal programs, and for other urgently needed programs and services that will preserve, protect, and enhance the environment.

Effective abatement of present contamination and proper planning to meet future menaces of nature's milieu are contingent on an ongoing, guaranteed source of funds. All too often cities and States have been faced with billion dollar authorizations and million dollar appropriations.

In many cases these governmental entities have temporarily extended themselves and prefinanced some or all of the Federal share only to find that the Federal share was impounded, delayed, or less than promised. Under the Environmental Trust Fund there will be a perpetual, insured, and growing source of funds guaranteed for one and only one purpose—trying to save our environment. Initially, funds will be used to underwrite the difference between what the Environmental Bank loans money out at and what the bank borrows money at. The Environmental Trust Fund will not be limited, however, to the use of the bank only, for the fund is flexible enough that should new problems arise or should new uses of the fund be desirable, Congress can so decide that the funds could be appropriated for other ecologically essential purposes. The Environmental Trust Fund then will function both as a vehicle for immediate action now and as a protection and insurance for the future against the poor planning and haphazard action that jeopardizes our limited resources.

In the illustrious tradition of war bonds, the authorization of U.S. environmental savings bonds is a statement by the Congress that the quality of life demands a new and tremendous investment on the part of all the citizenry. A livable environment costs money, and environmental savings bonds offer the citizen a chance to buy a share in cleaner air and cleaner water. For the first time, there will be an answer to the frequent question of "What can I do?" Now the citizen can make a direct, personal investment in the future of the environment; now the citizen can make a start to ensure that we have the resources to fight both today's and tomorrow's environmental battles.

Each of us has been and will continue to be a polluter, but now with environmental savings bonds, each of us will have a chance to be an environmentalist. Best estimates have stated that 30 million people participated in Earth Day. If only two-thirds of these had bought a $25 environmental savings bond, $500 million in capital would be generated toward clean air and clean water.

While the moneys invested are critical to environmental solutions, we should not forget or gloss over the other benefits that will result from the inauguration of environmental savings bonds. Citizens will become more aware of and involved in both the problems of and the solutions to environmental quality. Environmental savings bonds, backed and guaranteed by the U.S. Treasury, will revitalize the existing bond program where presently redemptions are far outstripping the sales of bonds. Not only will these bonds be anti-inflationary by increasing the Nation's savings, but they will decrease the direct cost of environmental programs to all levels of government. Moreover, these bonds will be a move toward getting government closer to the people, for the people will decide whether they are willing to pay the price of a healthy environment. We have slowly come to the realization that the best things in life are not always free. Clear air, clean water, quietude, parks and open space all cost money and the question becomes whether the citizen is going to be satisfied with rhetoric and pollution or whether he is going to directly invest his money in air he can breathe and water he can drink.

As should be apparent from my remarks, the Environmental Bank, the Environmental Trust Fund, and environmental saving bonds are not three separate programs. Rather they are a comprehensive and integrated whole. Citizens will buy bonds and the proceeds of the bonds will be placed in the trust fund. The trust funds will then be used as the capital to finance the loans made by the Environmental Bank. As the cities, States and other public bodies pay back their loans, those moneys will be utilized to pay the citizens when they redeem the bonds at maturation.

Mr. President, when more than 95 million Americans drink water which is inferior or of unknown quality, when 94 percent of the Nation's land disposal sites are unacceptable and breeding grounds for vermin and disease, when 34 States have inadequate air pollution programs, and when authoritative sources have stated that it will take $71 billion to clean up the environment, it is time for some new ideas and new programs. These new programs should include all levels of government and all the citizens; these new programs should include an attack on all forms of pollution; and these new programs should guarantee meaningful and substantial allocations of money. I believe that the Environmental Financing Act of 1970 is just such a program.

Resolving in essence the quest of human survival and the quality of human life on a planet of fragile hospitality—this must and is rightfully becoming the issue of paramount concern to all segments of society. Life loses its point, its relish, its sense of direction and even its vitality when it is spent amidst a haphazard squalor that God never made, nature never evolved, and man never intended. The battle for a clean environment is indeed a battle for basic survival, but it is even more than that—it is a quest for a psychic life of spirituality where man and nature live in mutual harmony. Clean and sparkling rivers, lush green countrysides, and invigorating air are basic to life itself; moreover, these qualities are truly what adds zest to one's life and make it really worth living. No goal is more worthy of the attention and the action of the Congress

than making life worth living, and I suggest that my Environmental Financing Act of 1970 is a major step toward achieving that goal.

I ask unanimous consent that the full text of the Environmental Financing Act of 1970 be printed in the RECORD at the conclusion of my remarks.

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

The bill (S. 4465) to establish a National Environmental Bank, to authorize the issuance of U.S. environmental savings bonds, and to establish an Environmental Trust Fund, introduced by Mr. MAGNUSON, was received, read twice by its title, referred to the Committee on Banking and Currency, and ordered to be printed in the RECORD, as follows:

S. 4465

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

SECTION 1. This act may be cited as the "National Environmental Financing Act of 1970".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress makes the following findings:

1. There is an increasing need for funds to finance State, regional, and local programs designed to insure a livable environment for the present and for the future.

2. Inflation, tight money, high interest rates, and strained tax bases make it increasingly difficult for State and local governments to financially meet critical environmental needs.

3. The inability of the States and the localities to finance needed environmental programs jeopardizes the environment and thereby constitutes a clear and present danger to the public health and welfare.

4. It is necessary and in the national interest for the Federal Government to assist State and local governments in financing needed environmental programs.

5. It is necessary to encourage and stimulate greater citizen participation in the environmental future of our country.

6. It is essential to increase the investment in our Nation's ecological future so that man and nature can live in mutually productive harmony.

7. An ongoing, guaranteed source of funding for environmental programs is in the national interest.

(b) It is the purpose of this Act to establish a National Environmental Bank to make and guarantee long-term loans to State and local governments and other agencies authorized by law to finance environmental programs to control or abate pollution. It is the further purpose of this Act to authorize the issuance of Environmental Savings Bonds to increase citizen investment and participation in environmental programs. It is the further purpose of this Act to establish an Environmental Trust Fund to provide a perpetual and guaranteed source of funds for environmental programs of the present and the future.

DEFINITIONS

SEC. 3. As used in this Act—

1. The term "Bank" means the National Environmental Bank established by section 4.

2. The term "Bond" means the Environmental Savings Bond established by section 19.

3. The term "Trust Fund" means the Environmental Trust Fund as established in section 20.

4. The term "environmental program" means the construction of waste treatment plants, the establishment and enforcement of air pollution standards, the creation and maintenance of solid waste disposal programs, the establishment and enforcement of noise pollution standards, and other programs and services which will preserve, protect, or enhance the environment as designated by the board of directors of the National Environmental Bank.

5. The term "local public body" means any State, county, municipality or other governmental entity or public body, or two or more such entities or bodies, authorized to undertake the environmental programs for which assistance under this Act is sought.

6. The term "State" means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

ESTABLISHMENT OF BANK

SEC. 4. There is hereby created a body corporate to be known as the National Environmental Bank.

MANAGEMENT OF THE BANK

SEC. 5(a). The management of the Bank shall be vested in a Board of Directors (hereinafter referred to as the "Board") consisting of the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Health, Education and Welfare, the Secretary of Agriculture (or the designees of the respective Secretaries,), the Director of the Environmental Protective Agency, the Chairman of the President's Council on Environmental Quality, the Director of the National Oceanic and Atmospheric Agency, and six other persons who shall be appointed by the President with the advice and consent of the Senate. Persons so appointed shall include representatives of State and local governments, private enterprise, and members of the general public. In making such appointments the President shall select persons who, among other relevant considerations, are knowledgeable in the field of environmental needs and problems.

(b). The terms of the directors appointed by the President shall be four years, commencing with the date of enactment of this Act. Any director appointed to fill a vacancy shall be appointed only for the unexpired portion of the term.

(c). Members of the Board who are otherwise compensated by the United States for full-time service shall serve without compensation in addition to that received for their full-time service. Other members of the Board shall receive compensation at the rate of $125 per day for each day engaged in the performance of their duties as directors. All directors shall be allowed travel expenses, including per diem in lieu of subsistence as authorized by law.

APPOINTMENT OF OFFICERS AND EMPLOYEES

SEC. 6. The board shall appoint a president of the Bank and such other officers and employees as it deems necessary to carry out the functions of the Bank. Such appointments may be made without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and persons so appointed may be paid without regard to the provisions of Chapter 51 of subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. The president of the Bank shall be an ex officio member of the Board and may participate in meetings of the Board except that he shall have no vote except in case of an equal division. No individual other than a citizen of the United States may be an officer of the Bank. No officer of the Bank shall receive any salary or other remuneration from any source other than the Bank during the period of his employment by the Bank.

CONFLICT OF INTEREST

SEC. 7 (a). No director, officer, attorney, agent, or employee of the Bank shall in any manner, directly or indirectly, participate in the deliberations upon or the determination of any question affecting his personal interests, or the interests of any corporation, partnership or association in which he is directly or indirectly personally interested.

(b). The Bank shall not engage in political activities nor provide financing for or assist in any manner any project or facility involving political parties, nor shall the directors, officers, employees, or agents of the Bank in any way use their connection with the bank for the purpose of influencing the outcome of any election.

GENERAL CORPORATE POWERS

SEC. 8. Except to the extent inconsistent with the provisions of this Act, the Bank shall have the general corporate powers of a corporation organized and existing under the laws of the District of Columbia.

PRINCIPAL OFFICES: BRANCHES

SEC. 9. The principal office of the Bank shall be located in the District of Columbia, and it may establish agencies or branch offices in any city of the United States.

CAPITAL STOCK

SEC. 10 (a) The bank shall have capital stock of $500,000,000 subscribed by the United States, payment for which shall be subject to call in whole or in part by the Board.

(b) The Secretary of the Treasury is authorized to, and upon request of the Board, shall purchase stock in amounts designated by the Board up to a total of $500,000,000.

BORROWING AUTHORITY

SEC. 11 (a) The Bank may issue notes, debentures, bonds, and other evidences of indebtedness in such amounts and on such terms and conditions as the Board may determine subject to the limitations prescribed in this Act.

(b) The aggregate outstanding indebtedness of the Bank at any time, including contingent liabilities on outstanding guarantees, may not exceed twenty times the paid in capital stock of the Bank at that time.

(c) The obligations of the Bank under this section shall be fully and unconditionally guaranteed both as to interest and principal by the United States and such guarantee shall be expressed on the fact thereof.

(d) In the event that the Bank is unable to pay upon demand, when due, any of its lawful obligations, the Secretary of the Treasury shall pay the amount thereof and thereupon to the extent of the amount so paid by the Secretary of the Treasury shall succeed to all the rights of the holder of the obligations.

LOANS TO CARRY OUT ENVIRONMENTAL PROGRAMS

SEC. 12 (a) The Bank may make or guarantee loans (including the purchase of obligations) to local public bodies to finance environmental programs. Financial assistance under this section shall be provided in accordance with standards and criteria established by the Board to ensure a priority of assistance with respect to those programs where the need is most critical or which involve new and improved methods of waste disposal or pollution, or which directly abate the pollution of the environment.

(b) The effective interest rate for financial assistance extended under this section shall not exceed the lesser of (1) 5 per centum per annum, or (2) the total of one-eighth of 1 per centum per annum added to the average rate of interest paid by the Bank on funds borrowed by it pursuant to Section 11.

(c) Loans made or guaranteed by the Bank shall have maturities not exceeding twenty-five years; except that the Bank may in its discretion extend the period of payment on any loan.

(d) Loans made or guaranteed by the Bank shall be of such sound value or so secured as reasonably to assure repayment.

TECHNICAL AND OTHER ASSISTANCE

SEC. 13 (a) The Bank may provide to borrowers whatever assistance, technical or otherwise, it considers necessary to protect its investment and to carry out the purposes of this Act.

(b) To assure fulfilling the purposes of this Act, the Bank shall direct an adequate number of staff members to seek out and confer with the representatives of local public bodies to provide information about the services furnished by the Bank and to provide whatever assistance is necessary for the utilization of such services.

TAXABLE STATUS

SEC. 14. The Bank, its property, its franchise, capital, reserves, surpluses, security holdings, and other funds, and its income shall be exempt from all taxation now or hereafter imposed by the United States or by any State or local taxing authority; except that (1) any real property and any tangible personal property of the Bank shall be subject to Federal, State, and local taxation to the same extent according to its value as other such property is taxed, and (2) any and all obligations issued by the Bank shall be subject both as to principal and interest to Federal, State and local taxation to the same extent as the obligations of private corporations are taxed.

INVESTMENT STATUS OF OBLIGATIONS OF BANK

SEC. 15. All obligations issued by the Bank shall be lawful investments for, and may be accepted as security for, all fiduciary, trust, and public funds the investment or deposit of which is under the authority or control of the United States or of any officer thereof.

PURCHASE OF ASSETS BY TREASURY

SEC. 16. The Secretary of the Treasury is authorized to purchase from the Bank any asset of the Bank at such price as may be agreed upon between the Secretary and the Bank.

AUDIT BY GENERAL ACCOUNTING OFFICE

SEC. 17. The General Accounting Office shall audit the financial transactions of the Bank and for this purpose shall have access to all its books, records, and accounts.

ANNUAL REPORT

SEC. 18. The Bank shall, as soon as practicable after the end of each fiscal year, transmit to the President and the Congress an annual report of its operations and activities.

ENVIRONMENTAL SAVINGS BONDS

SEC. 19. The Second Liberty Bond Act is amended by inserting after section 22B a new section as follows:

"Section 22B. (a) In addition to the United States savings bonds, and retirement and savings bonds authorized under sections 22 and 22A, respectively, the Secretary of the Treasury is authorized to issue from time to time United States Environmental Savings Bonds, the proceeds of which shall be deposited in the trust fund established by Section 20. Such bonds shall bear interest at such rates, be issued in such forms and in such manner, be offered in such amounts (subject to the overall debt limitation imposed by section 21) and be subject to such other terms and conditions (including restrictions on transfer) as the Secretary of the Treasury may from time to time prescribe.

ENVIRONMENTAL TRUST FUND

SEC. 20. There is hereby established within the Treasury of the United States an Environmental Trust Fund. All proceeds from the sale of bonds under section 19 shall be deposited in the fund.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 21. There are authorized to be appropriated from (1) the Environmental Trust Fund, and (2) to the extent that there is an insufficiency of sums credited to such Fund, from any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the purposes of this Act. Any sums so appropriated shall remain available until expended. Sums appropriated under this section shall be available, as specified in Appropriation Acts—

(a) to enable the Secretary of the Treasury to carry out his functions under sections 10 (b) and 11 (d);

(b) to enable the Bank to pay the difference, if any, between the interest paid by it on its obligations and the interest received by it on its loans; and

(c) to pay the administrative and operating expenses of the Bank in carrying out its functions under this Act.

S. 4469—INTRODUCTION OF NATIONAL INDIAN CULTURAL AND CEREMONIAL SHRINE ACT OF 1970

Mr. JACKSON. Mr. President, I introduce for appropriate reference the National Indian Cultural and Ceremonial Shrine Act of 1970.

The purpose of this measure is to establish a national policy for preserving and protecting areas which are of unique cultural and ceremonial significance to American Indian communities. At present, there is no declared congressional policy and no system of policy implementation which allows Indian people to maintain their traditional heritage and traditional practices on federally owned lands which have special cultural or ceremonial significance.

In past, the practice has been to deal with the desires of particular Indian communities on a case-by-case basis. In some cases administrative action has provided temporary solutions. In others, congressional action has been required. In far too many cases, however, the legitimate desires and expectations of Indian communities to use Federal lands for traditional cultural and ceremonial uses have simply been ignored or have been frustrated by management practices which are incompatible with the uses the Indian community has customarily made of the land.

The measure I introduce today would rectify this haphazard case-by-case approach. It would establish a uniform procedure whereby all recognized Indian tribes would have an opportunity to petition the Secretary of the Interior and request him to recommend to the Congress the establishment of a National Indian Shrine for their use and benefit. The procedure is fair and just to all concerned parties and insures that their views will be considered and that their interests will be protected.

Members of the Senate are aware that special legislation dealing with the claims of the Pueblo de Taos Indians of New Mexico to lands within the Carson National Forest, which they consider to be sacred lands, will be before the Senate in the near future. The claims of the Pueblo de Taos Indians to this large area of national forest lands presents many important questions of national policy as well as fundamental questions of justice and equity concerning the future use and administration of the lands claimed to be sacred and of great religious significance to the Pueblo de Taos Tribe. The Senate Interior Committee has carefully reviewed all aspects of the Pueblo de Taos claims and has reported H.R. 417 with an amendment in the nature of a substitute. The amendment, in my view, provides a fair and just resolution of this longstanding controversy. In most respects it follows the House bill and in some areas goes beyond the provisions of the House bill in providing for continued protection and exclusive tribal use and management of the lands in question. I am hopeful that the Senate will act favorably on this measure.

It should, however, be recognized that H.R. 417 as reported by the Interior Committee deals only with the specific fact situation presented by the Pueblo de Taos claim. It represents an effort to provide a final settlement to a longstanding conflict over the use and administration of the lands in question. It does not, however, represent a precedent for future cases or an expression of national policy on the handling of religious, sacred, or ceremonial land claims which have been or which may be advanced by other Indian communities. In ordering H.R. 417 reported to the Senate the committee has made clear that it was reserving a decision on the national issues presented by sacred and ceremonial land claims until there was an adequate opportunity to develop a comprehensive policy which would allow the fulfillment of the legitimate aspirations of particular Indian communities and, at the same time, protect the rights of the public in the administration and management of the country's national parks, forests, monuments, and public lands.

The measure I introduce today constitutes a first effort to define the parameters of a national policy for Federal recognition and continued protection of publicly owned lands which are of unique cultural and ceremonial significance to recognize Indian tribes. The legislation as presently drafted represents my preliminary judgment as to the types of a national program and policy which is needed. I look forward to and welcome any suggestions which representatives of concerned organizations may have for improving the measure.

The problem presented is difficult and complex. Finding a sound and reasonable solution will require a careful balancing of a great many conflicting desires and interests in the uses to be made of federally owned lands. The issues which are of concern include, but are not limited to—

The legitimate desire of Indian communities to be legally safe and secure and free from interference in the use of Federal lands which are of unique historical, cultural, and ceremonial significance to their members.

The protection of the rights of other members of the public who may have legal interests in the same lands claimed by an Indian community;

Avoiding any Federal action which abridges in any manner the Constitution's first amendment ban which provides that "Congress shall make no law respecting an establishment of religion";

The public interest in maintaining the high management principles established for national parks, forests, monuments, and recreation areas, and insuring that these areas remain open and accessible to all Americans;

The need for conservation management programs which will continue to insure that all Federal lands are free from the ravages of fires, erosion, and pollution; and

The necessity of avoiding the establishment of a policy, a system or a precedent which could result in great portions of the Nation's national parks and recreation areas being closed to the general public or being commercially developed at some future date.

Developing a national policy which deals with these issues and appropriately recognizes and allows for the continuation of the great contributions Indian culture has made to American society will not be an easy task. It does, however, represent an important challenge and one which must be met. Hearings on this measure early in the 92d Congress will be a first step toward defining the scope of the challenge and developing legislation to meet the challenge.

Mr. President, I ask unanimous consent that the text of the "National Indian Cultural and Ceremonial Shrine Act" be printed at this point in the RECORD.

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

The bill (S. 4469) to authorize the establishment of a system of National Indian Cultural and Ceremonial Shrines on federally owned lands which are used by, and which are of unique cultural and ceremonial significance to recognized American Indian tribes, introduced by Mr. JACKSON (for himself and Mr. STEVENS), 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. 4469

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 "National Indian Cultural and Ceremonial Shrine Act of 1970".

CONGRESSIONAL FINDING

SEC. 2. Congress hereby finds that increased pressures on areas of cultural and ceremonial significance to the American Indian people threaten the continuation of traditional practices and the transmission of traditional Indian heritage to succeeding generations; that fulfillment of the social and human potential of the American Indian people requires the protection and preservation of land areas and natural objects of cultural and ceremonial significance; and that the establishment of a national system which will preserve and protect Federal lands which are used by and which are of great cultural and ceremonial significance to recognized American Indian Tribes will assist Indian people to preserve their traditional culture while at the same time developing their maximum potential as individuals.

DECLARATION OF POLICY

SEC. 3. There is hereby established a "National System of Indian Cultural and Ceremonial Shrines," all units of which shall be designated, preserved and managed in accordance with the provisions of this Act. National Indian Cultural and Ceremonial Shrines shall be designated by Congress as "Indian Shrine Areas" and shall be preserved and administered for the use of recognized Indian Tribes in such manner as will afford full protection for the natural condition of the designated lands and afford the members of the Tribe an opportunity to maintain their traditional practices and their cultural and ceremonial heritage.

PETITION BY A RECOGNIZED INDIAN TRIBE

SEC. 4. (a) Upon the petition of a recognized Indian Tribe in accordance with section 4(b) of this Act, the Secretary of the Interior (hereinafter referred to as the "Secretary") is directed to undertake a study pursuant to the procedures set forth in section 5 to determine the facts and to make recommendations to the Congress on the establishment of a National Indian Cultural and Ceremonial Shrine.

(b) Any recognized Indian Tribe may, by a majority vote of its members, request the Secretary to undertake a study of Federal lands used by the Tribe which are of unique cultural and ceremonial significance to the members of the Tribe. The request shall be in the form of a petition and shall set forth:

(1) the place, time and results of the vote by the members of the Tribe to request the study;

(2) a description and documentation of the unique cultural and ceremonial significance, including origin, duration and usage, of the area and natural objects on the Federal lands in question;

(3) a description of the lands proposed for designation as a unit in the System of National Indian Cultural and Ceremonial Shrines which in all cases shall be confined to the area compatible with proper care and management of the land and natural objects to be protected;

(4) a suggested management plan for the proposed Indian Shrine Area which will insure continued protection of the traditional values of the lands with a minimum disruption of the uses and purposes for which the lands are now managed;

(5) such other facts as the Tribe believes to be relevant.

STUDY AND RECOMMENDATION

SEC. 5. (a)(1) Upon receipt of a petition which is in accord with section 4(b) the Secretary shall undertake a study of the lands described in the petition and their use and significance to the members of the petitioning tribe. Upon the request of other concerned parties having an interest in the use and management of the lands in question the Secretary shall hold a public hearing at or near the area involved and shall receive the views of all interested parties.

(2) At least thirty days before the date of any hearing and prior to the transmittal of his study and recommendations the Secretary shall advise the Governor of the State and the governing board of each county in which the lands are located, and Federal departments and agencies concerned, of the pending petition and invite these parties to submit their views on the proposed action to the Secretary. Views submitted pursuant to this subsection shall be included with any recommendation to the President and to the Congress with respect to the establishment of an Indian Shrine Area.

(b) During the period of the study and pending Congressional action on his recommendations the Secretary is hereby authorized, at his discretion, to segregate the lands described in the petition or any portion of these lands he feels is appropriate, from lease, entry or location under the public land laws. Such lands so segregated shall in all cases be confined to the area compatible with the proper care an management of the natural objects to be protected.

(c) Following the study the Secretary shall review the evidence and shall make a recommendation to the Congress within one year after receipt of the petition as to whether the establishment of a National Indian Cultural and Ceremonial Shrine is feasible and justified. In making this recommendation the Secretary shall consider the following factors:

(1) the present management status of the land;

(2) the long range management and use plans of the agency having jurisdiction over the lands and of other affected agencies;

(3) the use made of the lands by the members of the tribe, members of other tribes and members of the general public;

(4) the impact which creation of a National Shrine would have on recreation, conservation, and the historic uses for which the lands have been managed; and

(5) the desirability of vesting management authority for all or a part of the proposed Indian Shrine area in the members of the Tribe.

(d) If the Secretary recommends the establishment of a National Indian Cultural and Ceremonial Shrine he shall transmit a report to the Congress on the lands in question together with proposed legislation to implement his recommendations. The report and proposed legislation shall include:

(1) authentication of the cultural and ceremonial significance of the area and natural objects to be preserved to the petitioning tribe;

(2) a land use management plan which will enable members of the tribe to pursue their traditional uses of the land;

(3) all appropriate and necessary provisions to insure proper conservation and environmental management of the proposed National Shrine lands, including, but not limited to, fire protection, watershed control, pollution, erosion and disease control; and

(4) provisions to insure that the rights of persons having valid existing rights, leases or permits in the lands in question are protected.

MANAGEMENT

SEC. 6. If the Secretary recommends the establishment of a National Shrine on lands under the management of another Federal Department or agency he shall include the views of that Department or agency in the report. The proposed legislation shall include detailed provisions for future management of the lands involved and, unless Congress provides otherwise, such lands shall continue to be managed by the agency or Department having jurisdiction over the lands in question. The agency or Department having jurisdiction shall report to the Congress if such usage or significance of the lands ever ceases and shall recommend termination of the Shrine and appropriate disposition of the lands.

MAPS AND CHANGES IN STATUS

SEC. 7. The Secretary shall, upon designation of an Indian Shrine area by the Congress, file a map and legal description of the area with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives and with other appropriate Federal and State agencies. Correction of clerical and typographical errors in these legal descriptions and maps may be made by the Secretary after giving notice to the Committees and other concerned parties. Any modification or adjustment of boundaries, and any change in management of any Indian Shrine area and any termination of Shrine status of any portion of an Indian Shrine area shall be made only in accordance with the procedure followed in the original designation of a Shrine area as provided in this Act.

RIGHTS OF THIRD PARTIES

SEC. 8. (a) Lands designated as an Indian Shrine Area shall not be used for any commercial purpose which would result in an appreciable disturbance or alteration of the natural condition of the land: *Provided, however,* That this provision shall in no way diminish the rights of persons having valid existing rights upon the date of such designation.

(b) Lessees or permittees of an area designated under this Act shall be given the op-

portunity to renew their leases or permits under rules and regulations of the department or agency administering the area to the same extent and in the same manner that these leases or permits could have been renewed had the designation of the Indian Shrine area not occurred: *Provided*, That the Indian tribe involved shall have the right to obtain the relinquishment of any or all of these leases or permits from the lessees or permittees under such terms and conditions as may be mutually agreeable.

DEFINITION

SEC. 9. As used in this Act, "recognized Indian Tribes" and "recognized American Indian Tribe" means an Indian tribal organization to the members of which the Federal Government provides special programs and services because of their identity as American Indians. No group shall constitute a "recognized Indian Tribe" unless the tribe is organized and governed by a democratically elected tribal organization, as determined by the Secretary.

S. 4470—PROPOSED AMENDMENT OF THE REVISED ORGANIC ACT OF THE VIRGIN ISLANDS

Mr. JACKSON. Mr. President, on behalf of the senior Senator from Colorado, (Mr. ALLOTT) and myself, I introduce for appropriate reference proposed legislation submitted by the Attorney General of the United States to amend the Revised Organic Act of the Virgin Islands to delete certain language in section 27 of the act relating to the appointment of assistant U.S. attorney for the Virgin Islands.

I ask unanimous consent that the letter to the Vice President from Attorney General Mitchell, dated October 5, 1970, be printed in the RECORD following my remarks.

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

The bill (S. 4470) to amend the Revised Organic Act of the Virgin Islands, introduced by Mr. JACKSON (for himself and Mr. ALLOTT), by request, was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

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

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., October 5, 1970.

The VICE PRESIDENT,
U.S. Senate,
Washington, D.C.

DEAR MR. VICE PRESIDENT: There is enclosed for your consideration and appropriate reference a legislative proposal "To amend the Revised Organic Act of the Virgin Islands."

Section 27 of the Revised Organic Act of the Virgin Islands, as amended, (73 Stat 569; 48 U.S.C. 1617) provides that chapter 35 (formerly chapter 31) of Title 28, United States Code, which deals with the office of the United States Attorney, shall apply to the Virgin Islands. The only exception to this application is the phrase in section 27 that the "Attorney General shall not appoint more than one assistant United States attorney for the Virgin Islands."

The enclosed legislative proposal would remove this exception, and hence 28 U.S.C. 542, as a part of chapter 35, would apply in the Virgin Islands. Section 542 provides that the "Attorney General may appoint one or more assistant United States attorneys in any district when the public interest so requires."

Enactment of this proposal would give the Attorney General the same discretion in this matter within the Virgin Islands as he presently has in the districts of the United States.

The following table indicates that the case flow of the Virgin Islands, with one assistant, is near the average for the five United States districts having two assistants.

Total filings:	
Virgin Islands	141
Districts with two assistant U.S. attorneys	152
Total Terminations:	
Virgin Islands	101
Districts with two assistant U.S. attorneys	119
Pending:	
Virgin Islands	219
Districts with two assistant U.S. attorneys	142

Furthermore, Public Law 91-292, the Omnibus Judgeship Act, established an additional judgeship within the Virgin Islands. This addition, with its attendant increase in the court's workload capacity, would seem likely to impose even greater demands upon the office of the United States attorney.

It is apparent from these statistics that the restriction on appointment of assistant United States attorneys should be eliminated so the Attorney General may appoint additional attorneys if he determines the public interest so requires.

The Department of Justice recommends the prompt enactment of this measure.

The Office of Management and Budget has advised that there is no objection to the submission of this proposal from the standpoint of the Administration's program.

Sincerely,

———— ————,
Attorney General.

S. 4472—INTRODUCTION OF THE NEIGHBORHOOD SCHOOL ACT OF 1970

Mr. GURNEY. Mr. President, I am introducing a bill today entitled "Neighborhood School Act of 1970." It is legislation designed to preserve our traditional neighborhood schools.

It is also a formula, I believe, for solving the crisis that exists today in our school system.

Public education is in turmoil. Our students and our teachers are caught in the crossfire between total integration on the one hand, and total destruction of the neighborhood schools on the other.

Somewhere between these two concepts there must be a sane, sensible answer for providing quality education for blacks and whites and a sensible way to get on with desegregation as well.

I believe my bill will provide the means for restoring sound judgment to the issue and eliminate some of the emotionalism which is surrounding public education.

We are a nation which has been to war many times and sacrificed the lives of our fighting men to preserve our concept of democracy.

And yet today we sit quietly with our hands folded in our laps as the Department of Health, Education, and Welfare decrees our children do not have the right to attend their neighborhood school.

It is our duty to assure the American public that the education and welfare of their children will not be forsaken for the benefit of achieving some arbitrary numerical balance of minorities and majorities in the classroom.

In recent years, we have seen many judicial decisions and decrees, plans, proposals, and guidelines handed down by experts in the field of educational planning.

However honorable the intention of these policymaking plans may have been, the only positive result has been more confusion, strife, and turmoil.

Racial tensions have not been eased. In fact, almost without exception, for worse. Education for both blacks and whites has had to take a back seat to the subject of "planned brotherhood."

In these years we have also witnessed a growing dislike and distrust between parent and Government.

It troubles me that parents are being denied rights in this country, rights which we are fighting to attain for other countries.

The voice of the taxpaying public has been drowned by the decrees of HEW.

The right to set school policy has been snatched from the hands of the local school board and awarded to the bureaucratic self-styled expert whose guidelines are dictated by statistical charts.

The rules of the game also keep changing. Often what is permissible in some sections of the country is not allowed in others. The umpires in this instance, keep moving the bases and the strike zone.

It is no wonder so many people are concerned about the quality of education. This issue has been lost along the wayside.

It is time we set forth a sound policy to guide us.

My proposal will allow a student to remain in his neighborhood school unless he wants to transfer.

This provides a right of choice to the student. It would mean no student would be denied admission to a school for the purpose of integrating with students of a different race. And it would insure a student would not be assigned to a school in another neighborhood simply because his race was in the minority there.

He would not be bused across city and country to another school to be put on display like an exhibit.

The result would be a concentration on quality education, not quality transportation. This legislation will stop HEW playing with our children like pawns in a chess game.

I am stressing the preservation of the neighborhood school in the bill because I feel that destruction of the local school as we know it will eventually lead to destruction of public education.

Our schools, like our Nation, were not built with tax dollars alone. They were built by the sweat of the brow and a bend of the back. How many donation drives, barbecues, cake sales, benefit programs, and numerous fund-raising projects of the PTA are responsible for the purchase of equipment and supplies, the construction of classrooms, gyms, stadiums, and band halls?

The contributions of concerned parents, teachers, and interested citizens cannot be measured.

Neither can this contribution be replaced by Federal dollars. We cannot afford to lose the concerned parent or teacher—in this rush for surface satisfaction of providing moral leadership through association in the classroom between races.

Busing children is not the answer. Cutting the ties of parents and students with neighborhood schools is doing great harm to the whole school system.

I agree with the former Commissioner of Education, James E. Allen, Jr., that the best schools are those where parents and other local people can have and do take a real interest in what is being taught and how it is taught.

This bill will set forth the right of the student to select the school if he wants to go where his race is a minority. But it will not force the student to go to a school miles away in a neighborhood where he has no friends or ties for the purpose of satisfying a numbers game devised by a social revolutionary, bubble-headed bureaucrat.

Additionally, teachers are handicapped by the present assignment system. In some sections of the country well-trained, qualified teachers are unable to teach because the color of their skin does not match the scheme selected by HEW.

It is time we addressed ourselves to the seriousness of the times. Student disturbances in the grammar school, junior high, and high schools have taken on the modified character of college campus unrest, and these disturbances are growing daily.

A growing percentage of the Nation's schools are experiencing trouble in the classroom.

In a story printed October 4, in the New York Times on a report prepared for the Office of Education, it was noted 85 percent of 700 schools surveyed had some type of disruption during the last 3 years.

Disruption, as they called it, included arson, student-teacher physical confrontations, and rioting.

It is obvious we cannot legislate brotherhood. We can, however, assure students they will have equal opportunities for equal education.

This bill protects students from being bused.

This bill provides the right for any student in public school to transfer from a school to which he has been assigned where his race is in the majority to another school where his race is a minority.

My plan is to leave pupil assignment to the school districts and to the freedom of the individual but guarantee civil recourse for those individuals or groups who have been denied the best this country can afford in education.

The administration has asked the Supreme Court to rule that communities might base their desegregation plans on the premise of the neighborhood schools. The Fourth and Fifth Circuit Court of Appeals have ruled on cases in Charlotte, N.C., and Mobile, Ala., that massive busing is not required to achieve racial balance, and that only "reasonable measures can be required in efforts to integrate the schools."

Gentlemen, this bill will be a measure for and not against good education. This bill requires all public schools to comply with a unitary school system.

If we are to have harmony, we must strike cords of consent. We cannot decree love but we can avoid creating chaos.

The PRESIDING OFFICER (Mr. BELLMON). The bill will be received and appropriately referred.

The bill (S. 4472) to preserve the concept of the neighborhood school in American public elementary and secondary education, introduced by Mr. GURNEY, was received, read twice by its title, and referred to the Committee on Labor and Public Welfare.

S. 4473—INTRODUCTION OF A BILL RELATING TO CONVEYANCE OF CERTAIN REAL PROPERTY IN THE STATE OF ARIZONA

Mr. FANNIN. Mr. President, for a number of years, a nonprofit corporation organized by Arizona Lions International has held a special use permit from the Sitgreaves National Forest for 23 acres upon which has been erected buildings and camping facilities for handicapped persons and over a period of 10 years, in our opinion, has carried out its purpose magnificently.

Camp Tatiyee desires to have this property deeded to it and it is recognized that such conveyance could be made if it were in a position to trade like acreage. However, this group has no means of acquiring other property for the purpose of trading, being barely able to meet its operating budget.

In view of this, Mr. President, I am introducing today a bill to make this land available for the Arizona Lions International to continue to carry out their good work with handicapped persons.

The PRESIDING OFFICER (Mr. COOK). The bill will be received and appropriately referred.

The bill (S. 4473) to provide for the conveyance of certain real property situated in the State of Arizona, introduced by Mr. FANNIN, was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 1812

At the request of the Senator from New Mexico (Mr. ANDERSON), the Senator from Texas (Mr. YARBOROUGH) was added as a cosponsor of S. 1812, to amend title XVIII of the Social Security Act so as to include chiropractic services among the benefits provided under subpart (B) of this title.

S. 3632

At the request of the Senator from Oregon (Mr. PACKWOOD), the Senator from Illinois (Mr. PERCY) was added as a cosponsor of S. 3632, to amend the Internal Revenue Code of 1954 to limit the number of personal exemptions allowable for children of a taxpayer who are born after 1972.

S. 4307

At the request of the Senator from Illinois (Mr. PERCY), the Senator from Kansas (Mr. DOLE), the Senator from Colorado (Mr. DOMINICK), the Senator from Arizona (Mr. FANNIN), the Senator from Alaska (Mr. GRAVEL), the Senator from Florida (Mr. GURNEY), the Senator from South Carolina (Mr. HOLLINGS), the Senator from New York (Mr. JAVITS), the Senator from Oregon (Mr. PACKWOOD), the Senator from Vermont (Mr. PROUTY), and the Senator from New Jersey (Mr. WILLIAMS) were added as cosponsors of S. 4307, to amend the Environmental Quality Improvement Act of 1970 in order to establish a Corps of Engineers Environmental Advisory Board.

S. 4359

At the request of the Senator from West Virginia (Mr. BYRD), the Senator from Alabama (Mr. ALLEN) was added as a cosponsor of S. 4359, to amend chapter 84 of title 18 of the United States Code, relating to the injuring or killing of police officers because of their official character, and for other purposes.

S. 4459

At the request of the Senator from Illinois (Mr. PERCY), his name was added as a cosponsor of S. 4459, the Consumer Protection Organization Act of 1970.

SENATE JOINT RESOLUTION 192

At the request of the Senator from Michigan (Mr. GRIFFIN), on behalf of the Senator from Pennsylvania (Mr. SCOTT), the Senator from Wyoming (Mr. HANSEN) was added as a cosponsor of Senate Joint Resolution 192, proposing an amendment to the Constitution of the United States with respect to the offering of voluntary prayer or meditation in public schools and other public buildings.

SENATE JOINT RESOLUTION 225

Mr. DOLE. Mr. President, I ask unanimous consent that a statement by the Senator from Illinois (Mr. SMITH) be printed in the RECORD.

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

STATEMENT OF SENATOR SMITH OF ILLINOIS

Mr. SMITH of Illinois. Mr. President, when I introduced S.J. Res. 225, Law Officers Appreciation Week, the distinguished Senator from Wyoming, Mr. Hansen, requested that he be included as a co-sponsor. Through an oversight in my office the Senator's name was inadvertently omitted from the list of Senators who co-sponsored S.J. Res. 225.

I welcomed Senator Hansen's co-sponsorship of my resolution. I know that having served as Governor of his State he is fully aware of the fine work done by law enforcement officers on all levels of government.

Mr. President, I ask unanimous consent that the permanent Record show that except for an error in my office Senator Hansen would have been included as a co-sponsor of S.J. Res. 225.

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

SENATE JOINT RESOLUTION 240

At the request of the Senator from Arizona (Mr. FANNIN), the Senator from Arkansas (Mr. MCCLELLAN) was added as a cosponsor of Senate Joint Resolution 240, a proposed amendment to the U.S. Constitution, requiring a balanced budget.

SENATE RESOLUTION 476—ORIGINAL RESOLUTION REPORTED AND REFERRED TO COMMITTEE ON RULES AND ADMINISTRATION

Mr. YARBOROUGH, from the Committee on Labor and Public Welfare, reported the following original resolution (S. Res. 476); which was referred to the Committee on Rules and Administration:

S. RES. 476

Resolved, That the Committee on Labor and Public Welfare is authorized to expend from the contingent fund of the Senate $50,000 in addition to the amount, and for the same purposes and during the same period, specified in S. Res. 312, Ninety-first Congress, agreed to February 9, 1970, authorizing an investigation of various matters within its jurisdiction.

SENATE RESOLUTION 477—ORIGINAL RESOLUTION SUBMITTED AND AGREED TO

Mr. McCLELLAN (for himself, Mr. MANSFIELD, Mr. ALLEN, Mr. ALLOTT, Mr. BAKER, Mr. BENNETT, Mr. BIBLE, Mr. BYRD of Virginia, Mr. BYRD of West Virginia, Mr. COOK, Mr. COTTON, Mr. CURTIS, Mr. DODD, Mr. DOLE, Mr. EASTLAND, Mr. ELLENDER, Mr. ERVIN, Mr. FANNIN, Mr. FONG, Mr. FULBRIGHT, Mr. GOLDWATER, Mr. GRIFFIN, Mr. GURNEY, Mr. HANSEN, Mr. HOLLAND, Mr. HOLLINGS, Mr. HRUSKA, Mr. JACKSON, Mr. JORDAN of North Carolina, Mr. JORDAN of Idaho, Mr. LONG, Mr. MAGNUSON, Mr. MCINTYRE, Mr. METCALF, Mr. MILLER, Mr. MUNDT, Mr. MURPHY, Mr. RANDOLPH, Mr. RUSSELL, Mr. SCHWEIKER, Mr. SCOTT, Mrs. SMITH of Maine, Mr. SPARKMAN, Mr. STENNIS, Mr. STEVENS, Mr. SYMINGTON, Mr. TALMADGE, Mr. THURMOND, and Mr. YOUNG of North Dakota) submitted a resolution (S. Res. 477) declaring that the Senate rejects the findings and recommendations of the Commission on Obscenity and Pornography, which was considered and agreed to.

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

SENATE RESOLUTION 478—ORIGINAL RESOLUTION REPORTED, CONSIDERED AND AGREED TO

Mr. EASTLAND, from the Committee on the Judiciary, reported an original resolution (S. Res. 478) authorizing the chief counsel of the Senate Internal Security Subcommittee of the Committee on the Judiciary to respond to a notice of deposition in the case of *United States Servicemen's Fund, et al.* v. *James O. Eastland, et al.*, civil action No. 1474–70, which was considered and agreed to.

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

ADDITIONAL COSPONSORS OF A RESOLUTION

SENATE RESOLUTION 475

Mr. CURTIS. Mr. President, on yesterday I offered Senate Resolution 475 which was immediately considered. That resolution passed the Senate.

The resolution dealt with having an appropriate service in behalf of the prisoners of war and men missing in action between halves during the Army-Navy football game this year.

A number of Senators have expressed an interest in sponsoring the resolution and have asked to be cosponsors. The information did not get to me prior to the time I made the presentation on the floor.

Mr. President, I therefore ask unanimous consent that, at the next printing, the names of Senators FANNIN, FONG, JAVITS, PELL, SPONG, and HOLLINGS be listed as cosponsors of Senate Resolution 475.

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

ADDITIONAL COSPONSOR OF A CONCURRENT RESOLUTION

SENATE CONCURRENT RESOLUTION 80

At the request of the Senator from West Virginia (Mr. BYRD), the Senator from Wyoming (Mr. HANSEN) was added as a cosponsor of Senate Concurrent Resolution 80, to establish a joint committee to investigate the treatment of prisoners of war in Vietnam.

PROPOSED AMENDMENT OF THE CONSTITUTION RELATIVE TO EQUAL RIGHTS FOR MEN AND WOMEN

AMENDMENT NO. 1051

Mr. ERVIN submitted an amendment, 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 was ordered to lie on the table and to be printed.

SOCIAL SECURITY AMENDMENTS OF 1970—AMENDMENT

AMENDMENT NO. 1052

Mr. CURTIS submitted an amendment, intended to be proposed by him, to the bill (H.R. 17550) to amend the Social Security Act to provide increases in benefits, to improve computation methods, and to raise the earnings base under the old-age, survivors, and disability insurance system, to make improvements in the medicare, medicaid, and maternal and child health programs with emphasis upon improvements in the operating effectiveness of such programs, and for other purposes, which was referred to the Committee on Finance and ordered to be printed.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1969—AMENDMENTS

AMENDMENTS NOS. 1053 THROUGH 1060

Mr. DOMINICK submitted eight amendments, intended to be proposed by him, to the bill (S. 2193) to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health; and for other purposes, which were ordered to lie on the table and to be printed.

(The remarks of Mr. DOMINICK when he submitted the amendments appear later in the RECORD under the appropriate heading.)

AMENDMENT NO. 1061

Mr. JAVITS submitted an amendment, intended to be proposed by him, to Senate bill 2193, supra, which was ordered to lie on the table and to be printed.

(The remarks of Mr. JAVITS when he submitted the amendment appear later in the RECORD under the appropriate heading.)

ADDITIONAL COSPONSORS OF AN AMENDMENT

AMENDMENT NO. 858, H.R. 18515

At the request of the Senator from New York (Mr. JAVITS), the Senator from Indiana (Mr. BAYH) and the Senator from Minnesota (Mr. MONDALE) were added as cosponsors of amendment No. 858 to H.R. 18515, the HEW-Labor appropriations bill, to provide greater appropriations for the poverty program.

ADDITIONAL STATEMENTS OF SENATORS

SOVIET ACTIVITIES OFF U.S. ATLANTIC COAST

Mr. THURMOND. Mr. President, Secretary of Defense Melvin Laird appeared on the program "Issues and Answers" on Sunday and discussed the dangers posed by a Soviet submarine base capacity in Cuba. As quoted in yesterday's newspaper, he said that Soviet submarines off U.S. shores would pose a threat whether or not they used the Cienfuegos base, but that the size of the threat would be increased if they could be serviced in the Western Hemisphere, instead of having to spend a large part of their time traveling from home.

Mr. President, I congratulate Mr. Laird for his frankness in telling the American people of this danger. I realize that in his official position, he must be very cautious in his statements. But I think that these statements must be studied against he full context of the situation.

Mr. Joseph Alsop, in his column of October 7, brought out a key point in this matter. He pointed out that the real advantage of a Soviet base in Cuba would be a facility for the repair and adjustment of the ballistic missiles which the Soviet "Yankee" class submarines carry.

However, we must also be aware that a constant Soviet nuclear presence off our coastal waters will require an enormous investment of time and effort to keep continuous track of all Soviet moves. As the number of Soviet "Y" class submarines increases, we will have to put more and more of our equipment on their trails, tying down the Navy to an unprecedented degree. The Soviets are outbuilding us in ship and submarine construction. Their navy is practically brand new. Our ships are old and, as is openly acknowledged, face maintenance problems. In a crisis situation, this could be disastrous.

Thus we must see in this missile base not only a facility to aid the fleet plans of the Soviet submarines, but also, as Mr. Alsop points out, a facility for the repair and adjustment of the delicate guidance systems of the Soviet "Yankee" submarine missiles.

The implication of this move, therefore, bring out a whole new strategy which is based on a capacity in the foreseeable future to take offensive actions against the United States. I believe that Mr. Alsop is correct when he equates the submarine base as provocative as the installation of missiles in Cuba in 1962, and I am sorry to see these actions going forward at a time when Congress is about to take an adjournment.

We must look upon this step not only as a specific, provocative thrust against the United States, but as providing the Soviets with an additional option for offensive strategy, alone or in combination with other options, whenever the Soviets might choose to take such action. What we see, in many parts of the world, is the Soviets are developing multiple capacities to attack the United States, a situation which could be dangerous whenever they feel that they have achieved a dominant or commanding position in international affairs. With the achievement of superiority in ICBM's, the development of space weapons, the rapid buildup toward superiority on the seas, and the elaborate and sophisticated support given to nationalist movements and even to subversive elements within the United States, the Soviets are obviously building a grand design in which they will call upon many capacities to attempt to force us to do their will.

For some time, now, the Soviets have been conducting an elaborate program of espionage against our military and space installations all long the Atlantic coast. If we want to understand the dimensions of the Soviet purpose, we can get some idea from the extent of the Soviet program of monitoring carried on against all of our military activities on the eastern seaboard.

The Soviets are very arrogant about their espionage program, and make no secret about their movements. As Senators are undoubtedly aware, the Port of Charleston is one of the bases for our Polaris nuclear submarines. Soviet spy ships have been repeatedly sighted near the harbor waters at Charleston, sometimes anchoring right by the harbor buoy at the entrance to the port, to record the "sonic signatures" of the Polaris submarines and other naval vessels entering and leaving Charleston harbor.

A notorious case concerns the activities of the Soviet trawler *Laptev*, in its attempts last July and August to monitor the test firings of the Poseidon missile from the U.S.S. *James Madison*, which is based out of Charleston. The harassment by the *Laptev* actually caused the postponement of the Poseidon test launch. I have investigated the *Laptev* case very thoroughly, and I want to share with Senators the details of the incident, in order to impress upon them the provocative behavior of the Soviets, which is of the utmost importance in assessing the reports relating to the construction of the Soviet nuclear submarine base in Cuba.

The *Laptev* is a Soviet intelligence collection ship—AGI—and only nominally a trawler. Designated as the *Khariton Laptev*, this Soviet intelligence vessel is listed by Jane's as an oceanographic survey ship of the *Nikolai Zubov* class.

The *Laptev* arrived in the Cape Kennedy area on July 24, 1970, and remained until after the initial, successful launch of the Poseidon, on August 3, 1970. Before its arrival in the Cape Kennedy area, *Laptev* had been operating off the east coast of the United States since early June. In the course of routine operations, U.S. naval ships and aircraft sighted this Soviet AGI on numerous occasions during that time, in the area of the Virginia Capes and off Charleston. From July 24 until after the successful launch on August 3, this Soviet AGI loitered in the launch area, observing the preparations under way for the launch exercise.

Several times during this period, the *Laptev* maneuvered in close proximity to the U.S.S. *James Madison*. On July 24, for example, the Soviet AGI passed down the port side of the surfaced submarine, at one point only about 240 yards away; on July 25, the AGI closed in on an almost parallel course less than 400 yards away; and, on July 27, the *Laptev* changed course to cross the U.S.S. *James Madison's* bow, causing the U.S. submarine to take extreme action to avoid the Soviet intelligence ship. During the same day, when the U.S. submarine was submerged, the *Laptev* operated in the near vicinity.

On August 3, shortly after the launch of the missile by U.S.S. *James Madison*, the Soviet AGI intruded into the immediate launch area in an attempt to retrieve materials connected with the launch which were then floating in the sea. In so doing, the *Laptev* maneuvered in a manner to bring about a dangerous situation, in hazard to U.S. ships present and interfering with their operations.

Specifically, the Soviet intelligence ship moved toward the launch point, overtaking the U.S.S. *Calcaterra*, and steering a course to pass ahead of this ship at a distance and in a manner which presented the risk of collision. The *Laptev* then crossed ahead of U.S.S. *Observation Island* which was obliged to sound the danger signal prescribed by international code of signals. When the Soviet AGI disregarded this signal, U.S.S. *Observation Island* was compelled to back at full speed in order to avoid a collision. The decision to back was based upon the relative position and proximity of the *Calcaterra*, as well as the unknown intentions of the *Laptev* approaching the launch point.

Laptev then slowed and unsuccessfully attempted to pick up pieces of the plastic missile tube cover. Boats launched from U.S.S. *Observation Island* recovered all the cover pieces. *Laptev* then circled astern of U.S.S. *Observation Island;* later the Soviet AGI passed close on the port side—about 200 feet—and departed the area in an easterly direction. No Soviet intelligence collection ship was in the area when the U.S.S. *James Madison* made a second successful launch of a Poseidon missile on August 17, 1970.

The Soviet Union has deployed intelligence collection ships in electronic surveillance operations against U.S. naval and land targets, however, since the mid-1950's. Soviet AGI's have operated along the east coast of the United States for at least the past 10 years. A normal patrol for a Soviet intelligence collector in this region lasts about 2 months. The main areas of Soviet interest have been the Virginia Capes, amphibious training areas off the North Carolina littoral, naval operating areas off Charleston, and Cape Kennedy. Such patrols also cover the Puerto Rico naval operating areas and U.S. space vehicle recovery areas.

The Soviet vessels which make these patrols are sometimes referred to as "trawlers" or "oceanographic survey ships," because the hulls used in the construction of Soviet AGI's are comparable to those types. However, Soviet AGI's are distinct from the fairly large Soviet fishing fleets and are specifically configured and equipped for their role in gathering intelligence information.

During the past year, Soviet AGI's operated off the east coast of the United States in normal patrols, as follows:

1 Jul 69–3 Sep 69 *Repeter.*
12 Aug 69–1 Nov 69 *Teodolit.*
28 Oct 69–3 Jan 70 *Krenometr.*
20 Jan 70–2 Apr 70 *Lotlin.*
31 Mar 70–13 Jun 70 *Teodolit.*
2 Jun 70–Present *Laptev* (now south of Cape Cod).

I understand that the State Department has protested the activities of the *Laptev*, yet the Soviets do not indicate that they are bothered in the least.

Mr. President, whether we like it or not, the Soviets are moving into confrontation with us in all parts of the globe and even right on our doorstep. We can negotiate with them for peace, but we must realize that the Soviets employ confrontation as part of the negotiations. We must not blind ourselves with idealistic illusions about the Soviet's intentions. We must recognize that the Soviets are testing our will, and that we must demonstrate the will to survive if we are to survive.

I believe that we must now take bold steps to challenge openly the construction of the Soviet submarine base. If the Soviets can taunt us by adopting a collision course in our coastal waters, we can at least announce that we are stationing observation ships at the limit of international waters off Cuba. We must make it clear to the world that we are observing this development closely.

Moreover, when the President is satisfied that the construction of the Soviet base is continuing, we must take steps to stop its construction. We must prevent the delivery of the components to the site. We must make it clear to the world that we cannot accept a nuclear confrontation.

If we do not stop the Soviets in the act of building this first base, they will be tempted to create a system of naval support points for a very dangerous military-political confrontation. The point is not whether the Soviets have the intention for immediate use of the system, but the very fact that they have it gives them a dangerous capacity to threaten us, and to obtain political leverage over us. If we

allow the Soviets to get such a lever over us, we will be open to permanent political blackmail.

Now we have a serious situation developing right on our own doorstep. If this submarine base is completed, the Soviets will be in a far better position to threaten us, with our lives and our property. We must act now. Words are not enough. I say that if the Soviets see by our actions that we are serious in this matter, they will back down immediately. They cannot afford to risk a confrontation, for they are not yet ready. Yet, little by little they are getting ready. They are taking steps. The submarine base is one such step. The Soviets must learn that we cannot allow such activity.

Mr. President, I ask unanimous consent that the column entitled "That Soviet Base in Cuba," written by Joseph Alsop, and published in the Washington Post, October 7, 1970, be printed in the RECORD at the conclusion of my remarks.

Mr. President, another columnist, the outstanding military analyst, Col. R. D. Heinl, Jr., has also written a penetrating analysis of the Soviet submarine base in Human Events, October 10, 1970, in an article entitled "Will U.S. Minimize Soviet Sub Base Threat?" I ask unanimous consent that Colonel Heinl's column also be printed in the RECORD.

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

THAT SOVIET BASE IN CUBA

When members of the Senate Foreign Relations Committee were briefed on the new Soviet submarine base now being built in Cuba, Senator Frank Church of Idaho produced a splendid example of his amiable idiocy about such matters. How could we be sure, he asked, that this was really going to be a *Soviet* base?

Well, there is a simple answer that even Senator Church may perhaps comprehend. Because of the past influence of the horrible American imperialists, Cubans to this day are mainly baseball players, whereas Russians are passionate soccer players. And the sports facilities with which the new base at Cienfuegos is being provided, very conspicuously center on a fine soccer field.

There are, of course, other, less simplistic reasons why the U.S. government is quite certain that the new submarine base is intended exclusively for Soviet use. Above all, it is being built to handle the largest and most advanced Soviet nuclear submarines, of the "Yankee" class, carrying 16 nuclear missiles apiece.

The real question, in fact, is not whether the base is strictly for Soviet use. The real reason is why the Soviet war planners want such a base, when they have always before handled their distant submarines as we do, by ships specially built as submarine-tenders.

The only possible answer is extremely disagreeable. In brief, there are certain kinds of repair and maintenance—particularly on the submarines' vital nuclear missiles—that are extremely difficult to carry out at sea, at least in large volume and continuously.

Hence a base like Cienfuegos is needed, when really large numbers of nuclear submarines are to be continuously at sea and far from home. That is the true explanation of the base. And the explanation means, in turn, that the Soviets are now planning continuous deployment of very large numbers of "Yankee" class and other nuclear submarines in the Caribbean and along the American coast.

They will have plenty of them to deploy, God knows! Norman Polmar, one of the authoritative editors of "Jane's Fighting Ships," forecasts that the Soviet nuclear submarine fleet will be as large as our own by the end of this year. He further forecasts that the Soviets will have 50 more nuclear submarines than we do by the year 1974.

In the circumstances, the construction of the Cienfuegos base is an even more ominous development that the attempted deployment of Soviet nuclear missiles on Cuban bases in 1962. It reveals an undoubted Soviet intention to gain a solid capability to knock out the entire land-based bomber component of the U.S. deterrent, plus the controls of the "Safeguard" ABM system.

The most horrifying single aspect of the story of the Cinfuegos base is the response the bad news has met within this country. Consider a simple comparison.

In 1962, the U.S. Senate was in flames over mere rumors of Soviet missiles in Cuba, long before the presence of those missiles was confirmed by U–2 reconnaissance photographs. Contrast this with Senator Church's amiable idiocy, and the senatorial silence that has engulfed the news from Cienfuegos ever since!

Or think of the Kennedy administration's memorable reaction to the undesired and, indeed, the quite unexpected bad news in 1962. And then think of the Nixon administration's response to this news that is even worse!

It is being said, of course, that the administration let the Soviets know we knew about their intended submarine base, "as a signal." The signal, it is claimed, will stop the further construction of the base, with no more fuss. If you can believe that, however, you can believe anything at all, including the theories of world politics held by men like Senator Church and Sen. J. William Fulbright.

Meanwhile, Secretary of Defense Melvin Laird has now clamped down an iron lid on any further Defense Department discussion of the Cienfuegos base and its ominous meaning. The obvious intent was, and is, to prevent the public from growing alarmed, when we should be deeply alarmed. And this intent is natural, in view of the progressive American disarmament being shockingly carried on in the face of growing danger!

WILL U.S. MINIMIZE SOVIET SUB BASE THREAT?

(By Col. R. D. Heinl, Jr.)

Russian establishment of a nuclear submarine base at Cienfuegos on the south coast of Cuba confronts the United States with the gravest Communist challenge since the Cuban missile crisis of 1962.

In terms of U.S. vital interests—the security of the continental United States, the security and inviolability of the Western Hemisphere, the essentiality of unthreatened lines of communication through the Caribbean—the presence of an unfriendly naval base in Cuba (especially for missile-firing submarines) represents a more frontal, dangerous and brutal Russian provocation than Khrushchev's installation there of medium-range ballistic missiles in 1962.

This naked thrust of Russian seapower and nuclear missile power into what has been an "American lake" comes against the backdrop of two other truculent and conspicuous exercises of Soviet military muscle at American expense during the past two months. Russian deployment in August of SAM–2 and SAM–3 missiles into the Suez cease-fire zone (after having lied to the United States in the bargain) is one.

The other, of course, was the recent unleashing of Syria's 300 Russian T–54 and T–55 tanks into an attack on Jordan, our nearest Arab ally.

In its direct implications for the security of the United States, neither of the foregoing (nor Russia's brutalization of Czechoslovakia, for that matter) approaches the Cienfuegos submarine base by several orders of magnitude.

The Russians only three months ago opened a new "Yankee"-class missile-submarine station in our backyard off Greenland. ("Yankee" is the designation for Russia's Polaris-type nuclear submarine, which they are building at a rate of one a month. We have not built a Polaris submarine since 1966.)

When their Cuban base is completed and operational, the Soviets will have still another "Yankee" missile submarine station, this in our Caribbean underbelly, able not only to reach targets throughout our South, Southwest and Midwest, but also the Panama Canal and much of Central and South America.

Incidentally, nuclear missiles fired against the United States from a Caribbean launching area would, of course, outflank our multi-billion-dollar land-locked IBM defenses sitting in Montana and Dakota cornfields, and again raise the question—somewhat more urgently now—as to why we do not immediately put part of our IBM defenses at sea in the Navy's mobile SABMIS system that the Pentagon has been sitting on for several years.

But the threat of Russian subs in Cienfuegos is by no means limited to that posed by Yankee-class missile boats, deadly as they are.

The Caribbean is our principal highway for transportation of South American strategic raw materials to the United States, which is no longer the plenteously endowed mountain of natural resources and raw materials it was even 30 years ago. The Caribbean is also the Atlantic approach to the Panama Canal, and the route that tankers must traverse to move Venezuelan oil to the United States and Europe.

Those old enough to remember World War II will never forget the fiery carnival of blazing tankers and torpedoed merchantmen which a very few German submarines were able to produce in the Caribbean and its Atlantic entrance, the Windward Passage, between Cuba and Hispaniola.

With no Western Hemisphere base (such as the Russians are now building at Cienfuegos), German submarines in 1942 sank 285 American merchant ships in the Windward Passage alone. The submarine threat to our Caribbean communications was so great between 1942 and 1945 that the U.S. Navy had to convoy more ships through the Windward Passage than through any other sea area except the approaches to New York.

Because of the sickness of our domestic society at war with itself, our New Left, peace-at-any-price Senate, our war-weariness, and our neo-isolationism, we may expect that the direness of the Cienfuegos development will be minimized just as our own government, only last month, wishfully minimized and at first even denied the Suez missile cheating and lies by the Russians.

For public consumption, Pentagon spokesmen are saying we "are not sure" what is developing at Ceinfuegos. Others, are saying, "Well, there aren't any Yankee submarines there—yet." Still other apologists are already laying out the fallback line: "How can we blame the Russians for this if we have Polaris submarine bases in Scotland (Holy Loch) and Spain (Rota)?"

One short answer to the last question is that Holy Loch and Rota are a thousand miles from metropolitan Russia while Cienfeugos is 150 miles from the United States.

The pretense that our intelligence and reconnaissance machinery isn't "sure" what is happening at Cienfuegos is misleading rubbish. It can be stated on high authority that the Joint Chiefs of Staff have a disturbingly clear picture of what the Russians are up to and are deeply concerned as to what, if anything, we can do about it.

Once and for all, as we ought to have learned from 1962 if nothing else—the only thing the Russians respect is power.

In the Cuban missile crisis we had, depending on how one reckoned it, anywhere from a 5-to-1 to a 10-to-1 strategic missile superiority over Russia.

Today, due to Robert S. McNamara's hideous misjudgment of the 1960s, the Soviets have more ICBMs than we have. At the time of Cuba, we had a fighting Navy in its prime and Russia had virtually no navy at all. Today, the new and muscular Russian fleet cruises the Gulf of Mexico, thumbing its nose at our over-age, rust-bucket fleet with its ancient guns, no surface-to-surface missiles at all, and World War II diesel-powered submarines such as Russia junked a decade ago.

To expel Russian missiles from Cuba in 1962, President Kennedy had to go to a general mobilization and point every one of our nuclear weapons down Nikita Khrushchev's throat.

In 1970, since it appears we have neither the heart nor the strength to do what Kennedy did, the country may have to reconcile itself to living with Russian submarines and their nuclear missiles targeted at our cities from a base on what we once called an "American lake."

SENATOR RANDOLPH URGES CONGRESS TO PROVIDE PRIORITY TO PASSAGE OF FUELS AND ENERGY COMMISSION BILL—HIGH COAL PRODUCTION IS NEEDED

Mr. RANDOLPH. Mr. President, when Congress returns to work in mid-November, one of its very highest priorities, it seems to me, should be to pass legislation to establish by law a National Commission on Fuels and Energy.

Sixty Senators are cosponsoring S. 4092, which I introduced July 16, 1970, and on which hearings have been held by the Subcommittee on Minerals, Materials and Fuels of the Committee on Interior and Insular Affairs, with an executive session on the measure said to be imminent in the full committee.

The bill would establish a fuels and energy commission, to be composed of officials of the executive branch, chairmen of specified independent agencies, Members of Congress, and experts from the public sector. The purpose of the commission would be "to recommend programs and policies intended to insure that United States requirements for low cost energy will be met, and to reconcile environmental quality requirements with future energy needs."

In the face of threatened fuel shortages and electric power deficiencies, the country's requirements for fuels and energy will not be solved by charges and countercharges. Fallacious charges, for example, allege that oil companies which have acquired coal reserves and coal producing units are mainly responsible for higher coal prices and low supplies of coal at critical power producing points. There are other implications involving oil and natural gas supplies, as well as coal, that need to be investigated and studied carefully and realistically by a competent commission. It should be so constituted that it would be nonpartisan and representative of the executive, legislative, and quasi-judicial—independent agency—segments of the Federal Government, and further balanced with nongovernmental expert members from the public sector. Such a commission would be the best instrumentality to recommend to the President and to the Congress of the United States sound fuels and energy policies for the Nation.

I point out, Mr. President, that two of the oil firms—Continental Oil Co., and Occidental Petroleum Corp.—which have acquired and have been operating large coal-producing businesses in West Virginia have presented written testimony to the Senate Committee on Interior and Insular Affairs favorable to the fuels and energy commission legislation. They have given indisputable evidence that coal production has been increased, not reduced or kept stagnant, since their acquisition of the coal properties they operate in several States, especially in West Virginia, Pennsylvania, Ohio, Kentucky, and Virginia.

Continental Oil acquired the Consolidation Coal Co. in 1966, and Island Creek Coal Co. was merged with Occidental Petroleum in January 1968.

Testimony by C. Howard Hardesty, Jr., senior vice president of Continental, and William Bellano, president of Occidental, to the Senate Interior Committee is forthright and, in the words of Mr. Hardesty, "makes abundantly clear that diverse activities by petroleum companies have actually increased rather 'han decreased competition."

Mr. Hardesty, former General Counsel of Consolidated Coal Co., is knowledgeable on fuels matters. His letter of testimony to the Interior Committee on behalf of Continental Oil and Consolidation Coal Co., makes a clear case for Consolidation Coal's growth since its association with Continental in 1966, especially in the following paragraph:

In the three years, 1967 through 1969, capital outlays and commitments for new mines and expanded capacity at existing mines totaled $174 million. This compares with $65 million spent by Consol for the same purpose in the th e years prior to the merger. Since 1966, we have built or are building 15 new mines and are forecasting annual coal production of approximately 80 million tons by the end of 1972. In other words, Continental has almost tripled the rate of capital investment in order to double coal production since the merger. If the industry had expanded production at the same rate as Consol between 1966 and 1970, there would be a surplus coal production in 1970 of approximately 150 million tons rather than a threatened shortage.

I call attention to the fact that Mr. Bellano is in an unusually good position to make a judgment on the growth of Island Creek Coal Co. since it merged with Occidental Petroleum. Mr. Bellano was president of Island Creek Coal before its purchase of Occidental and, since March of this year, has been president of the parent company, Occidental. I quote from the Bellano testimony as follows:

When Island Creek was purchased it had a net worth of approximately $81 million, was producing 26 million tons of coal annually and sold ony 4.7 percent of the market. Our long range programs left Island Creek with relatively limited expansion plans. Once we were purchased by Occidental, our plans changed virtually over night. Indeed, within the first year, our plant investment doubled when Occidental made available $175 million in new building funds, a sum since vastly increased and is due to approximate $500 million in the years ahead.

With that one decision, Occidental moved Island Creek into a stronger competitive position within the coal industry, permitting us to open a number of new mines with resultant increased supplies for all coal users, as well as a new metallurgical source for sales overseas. In the next 5 years, by example, we will open 21 new mines and by 1975 will have tripled production. Our sales to utilities will grow from 3 percent of the market to 9 percent as we produce 35 million tons of steam coal. Overall, we will produce a total of 61 million tons, another instance of almost tripling production, which will raise our share of the market from 4.7 percent to 9 percent.

Frankly, Mr. President, I have been concerned to hear and to read charges mainly from Tennessee Valley Authority and New England areas with warnings that fuel production is increasingly falling into the hands of a small number of companies, and with implications of dire consequences.

I made inquiries concerning coal aspects, especially as they relate to capital investments and production prior to mergers and subsequent to mergers. The facts that were revealed refuted the allegations. I recommended to officials of both Continental Oil Co. and Occidental Petroleum Corp. that they shape their facts in the form of letters of testimony to the chairmen of the Committee on Interior and Insular Affairs, the Senator from Washington (Mr. JACKSON), and of the Subcommittee on Minerals, Materials, and Fuels, the Senator from Utah (Mr. Moss). Both firms did submit testimony by letter, even though the hearings on S. 4092 had been closed and the hearing record had been printed.

Mr. President, because of the fact that the Interior Committee hearings were printed prior to receipt by that committee of the testimony by Mr. Hardesty for Continental Oil and Mr. Bellano for Occidental Petroleum, I ask unanimous consent that the letters of both gentlemen to the chairman of the Interior Committee be printed in the RECORD.

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

CONTINENTAL OIL CO.,
New York, N.Y., October 12, 1970.

Hon. HENRY M. JACKSON,
Chairman, Senate Committee on Interior and Insular Affairs, New Senate Office Building, Washington, D.C.

DEAR SENATOR JACKSON: Continental Oil Company wishes to express its support of S. 4092 which would establish a Commission on Fuels and Energy. The stated purpose of this legislation—"to recommend programs and policies intended to insure that United States' requirements for low cost energy will be met, and to reconcile environmental quality requirements with future energy needs"—establishes a goal of highest priority and importance to this nation.

Such a comprehensive overview and coordinated approach to the many governmental policies relating to fuels is vital if we are to insure the availability of adequate supplies of energy. Public policy must reflect the insatiable energy needs of a dynamic society. Continuity and stability of policies affecting all aspects of adequate energy supplies—taxes, import programs, environmental controls, availability of capital, trans-

portation facilities—are essential ingredients of long-range planning.

In recent weeks, public attention has been focused on a threatened shortage of fuels. There is a belated but growing recognition that wishful thinking will not produce and bring to the consumer adequate supplies of gas, oil and coal.

Attempts to assign reasons for the threatened shortages have in many instances ignored real causes. Uniformed sources have charged that some petroleum companies are responsible because they are engaged in production and marketing of coal and uranium. A careful analysis of the facts makes abundantly clear such diverse activities by petroleum companies has actually increased rather than decreased competition.

Because the acquisition by Continental of Consolidation Coal Company has been specifically mentioned, permit me to detail the growth of this company since its association with Continental in 1966. In the three years, 1967 through 1969, capital outlays and commitments for new mines and expanded capacity at existing mines totaled $174 million. This compares with $65 million spent by Consol for the same purpose in the three years prior to the merger. Since 1966, we have built or are building 15 new mines and are forecasting annual coal production of approximately 80 million tons by the end of 1972. In other words, Continental has almost tripled the rate of capital investment in order to double coal production since the merger.

If the coal industry had expanded production at the same rate as Consol between 1966 and 1970, there would be a surplus coal production in 1970 of approximately 150 million tons rather than a threatened shortage.

Prices of coal have increased for obvious reasons. Society has properly demanded improved mine health and safety, rigid reclamation of surface lands, and amelioration of air and water pollution. This accompanied by higher labor, interest, building and supply costs can only result in higher production costs. As a nation we are now paying the cost for the cheap fuels which we have enjoyed throughout our history.

It is significant to note that 88% of Consol's sales to electric utilities are governed by long-term contracts providing for price rises only in response to higher costs. Escalation clauses require that we must satisfy our customers that higher costs are in fact being incurred.

For those who desire to face facts, there are clear reasons some coal consumers are experiencing coal shortages.

First.—The demand for electricity in the last half of the 1960's was seriously underestimated. The 1964 National Power Survey by the Federal Power Commission, widely used as a planning document, projected an average annual growth in U.S. electricity demand of 6.9% between 1965 and 1970. Instead, electricity demand growth averaged 8.1% per year between 1965 and 1969. This higher level of demand alone necessitated the use of 25 million tons coal equivalent in 1969 above the earlier FPC forecasts.

These estimates adversely affected investments in new coal mines as well as in transportation and other utility fuels. It takes three to four years to bring a coal mine into production, and no amount of wishful thinking can speed up the process.

Second.—Had nuclear generating capacity come on stream as projected and scheduled in 1970, some 19 million tons of coal would not be needed.

Heavy government research into nuclear power preceded the announcement in 1963 of the first purchase by a utility of a nuclear plant without direct government subsidy (which subsidies by 1967 had amounted to $2.3 billion). Throughout the period of 1963–1967 published studies indicated that nuclear plants possessed a cost advantage over fossil-fueled plants and that this advantage would widen in time unless coal were sold at much lower prices. The papers were full of announcements by a number of utility executives that their systems would not build any more coal-fired plants. Nuclear "overkill" was not caused by petroleum and coal companies.

Third.—Railroad coal car shortages cost the U.S. some seven million tons of coal production in 1969. Car shortages have continued to be widespread in 1970.

The railroad industry in its planning was also faced with the same oversell of nuclear energy as well as the abolition of quotas on imported residual oil. Consolidation Coal Company, along with some other producers, has tried to alleviate the problem through private ownership of cars. Through efficient planning and operation, the 774 cars which Consol owns or leases are able to haul as much coal as almost 5,000 coal cars in normal use.

Fourth.—During 1969, as much as 20 million tons of bituminous coal production was lost through wildcat strikes in the industry and only in recent months has this situation improved.

Labor peace and more efficient use of railroad equipment can solve threatened coal shortages.

Fifth.—This nation's need for an improved environment had its first manifestations in very strict sulfur oxide emission standards. The restrictions came at a time when there were no proven economical stack gas control devices to remove SO_2 following combustion of coal in the boiler. Rather than develop or install these devices, energy consumers turned to cleaner fuels—natural gas and residual fuel oil. The switch so dramatically changed the demand picture for gas and fuel oils that the East Coast now depends almost entirely (93%) on foreign sources for its residual oil and demand for gas exceeds supply. Worldwide dislocations of oil and transportation facilities have further affected availability and cost of residual and other low sulfur fuel oil.

Sixth.—Federal Mine Health and Safety Legislation enacted in 1969 has reduced the productivity of most underground mines. Provisions of the law should be carefully studied in light of operating experiences during 1970 and those provisions which do not enhance health or safety but affect productivity should be revised.

The geological, geophysical, research and engineering capabilities of Continental have been of assistance to the coal mining activities of Consol. These added talents already have and will continue to hasten the economic viability of synthetic oil and gas from coal. Certainly, the broadened financial base enhances Consol's ability to engage in long-range planning so necessary to help meet this nation's fuel requirements.

Continental has prospected for and found commercial reserves of uranium. When its mill is completed, it will furnish a prospective 1.2% to 2.4% of the uranium market demand. Since Continental produces only 1.8% of U.S. crude oil and only 1.4% of U.S. marketed gas production, the marketing of which is largely controlled by others, is it realistic to allege that it occupies a monopoly position in these intensely competitive industries?

We hope that this information will be helpful as you proceed with consideration of S. 4092.

Respectfully,

C. HOWARD HARDESTY, Jr.,
Senior Vice President.

OCCIDENTAL PETROLEUM CORP.,
Los Angeles, Calif., October 12, 1970.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In recent weeks, the energy problems resulting from improper prior planning by the utilities have prompted a wide-ranging attack on the Coal Industry. During this period, the rhetoric escalated to such a point that a gross misrepresentation of the facts resulted.

It is not the purpose of this letter to defend the Coal Industry, since in response to rhetoric the industry has replied reasonably and factually to set the record straight. Nor is there within these pages any attempt to defend this company, for we were not named during the furor. However, that episode served as a reminder to me that many of you may not be aware of the remarkable growth of Island Creek Coal Company since it merged with Occidental Petroleum in January of 1968.

Reviewing our new five year plan, the benefits as a result of that alliance are important enough that I would like to point them out.

As an aside, I might add that I am in an unusually good position to make a judgment on this, since I was President of Island Creek before its purchase by Occidental and, since March of this year, have assumed the presidency of Occidental.

When Island Creek was purchased it had a net worth of approximately $81 million, was producing 26 million tons annually and sold only 4.7% of the market.

Our long range programs left us with relatively limited expansion plans. Once we were purchased by Occidental, our plans changed virtually overnight. Indeed, within the first year, our plant investment doubled when Occidental made available $175 million in new building funds, a sum since vastly increased and due to approximate $500 million in the years ahead.

With that one decision, Occidental moved Island Creek into a stronger competitive position within the industry, permitting us to open a number of new mines with resultant increased supplies for all coal users, as well as a new metallurgical source for sales overseas.

In the next five years, by example, we will open twenty-one new mines nationally and by 1975 will have tripled production.

Our sales to utilities will grow from 3% of the market to 9% as we produce 35 million tons of steam coal.

Overall, we will produce a total of 61 million tons, another instance of almost tripling production, which will raise our share of the market from 4.7% to 9%.

Very obviously, this kind of immediate growth will have an affect, not just on the company but on the entire field of coal, for in the case of 21 new mines alone, we have committed an initial investment of $226,300,000, creating 8,724 new jobs, adding an additional $83,730,000 in payroll and providing an additional 37 million tons of coal to meet any shortages.

More specifically, this will mean in West Virginia alone that in addition to our already thriving operations there, Island Creek, using these additional funds made available by Occidental, will commit an initial investment of $39,800,000 for five new mines, creating 1,870 new jobs, adding $18 million to the state's payroll structure and a new coal production of 7,940,000 tons, of which 5,400,000 will go to utilities.

This kind of figure is indicative of the progress that Island Creek was immediately able to make once it merged with a larger natural resources firm.

I am grateful for your attention to this brief letter about Occidental and Island Creek.

Naturally, we will be pleased to add any further statistics that may be of interest to you and, from time to time, I hope that it will be possible to us to continue to keep you apprised of our development.

Sincerely yours,

WILLIAM BELLANO,
President.

WHY PICK ON THE GI?

Mr. YOUNG of Ohio. Mr. President, a news item in the Columbus Dispatch of September 20 relates the story of a young boy serving his military obligation to his country in our army in Vietnam. This 18-year-old youth lost his M–16 rifle while on a helicopter assault mission. Army officials told the young soldier he will be required to pay $130 for the loss of the rifle or that amount would be deducted from his pay. The boy and his family consider this unfair. Incidentally, the boy's father served 17½ years in the Navy. Can you imagine the outcry from the Pentagon if our generals and admirals were held responsible for billions of dollars in wasteful weapons systems? Those generals and admirals would be broke before they finished paying for their super boondoggle—the so-called Safeguard anti-ballistic-missile system.

COOPERATIVE INSPECTION OF COLORADO MINES

Mr. DOMINICK. Mr. President, I noted with great interest the recent announcement by the Department of the Interior that it had reached an agreement with the State of Colorado regarding cooperative inspection of metal and nonmetal mines in Colorado. Since I advocated that approach several years ago as the most sensible method of implementing mine safety laws, it is gratifying to see that it is finally being put into effect.

The agreement was entered pursuant to the Federal Metal and Nonmetallic Mines Safety Act, which authorizes the Secretary of the Interior to set health and safety standards for noncoal mines. Mandatory Federal standards under that act became enforceable July 31, 1970. Under the agreement, the Colorado Bureau of Mines will be responsible for enforcing health and safety standards established by Colorado which provide protection equivalent to the Federal standards. Mine inspections will be regularly conducted by the Colorado Bureau of Mines to assure that the standards are being complied with. Each noncoal mine will be inspected once annually by the U.S. Bureau of Mines.

Colorado is the second State to enter such an agreement, Arizona being the first. In order to qualify for participation in this joint inspection program Colorado had to satisfy several conditions specified in the act:

First, submission of a State plan agreement to be administered by the Colorado Bureau of Mines; and

Second, assurance that the Colorado Bureau of Mines has adequate legal authority, funds, and qualified personnel to enforce existing health and safety standards, which are substantially as effective as the Federal standards.

To continue participating, Colorado must submit reports upon which the Secretary of the Interior can evaluate the Colorado Bureau of Mines' performance under the agreement. And as the Federal standards are modified by the Secretary of the Interior, Colorado standards must be revised so that they continue to provide equivalent protection.

I strongly supported this joint inspection approach which gives the States primary responsibility for developing and enforcing their own mine health and safety standards when the Federal Metal and Nonmetallic Mines Safety Act was before the Senate in 1966. I felt that, given the lack of uniform Federal health and safety standards and the difficulty in developing and applying such standards throughout the diverse mining industry, it would be unwise not to give each State the basic responsibility of developing and enforcing its own standards. Although the Senate did not adopt that approach, such a provision was included in the House bill, and it was retained by the conferees.

The act became law on September 16, 1966. The fact that the Department of the Interior did not complete its promulgation of mandatory Federal standards until July 31, 1970, almost 4 years later, underlies the validity of my point regarding the difficulty of developing uniform Federal health and safety standards throughout the mining industry.

At any rate, Colorado has always been at the forefront in the area of mine health and safety, and I am very pleased that it is one of the first States to enter a cooperative inspection agreement with the Department of the Interior pursuant to the Federal Metal and Nonmetallic Mines Safety Act. I ask unanimous consent that the news account of this agreement be printed in the RECORD.

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

COLORADO AGREES TO MINE SAFETY

Colorado has become the second state in the Union to enter an agreement for federal cooperation in the health and safety inspection of metal and nonmetal mines, the Department of Interior announced Friday.

Under the new agreement signed by Gov. Love and Earl T. Hayes, acting director of the U.S. Bureau of Mines, the Colorado Bureau of Mines will enforce standards equivalent to the regulations established by the secretary of the interior.

The U.S. Bureau of Mines also will make one inspection a year of every Colorado underground noncoal mine.

The agreement is authorized by the Federal Metal and Nonmetal Mine Safety Act which empowers the secretary of the interior to set health and safety standards for America's noncoal mines.

THE CONSUMER MOVEMENT—ADDRESS BY FEDERAL TRADE COMMISSIONER ELMAN

Mr. HART. Mr. President, Commissioner Philip Elman is completing a distinguished term as a member of the Federal Trade Commission. On Wednesday, October 6, 1970, the Commissioner spoke to the Marketing Conference of the National Association of Manufacturers. He cautioned businessmen that they "must make a dramatic turn to the more traditional forms of competition—price, quality, and service. Tomorrow's consumers will be more concerned with the safety and ecology aspects of a soda bottle than its color, size, or accompanying jingle."

His speech traced the development of the consumer movement and urged that the business community work to upgrade consumer legislation and to improve practices in the marketplace through greater voluntary effort.

As the Senate heads toward adjournment, I urge Senators to consider the comments of Commissioner Elman and to return with a fresh commitment to make the American marketplace work for businessmen and consumers alike.

Mr. President, I ask unanimous consent that Commissioner Elman's excellent speech be printed in the RECORD.

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

THE CONSUMER MOVEMENT—AND WHAT IT MEANS FOR BUSINESS

(By Philip Elman)

I

The real revolutions in world history have been the revolutions in human values, ideas, feelings, and tastes. Mankind is passing through such a cultural revolution now. Unmistakable signs of its presence are all about us, here at home and abroad, in all parts of the globe and among all classes of people. Generated primarily by the young, its essence is a new birth of freedom for the individual; a joyous liberation of the human spirit; an insistence on truth and honesty in personal relations, and a total rejection of hypocrisy and cant; a renewed concern for the uses to which power, public and private, is put, and a fixed determination that it be used to preserve and enrich life, liberty, and the pursuit of happniess, not to destroy them, to protect the beauties of nature and the good earth, not to lay them waste. Its consequence, we may hope, will be to close at last the ancient gap between the ideals men preach and the injustices they practice in their daily lives. Its sure effect, in any event, will be to transform radically the structures and institutions of society, political and economic as well as social.

I should like to speak to you today about one phase of this revolution, small perhaps in its relation to the whole, but large in its significance for you as businessmen marketing products to the new type of individual who, with increasing rapidity, is emerging as your principal customer. His expectations of you, your products, and the way you sell and advertise them, will be vastly different from those of his parents; and you will do well to mark these differences and to respond to them.

II

The 1960's saw the beginning stages of the new consumer movement. Now, in the 1970's, we are seeing a fresh stage—with less talk and more action, focusing upon the practicalities, the procedures, the funding, and the institutional changes believed necessary.

One action front is Congress, where consumer legislation will surely be forthcoming in the near future. Pending bills, if passed, would create substantially new legal rights and obligations extending far beyond existing requirements of law. Other bills would establish new private and public remedies and procedures for providing expanded consumer protection.

A second front is represented by the private action of consumer groups and concerned citizens. Consumers are not merely complaining about problems but are taking to the courts to remedy their grievances. Consumer lawsuits are being filed in growing numbers. And consumer groups have begun to intervene and plead the public interest before federal and state agencies. All of these actions are supported by a small but burgeoning legion of able and dedicated public interest lawyers.

On a third front are the expanding consumer protection activities of the federal agencies. Today these agencies are under attack from consumer advocates, who feel that their interests are not being sufficiently heeded. There are increasing indications that the agencies are responding to these concerns. The Federal Trade Commission, for

example, has chosen not to await Congressional extension of its powers, but to exercise fully its remedial authority under existing law. The Commission has already asserted its power to require a respondent's future advertising to include affirmative disclosures designed to overcome and dissipate any residual deceptions of the public resulting from past misrepresentations. And it is now in the process of establishing its authority to require respondents to make appropriate redress to consumers injured by unfair trade practices—by giving refunds and paying damages. The Commission is sensitive to the criticism that its authority has been limited to polite wrist-slapping and negotiation of weak promises of future good behavior. Businessmen should also anticipate new and innovative substantive regulatory policies from the FTC. For example, in a recent complaint, the Commission—instead of challenging a dubious advertising claim as false—has alleged the making of such an unsubstantiated claim to be unfair. The theory of this complaint is simple but far-reaching—advertisers must not make equivocal, arguably true, or unprovable claims, but only those which they can substantiate with definite factual proof.

On a fourth front has been the activism of state and local agencies. Prodded by consumer advocates, by the liaison work of the FTC, and by the simple fact that increased consumer protection is not only desirable in the public interest but makes good political sense, numerous cities, counties, and states have enacted and are vigorously enforcing strong consumer legislation.

In sum, on these four separate fronts, the consumer movement is proceeding with a definite course of action, not merely talk. The goals have been agreed upon and the support consolidated. The future—much nearer than many suppose—will bring (1) broader and stricter regulation of business conduct as it relates to consumers; and (2) much more effective remedies and penalties for violation of these regulations. Whether these new sanctions and requirements come about by federal legislation, by action of federal agencies, by state and local action, or by private consumer action, or by a combination of all of these, I assure you that they will come—in some form and at some time soon. Admittedly, the various possibilities range in severity from mild reform to radical change. But even such limited proposals as the Administration's triggered class action bill would dramatically increase the cost of deception. Moreover, the existence of consumer action on at least four separate fronts is assurance that while progress may be stifled or defeated on one front, it will emerge on another front. Expansion of the Federal Trade Commission's powers and available sanctions will come—if not by federal legislation, then by court decisions upholding the Commission's own assertion of these powers. Members of the private bar will be suing companies for damages whether or not state and federal class action legislation is passed.

III

In light of all of these developments, what should be the response of the business community?

Two years ago, when I spoke to this same gathering, I gave the following advice:

"Whether there will be additional consumer legislation or regulation is in a real sense up to you. Do nothing, ignore the genuine grievances of consumers, pretend that the revolution in marketing has not created problems that need attention, and you can be sure that government will move into the vacuum. On the other hand, your actions to meet these problems could be more effective than government regulation and obviate the need for it. In this field, as in others, government and business working together can do more than either could do separately."

I think that advice is still sound today. In 1970, just as in 1968, there is much that businessmen can and should do—indeed must do.

First, marketers and businessmen can and should work for improvement, not defeat, of pending consumer legislation—in order to make these new laws and regulations reasonable, realistic, and fair. If you simply dig in your heels and say "no, never," you will serve neither your own interests nor those of the general public. You will only ensure that the actions that will come—over your opposition—will be more severe and less accommodating. If, on the other hand, you join in the search for sensible and practical reforms, all could benefit greatly.

Secondly, individual businessmen must make a far greater effort to avoid stepping over the line of illegality in their marketing practices. By this, I do not mean "legal brinkmanship"—that is, obeying only the most narrow and niggardly interpretation of the law. I mean the exact opposite. Businessmen should, whenever possible, act upon that view of the law which most favors honesty, full disclosure, and fair treatment of consumers. In this regard, I commend to your attention a statement made by Mr. Louis D. Brandeis in 1915 before his appointment to the bench:

"I have been at times counsel for a few trusts. The president of one of the largest of them, when we were discussing the law some four or five years ago—and he was full of his attacks against the Sherman Law—said to me, 'Now, you have been speaking in favor of this Sherman Law, and I have been going around and trying to find out what I can do, and I can't get any advice as to what I can do.' And he said, in rather a pleasant enough way, but in certain ways rather sneering, 'Perhaps *you* can advise me,' I said, 'I can advise you perfectly, but it is a question what advice I can give you. If you ask me how near you can walk to the edge of precipice without going over, I can't tell you, for you may walk on the edge, and all of a sudden you may step on a smooth stone, or strike against a little bit of a root sticking out, and you may go over that precipice. But if you ask me, how near you can go to that precipice and still be safe, I can tell you, and I can guarantee that whatever mishap comes to you, you will not fall over that precipice. * * * You must not expect from the Sherman Law any more than you do from any other law you are dealing with. You must not expect that you can go to the verge of that law without running any risks. Why should you? You do not in any other relation of life that I know of."

In his own self-interest, a prudent businessman should maintain a safe distance from the precipice of illegality. With new remedies and penalties, and with new enforcement procedures and methods, if you should fall off the cliff, the abyss below will be much deeper. In the future, sanctions will be more frequent, more demanding, and more publicized. Businessmen will be ordered not merely to halt unlawful practices, but to pay substantial penalties for past violations and to compensate consumers injured by such conduct. No longer will unfair trade practices be hidden in the secret archives of federal agencies. The activities of these agencies will be open to the public, and orders may require respondents to spend their own advertising dollars to inform the public of their past wrongdoings. In short, unfair and deceptive practices will also be unprofitable public relations and business practices.

Third, business must make a dramatic turn to the more traditional forms of competition—price, quality, and service. I am convinced that the younger generation—soon to be the primary consumers of business wares and ultimately the leaders of this country—will not be persuaded by, nor tolerate, the silly commercials and advertising gimmicks that are so prevalent today. Tomorrow's consumers will be more concerned with the safety and ecology aspects of a soda bottle than its color, size, or accompanying jingle. With higher levels of education than any previous generation of Americans, these consumers of the future will want food products that have a full complement of nutrients and not merely a pretty package. Business must adjust—and soon—to a generation that is no longer overawed by the flashiness of television; a generation that questions, rather than blindly accepts, the gospel of the modern-day hawkers; a generation that will not sit idly by if products are not honestly advertised or do not perform as promised.

The fourth area in which business should act is in creating the private institutions to resolve consumer problems on a continuing and permanent basis. One such step would be the establishment of satisfactory internal mechanisms for handling consumer grievances. Industry should also take steps toward providing a greater degree of self-regulation and self-policing of trade practices. The antitrust laws may provide some obstacles, but surely they do not bar a far greater degree of voluntary action by businessmen to raise the standards of the marketplace. If business fails to act, the full burden will fall upon the government. And that will inevitably mean more expensive, more strict regulation.

IV

All of these steps I urge upon you—but not merely as your public relations gesture of 1970. The consumer movement presents business of the 1970's with additional responsibilities. You are asked to worry not merely about labor costs, profits, and sales statistics, but about ecology, safety, nutrition, and consumer welfare. But your task is really no more difficult than that of any other modern institution. The consumer movement is only part of a larger social movement in this country, the implications of which are profound for everyone including business. We are living in a time of true social revolution. And all institutions—indeed all persons—must adjust to the pressing need for a broader perspective in reaching private decisions. We must all consider the effects of our own activities upon the larger public interest—upon the environment, upon social justice, upon individual freedom, upon the growth and progress of society.

Yet, while the task may be a difficult one, it is also challenging and exciting. It is not often that a people are given the opportunity and obligation to look beyond the petty concerns of everyday life and business to the broader needs of forming a more just society and a better world.

CAMPAIGN BROADCAST REFORM

Mr. PEARSON. Mr. President, I am deeply disappointed that this important and needed piece of legislation has been vetoed.

The cost of running for public office in this country today is staggering, and the proposed legislation would have been a major step toward curing this gathering crisis in our present political system of representative democracy.

The amount of money spent on political broadcasting in the last political year—1968—was $58.9 million. One can only wonder at what might have been done to improve our country had even a portion of this tremendous sum been channeled into more productive and essential areas.

The bill would have reduced appreciably the overall cost of campaigns and would have opened the way for many qualified men and women of modest means to enter the public arena.

Then, too, the bill did establish a reasonable and enforceable ceiling on

broadcast expenditures for congressional, senatorial, and gubernatorial candidates.

Without limitations a free elective process is no longer free.

Our form of government is based on the assumption that representatives of the people are chosen on the basis of merit and ability rather than on their financial worth or access to large sums of money.

Mr. President, I recognize that the bill has been criticized for its shortcomings in various aspects. I also recognize that the bill unfortunately has been debated in an atmosphere of partisanship.

But, Mr. President, the principle upon which this proposal stands and the conviction which prompted me to introduce it in the Senate is one which the majority of this body would not question; namely, that every man or woman in the United States of America should have an equal opportunity to serve their Nation.

The bill did not provide a complete answer to all the problems we face in the field of electoral reform, but by providing for controls over spending for political purposes on radio and television, and by insuring that candidates would be charged reasonable rather than exorbitant rates, it represented a positive step forward.

To delay until the perfect and all-encompassing instrument of reform is devised is, in my judgment, to delay forever. And the longer we delay, the more unconscionable will become the distortions in our election process.

In this land of government of the people, I must confess concern when the prospects of attaining public office are directly proportional to the amount of money in one's pocket rather than the amount of ability, determination and integrity in one's being. History may record that all Americans, not just a few candidates of limited means, lost by this veto.

TAX SUPPORT FOR ENVIRONMENTAL AND CONSUMER PROTECTION ORGANIZATION

Mr. RIBICOFF. Mr. President, a recent announcement by the Internal Revenue Service threatens to curtail seriously this Nation's efforts to achieve racial justice, preservation of the environment, and protection of the American consumer. For many years, legal action organizations have been in the forefront of the quiet battle to bring meaning and substance to our laws through the time-honored method of asking the courts to protect the rights of their clients. Such groups as the NAACP legal defense fund have strengthened the efforts of racial minorities to achieve justice within the American system. In recent years, other such groups have formed to use legal means to protect the environment and the consumer. These groups have been supported by the charitable contributions of millions of Americans.

On Friday, October 9, the Internal Revenue Service announced that, pending a study, it was suspending its customary assurance that contributions to such organizations qualify for tax deductions. By this action, the Service threatened the very existence of these charitably supported groups. It has been estimated that, without the charitable classification, contributions to these groups would shrink by 90 percent. The failure of this support virtually assures the end of this nature of legal representation.

The purposes and methods of these public service organizations are in the highest tradition of American democracy—seeking change through the courts, not in the streets. They seek merely to employ the legitimate means established by our Constitution for resolving conflicts. Their legal activities attempt no more than to enforce the laws which have been established by democratically elected legislatures. Indeed, the U.S. Supreme Court has held that such litigation is protected under the first amendment of the Constitution.

The action of the Internal Revenue Service conflicts sharply with the administration's own stated policies. In the past year and a half, the President has sent eight special messages to the Congress dramatizing his concern for restoring the environment. He has said that the job of cleaning up the environment "requires the help of every citizen," and he has called for a "total mobilization of all of us" in the fight to end pollution. Russel Train, Chairman of the Council on Environmental Quality, has been quoted as saying:

> Litigation brought by private groups which must rely on contributions for their support . . . [has] strengthened and accelerated the process of enforcement of anti-pollution laws.

Mr. Train has further stated that:

> Private litigation before courts and administrative agencies has been and will continue to be an important environmental protection technique supplementing and reinforcing Government environmental protection programs.

Now the Internal Revenue Service seeks to cripple perhaps the most important vehicle for bringing citizens into the national crusade.

At the very least, the action by the Internal Revenue Service will severely curtail environmental and consumer protection litigation. It would also cut sharply into the ability of civil rights organizations to use our courts to enforce constitutionally protected rights. Most Americans, black and white, would be deprived of effective advocacy against those who deprive them of their civil rights, pollute their air and water, and cheat them through deceptive advertising or shoddy goods. Some of the most respected voices for justice in each of these areas would be affected, including the Southern Christian Leadership Conference, the National Welfare Rights Organization, the Audubon Society, the Wilderness Society, and many others.

The Internal Revenue Service has stated that it does not wish to confer a tax advantage upon just one side of these national issues. The truth is, however, that effective advocacy by public interest law firms can, at best, only restore a balance to the resolution of these problems.

Today, the average individual who seeks to resolve his differences within the legal system must bear the cost of legal assistance out of his own pocket. The corporation, however, is permitted a tax deduction for its expenses, which at the regular corporate tax rate results in a tax savings of almost 50 cents on the dollar. Thus, the corporate treasury is able to obtain twice the legal representation of its case for the same amount expended by the private citizen for whom there is generally no available deduction. To permit charitable deductions for contributions to public law firms is to do no more than restore simple tax equality.

Recognition of the charitable character of environmental and other public interest law firms can only begin to redress much more fundamental imbalances before the courts. The resources of the businesses and governmental bodies involved in such suits are massive. Even with tax exempt status, the funds of public interest groups can hardly be expected to be of comparable magnitude. In addition, much of the country's best legal talent will be prevented by conflict-of-interest rules from representing the public interest in environmental and consumer matters. As a consequence, the public interest law firm represents one of the few ways to redress the essential inequality between the public interest and corporate power.

The strongest antidote for the politics of confrontation is the speedy resolution of legitimate grievances. All of us here have spent many words condemning violence and promoting solutions to our problems through the established system. But rhetoric is no substitute for effective and constructive action.

A dynamic society must prove itself able to meet new challenges and provide new answers through accepted and even traditional means. But our legal system can only be responsive to public and private grievances with the effective advocacy of both sides of the issue.

In order to enable growing public concerns to be redressed by a responsive system of justice, I urge the Internal Revenue Service to take immediate action to restore charitable classification to organizations which employ litigation to advance their charitable objectives.

MOTION PICTURES OF QUALITY RECEIVE FAVORABLE RECOGNITION

Mr. RANDOLPH. Mr. President, recently a noted movie viewer observed that too few American movies depict the virtues of goodness, glory, and heroism. He feels, and I concur, that much of today's product is aimed below the belt, and that the antihero is celebrated as a model for today's youth.

There are, however, creative people working within the industry who try to offset the subculture of skin flicks and make artistic products that are both inspiring and entertaining. Recognition for such work has come to one of America's foremost writers, producers, and directors.

Carl Foreman has produced such notable films of enduring value as "Guns of Navarone," "High Noon," and "Born

Free." In recent years, this American artist has been a resident of London and, as the following comments of the Right Honorable Sir Alec Douglas-Home will attest, he has won the respect of the citizens of Great Britain. Recently the Foreign Secretary presented to Mr. Foreman the badge of a Commander of the Most Excellent Order of the British Empire. His remarks at the presentation give testimony to the goodwill that American-made films of high quality generate globally.

Mr. President, I ask unanimous consent that the words of Sir Alec be printed in the RECORD:

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

SPEECH BY THE RIGHT HONORABLE SIR ALEC DOUGLAS-HOME

In recent years, Mr. Foreman, students of international affairs have come to use a term which they have borrowed from your profession—the "scenario".

I have always found this a misleading word.

Because it implies a degree of control over the actors in our productions which, often to my regret, I have never found to exist.

Not only do our actors insist on interpolating lines of their own: they have even been found on occasion to be suffering under the delusion that they are directing the production themselves!

But since I returned to this particular set last month, I can truthfully say that this is the most pleasant task I have had to perform.

The film industry has been one of the most notable areas for the pooling of American and British talent since the early days when so many of our citizens settled in Hollywood.

That is why we have so much welcomed your settling here as a citizen of the United States.

Your work with the Writers' Guild of Great Britain, the British Film Production Association and the British Film Institute has made a major contribution to what I may perhaps be allowed to call this Anglo-American profession.

And what is even more important, your films have made a major contribution to our Anglo-American culture.

For all these reasons, it gives me the greatest pleasure in the presence of so many old friends to present to you, in Accordance with the Commands of Her Majesty The Queen and on Her Majesty's behalf, The Badge of a Commander of the Most Excellent Order of the British Empire, which Her Majesty has been pleased to confer on you.

FUNDS FOR RADIO AND TELEVISION BROADCASTING BY POLITICAL CANDIDATES

Mr. BAKER. Mr. President, President Nixon yesterday sent to the Congress a message explaining his veto of S. 3637, a bill to limit the expenditure of funds by political candidates for radio and television broadcasting. The President listed a number of reasons for his veto, among them the fact that the bill discriminates against the broadcast media and that it would not effectively accomplish its purpose of limiting campaign spending.

I have consistently opposed this measure, both in the conference committee and on the floor of the Senate, and I am very much pleased that the President has vetoed it. As I have said before, I feel that by requiring radio and television stations to grant to political candidates the lowest applicable unit rate available to any advertiser, the bill creates a political subsidy for politicians and constitutes ratesetting by statute. The effect of the measure would not be a limitation or reduction of total campaign spending. Candidates forced by the bill to limit broadcast spending would simply increase their use of other advertising media. The cost of campaigning for political office would continue to rise and those candidates with fewer financial resources and who are less known to the general public would continue to be at a disadvantage.

The President feels, as I believe most of us do, that some appropriate limitation on the excessive expenditure of funds for political campaigns is needed. The question is whether or not this bill would provide that limitation in a manner that is fair, effective, and enforceable. I feel that it would not, and I am confident that the Senate will see fit to sustain the President's veto of S. 3637.

NINE MONTHS SINCE PRESIDENT ASKED FOR RATIFICATION OF THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, we are all aware of and deeply concerned about many of the serious voting and economic rights issues which are pending in this session of Congress. Issues, such as woman's rights, welfare reform, and electoral reform are pending in the Senate.

But we must not overlook other human rights matters which are also pending, but have not received the large amounts of recent publicity afforded these other issues.

In particular, I have reference to the Genocide Convention, which is still pending before the Committee on Foreign Relations. On February of this year, the President asked for the ratification of this convention. Since that time, this action by the President has been allowed to slide into the background. I feel that this is most unfortunate. Certainly, an issue as important as this human rights document of the United Nations, deserves our strict attention.

We must act on this important issue as soon as possible. It can not be allowed to slip into the background. Our country must take a firm stand once and for all against this inhumane crime, by ratifying the Genocide Convention.

I urge the Foreign Relations Committee to bring this Convention to the floor of the Senate as soon as possible.

UNIT PRICING COMES TO KANSAS

Mr. PEARSON. Mr. President, it was my distinct privilege to participate this past weekend in the announcement that a unit-pricing program would be undertaken by a major supermarket firm in my State.

Dillon Supermarkets, under the leadship of my friend, Dick Dillon, launched a significant consumer advance on Saturday by voluntarily inaugurating a unit pricing system on 550 items in their inventory at stores in Wichita. Other stores at Lawrence, Manhattan, Junction City, Topeka, and Salina, Kans. will be similarly completed over a period of approximately 4 weeks. Moreover, this program is presently scheduled to expand to over 1,000 items.

Mr. President, I was on hand at one of Dillon's stores in Wichita last Saturday and observed firsthand the reaction of many shoppers. I am most happy to report that the housewives with whom I spoke were enthusiastically in favor of this new step in the supermarket industry.

As one who is familiar with the need for better information for the consumer, and as one who is aware of the difficulty faced by the shoppers of this Nation in trying to find the best buy for their money, this important breakthrough by one of the major supermarket firms in my State represents not only an act of business statesmanship but is also a source of personal encouragement to me. I am sure the people of Kansas join me in saluting the management of this fine company.

LOW-COST ALCOHOLISM CONTROL PROGRAM FOR FEDERAL CIVILIAN EMPLOYEES

Mr. HUGHES. Mr. President, at the request of the Subcommittee on Alcoholism and Narcotics, the Comptroller General of the United States recently issued an illuminating report on the millions of dollars that could be saved by the Federal Government by the institution of an effective, low-cost alcoholism control program among its civilian employees.

The kind of prevention and control program to which the Comptroller General referred has been tested and found successful in a number of large private industries. At a time when these industries are desperately trying to cut costs, alcoholism control offers a charted course for savings.

On July 31 of this year, Lewis F. Presnall, manager of the Corporate Alcoholism Control Services, National Loss Control Service Corp. of Chicago, delivered a speech at the Addiction Institute of Carthage College, which casts further light on the potential for savings in systems for controlling alcoholism and problem drinking among employees.

This is an outstanding message on the subject; in fact, it might be classified as a basic "how to do it" manual on combating alcoholism in industry. As such, it seemed to me worthy of being incorporated into Federal reference literature. Accordingly, I ask unanimous consent that this informative speech be printed in the RECORD.

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

WE CAN HALT THE HUGE DRAIN CAUSED BY BEHAVIORAL PROBLEMS

(By Lewis F. Presnall)

In 1968 the National Council on Alcoholism made an estimate of the prevalence and cost of alcoholism among employees of U.S. industry and civilian government. At that time, according to figures of the U.S. Bureau of Labor Statistics, there were about 58 million persons on these payrolls, exclusive of small

businesses, domestic help, self-employed, professionals, the armed forces and farm labor.

Using conservative estimation formulae and data available from representative firms whose alcoholism programs had achieved high ratios of case identification, NCA calculated that not less than 5.3% of that work force suffered from some stage of the illness. It was also estimated, on the basis of current wage and fringe benefit compensation levels, that the annual cost to employers on cases yet untreated was not less than 4 billion dollars.

The cost of other behavioral problems—other drug dependencies, emotional disturbances, and severe family problems, such as alcoholism among spouses of employed persons—has never been similarly estimated. However, from the best data available to me from many industrial studies, I would hazard an estimate that these other problems do not cost employers less than another 6 billion dollars annually.

That is a total bill for employers of not less than 10 billion dollars and the cost is probably considerably higher.

The supreme irony of these facts is that for a decade the knowledge has been readily available, and demonstrated in practice, that enables us to extend the useful lines of employees and reduce these huge losses by a net, above control measure costs, of about 30%. If labor and management across the country were to apply the best technical knowledge now available, this would mean a net gain of about 3 billion dollars annually.

Beginning in 1944, a number of companies began developing various types of alcoholism and other behavioral problem control measures. By the early 1950's a great deal of trial and error experience had been accumulated about what could be accomplished through various control methods.

In 1952 a behavioral problem control program was developed in a medium sized plant of 2,300 employees. The approaches used utilized what had previously been learned through other company control efforts, but also contained a number of features that were unique at that time, and which obtained much better results in earlier case identification and loss reduction than had been obtained through earlier programs in other company's plants.

The unique features of the plan were:

1. The control efforts were not directed at alcoholism exclusively, but focused upon the whole range of behavioral-medical problems affecting work performance.

2. Before structuring the control measures, they sought and secured the active cooperation and advice of all ten union locals representing hourly-paid employees.

3. Special procedures for supervisory action on suspected cases of alcoholism were avoided. Instead, performance problem action and efforts to motivate employees to seek diagnosis and treatment were integrated completely into standard methods of personnel administration, particularly with respect to corrective discipline, absenteeism control, fringe benefit loss control, union-management communication, line/staff coordination, and routine follow-up with line management to assure that company behavioral and alcoholism policy was being implemented consistently.

4. Constant up-grading of company staff knowledge and coordination with respect to behavioral problems.

5. Consistent efforts to increase informal involvement, as helping people, among employees who had benefited from the program.

6. Use of both company and union leverage in up-grading the quality of community recovery resources. This included informal encouragement of AA and Alanon group formation.

7. Consistent employee health education regarding alcoholism, periodically introduced through standard employee education media.

8. Availability of employee counseling services on a 24 hour, seven day a week basis. (Employees did not abuse this emergency service. Most work was handled during daylight office hours.)

9. Deliberate steps to help managers and supervisors, to avoid the uncomfortable roles of "amateur counselor" and "amateur diagnostician."

10. Primary efforts regarding the supervisory role were directed at securing consistent *action* within the plant in conformity with policy on alcoholism, rather than attempting to change actions by first changing supervisory *attitudes* toward alcoholism.

11. The specific distorting effects of the mystique of alcoholism upon work performance documentation, disciplinary action, and administrative decisions were identified and steps were taken to remove these by positive action, as far as possible.

The plant happened to be in an old-line, heavy industry, where most of the employees were male and the average age was about 42 years. So, naturally, the alcoholism prevalence was high—about 10% of the population.

After five years operation the control program identified and offered treatment to 207 employees with alcoholism, one of the higher case identification percentages that has ever been recorded.

Treatment services in the area were not the best, but the recovery rate on these cases was about 50%. The 207 alcoholism cases represented 44% of the total case load. The remaining 56% were other behavioral problems: emotional disturbances, severe family problems affecting employee efficiency and about 8% of the cases were drug dependencies, other than ethyl alcohol.

Increasingly, companies are now beginning to adopt, with excellent results, the type of control measures which were evolved in that plant from 1952 to 1957.

However, in spite of the fact that we know how to achieve an annual net saving of from five to ten dollars annually for each control dollar spent, probably not more than 250 to 300 corporations in the entire country have done anything toward installing control methods. Furthermore, most of these have what James Davidson, Executive Director of the Alcoholism Council of Greater Los Angeles, has called "pop-up toaster" programs. That is, if an alcoholic reaches the late middle stage of the illness and happens to pop up where he is visible, they grab him and try to get him to accept treatment.

In planning for maximum loss reduction, it is important to understand the work behavior characteristics of the various stages of alcoholism progression, since this illness is by far the largest single behavioral-medical problem among employees.

For descriptive convenience, alcoholism progression can be divided into early, middle and late stages. It is rare to encounter a person with late stage alcoholism on the active payroll of a company. At this stage there is usually some pronounced and permanent damage to vital organs, such as the liver; the person's work capacity is at or below 25% of his previous healthy capabilities; he or she has become unemployable by any firm on steady basis without extensive treatment; and chances of the recovery through treatment may not be higher than 10% to 15% for people in this late stage group.

When we speak of alcoholism among employees, we are referring to early and middle stage cases.

In the early stage and often for some of the middle stage, the drinking patterns that can be seen by the casual observer may not appear to be much different from those of the regular social drinker. The significant difference is that the person having alcoholism is increasingly beginning to lose the ability to follow through on his *serious intentions* about how much he drinks, the occasions for drinking and when he or she intends to stop drinking once he starts.

Early stage alcoholism is the period when more frequent occasions of drinking to cope with life begin to occur. This is followed by an increased tolerance for alcohol, sneaking extra drinks before or at the party without knowledge of associates, an increased urgency about getting the first drink, some feelings of guilt about one's drinking or resentment when the subject is mentioned and, in many cases, the first experiences of memory blackout during heavy drinking.

During the last half of this early stage, work performance changes will usually begin to occur. The more common of these changes are: 1) occasional and poorly explained lapses in fulfilling responsibilities, 2) occasional spasmodic work pace and, at times, unusually high work output on the part of a previously steady employee, 3) minor decline in overall work quality, 4) increased tendency to "look good with superiors," 5) either marked improvement or some deterioration in personal grooming, dress and demeanor, and 6) in the case of hourly-paid production workers, occasional attendance problems; such as tardiness, failure to report on or off, and subtle changes in former attendance patterns.[1]

In the middle stage, the person's loss of control of drinking patterns will increase. Grandiose and aggressive behavior often occur. Repeated efforts at self-control fail. The individual develops an elaborate alibi system in an attempt to maintain self-respect and the respect of associates. Methods for sneaking drinks and protecting liquor supply become more elaborate. Work problems, money problems and family difficulties become more severe and more frequent. The person suffers from persistent remorse and often develops many resentments. Finally, in the last half of the middle stage, *drinking or signs of intoxication often appear during working hours.*

On the job, it will be observed during the second half of the middle stage that spasmodic work has become severe and frequent, overall performance may have dropped to 25% to 50% of normal, and lost time caused by off-the-job accidents are frequent in some cases. Absenteeism may have been chronic among hourly paid persons and "on-the-job absenteeism" is observed among salaried employees, who are more apt to be present in body, but not functioning up to par.

In order to control and reduce these work problems effectively, many of which may also be caused by other behavioral-medical conditions, it is essential to recognize some organizational problems that tend to block action at all levels.

It seems incredible, but labor unions, management and the individual suffering from alcoholism all have one thing in common.

They all have a similar proclivity for denying or minimizing the size and seriousness of the problem. They all develop elaborate alibis for explaining their reluctance to take action early enough. And when they are finally persuaded to act, they maneuver every possible way to act on the basis of half-measures.

Why is this?

When rational people behave irrationally and against their own self-interest, there are always reasons, if we take the trouble to look for them.

The reason in this case is what might be called the effects of the mystique of alcoholism. By mystique is meant the collection of misinformation, folklore, social stigma and emotional prejudice with which this subject has been shrouded for decades, indeed centuries, in our societies.

Let me state, then, a proposition upon which I shall base the following comments

[1] "Detour, Alcoholism Ahead", pamphlet published by Kemper Insurance, Chicago, December 1969, revision.

about the practical steps for controlling alcoholism and the other behavioral problems among employees.

The purpose of control measures is to remove the effects of mystique upon company policies and practices, union practices, and upon the choices of individuals suffering from alcoholism. If we can accomplish this within a plant, we will also make it possible for people suffering from all types of behavioral disorders to get into treatment, and get effective help earlier.

In considering practicalities, it will be helpful to divide the discussion into two main parts. First, what are some of the effects of mystique upon plant practices? Second, what are the most direct steps for removing these effects and, thus, reducing behavioral problem losses.

IN-PLANT EFFECTS OF MYSTIQUE

On the management side of the ledger, the first effect of mystique is to produce an unwritten, unrecognized, but operational management policy on alcoholism. Every company, large or small, in these United States, which does not have a modern alcoholism program, is presently operating under this policy.

If phrased in the customary company language, the policy could be written as follows:

"The company will pay an economic premium to employees (and supervisors) for the successful concealment of alcoholism from the attention of management. This economic premium will be paid in job security, promotion opportunities and fringe benefits. When the employee's alcoholism reaches the stage when it can no longer be concealed from the attention of management, his services will be terminated."[2]

On the labor union side of the ledger, there is also an unwritten policy, resulting from the mystique of alcoholism. If written, the union policy might read something as follows:

"It shall be the security objective of this union to protect the job of every employee suffering from alcoholism, even at the cost of his life, sparing him through every possible device allowable under labor contract from the social obligation to seek treatment, which would normally be expected if he had some 'respectable' illness. When a brother's alcoholism has reached the stage where he is no longer capable of performing at more than twenty-five percent of his normal efficiency and management tries to fire him, the union will plead for as many 'last chances' as possible. His job security and the possibility of qualifying for a permanent and total disability pension are of more importance than saving his life through treatment."

With management paying fifty dollar bills to employees for concealing their condition, the unions putting job security ahead of life-saving, not to mention the moralistic nagging of the spouse at home, who also thinks alcoholism is a character defect, is it any wonder that alcoholics develop elaborate alibis for their behavior and are highly resistant to admitting their problems?

But there are other effects of mystique upon practices and actions within industrial plants.

One of these results from the stereotype of the person having alcoholism as the late stage, falling-down-drunk, or the employee who was fired last year and who died three years later because his liver stopped functioning or because his heart muscle would no longer carry the load.

This bit of mythology prevents us from recognizing that it is not the late stage case, but the early and middle stage case that is employed in industry.

The effect of this stereotype is to block our recognition of the true prevalence of alcoholism, and so we are unaware of how much it costs, or of the necessity to spend some money and effort controlling it.

Another effect of mystique is to produce an unrecognized sub-rosa set of practices to implement the unwritten policies mentioned earlier. In-plant studies have clearly demonstrated that these sub-rosa practices are usually followed far more consistently than are the company's standard personnel procedures. The result of sub-rosa practices is to retain employees with untreated alcoholism on the payrolls for an average of fifteen years of alcoholism history without corrective action being taken. In effect, these practices kill alcoholics with misguided kindness.

A final serious effect of mystique is that upon the language we use in talking to and about alcoholics. Recently there was a series of articles on alcoholism and highway accidents in one of the country's better newspapers. The author was obviously sympathetic to the treatment of alcoholism, yet in quoting some statements made by Senator Hughes, he referred to him as "a reformed alcoholic." It is difficult to imagine anyone referring to a person as a "reformed diabetic" or even a "reformed psychotic?" We talk about "recovery," not "reformation," when we speak of treatable illness.

We are not going to deal very effectively with alcoholism among employees unless we learn to act as though it is treatable and talk as though it is treatable.

POSSIBLE SOLUTIONS

With these broad, but essential, considerations in mind, what steps must be taken within a plant, and in cooperation with outside resources to reduce the human and economic losses involved?

The one method that will not succeed is to try to change in-plant practices through distribution of educational pamphlets to employees. We are dealing with deep-seated emotional prejudices, re-enforced by an elaborate system of sub-rosa practices.

It is far more effective to change in-plant practices and, for the time being, not to waste much effort trying to change everyone's attitude.

First, one should get two or three key people in labor and management to take a fresh look at the facts. This can seldom be done by calling a sizable meeting of labor and management people together and presenting them with the facts. Mystique produces all kinds of fears. Deep-seated fears are seldom aired or removed in meetings where more than three or four people are meeting in conference.

To give some examples of common fears and their effects:

I recall a luncheon in a sizable city where I was asked to present the considerations of alcoholism control to a group of eight or ten executives, representing the largest companies in the area. No one below the level of a corporate vice-president was present.

During the discussion, a vice-president in charge of personnel flatly stated that they had little or no alcoholism among their employees. Yet, because his firm had predominantly a male population, their alcoholism prevalence was undoubtedly higher than in any firm represented in that room. It was obvious from his other comments and his position that he was a highly intelligent, experienced man in his line of work. I would guess that educationally he had a Masters degree in business administration, or its equivalent. But there is not a single school of business administration in the country that adequately covers alcoholism among employees in its curriculum, nor is the subject covered adequately in any basic text on industrial relations.

Therefore, it was apparent that the effects of his fears and prejudices about alcoholism had colored his remark. When I used the word "alcoholic," he probably pictured the late stage case in his mind. Running through his mental memory banks, he could not recall seeing any skid-row types on the payroll. Also, he was probably unaware that there is no method or combination of methods, by which early and middle stage alcoholics can be screened out by personnel staff in the recruitment and hiring process. With these thoughts in mind, he may have been saying to himself, "The admission that we have a problem, or might have a problem, in our plants would be a reflection upon my competence as vice-president of personnel."

If there had been the opportunity to meet with this man privately in his own office, these fears could have been removed and there would have been a good chance that he would now be quietly selling other key people in his firm on installing effective control measures. But now he has committed himself in front of people he sees every week at clubs and the golf course. It would be embarrassing if he subsequently took a fresh look at alcoholism in his firm. The chances are now that he will do nothing.

To line up two or three people in one's plant to begin investigating, it is advisable to do it quietly and privately, so that each one will have an opportunity to face his fears and unrecognized prejudices without embarrassment.

Similar fears and resistance will be encountered among line managers, union officials and occupational health staff members.

Once one or more key people are willing to investigate the subject more fully, there are several ways they can do this. In a small plant, it can be done through attending several open Alcoholics Anonymous meetings to learn the semantics of alcoholism. Additional ways are to send one or two people to the industrial seminars at Utah School of Alcohol Studies or Rutgers Summer School, read some basic books on alcoholism, and/or have interviews with staff at a Council on Alcoholism.

A second and parallel step is to determine the specific sub-rosa practices that have actually been followed by management and unions in cases of alcoholism. In a small plant, management can do this by tracing back the records of two or three long-service employees, who had lost their jobs as a result of alcoholism. If one follows these records back to the first date of employment, one can see what happened to the performance after alcoholism developed.

Check on the actions that were taken or not taken to correct the problems. See what subterfuges were used by the alcoholic, by supervisory personnel and the union to cover up or gloss over the situation. Observe what the immediate supervisors did or failed to do regarding performance documentation and disciplinary action.

If the plant has 1,000 or more employees, time and considerable money will be saved if professional consultation is engaged to accomplish the two steps mentioned.

Step three involves setting up a small task force, preferably a labor-management group if the shop is unionized, to develop a simple policy statement.

The policy is needed to replace the old unwritten policy.

As far as procedures are concerned, if the plant or company has fewer than 500 employees, it is advisable to avoid development of written procedures. Such guidelines are only necessary in larger operations as a means of assuring uniformity of operation throughout all departments. In a smaller plant, where things are done more often, on a face-to-face communication basis, it is better to avoid overly elaborate procedures.

However, line management people at all levels must assume responsibility for moni-

[2] "Folklore and Facts About Employees with Alcoholism," L. F. Presnall. Jour. of Occupational Medicine, Vol. 9, No. 4, April, 1967.

toring the execution of policy in terms of actual practice.

The guiding principle that must be followed in personnel administration is extremely simple: in all actions within the plant, supervision will now deal with performance problems, where alcoholism and other behavioral problems are suspected, in a manner consistent with the way "respectable" illnesses are already being handled.

Simple as this may seem, the effects of the mystique of alcoholism are so deeply rooted that actions of all kinds will constantly tend to slip off the track, especially at first.

Even recovered alcoholics within a plant, who should know better, will sometimes give incorrect advice to management on various actions. For instance, they have been known to advise that the three-day suspension be revoked, if an employee accepts treatment for alcoholism at that point in the disciplinary procedure. If the employee has been told at previous steps of the disciplinary procedure that he may have an illness and told how to get help, the three-day suspension should not be revoked. If he has an illness, he is responsible for getting treatment for it. On the other hand, if management finds that the employee's supervisor failed to indicate on previous warning and discipline occasions how the employee could secure a diagnostic interview with a qualified person, then the three-day suspension should be waived and management should reprimand the employee's supervisor for failing to follow the intent of the company's policy.

Another situation that commonly occurs, after introduction of an alcoholism policy, concerns documentation of performance problems. A supervisor will come to management and say he wants to discharge an employee whose work has become totally unsatisfactory. Yet when the information in the employee's personnel folder is examined, no notations of declining performance are to be found. The supervisor then usually resorts to the alibi, "Well, he hasn't really been doing his job for the last year or two, but I thought he might have a drinking problem. He's one of the best men on the crew when he's here, and I kept thinking he might straighten up."

Again, the supervisor should be reprimanded on the basis that (a) he did not follow policy guidelines and (b) this is not the way he would act if a "respectable" illness where involved in the performance decline.

For instance, if he observed that an employee had developed shortness of breath when lifting heavy objects,

(1) The supervisor would not call the employee into the office and say, "Jim, I want to talk with you about your coronary condition or your emphysema."

(2) He would say, "I have noticed you are short of breath lately. I want you to go to the doctor and have an examination."

(3) If the employee refused on the basis of religious convictions or other reasons to see a doctor, and the shortness of breath became more acute, the employee's service with the company would probably be terminated without much delay.

In firms having fewer than three hundred employees, someone in line management can have the part-time responsibility of monitoring personnel practices, advising others in the company on the "nuts and bolts" of motivating employees to seek help, and serving as a liaison between the company and community diagnostic and treatment services. Such an individual should be designated on the basis of his thorough knowledge of the firm, his empathy with people and his specially acquired knowledge of alcoholism and other behavioral problems. If such a person is a recovered alcoholic, he will have the advantage of deep personal understanding of the problem.

In companies of 300 to 1,000 employees, there may be a staff person who, with some special training, will be capable of undertaking such an assignment. It may require up to one-half of his work time in a plant of 1,000. Or the responsibility may be shared by a union person and a company person.

Regarding any supervisory orientation or training that may be undertaken, only a limited amount of instruction should be given on the disease aspects of alcoholism. The main points that need to be clear are:

1. It is a slowly progressing illness that usually takes 12 to 25 years development before death.

2. It starts out mildly, appearing not too different, as far as drinking patterns are concerned, from ordinary social drinking.

3. Performance changes and declines will usually be observable within three to five years after initial beginning of the condition. By the time overt drinking shows up noticeably during working hours, the alcoholism has usually progressed well into the middle stages.

The bulk of any supervisory training should be addressed to what procedures the company requires:

1. In normal performance review.

2. In performance documentation.

3. In application of corrective discipline and union-management communication.

4. In what special help is available through the program coordinators and how to make use of this.

Special care must be taken at all points to assure that supervisory personnel, at all levels, stay out of the roles of "amateur diagnostician" and "amateur counselor."

More recent program research has shown that supervisory roles should not be defined in this way. Management should identify work performance problems and deal with them, but should not try to determine or deal with the illnesses that may be the cause, unless overt behavior, such as drinking or use of drugs on the job, indicates that referral to someone qualified to handle such problems should be done immediately.

In industry today we have many problems. Unlike some of them, we already have the know-how for halting the drain caused by behavioral problems. It costs money to make these techniques operational within a plant, but there is no humanitarian endeavor where we can do so much *good* and, at the same time, do so *well* financially.

THE U.S. COURT OF CLAIMS—ADDRESS BY HON. MARION T. BENNETT

Mr. MATHIAS. Mr. President, on September 17, 1970, a distinguished Marylander addressed the National Convention of the Federal Bar Association here in Washington. Chief Commissioner Marion T. Bennett, head of the court's trial division, spoke on the subject "The U.S. Court of Claims—a 50-Year Perspective."

In 1855, Congress created the Court of Claims and consented to suits against the Federal Government in that court. The court has been of particular interest and importance to Congress ever since.

It hears and determines some of the largest and most complex civil suits in the Nation. The court's appellate division consists of seven judges on a level comparable to those in U.S. Court of Appeals. They review decisions of the 15 commissioners, who constitute the trial division.

Private claims before Congress which require adversary proceedings to establish the facts are referred to the Chief Commissioner of the trial division, who sends them back to Congress with a recommendation regarding the merits of any claimed equitable right of recovery. In instances where it is determined that there is a legal right of recovery, suits are filed in the court in the ordinary manner and are processed through the trial and appellate divisions to final judgment. Only the Supreme Court can reverse the Court of Claims, which was created by Congress under article III of the Constitution.

This system has worked well and protects the rights both of the sovereign and of the citizen. The court has had an interesting and significant history and reflects the growth and development of the Nation at large in the types of cases it handles. It has had a progressive attitude toward procedures to expedite the administration of justice in recent years, reflected in its current appellate docket. It is sometimes surprising that the court is not better known, considering its important place in the Federal judiciary.

Since his appointment in 1949, Commissioner Bennett has been a leader in the court, disposing of a heavy share of the caseload in well reasoned and careful fashion. Named Chief Commissioner in 1964, he and Chief Judge Wilson Cowen, a former resident of Maryland, have been instrumental in bringing the court's caseload and procedure up to date. The issuance of a new set of rules on September 1, 1969, is something of which the court is justly proud.

Commissioner Bennett, a former Member of the House of Representatives, related interesting court history and valuable suggestions in his speech before the convention. As a fellow member of the Federal Bar Association, I take particular pleasure in calling the attention of my colleagues to the Commissioner's address.

There are a number of ways to help answer the incredible quantitative and qualitative demands made on the Federal judiciary; none will prove more effective than finding men of Marion Bennett's competence and dedication for the Federal bench.

Mr. President, 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:

THE U.S. COURT OF CLAIMS—A 50-YEAR PERSPECTIVE

(Address by Marion T. Bennett)

The United States Court of Claims congratulates the Federal Bar Association upon this, its 50th Anniversary. The Association has been in the forefront supporting many significant efforts in behalf of the Government lawyer and for improvement in the administration of justice. The court has benefited from this cooperation, as has the nation and the bar. It is appropriate, in response to your invitation, that we take a look at the last 50 years in the life of the court which has had such a close relationship with the Federal Bar and for 115 years has been the principal forum for adjudication of suits against Uncle Sam. Benefiting from such a perspective, I will venture some suggestions for the journey in years ahead.

Any 50-year review of the court must, necessarily, be quite selective. I have dealt with this subject in much greater depth in an article to be published in the next issue of the FEDERAL BAR JOURNAL. Today I will limit myself largely to discussion of some prior court

procedures, as they relate to those of today. The last half century, while less than half of the court's life, covers the most important and productive period in the court's existence.

Where was the nation and the court 50 years ago? The court, to be sure, was hale and hearty at a mature 65 years of age. Perhaps for this reason it did not really get caught up in the age of excitement which characterized the "roaring" Twenties which many remember mostly for jazz, the Charleston, the flapper, post-war boom and bust, the Model "T" Ford and bathtub gin. The Great War was recently over. The 14-year national experiment with Prohibition had just started. Eighty thousand fans paid 1.8 million dollars to see Dempsey beat Carpenter. Florida swamp land turned into gold, and some reverted to swamp. Valentino died. So did Sacco and Vanzetti after a famous trial. The first radio station opened and the new medium made stars out of Rudy Vallee and Graham McNamee. Great figures of sport emerged in the 1920's—Red Grange, Helen Wills, the Four Horsemen of Notre Dame, Gertrude Ederle. Girls hummed "It Ain't Gonna Rain No More" while they strummed ukes, smoked cigarettes, and wore dresses so short that Utah wanted to pass a bill that would imprison a woman who wore skirts higher than three inches above the ankle.

In one serious respect the court shared prevailing institutional attitudes in the post-World War I era. It was sure that "normalcy" had returned, as President Warren G. Harding promised, and it did not anticipate any developing crisis. But, the signs were on the horizon. Soon it was seen that the court's machinery was of the Model "T" variety, and it did not meet the needs or desires of its "consumers." A flood of post-war procurement cases began to hit the court at about this time. Why the court was unable to meet the challenge presented by these cases, without the drastic reforms which it undertook, can only be understood by reference to what it was in 1920 and how it then handled its business.

In 1920 the court occupied the old Corcoran Art Gallery Building at Pennsylvania Avenue and 17th Street, N.W., now the Smithsonian Renwick Museum, where it had been since 1899 and remained until 1967. There were only 30 people on the payroll, about one-third the present number. The court's appropriation in 1920 was only $82,000. This year it was $1,872,000. In round numbers, in 1920 plaintiffs claimed 14½ million dollars and received judgments for $1,173,000. This court year they claimed 95 million dollars and won judgments for over 11 million. In 1920 defendants won $14,000 on counterclaims and this court year over $700,000.

THE REPORTS

An examination of the Court of Claims reports of 50 years ago helps to tell us much about the court of that day. The opinions of the 1919–20 court year are found in volumes 55–56 of the court's official reports. Their format is interesting. Headnotes precede opinions, even as they do today. But, there follows, usually, "*The Reporter's* statement of the case." This is, generally, a summary of the arguments and authorities. Sometimes the reporter, when too busy, lazy, or unable to understand the case, simply says: "The subject matter is fully set forth in the opinion of the court." The 1920 cases sometimes, but not always, include findings of fact. When made, the findings are numbered with Roman numerals. Then follows a short opinion, but not always. There were findings without opinions and opinions without findings in merits cases and many judgments with neither findings nor opinions on cases which were heard on the merits. Opinions when written were generally short—two or three pages. There were no dissents in 1919–20. Frequently an opinion of that period was entitled "Memorandum by the Court." Today we would call these orders of the court, or orders of a commissioner, or a memorandum opinion by the court or commissioner on a procedural question. In 1920 the court made findings in eight congressional reference cases and certified them back to Congress. None were accompanied by opinions.

In 1920 the World War I caseload was just gestating. The court was still more concerned with Civil War and Spanish-American War claims and Indian depredations.

Twenty-five contract cases predominated in the 1920 decisions. The year's 53 reported opinions in 1920 equal only about one-third of the output in 1970 when the cases were more difficult and required longer opinions and more detailed findings. The first 65 years of the court represent one-third of its output of opinions and the last 50 years, two-thirds. The last 20 years represent three-fourths of the output of the last 50 years.

SUPREME COURT REVIEW

In 1920 the Court of Claims was moving placidly along approaching the greatest crisis in its history, but it was not alone in failing to anticipate the need for a drastic overhaul in its procedures. At this time the Supreme Court still allowed what was almost an automatic appeal from the Court of Claims.

The Court of Claims Reports, volumes 55–56, for the court year 1919–20, list 43 cases in which the Supreme Court rendered opinions in that one term on appeals from the Court of Claims! They reveal that the court was affirmed in 34 cases. In the last term of the Supreme Court it granted certiorari in no Court of Claims cases. It denied 17 petitions for certiorari, and 11 petitions were pending but not acted upon when the Court went into the 1970 summer recess.

RULES OF THE COURT

To appreciate how far the Court of Claims has come in the last 50 years, mention must be made of its rules. The early rules are contained in the bound volumes of the Court of Claims Reports, beginning with volume 1 in 1863.

The first real overhaul of the rules did not come until 1951 when they were made to conform to the Federal Rules of Civil Procedure for trial of nonjury cases in the United States district courts. They were further refined and republished—most recently on September 1, 1969. Beginning with the 1951 revision, the court has had the great assistance of the Court of Claims Committees of the Federal Bar Association and the District of Columbia Bar Association in perfecting its rules, as well as valuable help from the Department of Justice. Time will not permit any extensive discussion of the rules here. Suffice it to say, the court is justly proud of its rules and any lawyer familiar with the practice in the United States district courts should have no difficulty finding his way around in Court of Claims procedures. There are a few modifications of the Federal Rules because of the nationwide jurisdiction of the Court of Claims and because of its commissioner system.

No accolade for the rules was justified before 1951. There were very few significant changes in the rules in the preceding 96 years. There was no reference in the rules to Summary Judgement, Discovery, Pretrial Procedures, and so many of the things the modern legal practitioner takes for granted. When this speaker came to the court in January 1949, the 1945 rules were in effect, all 36 pages of them. (There are 119 pages now, not including the index.) Where there were no rules for a given situation we made them up as we went along, on case-by-case basis. The situation under the 1916 rules, which were in effect in 1920, was even more primitive. One rule which had continued in force for several generations required the clerk (whose office was open on Saturdays) to maintain a docket called the "watch book," later referred to as the "notice book." At any time after the petition was filed, even though issue had not been joined by an answer, counsel could enter his case in this book and state that testimony-in-chief on the part of the claimant had been closed, that is to say that plaintiff's deposition had been filed, for all testimony was by deposition, and directing that the case be entered upon the trial docket of the court. This meant that the court could start to consider it, for the so-called trial docket, until fairly recently, was the court docket of ready cases. This must have been a rule which gave great encouragement to the Government to get ready if it had any evidence it wanted to be considered. The procedure seems very strange today but can be explained by the fact that in those days the cases were not always handled on a truly adversary basis and some were not defended at all. Parties had the option of filing briefs; they were not required in the beginning. Originally, three attorneys in the Department of Justice gave defendent such representation as it had in the Court of Claims, where the Government is always the defendant. Mongomery Blair was the Chief Solicitor. This staff had grown to 35 by 1920. The Department of Justice advises me that it has 130 attorneys assigned to defend cases in the court today.

The rules today and for some time now have provided that each side might have 30 minutes for oral argument before the court, subject to enlargement or restriction by court order. Fifty years ago the rules said nothing about a time limitation, and it was not uncommon for the court to allow lawyers to talk until they simply ran down. This practice apparently prevailed from the beginning because Presiding Judge John J. Gilchrist in his first report to Congress on the work of the court, on June 23, 1856, said that one case occupied three weeks in the argument and another two weeks. In 1930, when one lawyer had spoken for 2 hours without particularly enlightening or entertaining the court, one judge passed a note to Chief Justice Booth, stating: ". . . this fellow should go home and run for the Senate."

Other contrasts could be drawn between now and the "good old days" of practice in the court 50 and more years ago. But, there is one particular contrast which overshadows all others. I refer to the evolution of the commissioner system of the Court of Claims.

COURT OF CLAIMS COMMISSIONERS

From its very beginning on February 24, 1855, the Court of Claims has been authorized to appoint and use commissioners to gather evidence. The first ones were appointed on July 21, 1855. There were 192 of these commissioners, several in each of the 30 states then constituting the Union, in its five territories, and three commissioners were in England. One of these first commissioners was Benjamin Harrison, of Indianapolis, Indiana, later a Brigadier General in the Union Army, a United States Senator and President of the United States. Harrison, incidentally, was 22 years of age when appointed a commissioner and had been admitted to the bar only the year before. He was still listed as a commissioner in 1863, according to the court's official *Journal*. His father was a Congressman. His grandfather was President William Henry Harrison.

In the beginning, however, the commissioners of the court, who were not always lawyers, merely presided at the taking of depositions, as that was the form in which all evidence was required to be presented to the court. The commissioners had no control whatever over what went into the record for the court's consideration. They were paid on a fee basis by the party at whose instance the deposition was taken. The fee was $3 per day, plus 20 cents per folio of 100 words

taken in longhand. If the commissioner had the added competence of knowing shorthand he got an extra 10 cents. This extra sum was later reduced to five cents but a $5 minimum fee was established per case. These commissioners were sometimes known as "Reporter-Commissioners." They were appointed for permanent terms or could be appointed for specific cases only. They were not required to certify or file a deposition and accompanying exhibits until paid by the parties. The testimony could, also, be taken before a judge but this too was just a deposition proceeding. These procedures are reflected in the early statutes and in the early rules of the court.

The year 1925 marked the passage of legislation which has done more than any other to shape the subsequent years of the court's organizational history. The Act of February 24, 1925, seventy years to the day from the court's creation, authorized the court to appoint seven "competent persons, to be known as commissioners" to serve for a term of three years "to afford the Court of Claims needed facilities for the disposition of suits brought therein. . . ."

The 1925 development was brought about because of the flood of litigation following World War I. Under the original system of reporter-commissioners, the court was confronted with a mass of undigested depositions, exhibits, requested findings of fact, briefs and arguments by counsel. The trial, if it could be called that, was the deposition taking. The judges had usually not seen or heard any witnesses up to this point. The records were full of incompetent evidence. Judges were swamped by these poorly prepared and massive records.

The net result of this procedure was inevitable when the post-World War I procurement cases began to appear. The court fell behind in its work. Claimants were restive. Complaints were made to Congress. Suggestions were made to dismantle the court and to transfer its jurisdiction to the district courts. Still another suggestion was to increase the number of judges on the Court of Claims. The problem was resolved by the Act of February 24, 1925, authorizing appointment of commissioners who were to "have and perform the general duties that pertain to special masters in suits in equity." They were to "fix the times for hearings, administer oaths, examine witnesses, and receive evidence." Subpoenas were available from the court to compel attendance of witnesses before commissioners. They were authorized to operate under such rules and orders as the court might promulgate. Commissioners were required to report findings of fact to the court with the testimony upon which the findings were based. Exceptions and a hearing before the court were provided for on a commissioner's report.

Although the functions of the commissioners have been greatly extended by rule under the broad authority of the law, the 1925 statute, now 28 U.S.C. § 2503, has remained essentially unchanged for the past 45 years except in three major respects: (1) The reference to special masters was dropped from the statute in 1948 as no longer properly descriptive. (2) At the same time, the commissioners were given authority to make recommendations for conclusions of law, as well as findings of fact, when directed by the court. Such recommendations have been mandatory since 1964, by court order and rule, in all cases in which the commissioner makes findings and in such other cases as the court may direct. (3) The cases known as congressional references, wherein there is no legal right to recover, but perhaps an equitable right, which arise as private claims before Congress, are no longer referred by it to the court but rather to the Chief Commissioner of the court for a recommendation back to the Congress after a trial on the merits.

Since 1925 the court has evolved into Trial and Appellate Divisions of responsibility. Yet, there are recurrent proposals that judgments of the court should be reviewable by the circuit courts of appeals because there is no appeal from the Court of Claims unless the Supreme Court will grant certiorari, which it infrequently does. This ignores the true fact that there is now an appeal from a trial level decision. The confusion here arises from the title "Commissioner" which is now a misnomer and an anachronism. Reference to the current rules and statutes makes it plain that the commissioners are trial judges in fact if not in name.

A RECAPITULATION

In summary, 50 years ago the Court of Claims was a small organization, poorly housed, modest in output of work, burdened with primitive rules and inefficient procedures; it handled cases frequently nonadversary in nature; it took all evidence by deposition and had no true trials for determination of facts; it had a staff of widely scattered reporter-commissioners who did not have to be lawyers and who were paid on a fee basis; and its decisions were reviewed by the Supreme Court as a matter of course. Within this frame of reference, the dedication and abilities of judges and staff, so encumbered, were inadequate to the challenges of the post-World War I era. The old order had to give way. In the past 50 years the court sought and received from Congress, with the support of the bar, some sweeping reforms in its size and status as a court, in the powers and status of its commissioners, in its jurisdiction, in its organizational structure, and in the authority and scope of its rules. The fresh, brisk winds of judicial reform in the last 10 years have swept away many cobwebs. The Court of Claims Trial Division stands ready today to schedule a trial whenever the parties are ready, or can be made to get ready to proceed, and the Appellate docket is current. Any delays are usually for convenience of the parties.

But, this is not a complacent court content to rest on its laurels. It is well aware that there are problems ahead. It is aware that in the past some of the steps taken to meet problems were taken just in the nick of time. It wants to plan for the future and to keep alive its progressive outlook which has made it possible in the past half century to embrace new ideas and procedures. It welcomes all informed suggestions. Taking advantage of this spirit, and in harmony with the admonition of the Chief Justice that those in the Judiciary should speak up about what the courts need to do a better job, I shall venture a few opinions of my own. In so doing, I am well aware that there may be dissents. Hopefully, my long experience with, and affection for, the court will lend some credibility to this testimony. The following suggestions are not listed with any thought of priorities but are believed to be desirable and attainable goals. They would require legislation. I submit them as my personal views.

LOOKING AHEAD

Conscious of the ever-increasing costs of litigation to the parties, the court sought and received in 1970 statutory authority to pay for its own copy of the transcript of trial proceedings. 84 Stat. 298. When implemented by an appropriation this will equate it to other federal courts in this regard. Another step in the right direction would be to devise some way, with the help of Congress and the bar, for poor parties to have proper legal counsel.

I believe that the original purpose of the court as the main forum for adjudication of suits against the Government must be vigorously reasserted and that the court should have all the jurisdiction any federal court has for this purpose, although not necessarily exclusively.

As we enter an era where the court has been given some jurisdiction involving suits concerning the environment in which we live, and where patent and contract cases grow more complex, the court's jurisdiction must be clarified by Congress in the area of third-party practice.

I hope for the day when retired commissioners, like retired judges, may be recalled for active duty on a limited basis when their services are needed. It is a shame that the experience of such commissioners, in good health, should be thrown away when their services are needed on congressional reference cases and on protracted trials which disturb and delay the dockets of full-time commissioners. An improved retirement system would also facilitate appointments of commissioners from the private bar, now almost impossible.

Although the delegation of judicial authority from the court to commissioners to rule on procedural motions has not been challenged, and probably could not be successfully challenged, as long as the right of review is preserved, the situation would be improved if the authority to rule on these motions was statutory instead of by delegation and was subject to review on the same "clearly erroneous" basis that circuit courts review procedural rulings of district courts in suits against the Government.

It would be in the public interest for commissioners to be appointed for a term of years rather than to serve at the pleasure of the court. The commissioners would benefit by definite tenure and the court would benefit by assurance that commissioners were always on their toes, or else could exit gracefully. Modern thinking in judicial appointments is in this direction. Witness the new provisions for selection, tenure, retirement, and removal of judges of the District of Columbia courts.

Hopefully, the day will come when the Court of Claims has statutory authority to make declaratory judgments and has remand authority and reinstatement authority to implement its judgments for back pay in civilian personnel cases.

If Congress should make good its threats not again to renew the life of the Indian Claims Commission, that jurisdiction should revert to the Court of Claims.

The court could also very well assume the cases from the Renegotiation Board which now go to the Tax Court. I understand the latter court would interpose no objection.

The Court of Claims with its widely admired fact-finding machinery is probably better prepared than any other court to handle the larger claims under the Federal Tort Claims Act, where there are witnesses in several states and beyond the jurisdiction of any single United States district court.

Much confusion has been generated in the adjudication of contract claims against the Government as a result of certain Supreme Court decisions and the language of the standard Government procurement contract. Further, entirely too much time is now required to be spent resolving procedural snarls instead of on the merits of these cases. If we are to preserve our traditional concept of judicial justice the citizen must again be guaranteed his right to his day in court and to a speedy, inexpensive proceeding there if he wishes it, within proper limitations and with due respect for some necessary administrative process. Since most contract claims are for less than $25,000, why not make the decisions of boards of contract appeals final on those claims, but for the larger, more complex ones requiring an adversary proceeding, give the contractor an option of proceeding to finality either before the board or in court? The Court of Claims would not be burdened by such a solution and the worthwhile administrative process for claims would not be disregarded. It is pretty hard now for the court to make a worthy judicial determination on records made before the boards

which are not under the Administrative Procedure Act, for valid reasons.

The commissioner system of the Court of Claims is now being widely copied outside the area of courts created under Article III of the Constitution. Accepting the compliment of the Armed Services and of the Tax Court in this regard, their commissioners have such limited authority in comparison to those of the Court of Claims that a distinction in these titles would seem to be appropriate. The Executive and Legislative "courts" have adopted the title "judge" which, at the very least, should not be abandoned by the constitutional Judiciary. The public confusion between commissioners of the Judicial and Executive departments also should be clarified by appropriate nomenclature.

If it is a legitimate goal to speed up cases and reduce the cost of litigation, should not the right of automatic appeal from decisions of commissioners be reexamined in certain types of cases such as those turning entirely on the facts or below certain amounts claimed?

Further, since we have a Court of Claims with a nationwide jurisdiction which hears cases in every state, why shouldn't the sovereign be able to sue as well as be used in this court?

Finally, whatever has happened to vitiate the idea that the citizen will always be entitled to his day in court and that the sovereign should be subject to suit like any private citizen? More and more this idea is being eroded away with a sort of neo-totalitarian concept that the sovereign ought to be the judge of its own mistakes and to adjust administratively and finally, if at all, any disputes to which it is a party. If, as has often been said, that the Court of Claims is the "keeper of the nation's conscience," can it be that this conscience is less acute than it was 50 years ago?

Whatever the caprice with which the sovereign has expanded or contracted its consent to be sued over a span of years, there still exists, and will always exist if our society remains free, some opportunity to bring the Government to account before the bar of justice. Certainly today, with the exception of contract cases, it can be done with greater effectiveness procedurally than ever before. The nature of claims may vary with the times but the original purpose of the Court of Claims remains—to hold the Government to the standard of basic fairness in dealing with its citizens. As President Lincoln said in speaking of the court: "It is as much the duty of government to render prompt justice against itself, in favor of citizens, as it is to administer the same, between private individuals."

The court has kept Lincoln's charge to it. Free from local influences, mobile, with access to the records of Government, familiar with the workings of bureaucracy, armed with modern rules and procedures, assisted by an outstanding bar, it works hard to do equal justice "for the Republic and for its Citizens," as its official seal says. The court's real record, of course, is to be found in its decided cases. That is another story, and it is being constantly told in the literature of the legal profession and by the cases themselves. The story I have told here is one that has not been told before.

The official census figures show that in 1855, when the court was established, the population of the United States was just under 25 million people. By 1920, it had grown to about 106 million and today it is almost twice that number. We have quite a different country than we used to have and while, as previously said, the original purpose of the court remains, so does the need for it. In a time when the Government is becoming ever more centralized and powerful, the need for and value of, such a court increases in importance. For those of us who have had the privilege of serving the court, helping in its mission to protect the individual against the excesses of big Government and protecting the Government against unreasonable demands of some citizens, the work continues to have about it an element of inspiration.

THE RIGHT TO VOTE FOR ALL OUR YOUNG PEOPLE—SERVICEMEN, WORKERS, AND STUDENTS

Mr. PELL. Mr. President, as one who has long advocated lowering the voting age to 18, I naturally welcomed the President's action in signing the bill designed to insure this privilege to all younger Americans. It is also my hope that the courts will speedily uphold the constitutionality of that legislation, and that these more than 10 million currently disenfranchised Americans will soon be full participants in our system of government.

At the same time, there appears to be considerable misgiving among some of our older citizens concerning the wisdom of this development—and it is to those doubts that I now address myself.

Many of those who question the wisdom of enfranchising our younger adults derive their concern from reports of unrest and demonstrations on our college campuses. This is reflected in my own conversations and correspondence with constituents in Rhode Island, as well as in a nationwide opinion poll which shows campus unrest to be of concern to more Americans than even the war in Vietnam or the continuing inflation. This linking of the voting rights of 10½ million Americans with the activities of a few thousand school-age militants seems to me both unfortunate and unjust.

It is unfortunate, because it plays into the hands of that small minority of violent militants whose illegal methods we rightly deplore. Although only a small group within our student population, they have attempted to recruit others and to justify their violence on the ground that it is impossible to accomplish anything with the system. The best reply to that specious argument is to bring as many of our young people as possible into the system and let them see for themselves that it works. I can think of no more effective way to do this than to give them the franchise and a sense of responsibility in the choice of their own leaders.

The second reason for not withholding the vote from millions because of the transgressions of a few is that it would be unjust. To cite just one example—there are far more young men who have fought in Vietnam, or are fighting there now, than have ever ransacked an ROTC building on a college campus. Is it just to deny these young servicemen the right to vote on matters of war and peace because of the extra-legal activities of a few back home? Moreover, less than half of our young adults, 18 to 21 years old, are students, either in secondary schools or colleges. More than half of our young adults are neither students nor demonstrators: They are wage earners paying taxes—and there are more of them than there were Americans on this continent when tea was dumped into Boston Harbor to protest "taxation without representation."

Is it just to continue to disenfranchise millions of hardworking young Americans because of the activities of a few irresponsible young agitators?

Of all the areas of potential misunderstanding and conflict in our national life, it is hard to imagine one so unnecessary—and so filled with potential sorrow—as the so-called "generation gap." Much of the difficulty arises, I suspect, from the all-too-human tendency to create categories where none, in fact, exist. The addition of these young adults to the voting rolls will increase the total electorate by some 10 percent—and that 10 percent is no more monolithic than the 90 percent of their elders now eligible to exercise the franchise. There is, for example, no reason whatever to believe that youth is radical. We saw an example of this recently across the Atlantic. In the last British election, 18-year-olds had the vote for the first time—and the election went to the conservatives.

During my 10 years in the Senate, I have made a special point of bringing as many young people as possible into the mainstream of political life. In fact, my intern program, the largest on Capitol Hill, has involved several hundred young students working closely with us in our offices here or in Rhode Island. I can assure you that, in their private political convictions, they run the entire gamut from liberal to conservative, or whatever may be the fashionable labels of the moment. The one thing they share in common is an intense interest in being part of the country. We find them invariably idealistic, interested in learning about their Government in its day-to-day operations, and anxious to make a personal contribution. In all those 10 years I have yet to meet a young intern who was unready to exercise maturity and judgment as a voting citizen.

Over the years I have also observed the increasing sophistication and knowledgeability of our young associates. Every analyst or educator with whom I am acquainted is of the opinion that the present generation of young adults is more mature, more aware, and better educated than previous school-age generations. My own experience confirms this.

The great English statesman, Edmund Burke, had he been heeded might well have given the American colonies freedom and representation without the turmoil of revolution. And it was Burke who said:

> Tell me what are the prevailing sentiments that occupy the minds of your young men, and I will tell you what is to be the character of the next generation.

I support the vote for 18-year-olds for the same reason that I instituted our intern program 10 years ago when first elected to the Senate—an election, incidentally, in which I was myself a relatively young insurgent running against the regulars and the older generation. I know from personal experience what can be accomplished by working within the system.

To my own contemporaries, now that we have ourselves become members of the older generation, I would say: There is no real conflict between ourselves and our younger compatriots; but even if there were, we could not win. The actu-

arial tables are always on the side of youth. This country will someday be theirs, to do with as they please. Is it really too soon to take them into our confidence, to give them their own share of responsibility for the future of our country, and the world, in which they have the greatest stake of all?

RETIREMENT OF JOHN S. FORSYTHE AS GENERAL COUNSEL OF THE COMMITTEE ON LABOR AND PUBLIC WELFARE

Mr. YARBOROUGH. Mr. President, one of the most able and dedicated staff members of the U.S. Senate, Mr. John S. Forsythe, is retiring as General Counsel of the Committee on Labor and Public Welfare. I know that every present member of the committee, as well as other Members of the Senate who have worked with Jack during his 15 years of service to this body, share with me a deep regret to see Jack Forsythe leave the service of the Senate. His expert advice and wise counsel will be sorely missed by the members of the Committee on Labor and Publice Welfare.

Mr. Forsythe has had a distinguished career in the Government. After his graduation from Duke University Law School he began the private practice of law, from 1939 to 1941. During the Second World War, from 1942 to 1945 he served in the U.S. Navy and presently holds the rank of commander in the U.S. Naval Reserve. From 1945 to 1949 he was employed as an attorney in the Appellate Litigation Division of the Department of Labor, and as an attorney in the Policies and Review Division of the National Labor Relations Board. In 1949 he was appointed the General Counsel of the Committee on Education and Labor of the U.S. House of Representatives, and served in that capacity until the beginning of 1953. From early 1953 through 1954 Mr. Forsythe served as General Counsel of the Federal Coal Mine Safety Board of Review.

Then in January of 1955 Senator Lister Hill appointed Mr. Forsythe as general counsel to the Committee on Labor and Public Welfare. He has served with distinction in that post to the present time, spending much of his time working on education legislation. Beginning with the National Defense Education Act of 1958, there is not a single piece of education legislation that has not benefited from his thoughtful draftsmanship. His especial interest in the problems of handicapped children has benefited the members of the committee immeasurably and his background in labor law has enabled him to advise the committee in this most controversial of legislative areas.

As general counsel to the Committee on Labor and Public Welfare, Jack Forsythe had to work for 17 Senators having sometimes widely differing political views. He had to be able to handle an incredibly wide variety of subjects involving almost all of the domestic concerns of the Nation, ranging from education and health through the financing of these programs to pensions and welfare plans, the problems of poverty and manpower training, the elderly, and scientific research in the United States to collective bargaining and labor standards legislation. Jack Forsythe was able to handle his difficult assignment with extraordinary competence and ability.

I know that all members of the committee join me in wishing Jack Forsythe well on his decision to retire and become associate general counsel of the Life Insurance Association of America. Although we hate to see him leave, we wish him all possible success in his new endeavor.

NOMINATION OF ROBERT H. McWILLIAMS TO U.S. 10TH CIRCUIT COURT OF APPEALS

Mr. DOMINICK. Mr. President, I am very much pleased that the nomination of Robert H. McWilliams to be a judge on the 10th Circuit Court of Appeals has been confirmed by this body. In view of his excellent qualifications, the speed with which his nomination was confirmed is gratifying.

In addition to having a distinguished academic record, Mr. McWilliams has wide experience, both as a lawyer and a judge, upon which to draw in deciding the diverse and complex issues which will be presented to him on the court of appeals. He has engaged in the private practice of law and has served as a district attorney. He has served as a judge on Colorado courts, both trial and appellate, for a period of more than 18 years. He has served as a justice on the Colorado supreme court since 1961, and has presided as chief justice since 1969. He is held in high regard by the Colorado bar for his fine legal opinions.

I ask unanimous consent that a brief résumé of Mr. McWilliams' background be printed in the RECORD at this point.

I think Mr. McWilliams will be an outstanding addition to the 10th Circuit Court of Appeals, and to the Federal judiciary.

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

AN AUTOBIOGRAPHICAL STATEMENT FROM ROBERT H. MCWILLIAMS, CHIEF JUSTICE OF THE COLORADO SUPREME COURT

I was born on April 27, 1916 in Salina, Kansas, which was at that time a midwestern wheat town of approximately 15,000. My Father was then serving as principal of the local high school. He later became a professor at Kansas Wesleyan University, which is and was a small Methodist denominational college in Salina, Kansas. I attended the public schools in Salina, Kansas until 1927. In 1927 my Father accepted a teaching position as head of the Sociology department at the University of Denver, and our family then moved to Denver, Colorado. Thereafter, I attended the Denver Public Schools, namely, University Park grade school, Grant Junior High School, and South Denver High School, graduating from the latter institution in 1934. I attended the University of Denver from 1934 to 1941, receiving by A.B. degree in 1938 and my LL.B degree in 1941.

Both in high school and college I was very active in athletics, and made varsity letters in both basketball and tennis for three years at the University of Denver. I am still a very active tennis enthusiast and play regularly at the Denver Tennis Club. In my senior year at the University of Denver I was president of the student body. Scholastically, I ranked number one in my graduating class in both high school and college, and number three in my law school class. I was admitted to the Colorado Bar in 1941 by written examination and received the highest grade of the seventy-one persons taking the examination.

Immediately upon my admission to the Colorado Bar I was appointed to serve as a deputy district attorney in Denver. I served in that office until January 1949, excepting for the approximately four years I spent in military service. As concerns my military service, I served for approximately two years as a Special Agent in the Office of Naval Intelligence and later served for about two years in the United States Army, where I attained the grade of Staff Sergeant and was assigned to the Office of Strategic Services and served in the China Theatre. Altogether then, I served as a trial lawyer in the office of district attorney in Denver for about three years and during this period of time I tried several hundred criminal cases.

In January 1949 I voluntarily left the office of Denver District Attorney and was in that month appointed to serve as a municipal judge in Denver. The office of municipal judge was then a half-time employment situation, and accordingly while serving as a municipal judge I also engaged in the private practice of law, and officed with Mr. Donald B. Robertson and Mr. Raymond B. Danks. This arrangement continued until July 1952, when I was appointed by the then Governor of Colorado, Dan Thornton, to serve as a district judge for the Second Judicial District, which district is the City and County of Denver. The district court, incidentally, is the highest trial court in the state. In November 1952 I was elected to serve the unexpired portion of the term of office to which I had been appointed, namely two years, and then in November 1954 I was elected to a full six year term on the Denver District Court. During my eight year term on the Denver District Court I was Presiding Judge of the entire court for two years. During my tenure in the Denver District Court I presided over the trials of literally hundreds of cases, civil, as well as criminal. Also, during this time I was a member of the Colorado District Judges Association and served one year as President of that organization.

In 1960 I ran for the office of Justice of the Colorado Supreme Court, and in November of that year was elected by a very substantial margin to a ten year term on that court. I was sworn in as a Justice of the Colorado Supreme Court in January 1961 and have served on that court continuously since that date. In 1964 I was elected by my fellow justices to serve one year as Chief Justice of the Colorado Supreme Court. And then in January 1969 I was again elected by my fellow justices to serve as Chief Justice for an indefinite term, in which position I am presently serving.

Insofar as family background is concerned, my Mother and Father were born on Kansas farms and they met when they were students at Baker University, a small Methodist college located in Baldwin, Kansas. As above indicated, my Father was a member of the faculty at the University of Denver from 1927 until his retirement in 1946. In 1947 at the age of 67, my Dad was elected to the Denver City Council and he served in that body for eight years. He declined to run in 1955. My father died in 1959 at the age of 78. My Mother later died in 1967 at the age of 80. I initially had two younger brothers, one of whom, Edward, was killed in action in World War II in the South Pacific. My other brother, David, is married, has two children, resides in Denver and is an administrative assistant to Dr. Robert Gilberts, Superintendent of the Denver Public Schools.

I married Catherine Ann Cooper in 1942 and we have one son, Edward, age 21, who is a senior at the University of Colorado. My wife is a graduate of the University of Colorado. Her Father, now deceased, and her

brother, Richard H. Cooper, were for many years engaged in the building materials business in Denver under the firm name of Threewit-Cooper Cement Company, a family owned business which is now owned and operated by my wife's brother.

I am a member of Kappa Sigma social fraternity and am likewise a member of both Phi Beta Kappa and Omicron Delta Kappa, national honorary fraternities. Also, I am a member of the Denver Rotary Club and the Denver Gyro Club and have served as President of each. I belong to the Colorado and American Bar Associations, the American Judicature Society and have served on the Board of Trustees for the Denver Bar Association and the Board of Governors for the Colorado Bar Association.

I am a member of the Episcopal Church and in the past have served both on the vestry and as senior warden in my particular parish, as well as serving for several years as a lay member of the Board of Trustees, which is the governing body for the Episcopal Church in Colorado.

PROPOSALS FOR SELF-REGULATION ADMINISTERED BY THE AMERICAN ADVERTISING FEDERATION

Mr. MAGNUSON. Mr. President, in the past few weeks some very significant proposals have been set forth by advertising industry leaders to establish a meaningful mechanism for self-regulation to be administered by the American Advertising Federation.

These plans have been introduced by western regional chairman of AAF Fred Baker, chairman of F. E. Baker—N. W. Ayer Inc., Seattle, and by AAF chairman Victor Elting, Jr., vice president for advertising of the Quaker Oats Co., Chicago.

They are similar in scope and have identical objectives. They seek to establish a voluntary and substantive program for effective self-regulation in the advertising profession. This has long been needed. The leadership of the federation is to be complimented for its constructive thinking.

With great enthusiasm I wholeheartedly endorse these proposals and urge the advertising and business community to give them the most serious consideration at the highest levels.

In these difficult times, the public is looking to industry for meaningful responses to issues of concern. This is an opportunity that should not be overlooked for advertising to resist burdensome legislative pressure by substituting its own program.

The time has come to see whether real self-regulation can work to protect both the public's and the industry's best interests.

Although, I have not had the opportunity to meet Mr. Elting, I do know Fred Baker well. And I know of no one, in or out of Government, with a greater sensitivity to the public interest and the social responsibilities of the advertising industry. His is a voice that should be heeded.

I ask unanimous consent that the address by Fred Baker and the address by Victor C. Elting Jr., be printed in the RECORD.

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

REMARKS OF FREDERICK E. BAKER

I am very grateful to Lydia Reeve for inviting me to be with you at Newport Beach. I am grateful to you for taking time from your own business and personal affairs to spend this time together.

If I appear overly serious it is because I am highly concerned. I owe much to the field of advertising and perhaps you do too. For most of my adult lifetime it has provided me my livelihood, a chance to expand and grow and broaden my interests and knowledge.

My message today is a very simple one. Advertising is not at the crossroads—it is past the crossroads. Unless you and I, and thousands of others, act promptly with courage, vigor and intelligence, the advertising business as I have known it is a thing of the past. We have had practically complete freedom in the marketplace. Our art of communications has contributed mightily in the development of the American economy. People live better because of our work. People are healthier and physically more comfortable because of our work. Our nation is stronger because of this.

Most of what we have done has been constructive and honest, and in good taste. Some has not. Because some has not much of the public has lost a good share of confidence in what we do. We are suspect on many more counts than one. The elected representatives of the people, and the appointed officials, find us fair game. If we think we have been harassed in the past few years by confining laws and stringent regulations, I assure you we have only seen the beginning and a small beginning at that.

Unless we meet the situation head-on and regain the confidence of the American people—not by our words, but by our acts and by our deeds—we will become a completely contained, regulated, government-controlled industry.

Our problems must be successfully met on both the local and national levels. Our program must be viable everywhere—not just in several isolated areas or instances. To succeed, all in advertising must constructively participate. Our ad clubs are key to the local level for several reasons. Locally, the focal point in self regulation is your Better Business Bureau. This is their business, their reason for existence. Many Bureaus are doing an excellent job right now, with or without the help and support of the local ad club. I do not pretend to have an accurate reading on this but I have had considerable contact around the United States with the local Bureaus, either with the manager or an officer or board member. If I had to be specific I would estimate that at least a quarter or perhaps a third of the approximately 100 BBBs in the country are really in good shape. I will further observe that in the communities where this is true you find little or no consumer unrest or active consumer movements. The reason is obvious—the offended consumer has a place to go—knows the place is the Better Business Bureau and the Bureau handles the complaint to the reasonable satisfaction of the consumer.

As to the other two-thirds or three quarters of the Bureaus, they really need our help. They may need it by way of a task force from the ad club designing a program for increased Bureau membership and financial support. Some bureaus are so overwhelmed with calls that only half, or slightly better, of the people calling can get through to register their complaint. We usually find in such instance, that only a moderate proportion of the business community is supporting the bureau. Many more would if they had the story—properly presented. More dollars means more staff people, more complaints adequately handled.

They may need our help by way of a task force from the ad club to formulate a program that will make the local people aware of the Bureau—its purpose and what they should do if they have a legitimate complaint. Or, there may be other ways in which we can assist.

It has occurred to me that the ad club might mount a campaign encouraging housewives to voluntarily man the Bureau phones for a day or two a week. This would be consumers helping consumers and could free Bureau funds for additional investigative service.

Your AAF National Ethics Committee is urging all ad clubs to have an active Ethics Committee. Principal purpose of this committee is to assist the local Better Business Bureau in every practical way possible. We are not the policeman—the Bureau is.

In some cities where we have ad clubs no Bureau exists. There are about 70 such communities. In practically every case, however, the Chamber of Commerce functions similarly to a Better Business Bureau through a department, or division, for this purpose. Here we provide our expert help, as professional communicators, just as we would to a Bureau.

Of late, good things are taking place with the BBBs. In the past they have been fragmented nationally. Now they are all together—one national organization—the Council of Better Business Bureaus Incorporated. Ward Quall, who will be speaking to you later, today, was one of the key persons who accomplished this.

The local Bureau does everything possible to get the offending advertiser or marketer to see the error of his ways and voluntarily correct his situation. In most cases this works. In many it does not, which leaves the consuming public still unprotected from fraudulent or misleading advertising or practices.

This is why we in AAF have sponsored our Model Deceptive Practices Act. Nearly half the 50 states now have effective Consumer Protection statutes. Until the remaining states have adopted our Model Law, or a reasonably effective likeness, our job is not finished. We are making progress in the West. California has a fine law; so has Washington, Colorado, Arizona, Hawaii and New Mexico. To the best of my knowledge our states of Alaska, Idaho, Montana, Nevada, Oregon, Utah and Wyoming do not have statutes for adequate consumer protection. Our process is simple. Through the Better Business Bureau we first strive for voluntary compliance. If thwarted, the file is then turned over to the State Attorney General's office for Consumer Protection. Under our Model Law they can prosecute as a civil action.

At our Bakersfield Conference, Charles Thurber, Rose Mary White and Mike Jordan will make clear in workshop session the details on getting the job done at the local level.

Now let's think about the toughest problem of all. How do we clean up advertising and marketing nationally? Let me repeat my early remarks—most of what we have done (in advertising) has been constructive and honest and in good taste. Some has not.

Our challenge is to straighten out the *"some has not."* We must do this promptly, not because it is the *nice* thing to do—which it is—not because it is better advertising and marketing—which it is—not because we will all be prouder of our occupation—which we will—but because we will eventually lose all our basic freedoms to perform in the marketplace if we do not succeed.

A brief look at the past. We in AAF (then AFA and AAW), together with the Association of Better Business Bureaus International, created and promoted The Advertising Code of American Business. As you know, our Code contains nine points. Each is clearly defined and well expressed. If all agencies, advertisers and media abided

100% by our code we would have no problem with the consumers or the government. None whatsoever.

But we have those who do not comply—in high places as well as low in the advertising and business spectrum. Our Code is beautiful. It is the nine commandments of advertising. But, to far too many it is merely meaningless platitudes. We have no power of enforcement. It is respected by the good guys and laughed at by the bad guys.

Canada has a Code also. In some ways it is better than ours. It has *twelve* commandments. In general the areas covered are similar to our own. But each standard begins with this language, "No advertisement shall be prepared, or be *knowingly accepted*, which . . ." and it then defines the code standard involved.

The Canadian Code of Advertising Standards was prepared by the Canadian Advertising Advisory Board. This is a non-profit organization representing all phases of the advertising industry in Canada.

Its main objectives are:

A. To develop, promote and encourage adherence to approved national advertising standards and practices, including the "Canadian Code of Advertising Standards";

B. To contribute to the continuing improvement of avertising effectiveness by assisting in the development of appropriate educational and training programs;

C. To sponsor and support research into advertising, including its social and economic effects;

D. To improve public awareness of the contributions of advertising to Canada's economic and social well being; and

E. To serve the common interests of the Canadian advertising industry.

The Canadian Code of Advertising Standards has been reviewed and approved in principle by all the basic Canadian trade organizations of media, advertising agencies, advertisers and advertising and sales clubs.

The Canadian Code is better promoted than ours. It has more active support from media, agencies and advertisers than ours. However, it also offers no practical method of enforcement.

My personal feeling, as of this date, is that our Code is a very earnest attempt by the clubs in the American Advertising Federation, together with the Better Business Bureaus, to establish ethical standards that would truly protect the consumer and enhance the positive image of the advertising industry. It is my opinion that this effort is not being taken too seriously by many agencies, advertisers and media. There are exceptions to this statement and to those exceptions I am most grateful.

The reason neither our Code nor the Canadian Code really works is because there are no teeth in either. I have talked about the good guys and the bad guys in advertising. The good guys instinctively create, if an agency, authorize or direct, if an advertiser, and permit publication or broadcast, if a medium, only advertising messages which are truthful, ethical and in good taste.

The bad guys couldn't care less.

The primary excuse our industry presents for not adopting, *and enforcing*, a voluntary Code of Advertising Standards is that such a practice would be illegal—in restraint of trade and not permitted by the Federal Government.

Have we taken a real program to the Federal Government and requested exclusion of the advertising industry from anti-trust laws so far as our Code enforcement is concerned? To the best of my knowledge we have not. I happen to believe that if we, and by we I mean all of advertising, adopted a Standards program such as Great Britain has, the Justice Department and the Congress would welcome us with open arms and provide the legal relief necessary so we could function effectively. Before I discuss the British Code of Advertising Practice permit me to acknowledge that my information has been provided primarily by our AAF president, Howard Bell, and very importantly by my close associate and warm personal friend, Neal O'Connor, president of N. W. Ayer. Neal O'Connor is presently chairman of the Committee on Improving Advertising for the 4As. He spends considerable time in Europe on agency business and in recent months has devoted substantial time in England studying the actual structure and operation of the British Code. He has provided me with the bulk of my specific information.

The remarks I am projecting today are my own thoughts and are not necessarily supported by anyone else. *In principle*, Howard, Neal and I are thinking along similar lines. So is Victor Elting, *our* fine AAF National Chairman. So is our AAF National Ethics Committee. But, there is a great amount of "Nitty-gritty" that will have to be worked through before we have a really effective program of advertising standards stoutly supported by *all* elements of the advertising industry.

This is my fourth consecutive year as your chairman of the AAF National Ethics Committee. Our original consideration was to develop an effective program at the club level. From my earlier remarks you can properly gather than I believe we are now on the right track—the right track but with a very long way to go.

My concluding comments concern advertising standards nationally. First, due credit must be given the NAB Code effort and other evidences of self discipline within the advertising industry. Unfortunately, these are the exceptions rather than the rule.

It is now my firm opinion that we must explore to a successful conclusion a control system similar, if not identical, to the British. Theirs was established in 1962. It works.

Its purpose, and I quote, is "The promotion and enforcement throughout the United Kingdom of the highest standards of advertising in all media so as to ensure in cooperation with all concerned that no advertising contravenes or offends against these standards" unquote.

The detailed British Code of Advertising Practice is specific beyond belief. I can find nothing they fail to cover, including very specific position on medicines, treatments and appliances. It leaves no room for doubt or argument.

The British Code is under the general supervision of the Advertising Standards Authority. It is financed by grant from the advertising associations, but functions with total independence.

Seventeen major advertising trade organizations support the Code and their representatives constitute the Code of Advertising Practice Committee. These include all important media, advertisers and agencies.

The Advertising Standards Authority is the policy body. The chairman is appointed by the Advertising Association. He is currently, and must be, a man of great acceptance, courage and integrity. He appoints the other ten members, five experienced in advertising and five not from the advertising business.

This Advertising Standards Authority determines principles and policy, amends and extends the Code of Advertising Practice and keeps the Code of Advertising Practice Committee under surveillance. Hence, the Advertising Standards Authority is defined as the policy body.

The executive body is the CAP, the Code of Advertising Practice Committee. This committee, made up from the 17 supporting organizations, representing all three major sides of the advertising industry—advertisers, media and agencies—investigates cases, decides interpretation of the code, sets rules and refers policy matters to the Advertising Standards Authority.

To make all this work, the CAP employs an investigative unit—the Advertising Investigation Department. The AID processes complaints from: consumer bodies, governmental bodies, trade associations, competitors, the public at large.

It monitors all media to pick up offending copy.

You can see the role in Britain is specific, yet broad. They work within the advertising industry, they work with government and the departments of government, with consumer bodies, the trade associations and with individuals. This includes not just advertising per se but trade practices as well, such as guarantees, warranties, the use of "free,' etc.

Now—get this. Any ad judged to be in violation of the Code of Advertising Practice, either as a result of a complaint, or the monitoring, *must be withdrawn.*

As to the advertiser—*media will not accept banned copy.*

As to the agency which persists in violating the CAP—*media withdraws recognition*, which clearly means loss of commissions.

It's as simple as that. It is working. It is financed by the advertising industry, but run in the public interest. The governmental bodies respect it.

The British consumer is truly protected.

Please permit me to repeat something I said very early in these remarks.

Unless we meet the situation head-on and regain the confidence of the American people—not by our words, but by our acts and by our deeds—we will become a completely contained, regulated, government-controlled industry.

It required the complete dedication and cooperation of all facets of the advertising industry in Great Britain for them to establish the one program of self regulation in the entire free world that really works.

Isn't it much better for American advertisers, media and agencies to do likewise voluntarily, rather than be forced to by government?

In preparing these remarks I have been speaking only for myself. Just before leaving Seattle I reviewed the talk Victor Elting gave before the Chicago Advertising Club on September 17. On that same day Neal O'Connor met with his 4A committee in New York and presented the full material on the British Code. You can see the pot is boiling—the key elements in advertising are serious indeed.

In reading Victor Elting's talk, and in previous conversations with him, I know his deep feelings on this subject. Victor is suggesting to our AAF Ethics Committee that we give serious consideration to creating an independent Advertising Review Council. His suggestions follow the lines of the British system—a code with teeth.

I will first present the proposition to our Ethics Committee that U.S. advertising establish a program like Britain's. If the opinion of the Ethics Committee is substantially affirmative we will then bring the matter to our AAF Executive Committee and Board at the November meeting. If they concur, we will explore in great depth the positions of the 4As, the ANA, the other affiliated trade associations, and media. In my personal view this must be a collective effort with AAF taking a very great share of the responsibility.

At the proper time, assuming the leaders of advertising have agreed on a program, we will take it to the AAF membership for approval. At the very latest this would be our June convention in Honolulu.

In the meantime it behooves us in AAF to materially strengthen our financial situation. We are running on a very tight budget. In our Western Region we have a strong Company Membership Development Committee headed by Don Cunningham. Don has my pledge that I will do everything within my power to assist him and his committee in obtaining new Company members and retaining those we now have.

Careful study of our present company members indicates to me there is at least $30,000 more available to AAF annually from

the Western Region new company members if we each do our best.

If AAF is to play a leading role in the proposition I have discussed today, we simply must be in position to provide our fair share of the monies required should the system of financing be similar to the British.

We have a big job cut out for us. The next year, or so, is crucial. If we win, all of advertising and all consumers win. If we fail, the consumers will win anyway. Government will take care of that.

Let's get at it!

ADDRESS BY VICTOR C. ELTING, JR.

This is a crucial time in the history of the advertising industry. I'm sure all of us sense the stir of change and the pressures for more change . . . from within our industry, from social critics, from government, from housewives and other consumers. Just like many other aspects of our way of life, advertising is in a ferment of questioning and innovation.

Certainly an industry that has done so much to change our society from primitive scarcity to vast abundance must welcome a climate of new thinking. But we must also be wise enough to seek out the means of directing change into constructive and socially desirable channels.

Although like all industries we have our own internal questions—such as shifts in media patterns, technological innovations, new offshoots of the advertising agencies, and others—there can be no question that the overwhelmingly crucial problems facing us involve the social climate.

The internal matters may determine *how* we function; the social pressures will determine *whether* we function.

We are being accused of building false values in our people, of making them a drug-dependent society, of exploiting rather than serving the consumer, of pushing goods that pollute our air, water and soil. We are charged with building unattainable expectations among the poor that breed violent frustration, and of covering up adulterants and safety hazards.

You are all aware of these charges and of the serious consideration in government and consumerist organizations for limiting or prohibiting the use of advertising in many ways, just as it has already been prohibited for cigarettes on TV.

The problems besetting this industry, like most of the problems in America, are the direct result of our success.

The very freedom and competitiveness of our business system have transformed us from a provincial people obsessed with scarcity into a nation made up mostly of affluent urbanites facing new problems of abundance. This freedom and competitiveness have produced our success by concentrating on putting our full momentum behind achieving profitable sales. We have succeeded remarkably—we have created the great American miracle of comfort and security for 95% of our people that is unmatched in history.

But now that clearly is not enough. The momentum of focusing so hard on profitable sales has carried us past the turning point of our society. The effects of much of our success are now the targets of the questions being raised by both responsible and irresponsible social critics—our wives as consumers, the teachers of our children, the doctors who are concerned for our hearts and our lungs, as well as the radical activists and the demagogues.

So we must recognize that advertising is under fire because many people are raising questions about where we are headed . . . and because we have succeeded so well in making people aware that advertising is one of the greatest forces in directing where we go in our society.

Undoubtedly, the overriding need for our best thinking, our best organization, our best *action* is bringing the standards and ethics of all aspects of this industry into confluence with the new realities of our times.

These are serious matters for all of us—as consumers and citizens of this country, and as members of the advertising industry.

It would be easy to over react to these sweeping and often uninformed castigations of our system. We must be sure that, even while we determine what more we must do, we do not lose sight of what we have done and the progress we are making.

The great majority of advertisers, agencies, and media are responsible factors in our society. They have elevated their practices and standards well above what they have ever been in the past. Through their own voluntary actions and through cooperation in various associations and professional societies they have established standards and codes that demonstrate their integrity and awareness of their influence on people's lives.

We at Quaker, for example, have always been cognizant of our influence on people. We have set our standards high and have constantly evaluated them to keep them abreast of new needs. We are not unique in this, nor do I think we are unique in our current activities aimed at reaching advanced goals of responsibility.

First, we are improving our commercials, with an eye to their effect on children as developing persons, as well as consumers of our products.

Second, we are emphasizing as much as possible the selection of quality programs. I am emphasizing television advertising to children because of its importance to our business. We know that children will watch television. It is now a vital part of their lives. Studies show that poor children, especially, watch and grow on TV. If children do not have programs prepared specifically for their interest, they will watch other, less-suitable shows. They cannot be confined to a "children's ghetto" on TV. So their need and our opportunity are the same: Good programs that nurture their psyches as a vehicle for us to introduce them to good foods that, properly prepared, will nurture their bodies and minds.

Third, since the existence of the commercial vehicles of communication to children are a great asset to us as marketers, we feel we have a responsibility to also foster public TV in its role as an educator of children. We are now contributing $100,000 a year to the Corporation for Public Broadcasting to enable "Sesame Street" to be seen by the children in three major cities.

This new and innovative children's program has demonstrated how effective public television programing can be when it is well-conceived and well-financed. It seems reasonable that each advertiser who uses the commercial channels should allot perhaps 1% of its TV budget, through its philanthropic mechanism, to support such programing. In this way the public is given a choice in its viewing and industry shows its sense of responsibility for the privilege of the airways.

If all the creative, constructive things that are being done by individual firms were to be known, the public would be less likely to feel alarm at the charges of our critics. We need to keep on doing more, and to use our communications skills in getting credit for what we do.

Within the advertising industry—in all its segments—there exist some of the most creative, most forceful, and most responsible thinkers in America. Together, and coordinated to unify their effect, they are a tremendous potential for constructive advancement of our industry and our society. Through the American Advertising Federation, of which I have the privilege to be Chairman this year, we have a unity of the whole spectrum of the field—the only national association that is based on all segments—advertisers, advertising agencies, media and, most importantly, 180 local and regional advertising clubs with some 40,000 members, and more than 30 affiliated associations.

This membership includes a proportionate share of small, medium, and large companies—35 of the 50 largest advertisers, 24 of the 30 largest advertising agencies, 7 of the 10 largest newspapers, and the 3 national TV networks.

This structure of the AAF came about, after more than half a century of separatism in this industry, through the merger of the former Advertising Federation of America and the Advertising Association of the West. Its staff has been built up, with strong and capable leadership in Howard Bell, the president. The first two chairmen, Don Macdonald and Ken Laird, provided the leadership and inspiration to gain the support of the industry and shape a structure that can be effective.

The AAF has developed a forceful and direct Advertising Code for American Business that deals with truth . . . responsibility . . . taste and decency . . . disparagement . . . bait advertising . . . guarantees and warranties . . . price claims . . . unprovable claims . . . and testimonials. The Ethics Committee under Chairman Fred Baker is actively considering the best means for enforcing this code and putting teeth into it.

Also, let me assure you that the AAF is addressing itself vigorously to questions that face us from outside critics, through its Washington staff, its committees, and its other personnel.

So I can say that we are fortunate in this industry, unlike some others, in having a vital, aggressive instrument that harnesses the bulk of the industry's talents and resources, for functioning both at the national level and in 180 local communities throughout the United States.

It goes without saying, I believe, that everyone who hopes to have any future for this field must include himself and his organization in this instrument.

But we can no longer count on the voluntary course alone to protect us. A few abuses and breaches of good taste are taken by our activist critics as cause to flagellate the whole advertising industry. We who are professionals in catching the eye and attention of the public with our messages need to direct our course to suit the active, visible temper of the times. We must make *sure* that we all do what is best for our society—and that we clearly and visibly *enforce* the high standards that are raised by the responsible people in our industry.

It seems to me there are three ways to do this.

One, of course, as I have mentioned, is to scrupulously elevate the standards in our own companies and in the advertising industry as a whole.

In the second area, there are many businesses—members of both the AAF and the Better Business Bureau—who have worked hard to help revitalize the BBB concept of consumer protection into the new Council of Better Business Bureaus. The organization has 140 units working directly with business to develop trade practice programs and better servicing of products. In the automotive field, for example, it launched a BBB Automotive Warranty Servicing Program to step up action on complaints that were bogged down at local and regional levels.

The strengthened alliance between local ad clubs and BBB's offers one building block in the greatly needed self-regulatory effort that can't be touched by any other association. Financed by business, yet pursuing the interests of the consumer, its effective operation would demonstrate that the private regulation of business *can* work.

We must also recognize the Television and Radio Codes of the National Association of Broadcasters as instruments of great potential—and ways to strengthen their efficacy

deserve serious study. Their policies are formulated by the respective television and radio code boards made up of broadcasters who meet regularly. They have had an effect on the amount and nature of commercials.

Speaking yesterday before the International Radio & Television Society, FCC Chairman Dean Burch said his concern was "directed to the contrast between typical fare—which just fills the child's time and serves as a background to the commercial—and TV programming which makes a positive contribution to the child's growth, his awareness of reality."

Networks and independent stations can improve this by mutual efforts—with government assistance toward inventive programming and responsible advertising policies, Burch said, and perhaps may have to do it "regardless of whether cereal or toy sales reach new heights or not."

Noting that in many families television serves a "baby-sitter" function at times when parents are busy, Burch said "I recognize that to a substantial extent, this 'sitter' must and should just entertain—be the equivalent of chewing gum for the eyes. But also to a substantial extent, it must fulfill its promise as a child's 'window to the world.' "

Burch said the times will not permit criticism to be ignored, and the Federal Communications Commission cannot just "slough off" challenges such as a pending petition requesting the government to require daily programming for children and to ban commercial sponsorship of children's programs.

But self-reform offers a "middle ground," Burch said, and the industry must explore it.

The third way to direct change rather than be overrun by change is to imaginatively and boldly bring forth our own innovations to meet the needs of new times.

Where is such innovation needed?

You and I know that it is mostly in television. A number of hearings are already scheduled for this term of Congress where questions about television and TV advertising will be spotlighted. In addition, a private group dedicated to enriching the content of telecasting will meet in New York in mid-October. It seems likely that some of its proceedings will be directed against television commercials, including those involving children.

We can criticize the flamboyant way in which some critics of TV commercialism act. We can go into a panic and worry about the political effects of the hearings—possibly the political consequences have been somewhat exaggerated.

. . . Or we look at the situation as I believe it is, Let's have no delusions. There *are* problems with advertising, just as there are problems in almost every phase of our way of life.

Armed with this thought . . . that advertising like everything else in this world needs help, and that what it doesn't need is government over-regulation . . . let me outline a step that, in some respects, is a departure from the past.

I am suggesting to the Ethics Committee of the AAF to give serious consideration to creating an independent Advertising Review Council—not a creature of industry, of government, or media, or of any other interest, but a body that combines the broad knowledge and judgment of all concerned.

It would be set in motion by the AAF with suggestions for members to come from all concerned elements of our society, such as the law or judiciary, education, advertising media, labor, women's groups, minority groups, advertisers, religious groups, consumer education bodies, health care, advertising agencies, child psychologists, and others.

Three of the seven members provide the expertness and the background of the advertising industry that will be needed. The other would afford a diversity of knowledge and interests from the various aspects of the public at large, including the other elements mentioned.

The members would be appointed at first for terms of one, two, and three years to afford a staggered tenure, and thereafter for three-year terms.

Because some of the members would be busy people in their other activities, provision would be made for each of them to assign a designee at any meeting where he or she could not be present. This would assure that all elements would be heard equally at all times.

An assessment of a small percentage of total advertising expenditure would be made on each manufacturer, advertising agency, and medium to provide a budget of about $1,500,000 a year for staff, meeting facilities, office, correspondence and other requirements.

Complaints or inquiries from any legitimate group or person would be filed with the Review Council. It would be empowered to explore each case and deal with the companies, media, and agencies involved.

When the Council determines that an abuse exists and voluntary compliance with its standards is not forthcoming, it would be empowered to bring about compliance in two ways: (1) By publicizing the abuse and its findings, in order to direct public scorn at the violators; and (2) by calling on all media to refuse to carry the specific ads involved (or the producer to refuse to prepare them, in the case of direct mail and other types of media). Congress would be urged to vote for exemption from anti-trust legislation that now rules that such agreement among media is in restraint of trade. This is already the case in Britain, where strong and active codes of practice are being carried out.

The British Code of Advertising Practice is in many respects analogous to our proposal. It is explicit and is administered by a committee of people experienced in advertising and drawn from some 17 organizations in the communications field. The working of the Code is supervised by the Advertising Standards Authority in England, an independent body set up by the advertising industry to maintain standards of advertising in all media.

This British control system has been in existence since 1962. It is financed by an adequate budget and, the important point I want to make here, it has the agreement of media with respect to enforcement. No advertising can appear in England that is not approved by the C.A.P. Committee.

In an age of great public sensitivity to the social responsibilities of business . . . when stockholders are questioning more than a company's dividend rate . . . when activist groups appear daily to picket various organizations . . . when it is harder and harder to attract good young people with their social consciousness, a company that willfully allowed itself to be held up to such scorn would be shortsighted indeed.

Let me point out that unlike almost all the proposals for controlling our industry that come from consumerists and government, this one need not interfere with the full freedom of any of us in business to pursue our tasks responsibly.

It would do for all of us what we want done but cannot do alone—eliminate the pressures to go too far in our zeal because a competitor is using unethical methods.

It should not reduce by one dollar the income of any agency or medium, because we can be sure that the abuser who is blocked from using unsavory methods will find sound methods on which to spend his budgets.

There is another aspect of this proposal that must also be stressed. Business has been castigated increasingly for failures in self-regulation. But even the most avid liberals are now in full cry about the even greater failures of government as a regulator. It is refreshing to see that Ralph Nader is most visible among these critics of the regulatory agencies. His "Raiders" have focused as much exposure on the inability of these agencies to regulate as he has on the alleged failures of business.

Our youth are also disenchanted with government's ability to manage or regulate. Many of the angry young believe that there has been a pollution of promises made by government officials and aspiring officials . . . promises that not only fail to improve what they are aimed at, but build up new layers of unresponsive establishment.

This is a timely move; only the thought of having it originate with industry is novel. As Stanley Cohen pointed out in *Advertising Age:*

"We are inventing a whole cluster of 'quasi-public' devices in an effort to open up our society a bit, and for a moment at least, this new 'quasi-public' sector is attracting unusually hard-working young people and some remarkably good brains."

This Council would be a means of bypassing the weakness of self-regulation and of government regulation. It would not be of the *private* sector or of the *government* sector, but of the *independent entirety* of our population. Richard Nixon and Robert Finch have made much of their thesis that it is in the independent sector that we must look for the workable steering forces of our high-speed society. Here is a way to put that thesis into action and to make it work.

In suggesting this innovation—Robert Stuart, president; Kenneth Mason, group vice president for grocery products, and I, to mention those Quakers at the speakers' table today—are doing so for the purpose of provoking careful consideration and refinement by the advertising industry. It's an action-instead-of-words approach to a vital problem. All of us, I think, are weary of the constant reiteration of the problems with only vague or general suggestion as to their enforcement. Hence this proposal.

Our effort is not a radical one but more in the direction of conserving our system in heading off the alternatives that are being propounded all around us . . . alternatives that would destroy our freedom to think and create, destroy the way advertising and marketing skills have been developed to bring us to our problems of plenty, destroy the force of competition and incentive, destroy the pluralism of many interacting forces in our society, and turn over to government the power to unilaterally determine everything that goes over the air to reach the minds of children.

If we refuse, then we will be the real radicals . . . for our refusal may well result in bringing about drastic changes—changes that will be forced upon us. And we can be sure that if those changes originate outside our industry, we will find it difficult to live with them.

I hope that will get the careful attention of all of you here, of the media who reach everyone in this industry, and of the responsible and concerned members of this industry in refining this plan and setting it in motion in a working and constructive form, as soon as feasible.

There are ticking sounds that we hear in all the pressure groups, Congressional hearings, and other forums that are meeting to decide our fate. Let's defuse them by having the strength and courage to determine our fate for ourselves.

SWEAT ON, TAXPAYERS

Mr. YOUNG of Ohio. Mr. President, at present, the Army, Navy, and Air Force have 4,200 officers enrolled full time for periods of up to 3 years in graduate

studies. A recent General Accounting Office study shows that it costs taxpayers between $16,000 and $22,000 a year to send an officer to graduate school. This is approximately $70 million a year of taxpayers' money and it is increasing. Once they return with their tax-paid Ph. D.'s and master's degrees, many of the newly trained captains, majors, and colonels are not assigned to jobs requiring their specialized knowledge. The Department of Defense should put an end to this waste of taxpayers' dollars. Instead, Pentagon officials state that more graduate training is needed and the Army estimates that 75 percent of all career officers will receive graduate degrees, while the Navy expects that nearly all career officers will receive postgraduate education. They will then retire on half pay after 20 years and then have lucrative administrative positions in that military-industrial complex.

THE PRESIDENT'S VETO

Mr. DOLE. Mr. President, President Nixon's veto of S. 3637, a bill to revise provisions of the communications act relating to political broadcasting was not—as some have charged—a "ducking of the issue."

Rather, the President faced the issue head on and arrived at the only equitable decision.

The bill was discriminatory and unrealistic and would not have meant less campaign spending.

The bill would have limited spending on only radio and television. Spending on other forms of political advertising—newspaper advertising, direct mailings, balloons and buttons would not have been affected.

Indeed, had the bill been approved, spending on the latter items would have undoubtedly increased greatly to make up for the lack of direct radio-television communication with the voters.

The limitation on the amount of money that could be spent for broadcasting in general elections did not take into account the great disparity in the amount charged for broadcast time in various parts of the country.

As the President pointed out, 30 seconds of prime television time in New York City costs $3,500; in the Wichita-Hutchinson area of my own State, that amount of time costs $145.

The high cost of campaigning needs to be curbed. But S. 3637 is not the answer.

I voted against the bill when it came before the Senate and will vote to sustain the President's veto.

ABANDONED CARS—A HEADACHE FOR CITIES

Mr. JAVITS. Mr. President, the New New York Times of October 12, 1970, contains a story about the scope and impact of the abandoned car problem, and, while it comes as no surprise to me, it ought to be of interest to my colleagues because it shows how drastic the problem is, and that it is a national one requiring a national solution.

I have sponsored a measure, S. 4204, the Motor Vehicle Disposal Act, which would deal with this problem on a national basis.

I ask unanimous consent that the article from the New York Times, and the text of my bill, be printed in the RECORD.

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

[From the New York Times, Oct. 12, 1970]

ABANDONED CARS: A HEADACHE FOR CITIES

(By Agis Salpukas)

TRAVERSE CITY, Mich., Oct. 11.—John Spencer, a doctor who moved to this resort community to enjoy its natural beauty, recalled how often during a hike he would get so infuriated at the sight of an abandoned car that it would take several minutes for him to regain his temper.

"I'm a compulsive beer bottle picker-upper, but you'd see this hulk on the side of a road or in the field and there's nothing you could do. I'd get so angry," the tall, blond doctor said in a recent interview.

The doctor's feeling of frustration is shared by people in communities throughout the nation where the rusting hulks of abandoned cars have become a common sight in farm meadows, vacant lots of suburbs and side streets of cities.

Dr. Spencer, president of the Chamber of Commerce of Traverse City, channeled the anger by helping to organize a drive that rid his community of abandoned cars.

12 TO 20 MILLION JUNKERS

According to the Department of Health, Education, and Welfare, about 12 to 20 million abandoned cars have accumulated during the last 10 years. The chief reason is a depression in the price paid for scrap metal.

This year of the eight million cars to be taken out of service, an estimated seven million will be recycled and turned back into metal while about one million will be added to the backlog.

Almost every official from the scrap industry and governmental agencies who have looked into the problem agree that cleaning up the backlog will not be easy.

Even though prices for scrap have recovered since 1969, they said in interviews that there was no change to return to the happy days before 1958, when the scrap industry disposed of most of the nation's old cars at no cost to the general public.

CAR COMPANY HELPED

Now a community that wants to get rid of its abandoned cars will have to use its own money and manpower and work out its own program.

Traverse City has been a lucky exception. There the General Motors Corporation, concerned about the growing tendency of legislators throughout the nation to suggest that people pay a fee ranging up to $100 when they buy a car to pay for its disposal, went in and in an experimental program hauled out 3,100 abandoned cars from the resort community.

The corporation is now preparing a booklet which it will mail to Chambers of Commerce throughout the country outlining how they can copy the experiment and set up their own system by which each car can be disposed of for about $5.

A survey in major cities throughout the nation showed that Chicago, New York, Kansas City, San Jose, Milwaukee, Honolulu and St. Louis, Mo., were making headway in getting rid of abandoned cars.

AN EXTRA BURDEN

In each city, however, it has meant burdening the police and sanitation departments, often already short-staffed, with more work.

Also some of the programs have been effective only as long as the price paid for scrap metal remained high. In Chicago, there were days when the city had to stop hauling in abandoned cars since the local price for scrap fell and cars began piling up in the municipal pounds.

In St. Louis, where about 8,000 of the city's 10,000 abandoned cars were towed away since a drive opened in May of 1969, the program went into a state of limbo when the price of scrap went from $14 to $5 a ton.

The long depression of prices for scrap began in the late nineteen-fifties when steelmakers switched from open-hearth furnaces which used 50 per cent scrap metal to basic oxygen furnaces which take about 30 per cent. Prices dropped from about $40 a ton to $25 a ton.

It became cheaper to abandon a car than have it towed to a junkyard.

PRICE BACK UP

Mainly because of demand from foreign countries, the price of scrap has recovered. However, the backlog of abandoned cars cannot be solved by relying on private industry for the following reasons:

Hundreds of small collectors who used to scour communities for junk cars have gone out of business.

Cars have been abandoned in out-of-the-way places and it's too expensive for an auto wrecker to locate and tow away the vehicles.

Most of the cars are now rusted and stripped of their valuable parts, making them useless for parts.

A growing number of people, especially the poor, discouraged in the past when they were turned away by an auto wrecker, are now simply abandoning their cars.

G. A. Taylor, who is in charge of a police force that tows away abandoned cars in Richmond, Va., recalled that one family moved out of a poor section of the city and left five old cars in a yard. "They just backed up the truck to their door one night," he said, "put their furniture into it and took off. We never did find out where they went."

Those cities which have made the biggest progress in clearing up the backlog have had to set up and finance their own programs. In Chicago the police department has teamed up with the Department of Streets and Sanitation, which this year expects to remove 50,000 junk cars compared to 22,000 in 1960.

A special officer is assigned to each of the city's 21 districts to look for and ticket abandoned cars which are then picked up by tow trucks and brought to city pounds. If no one claims them after 15 days, the cars are sold at auctions. The city has also decided to take a calculated risk in towing cars off private property without prior permission.

The program has brought in $1.7-million in revenues this year, which meets the expenses of the Department of Sanitation but does not pay the salaries of the policemen.

NEW YORK PROGRAM

New York City which this year expects to get rid of 70,000 junk cars, set up a program in March, 1968, under which private scrap dealers place bids for contracts to tow away cars in 21 districts in the city's five boroughs.

Each district is patrolled by a sanitationman who puts a mark on an abandoned car and notifies the dealer. The car is usually towed away in five days.

New York, as most major cities, has found that the general public is very apathetic in helping to get rid of junk cars. The Sanitation Department offered a free tow-away service to anyone who called, but only one person has taken advantage of the service this year.

In its experiment in Traverse City, General Motors found that just to locate the cars scattered over 20 square miles required a military-type operation made up of teams of men who swept through the area.

CIVIC GROUPS HELPED

The drive was speeded up and costs were reduced considerably when local residents and civic groups such as the League of

Women Voters canvassed neighborhoods to find the cars.

Local towing companies, paid $10 per vehicle, piled collected junkers at one place. A portable car crusher—capable of handling 100 cars a day—was brought in and flattened the stripped hulks into 18-inch mattresses.

These were shipped by truck to a processor in Chicago and shredded for feeding steel furnaces.

General Motors estimated that the total operation cost about $5 per car beyond the money paid by the processor for the scrap.

The aim of General Motors was to head off proposals now being considered in many states to add a disposal tax or fee to the purchase price of a car.

In Maryland, a $1 fee has been imposed every time a person transfers title to a car. The fees are deposited in a central fund out of which the state pays scrap processors $10 for every car they bring in. The bounty encourages auto wreckers to seek out the abandoned cars even when they can make little in spare parts.

There is strong pressure from the steel industry on the Federal Government to place an embargo on the export of steel scrap, which would again bring down scrap prices and make it more difficult to rid the countryside of abandoned cars. The steel industry claims that there is a shortage of scrap that is causing inflation and unemployment.

The Institute of Scrap and Iron and Steel has argued, however, that present prices for scrap are not inflationary but have recovered to the level of 10 years ago. Also, the backlog of junk cars that has accumulated, the institute maintains, counters the steel industry's argument that there is a shortage of scrap.

S. 4204

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 "Motor Vehicle Disposal Act".

DISPOSAL FEE REQUIRED

SEC. 2. (a) Each person within any State who owns a motor vehicle on the effective date of this title shall, within three months after the effective date of this title, pay to the Secretary the motor vehicle disposal fee required by the provisions of this title, and affix to the motor vehicle a plate or other device, designed by the Secretary, stating that the motor vehicle disposal fee has been paid.

"(b) Every motor vehicle manufacturer shall pay for each motor vehicle manufactured by it after the effective date of this title the motor vehicle disposal fee required by the provisions of this title, and shall affix to the motor vehicle a plate or other device, designed by the Secretary, stating that the motor vehicle disposal fee for that vehicle has been paid.

EVIDENCE OF PAYMENT OF DISPOSAL FEE

SEC. 3. (a) The Secretary shall design a plate or other device suitable for easy and permanent installation in a conspicuous place on a motor vehicle on which the disposal fee required by this title has been paid.

(b) The Secretary shall make available places at convenient locations throughout the country in which persons shall pay the disposal fee required under section 2 and receive the plates or other devices evidencing such payments together with instructions for the installation of such plates or other devices.

(c) The Secretary shall make necessary arrangements with manufacturers required to pay the disposal fee under section 2 to receive the payment of such fees at such times as he determines to be convenient for such manufacturers and to furnish such manufacturers sufficient numbers of plates or other devices evidencing such payment.

AMOUNT OF DISPOSAL FEE AND ESTABLISHMENT OF THE MOTOR VEHICLE DISPOSAL FUND

SEC. 4. (a) The Secretary shall prescribe the amount of the disposal fee required under this title in an amount not less than $25 nor more than $50 per motor vehicle. In determining the amount of the disposal fee the Secretary may establish a schedule of fees after considering the size of the motor vehicle and the cost of removing motor vehicles. Any fee or fee schedule established under this section may not be established by the Secretary without proceedings including notice and an opportunity for a hearing held in accordance with the provisions of subchapter II of chapter 5, title 5, United States Code, and provisions for judicial review in the United States Court of Appeals for the District of Columbia in accordance with the provisions of chapter 7 of such title.

(b) Any sums appropriated pursuant to section 2 of this title and any disposal fees collected pursuant to this title shall be deposited in a revolving fund which is hereby established in the Treasury of the United States and shall be known as the "Motor Vehicle Disposal Fund". Moneys in the fund shall be available, without fiscal year limitation, to the Secretary to make payments to persons certified to him by licensed motor vehicle disposal concerns in accordance with the provisions of this title. Moneys in the fund not necessary for current operations shall be invested in bonds or other obligations of, or guaranteed by, the United States.

MOTOR VEHICLE DISPOSAL CONCERNS LICENSED

SEC. 5. (a) After the effective date of this title, any person engaged in the business of processing junked motor vehicles into established grades of scrap for remelting purposes may make application to the Secretary for a license under this section at such time, in such manner, and containing such information as the Secretary shall by regulation reasonably require.

(b) Licenses issued under this section shall be in such form as the Secretary shall prescribe and shall continue in effect unless revoked pursuant to this title.

(c) In issuing or refusing to issue any licenses under this section the Secretary shall conduct proceedings in accordance with the provisions of subchapter 2 of chapter 5 of title 5, United States Code. Such proceedings shall be reviewable in the appropriate United States court of appeals in accordance with chapter 7 of such title.

(d) The Secretary shall issue a license to any applicant if he determines that—

(1) the applicant is qualified and has the facilities necessary to process junked motor vehicles into established grades of scrap for remelting purposes;

(2) agrees to certify to the Secretary the names and addresses of persons eligible to receive disposal payments under this title.

(e) (1) The Secretary is authorized to enter the facility of any person authorized under this title or any person applying for a license under this title and to inspect the premises and facilities on such premises at reasonable times within reasonable limits, and in a reasonable manner.

(2) Every licensee shall establish and maintain such records, make such reports, and provide such information, including technical information, as the Secretary may reasonably require to enable him to carry out the provisions of this title. All information contained in any report received under this section shall be deemed to be confidential information for the purposes of section 1905 of title 18 of the United States Code.

(f) Subject to such terms and conditions as the Secretary may by regulations prescribe, persons licensed under this section shall receive from the Secretary a fee, in an amount not less than $1 nor more than $5 for each car processed, to cover the cost of removal of the plate or device required by this title and the keeping of necessary records as required by this title.

REVOCATION OF LICENSES

SEC. 6. (a) Any license issued pursuant to this title may be revoked by the Secretary if he determines that (1) the licensee has discontinued the business of disposing of motor vehicles as provided in the license, or (2) the licensee fails or refuses to make the certifications required by this title.

(b) Before revoking any license pursuant to subsection (a) of this section, the Secretary shall serve upon the licensee an order to show cause why an order of revocation should not be issued. Any such order to show cause shall contain a statement of the basis thereof, and shall call upon such licensee to appear before the Secretary at a time and place stated in the order, but in no event less than thirty days after the date of receipt of such order, and give evidence upon the matter specified therein. The Secretary may in his discretion suspend any license simultaneously with the issuance of an order to show cause, in cases where he finds that the public interest requires such suspension. Such suspension shall continue in effect until the conclusion of any revocation proceeding, including judicial review thereof, unless sooner withdrawn by the Secretary, or dissolved by a court of competent jurisdiction. If, after hearing, default, or waiver thereof by the licensee, the Secretary determines that an order of revocation should issue, he shall issue such order, which shall include a statement of his findings and the grounds and reasons therefor and shall specify the effective date of the order and he shall cause such order to be served on the licensee. In any case, where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be on the Secretary. Proceedings under this section shall be independent of, and not in lieu of, any other proceeding under this title or any other provision of law.

MOTOR VEHICLE DISPOSAL PAYMENTS

SEC. 7. (a) Each person who owns a motor vehicle on which the motor vehicle disposal fee has been paid is entitled to receive a disposal payment in an amount equal to the motor vehicle disposal fee whenever such vehicle is transferred to, and presented for disposal to, a concern licensed under the provisions of this title.

(b) If an owner, in violation of State law, abandons a motor vehicle on which the motor vehicle disposal fee has been paid, and such vehicle is thereafter presented to a public agency authorized by State or local law to confiscate and dispose of such abandoned vehicle, the public agency so presenting and transferring such abandoned vehicle shall be entitled to receive a disposal payment equal to the motor vehicle disposal fee.

(c) Whenever a motor vehicle is properly presented to a motor vehicle disposal concern as provided in paragraph (a) or (b) of this section, such concern shall issue to the person or agency presenting and transferring such vehicle a receipt therefor, on a form prescribed by the Secretary, stating that such vehicle has been properly disposed of under this title and that such person or agency is entitled to receive the disposal payment.

(d) The Secretary shall redeem, by payment of the disposal payment, under whatever arrangements he deems appropriate, receipts properly issued under paragraph (c) of this section.

UNLAWFUL ACTIVITIES

SEC. 8. It shall be unlawful for any person—

(1) to fail or refuse to pay the motor vehicle disposal fee required by section 2 or to fail to affix the evidence of such payment to the motor vehicle in accordance with the provisions of this title;

(2) to manufacture for sale, offer for sale, introduce or deliver for introduction in interstate commerce any motor vehicle manufactured on or after the effective date of this title without the payment of the disposal fee for such vehicle under section 2 and a plate or other device evidencing such payment being affixed to such vehicle in accordance with the provisions of this title;

(3) who is licensed under the provisions of this title, to fail or refuse access to or copying of records or fail to make reports or furnish information or fail to permit entry or inspection as required under section 405;

(4) to manufacture or furnish to any other person a plate or other device designed by the Secretary for the purposes of this title unless such person is authorized by the Secretary to do so; or

(5) to remove, destroy, or otherwise dispose of the plate or device evidencing payment of the disposal fee provided in section 2, except as authorized by this title or by regulations promulgated by the Secretary pursuant to this title.

PENALTIES

SEC. 9. (a) Any person who is required to pay the disposal fee pursuant to section 2 of this title and who willfully and knowingly fails to make such payment shall be subject to a penalty of not to exceed $500 for such violation.

(b) Any person who violates the provisions of section 3 or paragraph (3), (4), or (5) of section 8, or regulations issued thereunder, shall be subject to a civil penalty not to exceed $500 for each such offense except that the maximum penalty shall not exceed $100,000 for any related series of violations committed by the same person.

(c) Any person who willfully and knowingly makes a false statement of any information required under this title shall be deemed to have violated the provisions of section 1001 of title 18, United States Code.

(d) Any such civil penalty under this section may be compromised by the Secretary and shall be recoverable in a civil action in any district court in the district in which any such person resides, or is doing business.

(e) In addition to the civil penalties provided hereunder, any person who willfully violates the provisions of paragraph (4) or (5) of section 8 shall be subject to imprisonment of not more than six months for each such violation.

ADMINISTRATION

SEC. 10. (a) In order to carry out the objectives of this title, the Secretary is authorized to—

(1) promulgate such rules and regulations as may be necessary;

(2) appoint such advisory committees as he may deem advisable;

(3) procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code;

(4) use the services, personnel, facilities, and information of any other Federal department or agency, or any agency of any State, or political subdivision thereof, or any private research agency with the consent of such agencies, with or without reimbursement therefor; and

(5) manufacture the plates or devices designed by him for the purposes of this title at the expense of the United States.

(b) Upon request by the Secretary each Federal department and agency is authorized and directed to make its services, personnel, facilities, and information, including suggestions, estimates, and statistics available to the greatest practicable extent to the Secretary in the performance of his functions under this title.

(c) The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives shall have access, for the purpose of audit and examination, to any books, documents, papers, and records that are pertinent to the payments certified to by any licensee under this Act.

(d) The Secretary shall have discretion, based on market or other conditions in any locality or area of the country causing an inability or unwillingness of any licensed disposal concern to accept vehicles for disposal, to license automobile wreckers, including any public agency of a State or political subdivision thereof acting as an automobile wrecker, to accept vehicles for disposal and issue receipts under section 7, on condition that such wrecker undertakes to deposit such vehicles with an authorized disposal concern within twelve months after the Secretary determines that such market or other local conditions have abated.

(e) The Secretary shall have discretion, if business practices make it advisable in a particular locality or area of the country, to authorize any person engaged in the business of hauling scrapped motor vehicles, after crushing, to licensed disposal concerns, to issue receipts under section 7, provided that such persons satisfy the Secretary of their undertaking to deposit such vehicles as required by this Act and applicable regulations issued by the Secretary.

DEFINITIONS

SEC. 11. As used in this title—

(1) The term "person" includes any individual, corporation, company, association, firm, partnership, society, joint stock company, or public agency.

(2) The term "motor vehicle" means any vehicle driven or drawn by mechanical power manufactured primarily for use on the public street, roads, and highways, except any vehicle operated exclusively on a rail or rails. The Secretary may exclude classes of motor vehicles other than passenger automobiles from the definition of motor vehicle for the purposes of this title upon a finding that to do so is in the public interest.

(3) The term "manufacturer" means any person engaged in the manufacturing or assembling of motor vehicles including any person importing motor vehicles for resale.

(4) The term "State" includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone and American Samoa.

(5) The term "interstate commerce" means commerce between any place in a State and any place in another State, or between places in the same State through another State.

(6) The term "Secretary" means the Secretary of Transportation.

AUTHORIZATION AND APPROPRIATION

SEC. 12. There is hereby authorized to be appropriated to the Secretary to carry out the provisions of this title not to exceed $500,000 for the fiscal year ending June 30, 1971.

NATIONAL MOTOR VEHICLE DISPOSAL COUNCIL

SEC. 13. (a) The Secretary shall establish a National Motor Vehicle Disposal Council which shall consist of seven members, of whom three members who shall be representatives of businesses engaged in processing junked motor vehicles into established grades of scrap for remelting purposes, three members representative of the general public, and one member representative of automobile wreckers. Representatives of the general public may include representatives of Federal, State, or municipal agencies working in the fields of environmental protection and control.

(b) The Secretary shall consult with the National Motor Vehicle Disposal Council with respect to all matters subject to regulations which may be promulgated under this title.

(c) Members of the National Motor Vehicle Disposal Council may be compensated at a rate not to exceed $100 per diem (including traveltime) when engaged in the actual duties of the Advisory Council. Such members, while away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu subsistence as authorized by section 5703 of title 5, United State Code, for persons in the Government service employed intermittently. Payments under this section shall not render members of the Advisory Council employees or officials of the United States for any purpose.

EFFECTIVE DATE

SEC. 14. The provisions of this title shall take effect on September 1, 1971, except that sections 3, 10, 11, 12, and 13 shall become effective on the date of enactment of this title.

NATIONAL 4–H WEEK

Mr. THURMOND. Mr. President, "We Care," the theme chosen for the observance of National 4–H Club Week, October 4–10, appropriately describes the purpose of this fine organization of young people. Last week, nearly 4 million 4–H club members pledged their head, heart, hand, and health to their club, community, and country. Probably no organization presents a better tribute to the youth of our country.

The Lake City Post, Lake City, S.C., in an editorial entitled "4–H Youths Building a Better Way of Life," notes with pride the fine contribution these young people are making to our Nation.

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

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

4–H YOUTHS BUILDING "A BETTER WAY OF LIFE"

The collective social conscience of nearly four million boys and girls is very much in evidence this week. These young people are 4–H members celebrating National 4–H Week, Oct. 4–10. More than 1,100 of them are right here in Florence County.

By pledging their head, heart, hands, and health to their club, community and country, these 4–H'ers demonstrate concern for their fellow man. Appropriately enough, they have selected as their theme for national observance "We Care."

Through their project work and club activities, they develop into responsible citizens, improve our environment, and build nutrition and health. They also engage in community development, strengthen family life, promote education, chart careers, and help spread the 4–H learn-by-doing idea around the world.

We note with pride the educational opportunities these young people receive through the 4–H program. Under the leadership of the Cooperative Extension Service, 4–H meetings and activities are conducted by County Extension agents and volunteer local leaders.

These action-oriented boys and girls from nine to 19 years old, and some 27 million men and women who once were 4–H members, know the meaning of involvement. To them we extend our sincere good wishes for success. We look forward to their continuing achievement in their varied projects in science, agriculture, home economics, personal development, community service, leadership,

and citizenship. They are building a better way of life for themselves and the world.

OVERVIEW OF OPERATIONS OF LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

Mr. MILLER. Mr. President, in testimony October 12 before the Subcommittee on Economy in Government of the Joint Economic Committee, Associate Administrator Richard Velde furnished an overview of the operations of the Law Enforcement Assistance Administration.

As Administrator Velde pointed out, LEAA "was created by Congress to provide financial and technical assistance to help improve the Nation's entire criminal justice system at the State and local level."

Overall, I believe LEAA is carrying out this mandate of Congress.

What Mr. Velde said is of vital interest to readers of the RECORD. I ask unanimous consent that his testimony be printed in the RECORD.

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

STATEMENT BY RICHARD W. VELDE

Mr. Chairman, I appreciate this opportunity to appear before your Subcommittee today to discuss the program of the Law Enforcement Assistance Administration.

Since its beginning slightly more than two years ago, LEAA has been the object of intense interest and considerable scrutiny, by both the public and private sectors.

Such attention is not only proper, but in a sense it is mandatory. Part of the reason is that LEAA awards in grants and contracts large amounts of funds. They are public funds, and the public has a right to know whether they are judiciously used and whether maximum value is extracted from every dollar.

But there is another reason, and it may be even more important. LEAA was created by Congress to provide financial and technical assistance to help improve the nation's entire criminal justice system at the state and local level. The reduction of crime and the improvement of law enforcement comprise one of the nation's most urgent domestic priorities.

It is a demanding and complex task. It also is one of considerable sensitivity, because the rights of people are involved—the rights of our citizens to be free from crime and the fear of crime, the rights of the people to be properly served by their criminal justice system, the rights of those who are defendants or convicted offenders to be treated fairly and humanely.

The nation's criminal justice system has long been in a state of disrepair, in large measure because there has been deep apathy on the part of both the public and public officials for decades. That apathy is ending, as it should, for lasting improvements in crime control can be fashioned only if there is deep-rooted and broad commitment to the enormous task of making this society safe and just for all of its citizens.

During the past two years, there has been both interest in and study of the LEAA program by the general public, public service organizations, public officials and their organizations, criminal justice officials, and the Congress. We not only welcome all scrutiny and criticisms of the LEAA program, but we encourage it as well. In addition, we pay attention.

Your Subcommittee, in inviting me to testify today, indicated it had questions involving a number of the areas embraced by LEAA's operations. I am pleased to respond and to answer all of the questions—some in this prepared statement, others in the questions and answers you indicated would follow my formal remarks.

Because of your Subcommittee's interest in LEAA, we have given considerable thought on how to best relay to you the facts about the crime control program and how to convey our views on those areas which seem of greatest significance.

With your permission, I would like to deal, in part, with a number of criticisms that have been made of the LEAA program.

It has been alleged, for instance, that block grants to the states were being dissipated because LEAA had not assumed a leadership role in guiding expenditures; LEAA had allowed too much money to be spent on police programs; states involved the community to a very small extent in preparation and development of programs to reduce crime. While we welcome criticisms, we feel those conclusions are inaccurate.

To put the total LEAA program in perspective, I think it is important to note that the first year budget, for fiscal 1969, was only $63 million—certainly not enough to meet the needs of all parts of the criminal justice system across the country, no matter how it was stretched. In addition, it should be remembered that this program began from scratch in fiscal 1969. Every state had to create a state planning agency, and then work in cooperation with its city and county governments to first draft statewide criminal justice improvement programs and then to implement them. When we consider this had to be done in every state, in a matter of months, it is clear it was a complex and demanding task. It also must be stressed that these things were accomplished, and the nationwide crime control program became a reality in its first year of operations.

In addition, fiscal 1969 was the year in which several months passed before Administrators were appointed and LEAA actually went into operation. We have never denied that this late start caused problems. We have never denied that because the police were equipped to make immediate requests they often received a larger share of their state's grant money from the state planning council than might have been the case had the council been operating for longer, had more experience or had more time. We never denied that other areas such as corrections and courts posed more difficult problems for criminal justice planners and were slower in seeking funds. We never denied the fact that a number of large cities were very slow to request funds from their state councils and therefore received inadequate funding, even though they often got everything they asked for. We never denied those problems existed—but we set out vigorously to correct them at the end of fiscal 1969.

We believe we made substantial progress in fiscal 1970 in dealing with those problems. Fiscal 1970 was not only the first full year of operation for LEAA, but also was a year during which our funding level was more than four times as great as in that first difficult year—a total of $268 million. In fact, as far as action grants are concerned, fiscal 1970 funding was nearly seven times as great as fiscal 1969—$215 million compared to $29 million. We would be the first to admit that fiscal 1969 funding, no matter how carefully distributed, was grossly inadequate when compared to the nation's criminal justice needs.

It has been alleged that the vast bulk of LEAA's funds have gone for police, with corrections and juvenile programs being virtually ignored. But for fiscal 1970, nothing could be farther from the truth. Far from ignoring corrections, during fiscal 1970, LEAA made improvement in the corrections area its major priority. The result we feel was an outstanding success. The facts are:

In fiscal 1970 we doubled the percentage of state block action grants devoted to corrections programs, from 13.5 percent to 27 percent.

In dollar terms that improvement was even more striking. We estimate that as a result of later re-programming, states may have devoted only $2 million of fiscal 1969 funds to corrections programs. In fiscal 1970, if discretionary funding, technical assistance and corrections-related programs such as juvenile delinquency prevention are included, the total spending for corrections programs was more than $68 million, more than 30 times the amount in fiscal 1969.

LEAA has a great concern about juvenile delinquency programs. We're proud of the fact that of that $68 million total, some $33 million went to fund various juvenile delinquency programs, substantially more than the total amount of money distributed in block action grants to states during fiscal 1969.

We are concerned over recidivism, for our corrections institutions simply don't correct. LEAA thus has put great emphasis on community-based programs to rehabilitate offenders, to get them back into the community as quickly as possible in a constructive way. Of that $68 million for corrections-related programs in fiscal 1970, some $22 million went for these various types of community-based corrections programs.

Last November, President Nixon directed Attorney General Mitchell to move immediately to mobilize federal resources to improve the national corrections situation. Corrections in the United States today is inhuman, it is a national disgrace and finally, I believe that many corrections institutions breed crime instead of rehabilitating prisoners. I am particularly proud of LEAA's record in corrections during fiscal 1970. There is much work that remains to be done. But I think that we have certainly met our obligations head on, and I believe that the corrections improvement program funded by LEAA in fiscal 1970 represents our outstanding achievement in that year.

Police programs occupied a large share of the money spent by states from their block action grants during fiscal 1969. This was the result of a number of factors including the very short time for preparation of grant requests, the fact that planning agencies were just getting organized and the fact that the police were probably better equipped than any other area to make specific requests. As a result some 75 percent of the state block action money in fiscal 1969 went for police programs.

However, it is very significant that during fiscal 1970 the percentage fell from 75 to 51 percent of state block action grant money devoted to police programs. That drop was directly the result of our emphasis on corrections as well as other factors. This year, fiscal 1971, we intend to emphasize court programs without letting up our pressure on corrections and so it's quite possible that the police share a state block action grant money might fall even lower.

Let me also stress that those figures do not include discretionary action grants—one of the best measures of LEAA leadership since LEAA itself determines how this money will be spent. In fiscal 1970, police programs accounted for only 31 percent of the $32 million LEAA distributed in discretionary grants.

Total federal, state and local expenditures for the criminal justice system in the United States are estimated at roughly $6.5 billion. Of this amount it has been estimated that roughly 67 percent goes to the police. Against that 67 percent figure nationwide, I believe that the 51 percent and 31 percent police program expenditure levels for LEAA in fiscal 1970 substantially refute any charge that LEAA overemphasizes police programs.

At the same time, LEAA certainly is not downgrading the importance of police, or ignoring their needs. We are well aware that police are the most important means of curbing crime, and as such have responsibility

for performing a major service in the community. We are working with the police to develop programs which will provide real improvement and innovation. In the fiscal 1970 plans, for instance, less than 25 percent of the police program block action money was earmarked by the states for equipment purchases—and more than half of that was for communications equipment.

It has been alleged that LEAA has given inadequate attention to the needs of cities with urgent crime problems. This committee has received testimony earlier from a distinguished police chief in which an eloquent plea was made for more funds for police equipment and training. I can assure this committee that LEAA and the states will continue to be responsive to these basic needs.

There have been problems in the crime control program. No nationwide effort in a field as complex as criminal justice could escape having some difficulties. But we have been aware of them and have moved promptly to resolve them. We have shared the concern that large cities with urgent crime problems might not receive enough action funds from state block grants, for fighting crime in the cities is a priority. Preliminary results of the Fiscal 1969 expenditures of block grants indicate that 60 percent of all action funds distributed by states to local government went to the nation's 411 cities of over 50,000 population. Those 411 cities contain less than 40 percent of the nation's population and about 62 percent of its serious crimes. Fund usage was running in nearly direct proportion to incidence of crime. It must be noted that the 60 percent figure includes only direct grants to cities and counties. The percentage would be larger if it included programs funded separately which are of substantial benefit to cities—for instance, programs to improve corrections and courts, which normally are operated by states but into which the cities send the bulk of offenders. There have been instances of inadequate participation by large cities. In some instances, states did not move quickly enough in sub-granting funds, but this is being resolved. In other instances, cities themselves did not take needed initiatives, but we are taking special efforts to help them become fully involved. Most of the criticism of large cities stemmed from the funds they received from the fiscal 1969 budget—which was only $63 million and included only $25 million in block action grants. That was not enough to satisfy the needs of anybody, no matter how it was stretched.

With the much larger budgets of last year and this year, we are confident the needs of the cities will be met adequately. Some responsibility for delay must also be borne by the federal government. No implementing agency was established by the prior administration until four months after the Safe Streets Act became law.

In our own Annual Report we published a table showing that the 15 cities with the highest crime index in the United States had, on the average, only about 44 percent of the crime in their state and received, on the average, only about 28 percent of the state block action grants distributed by the state councils to the communities in their states. Those were fiscal 1969 figures, and we all agree they are not good enough. Since the states have not distributed all their fiscal 1970 money, comparable figures for last year are not yet available.

I think it is important, however, to point out that a number of the cities which did not receive adequate funding did not receive it because they did not ask for it. A great deal was heard last Spring about the city in Indiana which received only a polaroid camera and a fingerprint kit. The simple fact is that at the time this was made public, that was all the city asked for.

Furthermore, city requests are often in the police area, since this is where they most frequently feel the pinch. Corrections programs are almost always state or county run. Therefore, if LEAA state block action grant money is spent on corrections, while the cities may receive the principal benefits, LEAA corrections money would not go directly to those cities.

LEAA considers adequate funds to the cities very important. Apart from urging state criminal justice councils to make this a matter of primary concern, LEAA set aside $11 million—more than a third of its total discretionary funds for fiscal 1970—solely for programs to help the large cities. Even in cases where direct funds had been given to cities through LEAA discretionary grants, some projects were still not started at the local level after six months. LEAA technical assistance efforts are available to cities on request. Furthermore, we recently made an award of almost a quarter of a million dollars to the League of Cities and the Conference of Mayors to find ways to help the nation's largest cities take advantage of the opportunities available to them under LEAA programs.

We have managed, in less than two years, to create and coordinate a nationwide criminal justice planning system, which has mounted a comprehensive attack on crime in every state and every major city in the United States. Certainly it will be some time before the results can be seen, but we believe the promptness with which this program took hold, and the breadth of response, compares favorably with almost any other federal grant program.

It has been alleged that LEAA has failed to exert proper leadership in the crime control program. But if anyone thinks that the share of action grants devoted to corrections was doubled without leadership from Washington they simply don't understand how state criminal justice programs operate. Striking evidence of LEAA leadership can be seen by comparing the fiscal 1969 plans submitted by all the state agencies with the fiscal 1970 plans. It isn't merely that the 1970 plans are more sophisticated. They are far more detailed, far more specific, far more insightful, far more comprehensive, far more integrated. At the same time, there is room for increased LEAA leadership in the future, and we intend to take advantage of it.

It must be remembered that the intent of Congress, and overwhelmingly so, is that the Federal government be a partner, not a dictator, in assisting states and local governments in improving law enforcement.

Critics often have completely ignored important parts of the LEAA program—including the discretionary grant program, the academic assistance program, and the research program carried out by LEAA's National Institute of Law Enforcement and Criminal Justice. During fiscal 1970, funds for those areas totalled approximately $60 million—more than twice the amount of money spent in fiscal 1969 on the entire block action grant program.

During fiscal 1970:

LEAA made 426 discretionary grants totalling $32 million (compared to 29 discretionary grants totalling $4.2 million in fiscal 1969.)

LEAA for the first time had appropriations of $1.2 million for technical assistance, of which more than a third, about $410,000, went for technical assistance in the area of corrections. Examples of other technical assistance expenditures included $228,000 for preparation and dissemination of technical assistance materials on bombs, bomb threats and related police procedures; and $128,000 to support a study of campus disorders.

LEAA spent $18 million for academic assistance to help finance college studies for some 50,000 persons—some 43,000 criminal justice personnel, and 7,000 students preparing for criminal justice careers.

The National Institute of Law Enforcement and Criminal Justice used its appropriation of $7.5 million to support more than 100 research and development projects in the areas of crime prevention, police operations, courts, prosecution, and prisoner rehabilitation.

During fiscal 1970, LEAA established the National Criminal Justice Information and Statistics Service with an appropriation from Congress of $1 million. One of the projects undertaken by the Service was Project Search: a System for Electronic Analysis and Retrieval of Criminal Histories. This project involves 15 states in a cooperative effort to pool information on criminal histories by establishing computerized information systems connected to a central coordinating point.

I also would like to submit, for the Committee's record, a copy of LEAA's Annual Report for Fiscal 1970, which covers our program in great detail.

From this summary, I hope a more accurate perspective has emerged regarding a number of key points in the LEAA program. Much already has been accomplished, thanks in large measure to the untiring efforts of state planning agencies and both criminal justice personnel and public officials at the local and state levels. However, much remains to be done. We cannot be content until the crime rates begin to drop. And not even then, for crime must be reduced to the absolute minimum, and we must greatly enhance the efficiency and fairness of the entire criminal justice system.

It is impossible to predict when crime rates might begin to decline nationally. But I believe that day will come, perhaps sooner than many of us suspect. Let me cite one example of what a dedicated, progressive police department can accomplish. Washington, D.C. recently reported a substantial reduction in its monthly crime rate—the first one in more than four years. Metropolitan Police Chief Wilson gave most of the credit for this reduction to two programs, increasing the number of police on the street and the use of methadone to control drug addiction. LEAA last year gave the District some $2 million—more than twice its total block action grant—solely to help fund these two important programs.

Some who have examined LEAA have criticized the fact so much of LEAA's action funds have gone for police programs. I have tried to make it clear that the LEAA program is dealing with the comprehensive improvement of the entire criminal justice system, and is making every effort to make certain that this mandate of Congress is carried out so that police, courts, and corrections have their proper share of funds.

But I would like to take a moment to discuss those criticisms of aid to police. For the most part, the criticisms have been broad-gauge—too much money has gone for police, and there is always the implication that the bulk of police funds have gone for equipment.

The police comprise the overwhelming bulk of the criminal justice system. Their needs are enormous. In addition, they comprise the first line of efforts in crime prevention and crime reduction. It will do little lasting good to improve the fairness and efficiency of the courts and the rehabilitation efforts of corrections if we fail to give police the aid they need to prevent more crime and apprehend more suspects.

The critics often overlook the fact that aid for police involves a variety of vital programs. Equipment certainly is important—and an examination of equipment purchases shows heavy emphasis on communications equipment. This type of gear, as well as other kinds of equipment, is designed to permit police to respond faster and more efficiently to crime, and to protect the lives of policemen.

Studies have shown, for instance, that the faster police arrive at the scene of a crime, the greater chance they have of solving it. Heavy emphasis has been placed by police

on training—from the rookie through the patrolman through the middle and upper-level command ranks. The training will not only make police more effective, it will make them fairer in their contacts with citizens. Emphasis has been placed on prevention and control of civil disorders—with prevention programs and training of personnel as priorities. Development of better relations with minority groups has also been given major attention, both through disorders prevention campaigns and through enhanced police-community relations programs. Organized crime control is another area of prime concern. Organized crime is not only a law enforcement problem, but in ghetto areas is a civil rights problem as well—for organized crime preys on the poor and disadvantaged.

Some of those who have examined the LEAA program seem to forget what the Congress said in creating the new national crime control program. Congress decided, first of all, that law enforcement is and must be primarily a local and State responsibility. Congress decided that the LEAA program is not one where the federal government implants its will on law enforcement throughout the country or begins development of a federal police force. Rather, the LEAA program is designed to give financial and technical assistance to state and local governments. It is up to those state and local governments to not only contribute much of the money for improvement programs, but bear the overwhelming burden of work as well.

The LEAA program is basically a block grant program. State and local governments set their own priorities, develop their own programs. Then each state receives a block action grant to carry out its statewide improvement plan, and gives most of the block grant funds to its local units of government. This is a partnership program. We work cooperatively with state and local governments to develop programs and program directions we feel are important—as in the area of corrections, as I cited earlier. But we do not dictate to state and local governments, and anybody who thinks we should had better go back and read title I of the Omnibus Crime Control and Safe Streets Act. Congress did not intend this to be a program of Federal dictation.

Concern also has been voiced that planning funds have been inadequate thus far in the program. All of the planning funds are given to the states in block grants, based upon population. States use these funds, in cooperation with their units of local government, to help draft and implement statewide law enforcement improvement programs and to help pay administrative costs of the state planning agencies. In the first year of the LEAA program, planning grants totaled $19 million, compared to $25 million for block action grants in fiscal 1970, planning grants were $21 million, compared to $182 million in block action funds. Our proposal for fiscal 1971 calls for $26 million in planning funds, some $350 million for block action grants. We feel the planning funds are adequate. Planning is of great importance, but a good base already has been created and the funds proposed are adequate to continue the work. I might add here that LEAA plans to request more funds for planning in fiscal 1972.

As I indicated earlier, we feel that plans submitted to LEAA so far have been generally of good quality. In the program's first year, it was something of a wonder that states were able to submit plans at all. Despite whatever other problems they may have had, the first-year plans were brutally candid in discussing shortcomings of the states' criminal justice systems. For fiscal 1970, we required the states to plan for more than one year—to begin development of long-range plans and goals. Generally, the long-range planning work was not as adequate as we felt it should have been. The third round of plans will be submitted to LEAA by next December 31. We have worked closely with the states to improve planning and we expect these next plans to be of uniformly high quality.

I would like to turn now to a discussion in some detail of two other important aspects of the LEAA program—The National Institute of Law Enforcement and Criminal Justice, and the National Criminal Justice Information and Statistics Service.

The National Institute is the research and development arm of LEAA. In fiscal 1970, the Institute had a budget of $7.5 million, and Congress has appropriated the same amount for this year. We do not feel that is enough, but Congress has indicated that it will permit us to request re-programming of some funds if we feel they can be adequately utilized by the Institute this year.

In many ways, police and courts and corrections all are still operating in the 19th century. We must bring them fully into the 20th century, and enable them to use the benefits of science and technology. Three basic elements are needed for intelligent research and development: first, there must be a solid, broad base of research projects, being done in cooperation with the states, that are built on a master plan of long-range goals; second, there must be great emphasis on technology transfer, applying to criminal justice the techniques and equipment already developed by private industry, the space program, and the Department of Defense (it will do us no good to simply go on re-inventing the wheel); and third, there must be impartial evaluations of the state of the criminal justice system today, its needs, and what is being done to meet them.

The federal government is a later-starter in regard to criminal justice research, both in terms of money and years. To cite only one example, the Department of Agriculture has been conducting agricultural research since 1862—the year the agency was created. Even before that—as far back as 1828—the old patent office conducted agricultural research. This fiscal year the Agricultural Department's pending budget request contains $255.2 million for research, and since 1862 it has spent $4 billion on research. That research and development has been a key factor in this nation's incredible productivity in foodstuffs. Research for criminal justice—properly funded and directed—could provide comparable results, and I believe it could be done in a fairly short time.

During the past fiscal year, the National Institute supported more than 100 research and development projects in the area of crime prevention, police operations, court procedures, and correctional methods.

One of the Institute's most promising efforts is the Pilot Cities Program, which emphasizes system-wide improvement of all criminal justice operations—police, courts, and corrections—in cities and metropolitan areas.

Pilot cities are being established throughout the country to test the impact of such across-the-board improvements. San Jose and Santa Clara County, California, and Dayton and Montgomery County, Ohio, are the first pilot sites selected for the program. Within the next two years, five additional municipalities will be selected. Eventually, one pilot program will be located in each of LEAA's seven regions.

There are several criteria for selecting pilot cities. One of the most important is size. The municipality must be large enough to have problems of street crime, drug addiction, drunkeness, and delinquency, yet small enough that a limited investment of LEAA funds can produce measurable improvement.

In each pilot city, a research team, in cooperation with law enforcement and community officials, studies criminal justice operations and identifies areas for improvement. A comprehensive group of action programs aimed at basic system-wide improvement is then designed and carried out. In this way, the pilot cities program will test the performance of the best criminal justice system that current knowledge and technology can offer.

LEAA's Office of Law Enforcement Programs is collaborating with the Institute on the program and is the principal source of funding for action programs. Nearly $1 million in LEAA funds has gone to this program so far.

The Institute is sponsoring a number of projects to improve police capabilities. One priority is better police communications. We are well on our way to developing a small, reliable transceiver radio which can provide communications for policemen away from the patrol car. The Institute has issued a request for proposals, and over 100 firms are competing for funding to build the best version, both technically and economically.

Other projects are developing robbery and burglary alarm systems linked directly to police communications centers.

Improvements in weapons systems have long been requested by many police officials. With Institute support, the International Association of Chiefs of Police has established a Police Weapons Center to conduct research and dissemination of information regarding police weapons—including non-lethal weapons. The Center will also provide information on bomb disposal equipment—one of a number of Institute projects designed to meet this growing threat to public safety. Other Institute efforts are being directed toward development of truly effective equipment and systems to locate, identify, neutralize and dispose of hidden explosive devices.

To help police control the widespread use of narcotics, the Institute is working on two projects to develop equipment capable of detecting hidden quantities of heroin.

The Institute's research efforts go beyond developing new equipment, however, crime prevention is a major focus of research supported by the Institute.

The University of California at Davis is using a $148,121 grant to develop effective methods for preventing and controlling robbery, muggings, and other forms of attacks on the person. Other projects are studying ways to make residences and commercial establishments less susceptible to robbery, burglary, and vandalism. The theory behind these projects is that architectural and environmental design can enhance the security of homes and businesses.

In corrections and rehabilitation programs, the Institute has focused on such areas as prison architecture, work-release, and alternatives to incarceration.

Reducing court delay, which many experts view as a crucial element in controlling crime, is a primary aim of several Institute projects. Notre Dame University received $200,000 for an operations research study of courts in Illinois and Indiana. To assist in the training of local prosecutors, the Institute granted $290,000 to the Council on Legal Education for Professional Responsibility to create special education programs in law schools and prosecutors' offices.

To develop sound improvement programs, we need sound planning programs. But to develop sound planning, we need comprehensive and reliable information and statistics on every part of the criminal justice system. Today, that information simply does not exist on a national scale. Record keeping is fragmented, at best, and not uniform. Some cities and states keep good records, but only on some portions of the system. Others keep hardly any reliable statistics. We don't even know for sure how much crime there is, or how many ex-offenders commit new crimes after release from prison.

The Uniform Crime Reports of the FBI represents the greatest advance to date in collecting information about crime. It is the best that exists. But it is forced to rely on the reports submitted to it by police departments—and some departments do not

report all the necessary information, and many don't report at all.

What is the cost of crime to victims? The costs of prevention and control? We must know in order to measure—in dollars—the value of various anti-crime efforts.

How many offenders are repeaters and with what frequency? What are the correlations with such factors as age, seriousness of crime, length of sentence? We must know so we may make sound decisions about rehabilitation programs.

There is such a dearth of information that no one knows the aggregate expenditures for criminal justice activities in this country. Few state law enforcement officials can say positively how many jails are in their states. Courts do not have data about the amount of time required to process criminal cases, average sentences, or even on their own personnel.

To develop a sound, nation-wide criminal justice data system we have created the Information and Statistics Service in LEAA.

LEAA is spearheading programs to create or improve information and statistics gathering. The agency has done this by earmarking substantial portions of its discretionary action funds for such programs, and by creating the Information and Statistics Service (NCJISS), which was established last year. This was a million-dollar program in fiscal 1970, and its requested budget this year is $4 million.

NCJISS helps states and local communities develop statistical systems and it guides the states in using computer and information systems. In essence, it is providing the national leadership that has been critically needed.

For example, NCJISS has begun pre-tests for a series of three surveys on crime victims. These surveys will examine the individual as a victim, businesses as victims, and governments as victims and will provide estimates on such matters as victims' characteristics, geographical distribution of crime, the number of crimes being committed.

As part of this effort, NCJISS is negotiating with the Census Bureau to include questions about victim experience in the Bureau's Quarterly Household Survey, conducted in January and July, 1971. If this is arranged, then this will be the first attempt to collect hard data on crime incidence at the national level. Then, in 1972, NCJISS expects to begin its extensive National Victimization Survey.

The important national survey of jails has just been completed and will soon be released. This survey report contains a wealth of information on jail facilities and prisoners.

Under another NCJISS project, the Census Bureau is preparing a directory of criminal justice agencies in the United States. The LEAA will publish this directory in March.

The LEAA has also arranged for the Census Bureau to expand its collection of statistics on criminal justice expenditures and employment. In December, when the Bureau publishes the annual compilation—*Employment and Expenditures in Criminal Justice for Fiscal 1969*—data on prosecution and indigent defense will be included for the first time.

The first step in LEAA's long range goal of developing national court statistics is a NCJISS survey of court organization. The initial phase will cover about 8,000 court systems in the nation—trial courts, courts of general jurisdiction, state appellate courts, courts of limited jurisdiction. An interagency agreement to conduct this survey is now pending; the LEAA expects to complete this agreement shortly so that it may begin the survey and finish it by the end of 1971.

The agency has already begun development of the first module of what will become a management information system for the LEAA itself. This is an important project for it will enable the LEAA to manage and monitor its rapidly growing grants-in-aid more effectively—not only improving the follow-through on individual grants but eliminating possible duplication or waste in the various grants.

The LEAA is establishing a criminal justice reference service. Among the information services now available there are wide gaps in coverage and in quality. LEAA's new service will be a service-oriented system filling the information needs of the entire law enforcement and criminal justice community—police, courts, corrections, prosecution, probation and parole. The National Institute has awarded a grant to George Washington University to define potential users and to assist in planning the new service. The University will complete this project in January.

NCJISS' statistical efforts figure importantly in the National Institute's pilot cities projects. The incidence of crime is being measured by NCJISS in these cities—a "before" and "after" project that will help determine the effectiveness of the demonstrations.

One of the most important LEAA efforts is encouraging the development of information systems which will serve the states' operational needs while providing—as a by-product—the required statistics. The LEAA surveyed the 50 states to assess the present status of existing systems, and will be guided by this data in further advising and assisting the states.

A number of prototype systems are being developed, for example, the public safety information sub-system in Long Beach, California, that is part of the Department of Housing and Urban Development's Municipal Information Systems Project.

The most significant of all such information system projects, of course, is Project SEARCH—System for the Electronic Analysis and Retrieval of Criminal Histories. SEARCH is designed to give criminal justice agencies needed information on offenders in a matter of seconds. It contains data on arrests, results of trials, prison sentences, etc. Using such a system, a state holding a suspect could query a central point, find out whether there is information on the person, and which state or states has it. The LEAA has thus far financed the project with some $1.5 million. SEARCH is being demonstrated by the project states—a demonstration that will continue through December—and the preliminary evaluation indicates that every goal of the demonstration has either been met or exceed. The 15 project states have made the decision to go operational. A system embracing all 50 states is essential.

In the SEARCH project, you see a cornerstone of information and statistics system for criminal justice. The development of this system is a landmark, auguring well for the future.

Mr. Chairman, I have attempted in this statement to discuss candidly many of the criticisms that have been raised about LEAA and to discuss a number of key parts of the program which often are overlooked. I would now be pleased to answer any questions.

ILUS DAVIS—A DISTINGUISHED MAYOR

Mr. EAGLETON. Mr. President, Mayor Ilus W. Davis, of Kansas City, Mo., has announced that he will not seek reelection for a third term in the municipal election next spring. "Ike" Davis has rendered distinguished service to Kansas City during many years of public life. For the past 8 years as mayor, he has provided exemplary leadership to his city. His comprehension of contemporary problems confronting all major cities and his commitment to the improvement of the quality of urban life for all citizens of Kansas City make him one of the outstanding mayors in the Nation today.

I join citizens of Kansas City in saluting Mayor Davis, and in looking forward to his continuing service to the civic weal.

I ask unanimous consent that editorials regarding Mayor Davis, published in the Kansas City Star of October 2, 1970 and the Kansas City Call of October 9, 1970 be printed in the RECORD.

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

[From the Kansas City Star]

THE 8 REMARKABLE YEARS OF ILUS W. DAVIS

By any standard of leadership and excellence, Ilus W. Davis must be ranked as one of the finest mayors who has served Kansas City in its long history. His decision to step aside after eight years is understandable. But there must also be a sense of regret, in light of the tremendous accomplishments that have taken place since April 10, 1963.

Those years have been dominated by problems on a scale without parallel in American municipal history. Inflation has wrecked local budgets. Minority groups have demanded their rightful place in the mainstream of American life. The migration to the suburbs, which began after World War II, approached tidal wave proportions. Congestion, blight, crime and pollution became matters of critical concern.

When Ike Davis took office, City hall was in shambles. The treasury was empty. In the four destructive years from 1959 to 1963, most of the professional staff had quit in disgust. The first job was to rebuild the administrative team; the second was to find new financing. Mayor Davis carried the fight for the earnings tax to the Missouri Legislature and then to the people, who overwhelmingly ratified the new levy at the polls.

For the mayor, minority rights were a deep personal concern. Six years ago Kansas City became the first major community in the United States to ratify a public accommodations ordinance at the polls. He never wavered in his stand on fair housing, even though some advisers said he was committing political suicide. The election on that controversial ordinance was never held. But not because Ike Davis ran for cover. Before the scheduled date, Congress made a vote unnecessary by proclaiming fair housing the law of the land.

ACCENT ON THE AIRPORT

As a traveler in this nation and abroad, Ike Davis recognizes that airports are the modern gateways to cities. The successful 150-million-dollar revenue bond election for K. C. I. reflected his desire to build in Kansas City one of the great aviation facilities of the world.

The physical appearance of the city has been been another major interest. One of his first acts as mayor was to revive the municipal art commission. Later he worked for new ordinances to give that body meaningful authority. Under the charter, the mayor names the park board which is responsible only to him. Although his role was behind the scenes, the visual transformation of the parks and boulevards came about largely because of his demand for improvement.

It is characteristic of Ike Davis that he would be the first to minimize his part in these accomplishments. During the two terms there have been outstanding people on the city council and the administrative staff has been rebuilt to its former professional level. Through it all, Mayor Davis has been the leader around whom others rallied.

Despite the limitations of a city charter that provides for deeply divided responsibilities, Davis has been a strong mayor. Granted, when the roll call is taken, the

mayor casts only one of 13 votes. However, since 1963 there has never been any doubt about who was the leader at City hall. In many crucial decisions, the major and council have stood together unanimously. This is a testament to the mayor's personal persuasiveness.

It has been said that on television Ike Davis takes on the image of a schoolmaster and sometimes he has. Those who have worked with him in person-to-person situations would disagree. He is a man of great personal warmth, with a real ability to cut to the core of issues.

CIVIC INTEREST FIRST

Again and again Mayor Davis has demonstrated he is prepared to tackle difficult problems head on, without regard for the political consequences. His view is that he was elected mayor of Kansas City to do what was best for the community, not to pass the buck. Municipal financing offers the best example. Ike Davis led the drive to increase the utility tax at a time when the city had no other place to turn for additional revenue. The move was unpopular with the public, but it did stave off financial disaster.

The Program for Progress election last December came at a time when tax revolt was sweeping the nation. It was defeated decisively. Although the mayor had no illusions about the chance of success, he believed it was his duty to put the issue to the voters. Another attempt will be made December 17 to win approval of a higher earnings tax. If City hall is denied the money to finance adequate municipal services, the blame will not check to the mayor.

Recently Ike Davis told an acquaintance that in his years on the city council and as mayor he had invested almost one out of every two days of his adult life in public service. His genuine affection for Kansas City led him to make that sacrifice. Although his tenure at City hall may be drawing to a close, this community cannot afford to lose the knowledge and experience of Mayor Davis.

Now the challenge will be to find another leader of equal stature. That can be done. But in view of the remarkable achievements of the last eight years, it will be a formidable assignment.

[From the Kansas City Call, Oct. 9, 1970]

THE CITY TO LOSE A GOOD MAYOR

We know that people can't and shouldn't stay in office indefinitely, but we are sorry that Mayor Ilus W. Davis has decided not to run again in the coming spring city election.

Ike Davis has been a good mayor—a progressive and an understanding one. He has shown concern for the every day human problems of all segments of the population as well as the physical and financial growth of his metropolis. We hate to see Ike bow out of city government but after 15 years of active service, first in the City Council for seven years and now eight years in the top, and often trying, position, we can see his point of view. But we see him go with regret.

The black community has a special respect and fondness for Mayor Davis because of the leadership which he gave in the campaign for the public accommodations ordinance in 1963 and in the succeeding movements for passage of fair housing and equal employment opportunity ordinances.

But it was the bitterly-fought contest over public accommodations in which Ike showed his true colors. It was a heated campaign with tough and rough opposition against the ordinance led by a group of white tavern owners who were joined by right wing organizations.

The issue was so controversial that a lesser man would have said that since he was mayor of all of the people, he should maintain a neutral position. But not Ike. He stood up strongly and forthrightly for the public accommodations law and spoke vigorously against the bigoted position taken by the tavern owners and the other opponents. Not only did he lend his voice and his active guidance to the campaign, but he took the leadership in raising money to finance the campaign to defeat the accommodations referendum.

We won by only a few votes, but we won and Ike Davis can share a great deal of the credit. Kansas City for the first major city in the country to defeat a public accommodations referendum.

No matter what he does in the future, we will never forget Ilus Davis for what he did in that 1963 campaign. The ordinances for fair housing and equal employment opportunity came years later and by then the climate of the city and the whole country had changed somewhat, so they did not arouse the bitter opposition that public accommodations did. Our vote on fair housing never came to a head because a federal law was passed which made a local election unnecessary.

Besides being an outstanding mayor in the field of racer elations, Ilus Davis was a standout in other areas as well. In the early days of his administration, he tackled the city's serious financial problem and was instrumental in persuading the voters to support a one-half per cent earnings tax.

During his two terms in office, Mayor Davis has led Kansas Citians to the polls 17 times and he lost only one election. That is a good record for any office holder. Under the leadership of Davis, Kansas Citians voted over $200,000,000 in bonds for physical improvements to the city including the development of an airport which Ike hopes will become second to none in the country.

As Davis said in announcing that he would not run for reelection, there is still much to be done in this city, both from human and physical points of view. But Ike Davis has more than done his part and it is understandable that he wants now to turn the reins over to someone else. We thank him sincerely for what he has done for his city and wish him Godspeed in whatever he undertakes in the future.

Ike did not say that he was through with politics. He is still a relatively young man and may in the future decide to put his hat in the ring for some state or national office. If he does, we want black Kansas Citians to remember that he is our friend.

In the meantime, with Davis out of the running, the field is thrown wide open and there will be dozens of men vying for the top spot in our city government. Although many names have been mentioned, no one strong candidate is immediately in sight. It will be interesting to see how the city campaign shapes up once the November 3 election is out of the way.

STATUS OF MICRONESIA

Mr. FULBRIGHT. Mr. President, on October 6, 1970, there were referred to the Committee on Foreign Relations two joint resolutions adopted by the Congress of Micronesia in August. I ask unanimous consent that they be printed at this point in the RECORD.

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

SENATE JOINT RESOLUTION No. 99

A Senate joint resolution declaring that the United States and the United Nations should take no action on any matters relating to the future political status of Micronesia without first obtaining the consent and approval of the Congress of Micronesia

Whereas, under the terms of the Trusteeship Agreement between the United States and the Security Council of the United Nations, the United States, as Administering Authority, is obligated to "promote the development of the inhabitants of the trust territory toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the people concerned"; and

Whereas, it is generally recognized by both the United States and the United Nations that an act of self-determination, in the form of a plebiscite, must be exercised by the people of Micronesia before the Trusteeship Agreement can be terminated; and

Whereas, the Congress of Micronesia, as the elected legislative body of the people of Micronesia has recognized it obligation to safeguard the right of self-determination of the people of Micronesia, and has therefore conducted a study of the status issue for the past three years; and

Whereas, the primary purpose of the Congressional work on the status issue is to ensure that the people of Micronesia, when they finally exercise their right of self-determination, have the best possible alternative statuses from which to choose, and that they fully understand the implications of each form of status when they make their choice; and

Whereas, the Congress of Micronesia, in discussing the question of future political status, has followed recognized channels when dealing with the United States; and

Whereas, the Congress of Micronesia maintains that if the right of self-determination of the people of Micronesia is to continue to be respected and safeguarded, no action should be taken by either the United States or the United Nations on matters relating to the status issue, unless the consent and approval of the Congress of Micronesia is first obtained; and

Whereas, the Congress of Micronesia further maintains that any action by the United States or the United Nations on the matters relating to the future political status of Micronesia without the prior consent and approval of the Congress of Micronesia, would seriously undermine the efforts of the Congress of Micronesia to safeguard the rights of the people of Micronesia and would be both unjust and immoral; now, therefore,

Be it resolved by the Senate of the Third Congress of Micronesia, Third Regular Session, 1970, the House of Representatives concurring, that this Congress hereby declares that the United States and the United Nations should take no action on any matters relating to the future political status of Micronesia without first obtaining the consent and approval of the Congress of Micronesia; and

Be it further resolved that certified copies of this Joint Resolution be transmitted to the Secretary General, Security Council and the Trusteeship Council of the United Nations; the President of the United States, the Secretary of the State, the Secretary of Defense and the Secretary of the Interior of the United States; the President of the Senate and the Speaker of the House of Representatives, and the Chairmen of the Senate and House Committees on Interior and Insular Affairs of the United States Congress; and the High Commissioner.

A Senate joint resolution informing the United Nations of the present status of discussions between representatives of the Congress of Micronesia and representatives of the United States Government on the future political status of Micronesia, and welcoming any advice it might render to the Congress of Micronesia if requested by representatives of the Congress of Micronesia

Whereas, it is generally recognized that small territories have special problems to take into account when the time comes for each one to decide on its future political status, and it has been contended that some partici-

pation by the United States, before the final stages of self-determination are reached, might be beneficial to the people of the small territory; and

Whereas, because of small population, physical and cultural diversity, economic underdevelopment, dependence on financial assistance from the Administering Authority, and the overriding security interests of the Administering Authority, the people of the Trust Territory of the Pacific Islands have immense problems to overcome before determining their future destiny; and

Whereas, as elected representatives of the people, the Congress of Micronesia has strived for the past three years to take steps to safeguard the right of self-determination of the people of the Trust Territory of the Pacific Islands; and

Whereas, negotiation and discussions of the future political status of Micronesia have thus far been between representatives of the Congress of Micronesia and representatives of the United States Government; and

Whereas, the Congress of Micronesia now believes that discussions with the United States Government have reached the stage where some participation by representatves of the appropriate organ or organs of the United Nations might enhance the position of the Congress of Micronesia and the people of Micronesia; and

Whereas, the Congress of Micronesia therefore believes it advisable that the United Nations be officially informed as to the status of discussions on the future political status of Micronesia, and advised that any assistance and advice it might render to the representatives of the Congress of Micronesia on this issue will be greatly appreciated; now, therefore,

Be it resolved by the Senate of the Third Congress of Micronesia, Third Regular Session, 1970, the House of Representatives concurring, that the the United Nations, through the Secretary General, be and is hereby advised that the United States Government has thus far been either unwilling or unable to endorse a future relationship between the United States and Micronesia which recognizes certain principles and legal rights which the Congress of Micronesia maintains must serve as a basis to any future association between the United States and Micronesia when the Trusteeship ends; and

Be it further resolved that the United Nations is hereby informed that the United States Government is equally unwilling or unable to sponsor termination of the Trusteeship Agreement on the basis of Independence for Micronesia at this time, taking the position that the United States does not believe that Independence will be a realistically appropriate status for Micronesia for some time to come; and

Be it further resolved that the Congress of Micronesia welcomes any advice that representatives of the appropriate organ or organs of the United Nations might render on the status issue if requested by representatives of the Congress of Micronesia; and

Be it further resolved that certified copies of this Joint Resolution be transmitted to the Secretary General, Security Council and the Trusteeship Council of the United Nations; the President of the United States, the Secretary of State, the Secretary of Defense and the Secretary of the Interior of the United States; the President of the Senate and the Speaker of the House of Representatives, and the Chairmen of the Senate and House Committees on Interior and Insular Affairs of the United States Congress; and the High Commissioner.

Mr. FULBRIGHT. Mr. President, the first of these declares that the United States and the United Nations should take no action on any matters relating to the future political status of Micronesia without first obtaining the consent and approval of the Congress of Micronesia. The second informs the United Nations of the present status of discussions between representatives of the Congress of Micronesia and representatives of the Government of the United States on the future political status of Micronesia and welcomes any advice the United Nations might render to the Congress of Micronesia if requested by representatives of the Congress of Micronesia.

For some time, I have been following the negotiations on the future political status of Micronesia. My principal concern has been that the interests of the peoples of Micronesia be given full consideration. In that spirit, I wrote the Secretary of State, on August 24. I ask unanimous consent that this correspondence be printed at this point in the RECORD.

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

AUGUST 24, 1970.

Hon. WILLIAM P. ROGERS,
Secretary of State,
Washington, D.C.

DEAR MR. SECRETARY: At my request, Assistant Secretary of the Interior, Harrison Loesch, has been keeping the Committee on Foreign Relations informed on the U.S. discussions with the Future Political Status Delegation of the Congress of Micronesia. I had asked for this in view of the fact that the Trusteeship Agreement with the United Nations was approved by this Committee.

I am aware that the Department of State officials have been participating in these negotiations. My concern in writing is to make sure that the United States position in these negotiations is such that we will not be placed in a potentially embarrassing situation before the United Nations Trusteeship Council, which must ultimately approve any termination of the Trusteeship Agreement.

I would appreciate your views on this.

Sincerely yours,

J. W. FULBRIGHT,
Chairman.

SEPTEMBER 14, 1970.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations,
U.S. Senate.

DEAR MR. CHAIRMAN: The Secretary has asked me to reply to your letter of August 24 concerning our discussions with the Future Political Status Delegation of the Congress of Micronesia.

We fully share your concern that the United States be in a sound and defensible position when the time comes to terminate the trusteeship Agreement. We are mindful that, although the agreement can only be terminated with our concurrence, we are obligated to move the Trust Territory toward "self-government or independence," as appropriate to circumstances in the Territory and acceptable to the Micronesians. Our discussions to date with the delegation from the Congress of Micronesia have been directed toward a future political status which would accomplish this end and protect U.S. interests in the area.

You are probably aware that the Congress of Micronesia has responded in distinctly negative fashion to our recent proposals. We are now engaged in a restudy of our position to see what can be done to move toward a settlement acceptable to both sides. You may be assured that we are keeping in mind the importance of having Micronesian support for a future political status on which we would base the termination of the Trusteeship Agreement. We have previously informed the Trusteeship Council that the final political status of Micronesia would have to be approved by the electorate and we have assured the Council that we would expect United Nations observers to be present at that time.

If I may be of any further assistance to you on this matter, please do not hesitate to call upon me.

Sincerely yours,

DAVID M. ABSHIRE,
Assistant Secretary for
Congressional Relations.

Mr. FULBRIGHT. Mr. President, these two petitions received from the Congress of Micronesia serve to reinforce my concern, and I hope that the executive branch of our Government, to which they are also addressed, will give them careful attention during further negotiations on Micronesia's political status.

ORGANIZED CRIME CONTROL ACT

Mr. HANSEN. Mr. President, it is indeed gratifying to note that the House has finally passed the Organized Crime Control Act, S. 30, that this body sent over to them some 9 months ago. The quick action of the Senate which sent this legislation to the President yesterday, is an indication of the great need for this bill.

Early in this Congress the President asked for legislation to combat organized crime. High on his list of priorities, he placed: First, legislation to give the Attorney General broad latitude to assist State government in cracking down on illegal gambling—"the wellspring of organized crime's financial reservoir"; second, criminal legislation based on antitrust law theories to control the infiltration of crime into legitimate businesses in competition with our American system of free enterprise; and third, new or improved procedural laws relating to the prosecution of organized crime, including a new broad witness immunity law enforced by the availability of prison sentences for contempt.

In emphasizing the need for broad improvements in criminal procedure in order to bring about more successful prosecutions against members of the crime syndicates, President Nixon echoed the recommendations of the National Crime Commission, which said:

From a legal standpoint, organized crime continues to grow because of defects in the evidence gathering process. Under present procedures, too few witnesses have been produced to prove the link between criminal group members and the illicit activities that they sponsor.

The Organized Crime Control Act which was passed by the Senate in January, and which the House has just acted upon, incorporates these three recommendations of the administration.

The grand jury is without peer as an instrument of discovery against organized crime. Title I of the act provides for the impaneling of special grand juries, in addition to regular grand juries, in districts containing more than 4 million inhabitants or where the Attorney General certifies that one is necessary because of criminal activity in the district. Such special grand juries would be empowered to select their own foreman and deputy foreman; extend their term

up to 36 months; and most significantly, have statutorily authorized their ancient power to issue public reports regarding crime in the community. These reforms would make this venerable institution less an arm of the court and more an independent body with an unfettered duty to seek out and destroy organized crime.

Other procedural reforms deal, respectively, with general immunity; recalcitrant witnesses; false declarations; protected housing facilities for housing Government witnesses; depositions; and special offender sentencing. These provisions are intended to insure that the Government will have the necessary quantity and quality of evidence sufficient for valid indictments and convictions of organized crime figures, and that they will receive sentences commensurate with the gravity of their crimes.

In addition to these procedural reforms, the act contains two substantive provisions of major significance. Title VII deals with the large-scale illegal gambling operations which provide the chief source of revenue for organized crime. Relying upon the fact that the activities are dependent upon the facilities of interstate commerce, the title makes it unlawful to engage in a scheme to obstruct the enforcement of State law to facilitate an "illegal gambling business," which is defined as, first, violating State law, second, involving five or more persons, and third, operating in excess of 30 days or having a gross revenue of $2,000 in any single day. It also makes it unlawful to engage in the operation of such an "illegal gambling business" itself. The title contains a finding by the Congress that illegal gambling affects and is dependent upon the facilities of interstate commerce, thus eliminating the need for specific proof of an interstate element in each case. As President Nixon stated in his April 23, 1969, message on organized crime:

> The purpose of this legislation is to bring under Federal jurisdiction all large-scale illegal gambling operations which involve or affect interstate commerce. The effect of the law will be to give the Attorney General broad latitude to assist local and state government in cracking down on illegal gambling, the wellspring of organized crime's reservoir.

The second substantive provision of this act is contained in title IX and deals with racketeer influenced and corrupt organizations. This title contains a rather novel, and in my opinion, a most promising proposal for crippling organized crime's recent emergence into the field of legitimate business and unions. Some measure of the actual and potential impact of this facet of organized crime's activities on our economic system may be gaged from the report of the President's Commission on Law Enforcement and the Administration of Justice, which found that organized crime has to an alarming degree acquired both open and concealed ownership in a broad variety of legitimate enterprises.

The New York Times of October 14, 1969, reported that a recent survey of the business interests of 113 of the major underworld figures in the Nation disclosed that 98 of them were found to be engaged in legitimate businesses, including extensive holdings in casinos and nightclubs, land investment and real estate, hotels and motels, vending machine companies, restaurants, trucking concerns, wholesale food distributorships, sports and entertainment, and financial institutions.

When organized crime infiltrates a legitimate business, its whole method of operation counters our theories of free competition. Whether a business is purchased from funds derived from its many unlawful activities, or whether it is acquired by extortion and violence, its aim is monopoly, and it employs physical brutality, fear and corruption to intimidate competitors and customers in its effort to achieve increased sales and profits. The economic power concentrated in this vast criminal conglomerate constitutes a dire threat to the proper functioning of our economic system.

Title IX is designed to remove the influence of organized crime from legitimate business. Stated simply, this legislation makes it unlawful for any person to acquire an interest in or establish an enterprise engaged in interstate commerce by the use of income derived from "a pattern of racketeering activity", which is defined in terms of a number of existing criminal offenses characteristic of organized crime activity. It would also prohibit any person from acquiring or maintaining any interest or control of a business enterprise by racketeering activity, and prohibit any person employed by or associated with a business enterprise from conducting its affairs by racketeering methods.

These unlawful acts would subject violators to strict criminal penalties of fines of up to $25,000 and prison terms of up to 20 years. However, the principal value of this legislation may well be found to exist in its civil provisions which employ the time-tested antitrust remedies of injunction, divestiture, dissolution, and reorganization which have been highly effective in removing and preventing harmful behavior in the field of trade and commerce. There is abundant precedent for applications of civil remedies to the conduct sought to be prohibited by this legislation. Similar civil remedies in antitrust cases have been sustained by the Supreme Court.

I believe that this title offers an extraordinary potential for striking a mortal blow against the property interest of organized crime. As President Nixon stated in his April 23, 1969, message to Congress on the subject of organized crime:

> The injunction with its power of contempt and seizure, monetary fines and treble damage actions, and the powers of a forfeiture proceeding, suggest a new panoply of weapons to attack the property of organized crime—rather than the unimportant persons (the fronts) who technically head up syndicate controlled businesses. The arrest, conviction and imprisonment of a Mafia lieutenant can curtail operations, but does not put the syndicate out of business. As long as the property of organized crime remains, new leaders will step forward to take the place of those we jail. However, if we can levy fines on their real estate corporations, if we can seek treble damages against their trucking firms and banks, if we can seize the liquor in their warehouses, I think we can strike a critical blow at the organized crime conspiracy.

Mr. President, the bill as we sent it to the House has undergone some changes, and a substantive title on bombing, containing provisions similar to those appearing in S. 3650, has been added. These changes and additions in no way weaken this legislation. I am delighted that the bill has now been sent to the President. I am confident that he will implement it immediately.

THE UNITED NEGRO COLLEGE FUND

Mr. PERCY. Mr. President, on October 5, 1970, the 36 member presidents of the colleges and universities which comprise the United Negro College Fund met in Chicago for the first time in the fund's 27-year history. This gathering was timed to coincide with the fund's Chicago corporate campaign and several affairs were held to officially introduce these black educators to the various Chicago communities.

UNCF was funded by 27 schools to make a joint annual appeal for funds. The fund has now expanded to 36 fully accredited 4-year colleges and universities located in 12 States. Last year, the fund raised $6.8 million and this year the goal is $10 million.

Mr. President, UNCF is truly a worthy organization. The funds raised through its public campaigns have enabled the member institutions to train many thousands of young people from less than affluent backgrounds. Over 20,000 UNCF alumni contribute to daily life in Illinois alone.

This year, the member colleges are caught in the same cost spiral that affects other institutions of higher learning. In recognition of this fact, President Nixon recently announced an additional allocation of $30 million to predominantly black institutions. Hopefully, this action, coupled with increased support from the private sector, will enable the UNCF member institutions to meet their financial need.

Mr. President, at a UNCF luncheon meeting in Chicago, the 200 assembled business leaders heard Mr. Vernon E. Jordan, Jr., UNCF's new executive director, outline the history and continued importance of the black colleges and universities which are members of the organization. While Mr. Jordan's remarks were made in Chicago, I believe they have national significance. Therefore, I ask unanimous consent that Mr. Jordan's remarks be printed in the RECORD.

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

REMARKS BY VERNON E. JORDAN, JR., EXECUTIVE DIRECTOR, UNITED NEGRO COLLEGE FUND

The private Negro colleges have been one of the most—if not *the* most—important single factor in the progress of black Americans since the Civil War.

They have provided education where—at least at the beginning—there was none. In fact, in the early days it was *illegal* in some Southern States to educate black people.

And while the laws have changed, it is still true that some States of the old Confederacy have made it a practice systematically to deny educational opportunity to their black citizens.

There is a certain irony in the fact that this is a recognition of the power of education—and the fact that black people could and would—given the opportunity—seek the power that comes with the knowledge that education brings.

As they came into being—one by one—the Negro colleges not only demonstrated beyond question that the black man *could* pursue higher education successfully, they proved to be (with minor exceptions) the only source of teachers, ministers, physicians and other leaders with any higher education at all.

So, from the very beginning, it has been the private Negro colleges that have provided the leadership first for the black community and later for the community at large.

And they still bear much of that responsibility.

Early graduates of the Negro colleges, all of them private at the time, provided the teachers for such black elementary and secondary schools as existed at the time. They also provided the leadership—the administrators and faculties for the state-supported Negro colleges which began to come into existence about 1890.

Not one of the Negro state colleges offered courses in medicine. Black physicians were trained (with minor exceptions) at Shaw, Meharry and Howard. Even today, eight out of ten black physicians in the country are trained at Howard University and Meharry Medical School.

There was no such thing as a state-supported liberal arts college for Negroes until North Carolina purchased the National Training School in 1922 and converted it into what is now North Carolina Central University. Morgan State College in Baltimore, previously a private institution, was purchased by the State of Maryland in the 1930's.

In other words, the *only* liberal arts education provided for the black man in the South until the 1920's was provided by the private Negro college.

This accounts for the fact that these colleges and universities trained as undergraduates the vast majority of black doctors, dentists, lawyers, ministers, college teachers, college presidents and other leaders, not only in the past but in the present. In short, these colleges have produced the black intelligentsia of America.

Furthermore, it was not until after the Gaines Decision in 1938 that any state-supported Negro college offered graduate or professional work.

Until then the only schools of library science open to the black student in the South were at Hampton Institute and Atlanta University . . . the only collegiate schools of nursing were in private institutions—Tuskegee Institute, Dillard University and Hampton. Atlanta University and Howard had (and still have) the only black schools of social work.

In a draft of a preliminary report concerning black colleges prepared by the Carnegie Commission on Higher Education, the distinguished Commission says the following about the importance of the predominantly black colleges:

"The colleges founded for Negroes are both a source of pride to blacks who have attended them and a source of hope to black families who want the benefits of higher learning for their children. They have exercised leadership in developing educational opportunities for young blacks at all levels of instruction, and, especially in the South, they are still regarded as key institutions for enhancing the general quality of the lives of black people."

It is frightening to contemplate what the status of black Americans would be if there had been no private Negro colleges; it is sobering to contemplate how much poorer the Nation would be. From the outset these institutions have kept the black man's dream of citizenship, equality and opportunity very much alive. From their founding, with their enormous task, they have been short on resources but long in accomplishments.

It is in this context that the United Negro College Fund came into being in 1944. At that time 27 private, accredited, black colleges banded together in an attempt to make a national appeal for support—to reach an audience that singularly they could not reach.

The beginnings of UNCF by today's standards were modest—our first campaign in 1944 raised $765,563. Since that first campaign, UNCF has distributed more than $100 million to its member colleges. Last year we raised $6.8 million, the highest amount in the Fund's history. This year our goal is $10 million dollars.

How, then, do we justify such a goal? What are the needs and problems of blacks in higher education today? Consider these random facts on the matter—

Of the 2.4 million black people between the ages of 18 and 24 years old eligible for college, only 13.4 percent are enrolled, compared to 17.5 million whites eligible, 27.5 percent of whom are enrolled.

There are more than 300,000 black students in American colleges and universities today. That represents 6 percent of the total national college enrollment. One-half the total enrollment of black students is educated at predominantly black colleges, and the UNCF colleges enroll 24.9 percent of all black students in black schools, or 12.3 percent of the total national enrollment.

There are 300,000 more foreign students enrolled in American colleges and universities than black students.

62.3 percent of the freshmen in Negro colleges in 1968 had parents whose income was less than $6,000.

About 60 percent of all freshmen in black colleges have fathers who did not complete high school and 27 percent have fathers with grammar school education or less.

The occupational status of fathers of freshmen at black colleges reflects their educational deprivation. The fathers of freshmen at black colleges are overwhelmingly unskilled or semi-skilled—50.6 percent of the men and 43.2 percent of the women entering black colleges have fathers in these occupational categories.

The average tuition at UNCF colleges is $962, but even this low cost works a hardship on poor black families.

The average UNCF faculty salary is half the national average.

In 1968, of 21,700 degrees awarded black youth, 17,242 were from black institutions.

75 percent of all black Ph. D's had their undergraduate training in Negro colleges and universities.

At the graduate level, in 1969, the Nation's blacks accounted for less than one percent of doctoral candidates, only 2 percent of the law students, and 2.5 percent of the medical students.

Given these hard facts about the plight of black higher education in America, what has been the response of the sources of funds in this Nation?

Last year the corporate sector gave about $390 million to higher education in the United States—at UNCF we raised less than $3½ million from the corporate community.

A recent report of the Federal Interagency Committee on Education shows that the federal government in 1969 spent $4 billion for higher education, but only $119 million, or 3.5 percent, went to predominantly black colleges and universities. We note, with appreciation, that as late as last week additional federal funds for black schools were made available. Though inadequate, recent appropriations by the Administration represent a step in the right direction.

UNCF colleges are caught, along with everyone else, in the cost spiral. In just four academic years, 1964 to 1968, operating expenses climbed from a total of $40 million for all members colleges to $90 million. This year we estimate that the *combined operating budgets* only will total $110 million.

Clearly, these facts evidence both a quantitative and qualitative inequity in black higher education, not only in terms of support but in terms of the ability of private black colleges to continue to provide quality education to young black Americans. On this point the recent report of the Scranton Commission on Campus Unrest observes:

Adequate financial resources do not guarantee educational quality, but adequate educational quality cannot be attained and maintained without sufficient financial resources.

On the question of whether support to the United Negro College Fund is perpetuating "segregated" education, I refer you again to the Scranton Report:

Although most of the black colleges and universities were created to serve the educational needs of black Americans, they have never been segregating institutions. From the beginning, all have had white faculty members and almost all still do. Many had white presidents. Traditionally, they have enrolled proportionately more non-black students than white colleges and universities enroll non-white. Among institutions of higher learning, they are the most *open* and non-discriminating in the appointment of faculty and in the admission of students.

In our judgment, the question of the future usefulness and ability of predominantly black colleges and universities transcends the integration-segregation issue and relates primarily to the question of *quality education.*

In pursuit of the goal of quality education and in pursuit of $10 million to support that goal, the United Negro College Fund is in Chicago today.

Indeed Chicago has a vested interest in the United Negro College Fund. Some 20,000 UNCF alumni live and work here, and they are making significant contributions to the health, welfare and security of the Chicago community. UNCF graduates here, teach in the schools, treat the sick, seek justice in the courts, publish newspapers and magazines, serve in the government, administer social agencies, work in business and industry, and lead the community in the fight for justice and equality. These are educated black men and women proving daily that education is the equalizer of the conditions of men—the balance wheel in the social machinery.

So we petition you again to invest in UNCF—in 40,000 students—in young black people—in the Southern region and thus in the Nation itself. We ask that investment not just for the colleges, the teachers, the students—but for the constituency that they, with their education skills must serve, must help, must lead.

The constituency of which I speak is black people in America:

Those black people in the ghettos and rural places who have no hope, nor hope of hope.

Those black people who cry out today, not for freedom and equality but for a crust of bread and a morsel of meat.

Those little black children who cry out not for Black Power but for medicine for their festering sores and protection from the rats and roaches.

A constituency that includes the junkie and the pusher in the ghetto—

The unemployed father.

The underemployed daughter.

The welfare dependent mother.

The son who has no money for college.

Those who cry out to middle-class educated black America—asking, pleading—Is there no Balm in Gilead?

These are the constituencies that black college graduates must serve. These are the constituencies with whom we have an obligation to make common cause. These are our brothers and sisters.

To do that, we are in Chicago today, not begging money but rather providing this

community with another opportunity to invest in a rich human resource that will yield a better land and a greater Nation. The price is right—the investment sound—the dividend sure! Can we count on you—Chicago—in this critical time in black higher education in America?

MEDICAL CARE PROVIDED BY THE GOVERNMENT

Mr. CURTIS. Mr. Frank K. Woolley, executive director of the Association of American Physicians and Surgeons, Inc., has made a thorough study of those portions of H.R. 17550 which relate to medical care provided by the Government. He has prepared a statement on this which merits the consideration of all of the members of the Committee on Finance and the entire Senate.

I ask unanimous consent that Mr. Woolley's statement be printed in the RECORD.

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

STATEMENT BY MR. WOOLLEY

CLOSED PANEL PER CAPITA GROUP PRACTICE PLANS

The Association of American Physicians and Surpeons is dedicated to saving individual freedom and the highest quality medical care in the world by fighting for private practice. It has clearly pointed out to me why the federal subsidization of Closed Panel Per Capita Group Practice Plans would be unfair and would reduce the quality of medicine in America. The Statement follows:

PER CAPITA PREPAYMENT GROUP PRACTICE PLANS

(Kaiser-Permanente Type)

The principle of giving special privilege and special subsidies to Kaiser-Permanente type per capita prepayment group practice plans as contained in HR–17550 as it passed the U.S. House of Representatives, is wrong.

This would be another "foot in the door" operation to expand government interference with professional medical judgment.

In this legislation this special treatment is euphemistically called Health Maintenance Organizations (HMO). See Section 239 of the Bill.

Kaiser-Permanente type schemes would be paid a year in advance, the excuse being that it would provide an incentive to prevent illness and reduce the total cost of care. HEW says: The provision of a "full range of services from a *single source* in a coordinated, efficient manner" will reduce costs. No valid evidence supports this.

It is intended to encourage such prepaid care to citizens under 65 years of age. The Bill says to be eligible an organization (such as K–P) must have "enrolled members at least half of whom consist of individuals under age 65." (Sec. 239.)

Once again, the private free choice medical care system which has naturally developed in the United States will be subjected to morally and economically unsound pressures by government intervention. Government payment is the lever.

Advocates of the scheme have used government and labor union leader pressure to promote it for years. Even then it has not caught on. Less than 5% of the total population have voluntarily, without government special subsidy, chosen to obtain service in this manner.

The Report of the Committee on Ways and Means of the House of Representatives, gives a clue to what would happen. It reads:

"Under this new approach to payment of Health Maintenance Organizations, *there is expected to be a small increase in the first year or two in the amount of payment* by the program. (Emphasis added) p. 53.

(All government medical programs have cost outrageously more than promised.)

It is a closed panel operation. "The individuals with respect to whom such payment would be made would receive Medicare-covered services only through the Health Maintenance Organization, except in emergencies. If an enrolled individual received non-emergency care through some other means than the Health Maintenance Organization, he would have to meet the entire expense of such care." ibid p. 53.

SUBSIDY CAMOUFLAGED

"This payment is to be no more than 95% of the estimated amount (with appropriate adjustments to assure actuarial equivalents) that would be payable if such covered Medicare services were furnished outside of the framework of a Health Maintenance Organization." ibid p. 53.

NOT NEW

The scheme is not new—only the direct subsidy through Medicare and Medicaid is new.

1. A committee on the costs of medical care, organized in 1927 made two key recommendations in 1932. One was:

"Prepaid per capita practice subsidized by the national government." Current History, August, 1963, p. 77.

It was strongly opposed by doctors fearing it would: "—transform the doctor into a harassed, incompetent, salaried bureaucrat—"

2. Wilbur J. Cohen, as Under Secretary of HEW, in 1966 endorsed a book: "Group Practice and Prepayment of Medical Care" financed by "The Commonwealth Fund" through "The Group Health Foundation." From it we learn:

(A) "A final basic in the plan was the *elimination of the fee system.*" ". . . accomplished through a salary arrangement . . ." (GP&P of MC) p 20

(B) The Farmers Union in 1934 sponsored the Farmers Union Cooperative Hospital Association at Elk City, Oklahoma, ibid p. 22. It failed. (The book doesn't admit this.)

(C) "The U.A.W. . . . under the leadership of Walter Reuther . . . (established) the Community Health Association of Detroit." (A per capita prepaid group plan.) The new organization's executive director was Doctor Fred Mott, developer of medical programs for the Farm Security Administration, the Province of Saskatchewan (bankrupt)* and the United Mine Workers (sold to government after being in financial trouble)* ibid p. 51–52.

(D) In 1966 the group plans were interested in the Medicare Law feeling it "will be of great assistance" ibid p. 80–81.

(E) Terms considered necessary included: "The management of the entire operation must be tightly integrated and under *centralized policy guidance.*" Ibid. p. 86.

What could be more centralized than labors' plans being subsidized and forced into operation by HEW? Yet, Under Secretary of HEW, Veneman, in trying to sell this tight control scheme included in the Bill says:

"Public intervention would be reduced rather than increased." (Patient Care 8/15/70 p. 15)

Also, he said recently governmental intervention was guaranteed explaining:

"As long as *we* pay 37%, *we* ought to have some leverage in the system." (MNR 8/31/70 p. 1)

(F) Regular group practice excluded.

Even though regular group practice appears to be eligible—one better carefully look at who is behind it—who will administer it and the fine print because:

"There are many instances of physicians working in offices under one roof calling themselves groups, but since each manages the affairs of his own office and practices independently and in competition with his associates, their use of the term does not fit our definition." (GP&P of MC p. 89)

(G) Limitations for the physician are cited in the book partly quoted as follows:

(a) *"The sacrifices of certain freedoms . . .* their work schedules are made out to conform to an established pattern, office hours cannot be changed without the consent of someone else. They are forced to take care of someone else's patient and allow someone else to take care of theirs at certain times. They may be called upon to explain departures from the normal procedures or the need for special equipment. They must integrate their activity with those of the rest of the group." ". . . personality is being submerged . . ."

(b) ". . . the new physician finds himself running into the established order at every turn."

(c) "Sharing control of the patient."

(d) "Learning to live with others of diverse interests."

(e) "The sacrifice of status in the professional community is a factor not to be dismissed lightly."

(f) "Limiting consultants to those of the group."

(g) "Physicians income in the groups is sometimes the problem." ibid p. 93–96

Also, on page 109 we find a quote:

"Each physician is generally to be considered of equal value to the group."

(H) *Backers:*

"By now it is no shock to learn 'the organizational plan of H.I.P. (a K–P type of plan in New York) were underwritten by . . . the Albert and Mary Lasker Foundation and the Rockefeller Foundation'." ibid p. 33

Lasker and Rockefeller are behind the "Compulsory nationalized medical scheme" of U.A.W. now waiting in the wings as the Kennedy Bill.

HEW PROPAGANDIZING

HEW has been working for years to force the use of per capita, salaried, prepaid, group practice and in recent years has become quite obvious in its activities.

For example in October, 1967 it organized a National Conference on Group Practice in Chicago and reported on it in an official publication, Public Service Publication No. 1750 openly boasting how it was promoting "group practice."

(A) "All of us who are participating . . . have a common goal: the promotion of group practice as the optimum method of organizing our health manpower and resources to provide high-quality medical care for our nation's population." p. iii

(B) "In 'A Blueprint for Action,' Doctor Cashman's magnificent summary at the closing, we have concrete . . . proposals that can keep us all busy in the days ahead, not just the federal government. . . ."

(C) "Conference objectives (HOW to promote, not whether)." p. 2

(D) "Participation, by invitation of the Secretary, was limited to persons who were in the best position to promote group practice. . . ." p. 2

(E) William H. Stewart, M.D., Surgeon General PHS, at the time in a keynote address said:

"The record of accomplishment in fostering the spread of group practice, and especially prepaid group practice, *is not what many of us have hoped* it would be—a record of steady and accelerating growth." "The concept is not a new one;" p. 9

(F) *"The number of people covered* by prepaid group practice plans increased from 3.3 million in 1955 to 4.2 million in 1965—surely not a precipitous rise in a decade. . . ." He then went on to say:

"First, there are *legal restraints* which bar progress in a number of states, 17 states still prohibit the formation of consumer sponsored groups. . . ." *"Second,* there is urgent need for sources of organizing initiative. These must be strong enough to overcome overt opposition—" *"Fourth,* there is need for

*Notes added by AAPS.

more effective support and stimulation at the national level. *We in the federal government are exploring better ways of using our purchasing power to enhance this movement—"*

The entire report disclosed a clear cut conspiracy to control the nation's patients and doctors. Everyone interested in stopping tyranny should get a copy of this 70 page booklet and understand the nature of the promotion behind this scheme.

Finally, these statements are made about *State* Laws:

"Make advice and technical assistance available in the form of expert staff to support state and local movements in removing obstacles in state laws;" continuing "Explore the desirability of legislation to provide for optional federal chartering of health insurance organizations as a possible means of overcoming State or other existing restrictions" p. 32.

KAISER FOUNDATION HEALTH PLAN AND HOSPITALS

The director of the Foundation, Doctor Sidney R. Garfield, writing in the April issue of "Scientific American", admits many things which are quite pertinent to the issue at hand. For example:

(1) "Dramatic advances in medical knowledge and new techniques, combine with soaring demands created by growing public awareness, by hospital and medical insurance and by Medicare and Medicaid, are swamping the system by which medical care is delivered."

(2) "National health insurance, an attractive idea to many Americans, can only make things worse."

(3) "Medicare and Medicaid—equivalence of national health insurance for segments of our population—have largely failed. . . ."

(4) "It is folly to believe that compounding this demand by extending health insurance to the entire population will improve matters." "On the contrary, it is certain that further over-taxing of our inadequate medical resources will result in serious deterioration in the quality and availability of services for the sick."

(5) "All of this is not to say that U.S. medicine should change over to the Kaiser-Permanente pattern. On the contrary, freedom of choice is important; we believe the choice of alternative systems, including solo practice, is preferable for both the public and physicians. Any change to prepaid group practice should be evolutionary, not revolutionary."

(6) "We have come to realize that ironically the elimination of the fee has created a new set of problems." "Only after years of costly experience did we discover that the elimination of the fee is practically as much of a barrier to early sick care as the fee itself. The reason is that when we remove the fee we remove the regulator of flow into the system. . . ."

(7) "The impact of this demand overloads the system and, since the well and worried-well people are a considerable portion of our entry mix, the usurping of available doctors' time by healthy people actually interferes with the care of the sick.

"The same thing has happened at the broad national level the traditional medical-care delivery system, which has evolved rather loosely over the years subject to the checks and balances of the open market, is being overwhelmed because of the elimination of personally paid fees through the spread of health insurance. Medicare and Medicaid. This floods the system with a changed entry mix characterized by an increasing proportion of relatively well people." p. 15–19 "Scientific American," April, 1970.

CONTROL

It is an established principle that whatever government subsidizes it controls. Government interference is not the basis of this country's superior medical care. Closed-panel per-capita prepayment group practice plans should not be subsidized by government in America.

ALLEGED SAVINGS IN SPACE PROGRAM

Mr. ANDERSON. Mr. President, after reading the recent floor statement by the senior Senator from Wisconsin (Mr. PROXMIRE), which appeals in the RECORD of September 30, 1970, on page 34370, I find illogical the financial wizardry through which the Senator arrives at savings which, he asserts, have been made or can be made in the space program. Furthermore, I am quite concerned that the analysis and conclusions the Senator presented in effect accuse the National Aeronautics and Space Administration of inconsistencies and contradictions in information furnished to the Senator in response to his two inquiries, one of a year ago and another recently.

I carefully reviewed the NASA letter—which the Senator placed in the RECORD—and I find that the information furnished is an accurate presentation of the agency's Apollo program and the funding requirements therefor. This is as presented to and approved by the Committee on Aeronautical and Space Sciences and subsequently by Congress. Moreover, I find that NASA was fully responsive to the questions of the Senator from Wisconsin with respect to the impact on savings of reductions in the Apollo launch rate from three per year to two per year and from three per year to one per year—a savings of about $30 million and $45 million respectively. The question the Senator raised last year was directed solely to a change in launch operations—not a cutback in the total number of lunar flights previously planned. The letter from NASA states specifically that the advanced stages of hardware construction do not permit any savings because the termination costs at a point so near completion would offset the cost of completion. Therefore, as my friend from Wisconsin, who is an expert in economics, should recognize, it is better to have, under these circumstances, fully complete and finished units rather than partially complete units which are of no value to anyone. I would also point out that these launch vehicles and spacecraft are such highly specialized pieces of equipment, that there is no market for this hardware, and, further, that the dollar return from scrap of such hardware would be negligible. Therefore, it is clear there can be no dollars saved to be returned to the Treasury from this equipment which is already built.

NASA further advised the Senator from Wisconsin that if a decision were made to terminate manned space flight activity after the completion of the current hardware contracts and currently authorized lunar flights, significant real savings could be achieved. These would be achieved, however, by a complete shutdown of all production, test, and launch facilities. No—and I repeat, no—moneys would accrue to the U.S. Treasury from any unused hardware because, as I have already stated, it has little or no value for other than its intended purpose.

The Senator from Wisconsin on September 10, 1970, about a year later, asked NASA a question as to how much would be saved by the decision to cancel Apollo 15 and 19 and whether these funds would be available for other purposes.

I might say that this entire matter was publicly discussed in great detail in a press conference held by NASA on September 2, 1970. I find the NASA response of September 28, 1970, to the Senator's question to be completely in accord with the understandings of the space committee as to the reorientation of the lunar program.

The questions posed last year by the Senator from Wisconsin dealt with reductions in funding requirements as a result of reducing the annual launch rate. His recent question dealt with the decision to drop Apollo 15 and 19—two very different matters.

The decision to drop the Apollo 15 and 19 missions was a very difficult one and, as many of us who have received letters know, has been vigorously opposed by prominent members of the scientific community. Nevertheless, the fiscal year 1971 budget reductions and projects for the immediate years ahead required another critical review because of lead times and operational decisions that had to be made. Basic to this consideration, and a point which has been brought to the attention of the Senator from Wisconsin, is the fact that from an economic standpoint and, more important, from a standpoint of safety, as recently pointed out by the Aerospace Safety Review Panel, NASA should not operate the Apollo program below two launches per year. Therefore, the reorientation of the Apollo program dropping two flights enabled NASA to fly out the remaining lunar flights at the rate of two per year in 1971 and 1972. This will satisfy to the greatest possible extent the economic and safety considerations and complete the reduced Apollo lunar program prior to initiating the Skylab launches in late 1972. This reorientation will eliminate the necessity to maintain a lunar mission capability during the Skylab operations of 1973 and the attendant costs and risks associated with such a lunar holding period. However, I should like to emphasize here that under this plan there will be no United States manned flight launches after June 1973.

This recent decision to drop two of the Apollo missions does release two Saturn V launch vehicles and certain spacecraft for other missions—including lunar missions—not yet defined. However, it seems to me that in view of the decision to terminate all Saturn V large launch vehicle production—and with the Saturn 1–B production discontinued some time ago—it is very wise to have available some large launch vehicle capability during the mid–1970's to undertake missions which may become important but which are not foreseen today. This is an acceptable trade-off for foregoing the use of the lunar hardware for its designed purpose.

In its recent September 28, 1970, letter NASA advised the Senator from Wisconsin that the savings of $50.1 million in fiscal year 1971 resulted from the reduction in Apollo program operational costs

accruing from the decision to reorient the Apollo program as I have outlined it. This $50.1 million is real savings—but not the same savings—of the type which NASA reported to the Senator from Wisconsin would accrue from changes in launch rates a year ago. There is, therefore, no contradiction; there are no inconsistencies in the information which has been furnished to my friend from Wisconsin.

Mr. President, I indicated earlier that I was intrigued by the financial acumen of the Senator from Wisconsin. In response to a question from him, NASA put a price tag on the Saturn V launch vehicle and other units of space hardware—hardware that I reemphasize is already built. This hardware is, as I have said, highly specialized, not convertible to uses outside the space program and not convertible into cash for return to the U.S. Treasury. One can only characterize these two Saturn V's, which are to be placed in storage and to be maintained against storage deterioration, as a national asset—an asset which can be used only for space endeavors. They are an asset which under the previous program plan would have been used for their designed purpose; that is, lunar missions which have now been canceled much to the distress of the scientific community.

It is against this background that I am at a great loss to understand how my friend from Wisconsin can trumpet the great savings which are available in the Apollo program.

As I understand the word "savings," a savings has to represent dollars which can be used for other purchases. This certainly is not the case here. The only way that this Nation can realize a return on the dollars already spent for the Saturn V's and the other space hardware going into storage is by flying space missions. This would entail launch and other mission-related costs; and it is these costs which will not be incurred and it is these dollars which will be saved and will be available for other purposes. This is my interpretation of savings.

I do not agree that we save money that is already spent for the construction of equipment that is going to sit in a warehouse and is not convertible to cash by any stretch of the imagination. In fact, not only are there no savings, but the cost of preserving and maintaining these vehicles and other equipment to prevent deterioration while in storage must be underwritten.

Therefore, Mr. President, I must conclude that the Senator from Wisconsin has been unfair in his accusation that NASA is contradicting itself. I challenge his interpretation of the word "savings" and his statement that there are savings of $465 million resulting from the decision not to fly Apollo 15 and 19 as originally scheduled. If he disagrees, I can only say to my friend from Wisconsin that I would like to have him show the Senate how to produce the $465 million in real dollars from the cancellation of the Apollo 15 and 19 missions. If he can do that, I will be happy to get it to the Treasury for the benefit of the American people.

POSSIBLE SOLUTION TO THE RAILROAD PROBLEM

Mr. PERCY. Mr. President, over the past several years, and particularly since the Penn Central debacle, we have heard a great deal about the railroad problem. Many of us have been particularly concerned with the recurring labor-management disputes in the railroad industry. And, more recently, new questions have been raised about whether conglomerates should own railroads.

The principal suggestion that has been offered as a solution to the overall railroad problem is an unhappy one, Government ownership. Certainly no one in public life has articulated answers to the many difficulties faced by the railroad industry that a majority of us can endorse.

I am pleased, therefore, to bring to the attention of the Senate today a proposal which holds out at least the promise of a brighter future for the Nation's railroads. I think this proposal will receive considerable support, for it may end up to be the only viable alternative to Government ownership.

A group of employees of the Chicago and North Western Railway, headed by Larry S. Provo, has contracted to buy the assets of the railroad, which are owned by Northwest Industries, a conglomerate engaged in many activities other than railroading. It is a creative proposal which could improve the fortunes of a midwestern railroad based in Chicago and serving 11 Midwestern States. It certainly will make possible substantial improvements in railroad labor-management relationships. And it will result in a railroad with no ties to any other kind of manufacturing or service establishment.

Many students of our Nation's political and economic life have been concerned with the lack of employee participation in the capitalistic structure and with the need for making capitalism more relevant to the well-being of employees. A recent example of this concern is found in a speech by Fred Smith of Rockefeller Family and Associates, entitled "To Keep Life on the Move." The sentiments he expressed are particularly appropriate to the North Western proposal. He said:

> We must make Capitalism in our country more universal—less the province of the relatively few. Somehow we must make it possible for employees and wage earners to relate more directly to and share more importantly in the earnings of the nation's production facilities. Several suggestions have been put forth to accomplish this, at least in part. One widely publicized plan suggests the distribution of all corporate earnings to registered voters, which seems to many of us to be fundamentally unsound. * * * There are other proposals. None of them has widespread acceptance; but it is interesting that ideas currently being discussed originated chiefly with businessmen, not with radicals, intellectuals inexperienced in business or malcontents.
>
> The purpose of this needed addition to our economic system is not so much to share the wealth as to share responsibility for and the interest in producing, financing and distributing goods and services. Until there is a readily recognizable link between the responsibility of the man at the machine—as well as the man in the front office—and the Gross National Product, there will remain an all-but-unbridgeable chasm between labor and management, which will continue indefinitely to nurture distrust and disagreement, and will keep collective bargaining a battle for superiority rather than a mutually constructive effort to improve the nation's welfare.

The plan which I endorse here today is consistent with the timely views Fred Smith expressed. Under the plan, the 14,000 railroad employees could buy stock in the new employee company on the basis of their annual salaries. Employees earning $10,000 or less would be able to purchase up to $5,000 in stock while employees earning $30,000 or more could buy up to $100,000.

We should all be encouraged when individuals are so dedicated to their industry that they are prepared to commit their own resources to the development of the property on which they make their living. I have read the application of the employee company for approval of the Interstate Commerce Commission. The employees believe, as I do, that the railroad industry is particularly suited to employee ownership. As they have stated, much of the work on a railroad is done by unsupervised individuals and small crews. Employee shareholders will have a deeper appreciation of the importance of transportation service and the significance of developing appropriate long-term plans for the maintenance of a sound transportation system. Quite obviously, the type of service performed for the public is substantially affected by the attitude which the employee brings to his job. Employee ownership should thus be a substantial factor in developing increased efficiency, worker pride and improved service.

Mr. President, I know from my own experience in business the effect that employee ownership and profit sharing can have on the attitudes of the employees. Employees comprised the third largest stockholding group in my previous company, which resulted in extremely high morale and an unusually high level of dedication, factors which were in large measure responsible for the company's success.

I sincerely hope that the Interstate Commerce Commission will rule favorably and expeditiously on the plan for employee ownership of the Chicago and North Western Railway. Sometime ago I discussed the plan with Mr. Provo, and I share his hopes over the possibilities it offers.

Mr. President, the Chicago Tribune recently commented editorially on this possible solution to the "railroad problem." I ask unanimous consent that the editorial be printed in the RECORD.

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

THE EMPLOYEES BUY A RAILROAD

If present plans go thru, the Chicago and North Western Railway will become the first railroad and one of the few big companies of any type to be owned by its employees.

An employee group has agreed to buy the line for $420 million, taking over $401 million in debt and paying the remaining $19 million over a 20-year period. The 14,000 em-

ployees will be invited to buy shares in the new company in limited amounts ranging from $5,000 to $100,000, according to the individual's salary. For 10 years, there will be certain restrictions on the payment of dividends and the use of profits.

Employee ownership is probably the closest a big company can come today to that primitive form of private enterprise in which the proprietor's profits are determined by his own efforts. Often today the shareholders and workers are far apart and view one another as adversaries, forgetting that the success of a company depends on both capital and labor and that the investor and the worker share an interest in the welfare of the company.

This trend is reflected in the fact that Larry Provo, president of the railroad, is also president of the employees' group. The North Western is part of a big complex owned by the shareholders of its parent company, Northwest Industries. Except to the extent that they may own shares in the parent company, the executives of the railroad are hired hands the same as anybody else.

Employe ownership means putting the eggs of management, labor and the owners all back in the same basket. Each will have a clear interest in the prosperity of the company and in doing the best job he can. The results should prove to the advantage of all three—not to mention those of us who depend on the North Western to get us to work.

It will be interesting to see how some of the issues that have divided the three groups will now be resolved. If profits rise, will there be a tendency to translate them into higher pay scales, thus holding down profits and corporate income taxes? Or will the emphasis be on dividends and capital improvements, thus adding to the value of the investment? What will happen when the national unions call a strike? Will employes strike against themselves?

It is good to know that several rail unions have endorsed the plan. We look forward to approval of the plan by the Interstate Commerce Commission and hope that most of the employes will participate. The experience should be profitable, not only for themselves but also as an example of what can be achieved when management, investors and labor recognize their common interest in the company they run, own and work for.

SAVING TREES IN THE WILDERNESS

Mr. MATHIAS. Mr. President, environmental protection has become the watchword of today. There is widespread alarm that our treatment of the natural environment, if not severely scrutinized and reformed, will hold the gravest of consequences for life on this planet. Hundreds of thousands of acres in this country are converted from farmland and forest to housing, highway, industrial, and commercial uses every year. Much of this conversion goes on under protest by those who would hope to have a particular area spared from the devastation of intensive use. Millions of trees are destroyed every year by the relentless bulldozers which too frequently spearhead man's invasions. Too often these trees are simply burned as refuse while hundreds or thousands of miles away other trees are being cut for building material.

I should like to share with the Senate an article about a man who has spent most of his life saving trees. He is not concerned with staying the bulldozers, nor does he entreat the woodsman to spare the tree, like the fabled little boy. His name is Charlie Mathis, and he has made a career of salvaging the trees which fall before the tide of suburbia. By putting these trees to use, he is saving other trees in the wilderness.

But Charlie Mathis is about to retire. Somehow his retirement is symbolic of the passing values in American life, particularly that of the frugality which meant so much in the building of the Nation.

I ask unanimous consent that the Washington Star's feature on Charlie Mathis be printed in the RECORD.

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

A SAWMILL SURVIVES AMIDST SUBURBIA

(By Lee Flor)

You'd expect to find an open-air sawmill in the sweeping timber ranges of the mountains to the west, where land costs $50 to $100 an acre.

There are many in the piney barrens on the Eastern Shore where some land is poor. Deserted for farming, it goes back to woodland.

But Charlie Mathis manages to operate his tiny, five-man sawmill on a quiet backroad in Montgomery County, where land sells for $2,000 to $5,000 an acre.

SITS IN SUBDIVISION

His sawmill is a page out of the past. You come around a slight bend on Muncaster Mill Road, and if you don't look sharp, you can miss it sitting there in the midst of a typical housing subdivision.

Charlie is like a page out of the past, too. At 63, he is rich with memories of a lifetime as a lumberjack and sawmill operator, but has few worldly goods.

He started out as a young man of 12, following his father into the woods to become a lumberjack.

BUSINESS CHANGES

He has seen vast changes come into the lumber business, with increasing labor costs driving small operators out of existence.

Charlie has survived by leaping into the teeth of suburbia. He moved to the present site between Rockville and Gaithersburg because it was near new subdivisions.

"I get most of my timber from subdevelopers, out of Washington," he explained.

There are about 18 to 20 hardy individuals who still work on a personal basis, going out to find timber tracts on land which developers want to clear for houses. The lumberjacks, almost all of them over 40, still cut the trees themselves and haul the logs to Charlie.

The Mathis sawmill is small, and operates on a subdued note. Charlie doesn't have a business telephone, and hires most of his labor on a day-by-day basis.

He uses his front-end loader to keep the 58-inch sawblade busy. He generally roughcuts timber, and ships it out to lumberyards where it is seasoned in the open for six to eight months. It then is heated in a kiln and finished into lumber for houses.

But suburbia is creeping on relentlessly, and it looks as though the Mathis sawmill is finally going to be a victim.

"The last land out here is going for subdivisions," Charlie said, sweeping his arm out in the direction of the encroaching houses.

"I've got one year and four months, and then I'll be 65, and I'm going to retire. After me, I don't think there will be anybody," he said.

PROFESSIONAL STANDARDS REVIEW—MEDICARE AND MEDICAID

Mr. BENNETT. Mr. President, last week, the Committee on Finance approved, in modified form, amendment No. 851 to the pending social security bill.

That amendment, which I submitted on August 20, would establish professional standards review organizations throughout the country to serve as the principal mechanism for physician review of care and services provided under medicare and medicaid.

There has been substantial misunderstanding as to the purposes and provisions of the PSRO amendment. I believe it would be helpful to all concerned if they understood the whys and wherefores of the proposed legislation—including changes made by the Finance Committee. Parenthetically, I might add that when the amendment was introduced, I invited constructive comments as to how the proposed professional standards review provisions might be improved. The modified version, as approved by the Finance Committee, incorporates a number of important improvements suggested by hospitals, physicians, and others. In a speech delivered to the Senate in July, I noted that—

> The American people are justifiably concerned over the tremendous costs of health care. Much of that concern, it seems to me, is a product of a very real feeling that we are not getting what we are paying for. I believe, equally, that much of the apprehension, anxiety, and suspicion now prevalent—for better or worse—with respect to those responsible for health care would disappear if professional standards review organizations were established and functioned effectively. It seems to me that the American people are entitled to know that American medicine shares their concern—and more importantly—proposes to do something substantial about it.

Mr. President, we simply cannot afford to continue down the high cost road we have been traveling. Right now, the Finance Committee is confronted with the extremely unhappy task of approving a $216 billion tax increase to cover a potential 25-year deficit in medicare's hospital insurance plan. And, that enormous increase in the taxpayers' burden is on top of increased hospital insurance taxes—which the Congress voted in 1967—above medicare's original financing.

The taxpayers—the average citizen and his employer—are on a treadmill when it comes to financing medicare and medicaid. They are asked to pay more and more simply to maintain present benefit levels.

My amendment to establish professional standards review organizations was intended as a responsible effort to establish a comprehensive commonsense means of slowing down—perhaps even stopping—that taxpayers' treadmill.

The principal answer to controlling medicare and medicaid costs which had been offered until introduction of my amendment was a call for increased and expanded efforts by Government and the private health insurers who serve as Government agents in administering

medicare. That would simply be more of the same kind of ineffective and often unacceptable review activity on a larger scale by bureaucrats and insurance company employees.

The Bennett amendment provides, I believe, a more rational—more professional—more acceptable—and more effective alternative.

Under the amendment, ongoing and comprehensive professional review of all health care provided under medicare and medicaid would be undertaken under the aegis of professional standards review organizations—which, in the main, would function at local levels.

The professional standards review organization would have the responsibility of determining—for purposes of eligibility for medicare and medicaid reimbursement—whether care and services provided were: First, medically necessary and second, provided in accordance with professional standards. Additionally, the PSRO, where medically appropriate, would encourage the attending physician to utilize less costly alternative sites and modes of treatment. The PSRO would not be involved with questions concerning the reasonableness of charges or costs or methods of payment nor would it be concerned with internal questions relating to matters of managerial efficiency in hospitals or nursing homes. The PSRO's responsibilities are confined to evaluating the appropriateness of medical decisionmaking so that medicare and medicaid payments will be made only for medically necessary services which are provided in accordance with professional standards of care.

The Secretary of Health, Education, and Welfare, as well as the statewide and national review councils established under the proposal, are expected to provide every possible assistance to the local PSRO's. In the unlikely event that a given PSRO does a poor job, it should be solely because of its own failings—not because it did not have access to the means to do a good job.

Reasonable questions might be: "How does a PSRO get organized?" and "What requirements must an organization meet in order to qualify as a PSRO?"

First, the Secretary of Health, Education, and Welfare, following consultation with national, State, and local public and private medical care organizations, would tentatively designate PSRO areas throughout the country. In smaller and more sparsely populated States, the designations would undoubtedly be on a statewide basis. Each area, defined in geographic or medical service area terms would have a minimum of 300 practicing physicians—in many cases substantially more than that number. Because of the minimum number of physicians required—intended to assure broad, diverse and objective representation—it is expected that there will be many multi-county PSRO areas.

After designation of the areas, the Secretary would provide prototype plans of organization and operation to prospective PSROs in each area. The prototypes would be developed in consultation with them and with various organizations presently operating comprehensive review mechanisms as well as national, State, and local medical organizations. Priority in designation as a PSRO would be given to organizations representing substantial numbers of practicing physicians at local levels who are willing and believed capable of progressively assuming responsibility for overall continuing review of institutional and out-patient care and services. To be approved, a PSRO applicant must provide for the broadest possible involvement in its activities on a rotating basis of physicians engaged in all types of practice in an area such as solo, group, hospital, medical school, and so forth.

Additionally, the PSRO would undertake to arrange with dental societies or qualified dentists for review of dental services. Arrangements would also be made by the PSRO for any necessary review with respect to other types of health care as well as for necessary consultation in medical specialties and subspecialities. With the assistance of the Secretary, necessary coordination and methods of interchange of information would be made with medicare carriers and intermediaries and medicaid agencies for regular access to and provision of provider, practitioner and patient profiles of care and services. Maintenance of those profiles are presently required by medicare. Of course, physician organizations or groupings would be completely free to choose not to undertake the responsibilities of PSRO. In such cases, the Secretary would then seek alternative applicants from among other medical organizations, State and local health departments, medical schools, and failing all else, contract with carriers and intermediaries or other health insurers for their assumption of the expanded responsibilities of a PSRO. In no case, however, could any organization be designated as a PSRO which did not have professional competence. And, in no case, could any final determinations with respect to the conduct or provision of care by a physician be made by anyone except another qualified physician.

In this context, it might be well to point out that the amendment requires that PSRO physicians engaged in the review of the medical necessity for hospital care and justification of need for continued hospital care must be active hospital staff members. The purpose here is to assure that only doctors knowledgeable in the provision and practice of hospital care will review such care.

A qualified PSRO applicant would be approved on a conditional basis for a period of approximately 2 years during which it would gradually develop and expand its review activities and capacity. During the conditional period, existing medicare and medicaid review operations would also continue so as to provide backup and standby capacity in the event a PSRO encounters difficulties or is terminated. At the end of the conditional period, the Secretary would have authority to waive any other professional review requirements imposed under present law and regulations where the PSRO has satisfactorily assumed responsibility for that review.

A PSRO's responsibilities will be substantially eased to the extent hospitals and other providers in its area have effective in-house review of admissions and the medical necessity of services provised in conjunction with the institutional care. A PSRO would have authority to approve the medical necessity of all elective hospital admissions in advance—solely for the purpose of determining whether medicare or medicaid will pay for the care. However, in practice, the PSRO is expected to apply that authority only so long and only where in-house review is regarded as inadequate with respect to given hospitals, given diagnoses, or given practitioners. In this regard, the PSRO is given discretion so that any prior approval of hospital and other institutional admissions will be required only to the extent deemed necessary by the PSRO to fulfill its responsibilities.

The PSRO would be responsible for reviewing certifications of need for continued hospital care beyond professionally determined norms directly related to patient's age and diagnoses, using criteria such as the types of data developed by the Commission on Professional and Hospital Activities sponsored by the American Hospital Association, the Amercian College of Physicians, and the American College of Surgeons. The professional-determined time of certification of need for continued care is a logical checkpoint for the attending physician and not to be construed as a barrier to further necessary hospital care. PSRO disapproval of the medical necessity for continued hospital care beyond the norm for that diagnosis does not mean that the physician must discharge his patient. The physician's privilege of determining the date of discharge as well as whether his patient is admitted in the first place are not taken from him by the PSRO. Their responsibility here is to determine whether the care should be paid for by medicare and medicaid.

The functioning of PSRO's in approving hospital admissions and need for continued care will avoid the present serious problems encountered in retroactive denial of payment after the care has been furnished. In the absence of a requirement of prior admission approval or where such approval has been given, medicare and medicaid payment for covered care would be assured. That is not the case today, where utilization review is virtually all retrospective. Of course, the amendment includes provision permitting prompt appeal by the attending physician of any initial adverse decision by the review organization.

To assist the PSRO in its work, it could employ such professional and clerical personnel as are reasonably required. The Government would not select those employees. They would be people in whom the PSRO has confidence.

The amendment as originally introduced provided for Federal ownership of all files and records of a PSRO. That provision has been deleted from the modified amendment approved by the Finance Committee. It had been incorporated originally to permit prompt transfer of responsibilities from a terminated PSRO to a successor organization, if that became necessary. We have since been advised that any necessary arrangements for such contingencies can be included in the contract with the

PSRO and that there was, therefore, no need to be starkly specified in the law.

Earlier, Mr. President, I noted that a PSRO must provide for the broadest representation and involvement of the physicians in its area in the review responsibility. Preferably, this would be achieved through orderly rotation in service as reviewers. There is an important purpose here. While the PSRO would presumably detect and see to the termination of any fraud or abuse in the provision of care, in the long run its real value in moderating the costs of health care will result from the educational value of broad and continuing exposure and involvement of practicing physicians with norms of care and treatment. Obviously, as physicians and institutions in an area become more and more familiar with those norms and utilize them, less physician review time will be required to curb overutilization.

Overutilization is not just a problem in medicare and medicaid—it affects private health insurance, as well. In this regard, a PSRO, if willing, would also be able to provide its review services to private plans and providers, with proportionate allocations of operating costs between medicare, medicaid, and others served by the review organization.

There is another important feature of the Bennett amendment which should not be overlooked. No civil liability would attach where a practitioner or hospital had acted in conformance with the requirements or norms of a professional standards review organization and where negligence was not established. Similarly, those persons involved in the reviewing effort itself, could not be held civilly liable for performance of required responsibilities.

Many physicians have indicated that they order and provide a costly surplus of care and service to patients simply because of the very real and very expensive threat of malpractice suits. The exemption from liability where the care and services are provided in accordance with the professionally determined norms employed by the PSRO should help avoid the malpractice problem along with much expense for excessive and unnecessary services.

To the extent that professional standards review organizations function effectively in preventing payment for unnecessary care and services, I see another important future plus. Everyone recognizes the value of providing a broader range of outpatient services in hospitals and physicians' offices as less costly alternatives to inpatient care. The problem in providing coverage of those services, heretofore, has been the lack of a proper professional review mechanism to avoid abuse. The PSRO can very well serve as that vital means of assuring proper utilization of outpatient and office care.

Mr. President, what I have tried to describe here today is by no means the full extent and details of the professional standards review organization amendment. In large part, these matters were previously discussed in speeches on July 1 and August 20.

My purpose, at this time, is to indicate to critics, constructive critics, and supporters the extent to which the amendment has been modified—and improved, I believe—as well as to emphasize important considerations which, perhaps, had not been sufficiently stressed in earlier statements.

Hopefully, those who criticized the original proposal on the basis of misinformation and misunderstanding will, in the interest of mutual concern and effort to solve serious, real and increasing problems, recognize that the focus and thrust of the Bennett amendment is to give private medicine a bona fide opportunity to do what must be done—and to do it at the local level. The alternatives to those objectives are not very inspiring.

Those who shared my concern over the need to develop a bold approach to solving a good part of our health care cost problems through organizing the talents and professionalism of those who know most about health care—physicians—will recognize their constructive input in the modified version of the Bennett amendment. In fairness, the genesis of this amendment was the professional review organization proposal of the American Medical Association.

And, the amendment, as approved by the Finance Committee, incorporates virtually every change recommended by the American Medical Association.

Finally, Mr. President, I want to thank the Catholic Hospital Association for its highly constructive attitude and thoughtful comments concerning the proposal. I have been in the Senate quite a few years, and I do not believe I have ever encountered a more selfless and less self-serving statement than that submitted by the Catholic Hospital Association on the Bennett amendment. They conceded the serious problems with hospital costs and utilization today. They acknowledged the need for a comprehensive review mechanism employing and applying norms of care and service. The questions they raised with respect to the original amendment were reasonable and legitimate and, I believe, satisfactorily resolved in the modified version of the bill.

The Catholic Hospital Association—whose member hospitals account for one-third of all short-term admissions in the United States—did not bury its head in the sand to avoid seeing the enormous problems confronting us. They recognized the hard facts of life and the need for major changes in the health care review process. I have every hope that the Bennett amendment, if enacted, will prove an effective and responsible answer to the present problems in controlling soaring health care costs.

The letter of September 21 addressed to the Senate Finance Committee by the executive council of the Catholic Hospital Association on amendment 851 contained a list of reasons which they believed, and rightly, underlay the Bennett amendment. I quote:

In studying the Bennett Amendment and its implications for CHA membership, it is recognized

(a) that there is a need for improved mechanisms to ensure adequate review and controls with respect to quality, quantity, and cost of health care;

(b) that while some hospitals have had effective utilization review and medical audit programs, for the most part there has not been adequate review of clinical performance;

(c) that the traditional hospital-centered controls, even if they were effective, do not meet the need for controls outside the hospital;

(d) that within the context of a total health systems concept, many aspects of this proposed Amendment have merit.

(e) that the proposal for a national advisory group of physicians to assist in the development and application of inter-hospital comparisons and norms of care and treatment is a worthwhile step towards the establishment of much needed national standards.

MILITARY COMMISSARIES IN EUROPE SWITCH FROM UNITED STATES TO EUROPEAN BEEF

Mr. CURTIS. Mr. President, I was shocked when I learned that the Army and Air Force commissaries in Europe were switching from U.S. beef to European beef. Mr. President, I ask unanimous consent to have printed in the RECORD an article published in Stars and Stripes for September 9, 1970, and the text of my letter to Hon. Barry J. Shillito, Assistant Secretary, Installations and Logistics, Department of Defense.

Mr. President, this matter is of very serious concern. I hope that it will have the attention of the Congress and that this proposed action can be rescinded.

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

COMMISSARIES SWITCHING TO EUROPEAN BEEF

(By Homer A. Cable)

WORMS, GERMANY.—U.S. beef is gradually being phased out of Army and Air Force commissaries in Europe, with high-quality meat from European sources scheduled to take its place, TASCOM officials said here Tuesday.

The switchover should not only save the U.S. government a large amount of money formerly spent for shipping the meat to Europe, but the commissary customer should benefit by lower beef prices, the officials said.

Beef supplied by packers in Ireland and Yugoslavia is presently being tested for customer acceptance at 11 stores in Germany and Italy, with initial reaction being favorable.

All of the beef must pass strict veterinary inspection and meet high U.S. standards. It is expected that packers in Denmark, the Netherlands and West Germany able to meet the standards will also bid for part of the business, TASCOM officials said.

European beef is available at commissaries in Worms, Wiesbaden, Ramstein, Vogelweh, Mannheim, Zweibruecken and Heidelberg, Germany and at Vicenza, Brindisi, Leghorn and Aviano, Italy.

The commissary system in Europe has been using about a half-million pounds of U.S. beef weekly, the bulk arriving at Rotterdam frozen. There, the beef was "tempered"—slowly thawed to chilled state—then delivered to commissaries. With procurement of European beef, all of it chilled, there will no longer be any need for the Rotterdam operation.

At present, about 20 per cent of commissary beef is being obtained from Ireland and Yugoslavia. By early next year the switchover to locally procured meat should be completed, with the entire monthly 2 million pounds coming from European sources.

A commissary official pointed out that, because of type feeding, differences in grass and cattle heredity, there are slight differences in European and U.S. beef. However, he said, European beef can be every bit as good as and sometimes better than, that coming from America.

Commissary officials were hesitant about predicting exact amounts that will be saved by customers through purchase of European beef, as cost prices will fluctuate. But some cuts of beef may drop by as much as 25 to 30 cents a pound as a result of the change, a TASCOM official predicted.

U.S. SENATE,
Washington, D.C., October 9, 1970.

HON. BARRY J. SHILLITO,
Assistant Secretary of Defense, Installations and Logistics, Washington, D.C.

DEAR MR. SECRETARY: I am very concerned about the proposed action of the Defense Department which would result in the Army and Air Force Commissaries in Europe discontinuing the sale of United States beef and selling European beef instead. I am attaching hereto and making a part of this letter an article from the September 9, 1970, issue of THE STARS and STRIPES. This article is entitle "Commissaries Switching to European Beef" and it is written by Homer A. Cable, City Editor.

According to this article, this is no small transaction. It means a loss of sales on the part of United States producers of beef of twenty-four million pounds a year.

Mr. Secretary, do you realize that this amount of meat is equivalent to forty thousand head of cattle?

It is difficult to believe that the Defense Department would strike a blow like this against American agriculture. At the present time it is part of the policy of our government to promote the export of agricultural products and particularly to promote the export of beef. The taxpayers' money is being used for this promotion and it is right that such expenditures be made.

The Congress is often told that the increasing of exports is an important part of our agricultural policy and is necessary in order to prevent prices from collapsing domestically.

This article indicates that considerable of this beef will be purchased in Ireland and Yugoslavia. Do you realize there is no way that an exporter in the United States can send one pound of beef into Ireland? I do not criticize Ireland for restricting imports, but that is no justification for the action taken by these commissaries.

This article recites that a commissary official stated that there are slight differences between this European beef and United States beef. This fact will not be supported by anyone who knows the quality of United States beef and who has traveled in Europe.

This action cannot be justified on any grounds of balance of trade or dollar drain because American agriculture should not be singled out for such a burden.

Earlier in this letter I pointed out that this market that is about to be taken away from American agriculture is equivalent to forty thousand head of cattle. It takes about sixteen pounds of feed grains to produce one pound of trimmed meat which is ready for the consumer. In other words, the twenty-four million pounds of meat involved in this action against American agriculture also represents a loss to the American farmer of a market for 304 million pounds of feed grains.

I sincerely urge that this action be rescinded.

I respectfully ask for a report on the situation.

Sincerely yours,

CARL T. CURTIS,
U.S. Senator.

BISHOP JAMES E. WALSH

Mr. MATHIAS. Mr. President, by his life, Bishop Walsh has become a unique witness, one characterized by the words of love, peace, and happiness with which he ended his ordeal in China and returned to his native city of Cumberland. With sentiments such as these, the Most Reverend James Edward Walsh was welcomed home yesterday by His Eminence, Lawrence Cardinal Shehan, by the faculty and student body of the Bishop Walsh High School, representatives of the Catholic, Protestant, and Jewish clergy of western Maryland, and by a great host of his fellow citizens.

Bishop Walsh's own words as well as those of Cardinal Shehan underscored the words of Dag Hammarskjold, quoted in the program:

Still a few years more, and then? The only value of a life is its content—for others. Apart from any value it may have for others, my life is worse than death. Therefore, in my great loneliness, serve others. Therefore: how incredibly great is what I have been given, and how meaningless what I have to "sacrifice."

Hallowed be Thy Name,
Thy kingdom come,
Thy will be done—

The Mass was distinguished by the remarkable music of the boys' choir and men's choir of Immaculate Heart of Mary Church under the direction of the pastor, the Reverend Arthur W. Bastress, and the choir director, Mr. Norman Sydnor.

The Mass, like the school in which it was held, was dedicated to Bishop Walsh, and I am privileged to ask unanimous consent to have printed in the RECORD the words of Brother Lawrence J. Colhocker, F.S.C., principal, together with a list of the participating clergy.

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

DEDICATION

The release of Bishop James E. Walsh from his twelve-year imprisonment in China and his subsequent return to Cumberland are events of great significance especially to all of those who have been associated with the school named in his honor and located on Haystack Mountain. Ever since Bishop Walsh High School began operation in September, 1966, its students and faculty have prayed for what has now come to pass, an eventuality that for so long seemed improbable.

To most of the boys and girls attending Bishop Walsh High School, Bishop Walsh himself existed more in the dimension of myth than in reality. With the exception of the portrait of the youthful prelate hanging in the main lobby of the school, the Masses celebrated in anticipation of his release, the references made by teachers to his life and accomplishments, and the hopeful attitude of his family and friends, there was little evidence that Bishop Walsh, the man, the missionary priest, was really suffering the daily inconveniences and fears that resulted from imprisonment at the hands of the same people to whom he had devoted so many years of his apostolic life. Now that he has returned, his presence among us is the only testimony needed to demonstrate the truth of that life, a life that remained hidden for so long behind the walls of a primitive jail.

To the students and faculty of the high school, Bishop Walsh has remained and will continue to remain the embodiment of those values that form the philosophy upon which the school is founded. His lengthy career of service to the Church in China and his refusal to abandon the people he loved during a period of crisis is an example of the kind of commitment and fidelity needed if the Christian life is to continue to make the impact it must upon the world. The witness that Bishop Walsh has given by his life of dedication is sorely needed today, a period in which commitment and fidelity to a community of people and to an urgent cause have little appeal. In an era in which concern for self seems to have taken precedence over concern for others, Bishop Walsh exemplifies the paradox inherent in the assertion that the most fulfilling of lives is that which gives of itself until no more can be given. Ever since he departed for China on September 13, 1918, at the age of twenty-seven and as one of the first American Catholic missionaries to that country, Bishop Walsh has remained true to his Christian vocation.

Another outstanding aspect of Bishop Walsh's career that should be meaningful to high school students is the continuing interest he has manifested in developing all the dimensions of his human personality, particularly his intellect. His curiosity and openness to the world have provided him with the insight necessary to the fulfillment of his mission, a mission concerned with the salvation of earth-bound men. His devotion to all aspects of learning, evidenced particularly by the zeal with which he undertook the study of those languages needed to communicate with those peoples among whom he worked, is based most certainly upon his realization that the most perfect man is the most human man and that the most human man is the man who is in touch with himself, with his neigbhors, with his world, and with his God.

The students, faculty, and alumni of Bishop Walsh High School are proud to be associated, even so indirectly, with a man whose heroic approach to life emphasizes greater than anything else the need we have to strive with energy and love for the attainment of those Christian values we consider ultimate. Therefore, we welcome him with affection and in doing so, recommit ourselves to each other in the hope that together we can arrive at that peace and freedom that Jesus, once himself a prisoner, has earned for us all.

Brother LAWRENCE J. COLHOCKER, F.S.C.,
Principal.

PRINCIPAL CONCELEBRANTS

His Eminence, Lawrence Cardinal Shehan, Archbishop of Baltimore.

Most Rev. James Edward Walsh, M.M., Maryknoll Fathers, Maryknoll, New York.

CONCELEBRANTS

Rev. Nicholas P. Amato, Chaplain, Bishop Walsh High School.

Rev. Joseph C. Antoszewski, Pastor, St. Joseph's Church, Midland, Maryland.

Rev. John Donovan, M.M., Maryknoll Fathers, Maryknoll, New York.

Rev. Msgr. David I. Dorsch, Pastor, St. Mary's Church, Cumberland, Maryland.

Rev. Perrin Haft, O.F.M. Cap., Associate Pastor, Saints Peter and Paul Church, Cumberland, Maryland.

Rev. Edward B. Hemler, Associate Superintendent of Schools, Archdiocese of Baltimore, Maryland.

Rev. J. Joseph Hilliard, Pastor, St. Mary's Church, Lonaconing, Maryland.

Rev. James V. Hobbs, Associate Pastor, St. Mary's Church, Cumberland, Maryland.

Rev. Paul D. Jenkins, Pastor, Church of the Assumption, Keyser, West Virginia.

Rev. Regis Larkin, Pastor, St. Peter's Church, Oakland, Maryland.

Rev. Msgr. John U. Lyness, Pastor, St. Patrick Church, Cumberland, Maryland.

Rev. John J. Mackey, Pastor, St. Patrick Church, Mt. Savage, Maryland.

Very Rev. John J. McCormack, M.M., Superior General, Maryknoll Fathers, Maryknoll, New York.

Rev. Msgr. P. Francis Murphy, Secretary to His Eminence, Archdiocese of Baltimore.

Rev. Msgr. William C. Newman, Superintendent of Education, Archdiocese of Baltimore.

Rev. Thomas Quinn, O.F.M. Cap., Chaplain, Frostburg State College Newman Center, Frostburg, Maryland.

Rev. John L. Reinsfelder, Paster, St. Michael's Church, Frostburg, Maryland.

Rev. Francis Roscetti, O.F.M. Cap., Pastor, St. Anthony's Church, Ridgeley, West Virginia.

Rev. Joseph C. Simmons, Associate Pastor, St. Patrick Church, Cumberland, Maryland.

Rev. John T. Sleeman, Pastor, St. Peter's Church, Westernport, Maryland.

Rev. Richard Smith, Associate Pastor, St. Mary's Church, Cumberland, Maryland.

Rev. John Stankard, M.M., Maryknoll Fathers, Maryknoll, New York.

Rev. DeSales Young, O.F.M. Cap., Pastor, St. Ambrose Church, Cresaptown, Maryland.

ASSISTING MINISTERS

Rev. Bruce W. Barth, Pastor, Trinity Lutheran Church, Cumberland, Maryland.

Rev. William J. Cox, Pastor, Holy Cross Episcopal Church, Cumberland, Maryland.

Rev. William W. Crawford, Pastor, St. Mark's United Church of Christ, Cumberland, Maryland.

Rev. Goodwin Douglas, Pastor, Metropolitan A.M.E. Church, Cumberland, Maryland.

Rev. Vernon I. Naugle, Pastor, St. Luke's Lutheran Church, Cumberland, Maryland.

Rabbi Philip Rosenberg, B'er Chayim Temple, Cumberland, Maryland.

Rabbi Meier Samberg, Beth Jacob Synagogue, Cumberland, Maryland.

Rev. A. D. Tice, Pastor, Emmanual United Methodist Church, Cumberland, Maryland.

LECTORS

Brother Lawrence J. Colhocker, F.S.C., Principal, Bishop Walsh High School.

Mr. William Walsh, Nephew of Bishop Walsh, Cumberland, Maryland.

COMMENTATOR

Brother James A. Vendetti, F.S.C., Faculty Member, Bishop Walsh High School.

CANTOR

Rev. Arthur W. Bastress, Pastor, Immaculate Heart of Mary Church, Baltimore, Maryland.

ORGANIST

Rev. James M. Burns, Director of Music, St. Dominic's Church, Baltimore, Maryland.

The Boys' Choir and Men's Choir of Immaculte Heart of Mary Church, Baltimore, Maryland are under the direction of Mr. Norman Sydnor.

SECOND NATIONAL INDIAN EDUCATION CONFERENCE

Mr. MONDALE. Mr. President, at the end of August, the Second National Indian Education Conference was held in my home State, Minnesota. Some 800 American Indians and their friends attended the event.

A number of recommendations to the Federal Government for the improvement of American Indian education came out of the conference. In addition, the National Indian Education Association was organized. This group consists of 17 Indian people actively involved with education throughout the United States.

I am proud to report that the President of the organization is Mr. Will Antell, from my State. Mr. Dillon Platero, from the Navajo, was elected first vice president. He serves as the gifted director of the impressive Rough Rock Demonstration School. Mr. John Winchester, a Potawatomi Indian from Michigan, was elected second vice president. Mr. Sparlin Norwood, a Cherokee from Oklahoma, was elected secretary, and Mr. William Demmert, a Tlingit from Alaska, was elected treasurer.

I am happy to see American Indians from all parts of the country coming together to work on educational problems and pleased that Minnesota provided the forum for this great effort.

Also at the Second National Indian Education Conference, a major statement on national priorities was outlined in one of the workshops. This statement highlighted a number of crucial educational issues. I ask unanimous consent that the press release describing these events be printed in the RECORD.

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

AUGUST 28, 1970.

The Second National Indian Education Conference met in Minneapolis on August 26, 27, and 28 to assess programs in Indian education and to explore directions on a national scope.

A major workshop was National Priorities. The objective was to delineate a composite of Indian issues that are crucial to Indian people and the entire nation.

The U.S. Senate Special Sub-Committee on Indian Education said, "We have concluded that our national policies for educating American Indians are a failure of major proportions." It was stressed further that Congress, the U.S. Office of Education, and the Bureau of Indian Affairs implement these findings and those priorities as stated in the President's July 8th message to Congress.

Historically the Indian people have not been involved at federal, state or local levels in legislation and administrative decisions affecting their lives. The federal government now supports a policy of Indian self determination.

The followinig major priorities were listed by the workshop:

1. Scholarships for Indian students must be increased significantly on all levels. An equal emphasis should be placed on academic and vocational education. The appropriation for college scholarships should equal, if not surpass, the current $38 million appropriation for vocational training.

2. Indians must have a more articulate voice in the education of Indian people on the local, state, and federal levels. The newly formed National Indian Education Association can be a powerful lobbying agent to develop strategy for Indian conceived plans and programs. Further, the Office of Education and other federal agencies concerned with the education of Indian people should establish a permanent committee composed of members of this association to analyze and develop new policies and programs in Indian education. It is imperative that Indian people be on school boards in direct proportion to the number of students enrolled in those schools.

3. The creation of a special developmental fund of $4 million for demonstration and innovative moves in Indian education for the purpose of creating new educational systems, new methods of administration and specialized staff training operated and controlled by Indian groups, organizations and tribal governments.

4. Educational institutions should be assessed and restructured to make education more meaningful to Indian people. This must be implemented by native American communities. Indians must have a major role in this assessment and restructuring.

5. Indian studies programs and all research relating to Indians should be under the surveillance and control of Indian people.

6. The criteria for granting federal moneys should emphasize local Indian need and control as it affects the education of Indian children. All contracts for federal moneys concerning Indian education programs in urban and non-reservation areas should be with urban Indian organizations, centers and other local Indian organizations; and on reservations with Indian groups, with Indian organizations and tribal governments.

7. The federal government should set aside adequate construction facilities moneys so that Indian communities may develop local school facilities.

We suggest careful appraisal of these priorities and a personal commitment to their implementation.

WHO IS AFRAID OF BORIS AVERIANOV?

Mr. FULBRIGHT. Mr. President, who is afraid of Boris Averianov? Someone is, because on May 27 of this year the State Department announced that it had denied a visa to this Soviet labor leader. The United Auto Workers had asked the State Department to grant Mr. Averianov a visa so that he could attend a symposium sponsored by the United Nations and the United Auto Workers. The Department told the UAW that it would not recommend to the Justice Department that waiver be granted for Mr. Averianov but declined to say why. In a letter to Victor Reuther, Director of the International Affairs Department of the UAW, the Department stated that:

> The United States Government has concluded that it is inadvisable at this time to change our long-standing policy on the admission of Soviet labor officials to this country.

Mr. Reuther wrote my office, commenting on the State Department decision and reporting on a conversation with U.N. Secretary General U Thant and U.N. Under Secretaries Ralph Bunche and Philippe de Seynes in which they indicated that the State Department action might be a violation of the convention between the United States and the United Nations. He asked that the Committee on Foreign Relations inquire into the denial of a visa to a delegate to a United Nations Conference solely on the ground that he was a Soviet trade union leader.

I therefore wrote Secretary Rogers on June 5, asking him to furnish me with a detailed explanation of the background and reasons for the decision. Mr. David M. Abshire, Assistant Secretary for Congressional Relations, replied on June 29. Instead of providing a detailed explanation of the background and reasons for the decision, Mr. Abshire's letter simply stated:

> Among other factors, the Department of State must consider the view that Soviet trade unions are not independent organizations but rather are controlled instruments of Soviet policy. As you know, the AFL–CIO attaches the highest importance to this factor and has long and vigorously opposed contacts with Soviet labor officials.

I then wrote Mr. Abshire on July 10 asking him a number of specific questions including what specific criteria were used by the Department of State to determine whether the admission of a Soviet labor leader was consistent with the public interest, how the criteria of the public interest applied to the particular case of Mr. Averianov, why it made any difference whether Soviet trade unions were independent of or subordinate to Soviet policy, and which Soviet and other Communist labor leaders had been admitted to the United States in the last 5 years.

I also wrote Mr. Reuther and asked for his comments on the State Department's letters.

In his reply to my letter of July 10, Mr. Abshire stated that:

> To date and on balance, we have been unable to perceive a sufficient public interest in cases of this kind to justify a waiver recommendation.

Mr. Abshire stated that the policy had been reviewed, "in consultation with other concerned Government agencies" but in the case of Mr. Averianov it had been "determined that insufficient justifications existed at this time for changing our policy." Mr. Abshire's letter also said that the State Department did not keep statistical records by occupation on individuals to whom visas are issued. Its records showed, however, that five Soviet labor officials had toured the United States in April 1967 but had sought entry as tourists rather than as labor officials.

I wrote Mr. Abshire again on August 4, saying that while I appreciated these additional comments I would like the Department's answers to the first three questions I had posed in my letter of July 10. I also said that I would appreciate knowing whether the Department would have issued a visa to Mr. Averianov if he had applied for one as a tourist and, if so, why it would be in the public interest to have him visit this country as a Soviet tourist but not as a Soviet labor leader. Mr. Abshire's reply stated that:

> The Department's policy on the admissibility of Soviet labor leaders in their official capacities was a coordinated position of the Administration and further reflects consultation and discussion with American labor organizations which have an interest in this policy.

His letter referred specifically to the fact that "the AFL–CIO remains vigorously opposed" to the admission of Soviet labor leaders and added that if Mr. Averianov were to apply for admission as a tourist consideration would be given to recommending that a waiver be issued if his program and activities in the United States indicated "that tourism was in fact his purpose in seeking entry and that he would not be acting in his official capacity."

I sent a copy of this letter to Mr. Reuther and asked for any additional comments. In his reply, Mr. Reuther pointed out that the United States is now virtually isolated in the International Labor Organization and that U.S. relations with the ILO have reached such a low level that on the recommendation of the AFL–CIO, the chamber of commerce, and the Labor Department, U.S. funds to the ILO have been cut off. He also reminded me that when President Eisenhower invited Premier Khrushchev to visit the United States in 1959, he apparently felt that we were sufficiently strong to survive a direct exposure to Premier Khrushchev and that a dinner meeting with the 10 leading U.S. trade union leaders was arranged in San Francisco, Mr. Reuther commented that:

> It struck him as "rather ludicrous that whereas the Administration of General Eisenhower felt it constituted no threat to the internal democracy of our country and was in the overall interest of the Nation to expose a group of U.S trade union leaders to the views of the number one communist leader in the world and, in turn, expose him to U.S. workers' views, the Administration of President Nixon considers the issuance of a visa to a Soviet trade union official (minor in the Soviet hierarchy) somehow would endanger the internal security of the U.S.

Mr. President, I ask unanimous consent that at the conclusion of my remarks there be printed in the RECORD Mr. Reuther's letter of May 28 to my office, together with its enclosures; my letter of June 5 to Secretary Rogers, together with its enclosures; Mr. Abshire's reply of June 29; my letter to Mr. Abshire of July 10; a letter to me from Mr. Reuther dated July 15; a further letter to me from Mr. Abshire dated July 17; a letter from me to Mr. Abshire dated August 4; his reply dated September 10 and, finally, a letter to me from Mr. Reuther, dated September 25, together with its enclosures.

I urge Senators to read the documents placed at the conclusion of my remarks. They tell a sorry story, in my view, which does not reflect to the credit of either the AFL–CIO or the Department of State. But the documents do provide a clear answer to the question: "Who is afraid of Boris Averianov?" The answer is that the leaders of the AFL–CIO are afraid of Boris Averianov and the State Department is afraid of the AFL–CIO.

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

UNITED AUTO WORKERS,
May 28, 1970.

Mr. LEE WILLIAMS,
Administrative Assistant to Senator J. William Fulbright, Senate Office Building, Washington, D.C.

Subject: State Department Action Denying Visa for Soviet Trade Union Leader Scheduled to Participate in United Nations Conference at UAW Center in Onaway, Michigan, June 14 to 20, 1970

MY DEAR LEE: In accordance with my phone conversation with you yesterday, I wish to put into your hands the pertinent documentation relating to the denial of a visa by the State Department to a Soviet trade union leader scheduled to participate in the above mentioned UN Conference.

Enclosed is the following documentation:

1. Official UN press release of May 22, describing the nature of the Environmental Conference to be held by the UN with UAW as host.

2. Full text of the UN Aide Memoire, which was transmitted by the UN months ago to the State Department. This Aide Memoire clearly indicates that the invited ten trade union participants were to have the same status as the official government representatives of the twenty nations.

3. Letter from Victor Reuther to U.S. Ambassador to Moscow, Jacob D. Beam, dated February 13, 1970, informing him of the invitation extended to the Soviet trade union leader.

4 and 5. Text of Victor Reuther's letters to the Soviet and trade union leader extending an official invitation.

6. Response of Ambassador Beam.

7. Covering letter to Deputy Assistant Secretary, Emory C. Swank, dated February 13, officially notifying him of our invitation.

8. Response of State Department dated May 5, denying visas.

9. Release by U.S. State Department dated May 27, as carried by UPI to the effect that the visas had been denied, but declining to say on what grounds.

10. Two clippings from the *Washington Post* and *Evening Star* in 1966, indicating a previous controversy over visas for Soviet trade unionists. The final clipping indicates that the visas were granted and, in fact, the UAW did receive the Soviet trade union delegation.

At a public press conference this morning, the newly elected president of UAW, Leonard Woodcock, was asked about this action of the State Department. I enclose that portion of the transcript of his press conference, setting forth the question put to him and President Woodcock's response.

The above documentation clearly indicates the considerable effort made by our union to give proper notice to avoid the embarrassment to our government which has finally occurred. The United Nations itself, when it became aware that such difficulties might arise, has taken its own direct contacts at the very highest level.

Last Monday, May 25, I was invited by Secretary General U Thant to a luncheon at the United Nations and present also were Under Secretaries Ralph Bunche and Philippe de Seynes and the heads of various important divisions within the United Nations. U Thant, Ralph Bunche and de Seynes were most outspoken in this private luncheon meeting, indicating that in the UN's judgment this action by the State Department is a violation of the Convention between the U.S. and the UN, which obligates the U.S. to provide courtesies to official participants in UN meetings, and the Secretary General indicated that the United Nations could not tolerate such flagrant violation of this Convention. I am certain the UN itself is continuing its protests, as well as discussions with the State Department and the U.S. Mission to the UN.

Following the luncheon, I sought to reach U.S. Ambassador to the UN Charles W. Yost, and since he was not available, I spoke with his Deputy Ambassador, William B. Buffum, and related to him the substance of the conversation with the Secretary General and his associates. I told him that as far as the UAW was concerned, we were not seeking controversy, but we felt it impossible to comprehend a policy by the State Statement which ruled out an entire class of people, meaning all trade union leaders in the Soviet Union from eligibility for visas. The inference of such a policy is either that Soviet trade union leaders, per se, are more Communist than leading Soviet scientists, political leaders, journalists and educators, who frequently come to the U.S. on private invitations or that the UN, or the UAW, are more vulnerable to Communist subversion than the growers of corn in Iowa, the heads of U.S. corporations, educators, etc.

It has been the stated policy of successive U.S. administrations, including the present one, to seek to build bridges of understanding with the people of East European countries. Only a few weeks ago, I was invited by astronaut Borman to attend a high level conference in New York with U.S. State Department and other U.S. leaders and leading Soviet spokesmen. This invitation was extended by a private organization called the Fund for Peace. Under Secretary of State, Elliot T. Richardson, addressed the conference, as did Averell Harriman, George Ball and the leading Soviet figures. I was pleased to participate in this conference. This experience adds even more to my sense of shock and amazement at the inconsistencies of the State Department's action in this instance where a delegate to a United Nations conference to be held in the U.S. is denied a visa

solely on the grounds that he is a trade union leader. It was made quite clear to me by the State Department that this was not a decision against the individual, but it would have applied to any official designee of the Soviet trade union.

I shall be most grateful if you will call this matter to the attention of Senator Fulbright with the urgent request that he and this Committee on Foreign Relations inquire into this matter.

Sincerely yours,

VICTOR G. REUTHER,
Director, International Affairs Department.

CENTRE FOR ECONOMIC AND SOCIAL INFORMATION,
May 22, 1970.

EFFECT OF URBANIZATION ON HUMAN ENVIRONMENT TO BE DISCUSSED AT INTERNATIONAL SYMPOSIUM IN UNITED STATES

MEETING JOINTLY ORGANIZED BY UNITED NATIONS AND UNITED AUTO WORKERS OF AMERICA

The first attempt at an attack on the problems of the human environment as a joint effort by organized labour and the United Nations will be made at an international symposium to be held in Onoway, Michigan, from 14 to 20 June.

At the seven-day meeting, Government officials, international experts, industrialists and trade union representatives will review a number of central issues affecting the human environment as a result of urbanization and growth of urban settlements throughout the world.

Specifically, they will consider major trends in world urbanization; experience in formulating national settlement policies; the ecological aspects of the urban environment; the human stake in environment improvement; and approaches to comprehensive planning for the human environment.

The symposium is being sponsored by the United Nations jointly with the United Automobile Aerospace and Agricultural Implement Workers of America (UAW).

Twenty-four of the participants were invited by the United Nations from some 20 countries of Africa, Asia, Middle East, Latin America, North America and Europe. The UAW has nominated 10 representatives as participants. In addition, six consultants have been selected to prepare discussion papers on the substantive agenda items.

As a prelude to the Symposium, a press conference will be held at the United Nations Headquarters, New York, on 26 May, jointly by Victor Reuther, Director of the International Affairs Department of UAW and Philippe de Seynes, United Nations Under-Secretary-General for Economic and Social Affairs.

THEME OF SYMPOSIUM

The theme of the symposium, according to a background paper circulated to the participants, is "the impact of urbanization on man's environment".

The increasing pressure on existing urban environment, the background paper says, results from population growth and urban migration and from "the ever-growing physical demands placed upon the environment by man's industrial and technological activities".

The most recent United Nations report on the subject[1] estimates that the world urban population will grow from 990 million in 1960 to more than 3,000 million by the year 2000, and will have exceeded total rural population by that time.

Individual countries and the human community as a whole must develop a more rational and constructive approach to further development, the background paper states. Many experts, it adds, have expressed doubt as to whether existing urban centres can be expected to expand indefinitely along current lines of physical, financial and administrative organization. Previous strategies for urban growth do not appear to offer the same safety valve in the decades to come as was thought to be the case in earlier periods, it points out.

OBJECTIVES OF SYMPOSIUM

In a section on objectives, the background paper says that the Symposium will focus on major issues relating to the effect of urbanization on the human environment.

The Symposium will also serve as a forum for an exchange of information and experience on these issues between experts, officials and trade union representatives from both developed and developing countries. It will make recommendations on policies and programmes to minimize the harmful impact of urbanization on the environment, and will propose guidelines for action in this area at the 1972 United Nations Conference on Human Environment.

BACKGROUND TO SYMPOSIUM

The Symposium has been organized in response to a series of actions taken by the General Assembly since 1965.

In guidelines laid down in a resolution[2] in December 1965, the Assembly recommended that Member States assume a major role in the solution of the housing problem and called for international assistance to developing countries in the field of housing, building and planning.

The United Nations Committee on Housing, Building and Planning was asked to work out "practical and effective measures" for carrying out the recommendations set out in the Assembly's resolution.

In a resolution[3] last year, establishing a preparatory committee for the 1972 United Nations Conference on the Human Environment, the Assembly invited interested intergovernmental and non-governmental organizations to lend every possible assistance in the preparations for the Conference.

In another action[4] last year, the Assembly decided to consider the question of housing, building and planning as a matter of priority at its 1970 regular session, and requested the Secretary-General to prepare a report for this purpose.

Specifically, the Secretary-General was asked to report and make recommendations on the problems and priorities confronting Member States in this field. He was also asked to make recommendations in building and financing costs and on the need for low-income housing, rural housing, community facilities and environmental improvements.

AGENDA OUTLINED

The main items for discussion will be as follows:

Major trends in world urbanization;

Experience in formulating national settlement policies and regional urbanization programmes;

(a) In a centrally-planned economy;
(b) In an industrially developed country;
(c) In a developing country;

Ecological aspects of the Urban Environment;

The human stake in environmental improvement;

Approaches to comprehensive planning for the human environment.

SYMPOSIUM ON THE IMPACT OF URBANIZATION ON MAN'S ENVIRONMENT

A. BACKGROUND

1. The United Nations in cooperation with the International Trade Union of the United Automobile Aerospace and Agricultural Implement Workers of America (UAW) will convene a meeting to review a number of central issues affecting the human environment as a result of urbanization and growth of urban settlements throughout the world.

2. Increasing pressure on the existing urban environment as a result of population growth and urban migration, and the ever-growing physical demands placed upon the environment by man's industrial and technological activities have made it clear that individual countries, and in fact the human community as a whole, must develop a more rational and constructive approach to further development. Nowhere is this more evident than in the rapidly growing urban areas of the world. The most recent United Nations report on this subject indicates that by the end of the present century the world will have changed from a basically rural organization to one that is predominantly urban; and the trend is expected to continue.[1] In numerical terms, the report estimates that the world urban population will grow from 990 million in 1960 to over 3,000 million over the year 2000, and will have exceeded total rural population by that time.

3. The United Nations and many other international organizations are seriously concerned about the environmental impact of an urban growth of this magnitude. Many experts have expressed doubt to whether existing urban centres can be expected to expand indefinitively along current lines of physical, financial and administrative organization. Previous strategies for urban growth such as new towns and the opening of new territories, limited as they are by the constraints of current investment trends, financing and political considerations, do not appear to offer the same safety valve in the decades to come as was thought to be the case in earlier periods. Current projections indicate that the vast majority of urban growth will take place in existing centres. This gives rise to the concern expressed above and such questions as: (a) What is likely to be the impact of the increased numbers, size and density of urban populations on a scale never before experienced in most parts of the world? The question raises implications regarding the capacity to provide employment, health (both mental and physical), housing and community facilities, education, recreation and other expected urban services. (b) On another level it is necessary to evaluate the probable impact on the natural ecological environment: air, water, vegetation and the quality of life in an urban world. Will the massing of so many people create entirely new conditions or will it merely extend the present ones? These are some of the issues which it is hoped the meeting will at least be able to begin to define.

4. The United Nations Conference on the Human Environment, which is to be held in Stockholm, Sweden, in June 1972, will also be considering problems arising from urbanization and the increased pressure upon human settlement. The problem of human settlements was identified by the Advisory Committee on the Application of Science and Technology to Development as one of the three main categories of problems to be considered by the Conference. In preparation for the Conference and in particular of those elements dealing with the urban influence

---

[1] *Growth of World Urban and Rural Population*, 1920–2000. United Nations, New York, 1969; Sales Publication ST/SOA/Series A/44; Sales No. E.69.XIII.3.

[2] Resolution 2086 (XX) of 7 December 1965.

[3] Resolution 2581 (XXIV) of 15 December 1969.

[4] Resolution 2598 (XXIV) of 16 December 1969.

[1] *Growth of World Urban and Rural Population*, 1920–2000. United Nations, New York, 1969; ST/SOA/Series A/44; Sales No. E. 69. XIII.3

and the problems of human settlements, it is desirable to identify the specific influence of such problems in urbanizing countries. Relevant experience can be brought to bear on such issues and its application, particularly in developing countries, can be more clearly understood. The Symposium can also serve therefore as a first step towards identifying major issues, assembling information and preparing documentation relating to human settlements for the 1972 Conference.

5. In addition, the General Assembly approved, at its 24th session, a resolution in which it requested the Secretary General to submit a report ascertaining the problems and priorities confronting member states of the United Nations in the field of housing, building and planning, and in particular giving information on trends in building and financing costs and the need for low cost housing, community facilities and environmental improvements, together with his conclusions and recommendations on this matter.[2] The Symposium will assist in providing background material for the preparation of this report, and in focussing the discussion which takes place on the central issues which confront the world in relation to urbanization.

6. In response to these basic requirements, and to a growing world-wide interest in the problem of human settlements and their future development, the meeting has been organized in concert with the International Union of the United Automobile, Aerospace and Agricultural Implement Workers of America, which has offered full host facilities.

B. OBJECTIVES

1. The purpose of the meeting is to assemble leading professionals, government officials and industrialists from a number of countries, and trade union representatives to discuss the problem of urbanization and its impact on man's environment. Specifically, the objectives will be:

(a) To focus on the major issues involved in the direction and control of urbanization trends for the improvement of the human environment;

(b) To exchange information and experience on these issues between informed experts, officials and trade union representatives from both developed and developing countries;

(c) To formulate recommendations on policies and programmes to minimize the harmful impact of urbanization on the environment;

(d) to offer basic guidelines on the approach that the United Nations should follow in this field in relation to the 1972 Conference.

C. ORGANIZATION OF THE MEETING

1. The Symposium is being sponsored by the United Nations in cooperation with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America. Within the United Nations the meeting is sponsored by the Office of Technical Co-operation and the Centre for Housing, Building and Planning which will be responsible for the organization aid administrative arrangements for the Symposium. The Union will assume responsibility for the meeting facilities, food and lodging of all participants, the services of the Technical Secretary, and the provision of certain other sevices. The United Nations will invite 20 international experts and will select consultants to prepare the main discussion papers. It will also be responsible for the preparation and translation of the meeting documentation and other services. The Union will nominate 10 representatives as participants. Invitations will also be extended to a number of additional observers and other guests. The meeting will be chaired by two co-directors one appointed by the UAW.

2. The Symposium will consist of plenary meetings at which the discussion papers will be introduced for each item of the agenda, as well as films, exhibitions and the review of publications and other educational materials.

D. AGENDA

The main items for discussion will be as follows:

Item I. Major trends in world urbanization.

Item II. Experience in formulating national settlement policies and regional urbanization programmes:

(a) In a centrally planned economy;

(b) In an industrial developed country;

(c) In a developing country;

Item III. Ecological aspects of the Urban Environment;

Item IV. The human stake in environmental improvement:

Item V. Approaches to comprehensive planning for the human environment.

2. One main paper will be prepared for each agenda item (three under Item II). In addition to the author who will present the paper, there will be four panelists for each main item.

F. LANGUAGES

The working languages of the UN (English, French, Spanish, Russian) will be used for all working papers and interpretation facilities.

G. TIME AND PLACE OF MEETING

The Symposium is scheduled to take place in Onoway, Michigan, USA, from 14 to 20 June 1970. The UAW offered host facilities at its new Family Education Center at Black Lake.

H. PROJECT FOLLOW-UP

It is proposed that an edited version of the Symposium papers and discussion will be published as a document for wide dissemination in the four UN languages, thus providing a major contribution to the documentation for the 1972 Conference.

I. FINANCIAL ARRANGEMENTS

1. The United Nations will bear the following costs with regard to participants whom it invites:

Round trip economy class air transportation between the country of origin's airport of departure and the location of the meeting;

Round trip economy class air transportation between country of origin or duty station of expert consultants, interpreters, secretaries and other staff.

2. The United Auto Workers will provide food and lodging for all participants for the duration of the Symposium.

3. No expenditures for the travel or other costs incurred by dependents who may accompany participants; costs incurred by participants with respect to travel insurance, accident insurance, medical bills and hospitalization fees in connexion with their attendance at the meeting; or compensation in the event of death or disability of participants while attending the meeting, will be paid by the United Nations or the sponsoring organizations.

FEBRUARY 13, 1970.

Hon. JACOB D. BEAM,
The American Ambassador, Moscow, U.S.S.R., American Embassy—Box M, APO, New York, N.Y.

MY DEAR MR. AMBASSADOR: For some years the United Automobile Workers of America have been quietly pursuing contacts with trade union representatives in various Eastern countries, in addition to the very wide contacts which we already enjoy in Western countries and the developing countries. We have already had one delegation visit the Soviet Union, and we have received a trade union delegation as guests of UAW. This past year we were pleased to have, as our guests, very high level trade union delegations from Yugoslavia and Rumania. I recall the opportunity which I had on a recent visit to Moscow to speak with you briefly about what our intentions are in this regard.

The purpose of this letter is to inform you of an invitation which we have extended to Mr. Boris Averianov, Director of International Affairs for the All Union Central Council of Soviet Trade Unions. A copy of my letter of invitation to Mr. Averianov is enclosed. I wish to underscore the point that Mr. Averianov will be the guest of the UAW during his stay in the United States, and we will assume full responsibility for programming his stay.

I write you to solicit your cooperation in expediting the issuance of a visa for Mr. Averianov.

Respectfully yours,

VICTOR G. REUTHER,
Director, International Affairs Department.

FEBRUARY 12, 1970.

Mr. BORIS A. AVERIANOV,
Director, International Department, All Union Central Council of Soviet Trade Unions, Moscow, U.S.S.R.

MY DEAR BORIS: I recall our conversation during my last visit with you in September, 1969, when we spoke of the possibility of your making a visit to the United States. We welcome this opportunity not only to meet and talk with you about matters of common concern, but we also welcome the opportunity to show you a bit of our country and our trade union activities as but a small measure of repayment for the kindness and generosity with which you have received numerous representatives of our organization.

As to the time of the visit, I know that you will be most occupied during the early days of May in conjunction with the annual First of May celebrations. When these are behind you and you are free to undertake a visit to us, we will be happy to receive you. The month of May should be a pleasant month in most parts of the United States, and it will be a good time when the leadership of our union will have a slight pause between our national convention and the beginning of major collective bargaining negotiations. Later in the summer will, of course, find all of our people deeply engrossed in the negotiations of major agreements.

As to the duration of your stay, this depends entirely upon your own desires and the time you can give to such a visit. Certainly, we would hope you could stay for at least three weeks.

Perhaps it has already come to your attention that the UAW has extended an invitation to the United Nations to act as host for an international planning conference on the subject of "The Impact of Urbanization on the Human Environment." We have suggested that this planning conference would meet at our new UAW Family Education Center in northern Michigan. The United Nations has agreed, in principle, and are contemplating participation by representatives of twenty countries and, of course, it has been suggested that we should feel free to invite prominent trade unionists from both the industralized and developing countries.

It is still our hope that this conference will be convened at our Center on May 10, and extend for five or six days. It is our hope also that your schedule would permit your arriving in sufficient time to participate in that meeting where you will also have the opportunity to meet not only key representatives of many nations, but also some key trade union personalities. There is, however, a possibility that the inner machinery of the United Nations may not move sufficiently

[2] General Assembly resolution 2598 (XXIV) of 12 December 1969.

fast to permit holding that meeting as early as May 10, and it may have to be rescheduled for early Fall. However, whether or not this meeting does take place in May, we are nevertheless prepared to welcome you and assist you in making such visits and holding such conversations as you may desire.

Do let me know at your earliest convenience as to what date would be most convenient for your arrival.

Please accept my very best personal wishes for you and your family, as well as for your colleagues in your union.

Very sincerely yours,

VICTOR G. REUTHER,
Director, International Affairs Department.

FEBRUARY 26, 1970.

Mr. BORIS A. AVERIANOV,
Director, International Department, All Union Central Council of Soviet Trade Unions, Moscow, U.S.S.R.

Subject: Invitation to Attend and Participate in Conference of UN Experts on "The Impact of Urbanization on the Human Environment" to be held at UAW Family Education Center, Onoway, Michigan, June 14–20, 1970.

MY DEAR BORIS: The officers and members of our one million six hundred thousand member organization are enormously pleased that the General Assembly of the United Nations accepted the proposal of the Swedish government to convene in 1972 a world conference on the Human Environment.

Exactly one year ago, on January 14, 1969, Walter Reuther, the President of our organization, directed our interest and our support for this UN action. The growing concern throughout the world regarding the human environment reflects the growing interest not only of official governments, but likewise of non-governmental organizations and, of course, of many millions of private citizens throughout the world.

As an expression of our deep personal concern of our organization, the UAW expressed to the United Nations its interest in assisting in promoting the widest interest and support for this UN effort.

On November 13, 1969, the UAW extended a formal invitation to the UN, offering that our organization would serve as host for the convening of a small Planning Conference of the UN participants on an important aspect of the broad question relating to human environment. This proposed conference was to deal with "The Impact of Urbanization on the Human Environment" as part of the implementation of the UN General Assembly Resolution No. 2398.

The officers of the UAW are pleased to inform you that the United Nations has accepted with enthusiasm the offer of the UAW to serve as host for such a conference. Joint planning meetings at the staff level between Mr. Philippe De Seynes, Under Secretary of the UN; Mr. R. Joseph Crooks, Director of Centre for Housing, Building and Planning, and the UAW have been held. It has now been firmly established that the United Nations will invite technical experts from approximately twenty different member nations of the UN, as well as representatives from UN-related organizations.

The United Automobile Workers Union, as host for the conference, has been invited to extend invitations to a limited number of trade union leaders representative of the major continents as well as both the developing and the industrialized nations.

I have the great pleasure of extending to you, in behalf of President Walter Reuther and the officers of the UAW, a warm invitation to attend and participate in this most historic conference. We also welcome this opportunity to have you visit the new and unique Family Education Center of UAW. A brochure showing the facilities of the Center is enclosed. You will, of course, be a guest of the UAW for the duration of the conference. We sincerely hope that your schedule will permit your attendance. We know that problems of the environment are of pressing concern to workers and trade unions as well as governments around the world, and we know that your attendance and your participation will constitute a significant contribution to what must be a coordinated worldwide effort.

If you are able to accept our invitation, we shall immediately forward to you more details concerning the conference.

May we hear from you at your earliest convenience.

Sincerely yours,

VICTOR G. REUTHER,
Director, International Affairs Department.

MOSCOW, U.S.S.R.,
February 25, 1970.

Mr. VICTOR G. REUTHER,
Director, International Affairs Department, UAW, Washington, D.C.

DEAR MR. REUTHER: I have received your letter of February 13 and am interested to learn that you have extended an invitation to visit the United States to Mr. Boris Averianov, Director of the International Affairs for the All-Union Central Council of Soviet Trade Unions.

Our Consulate tells me that as soon as Mr. Averianov's formal visa application is sent to the Embassy through the Ministry of Foreign Affairs, we will request an advisory opinion from the Department of State under current exchange procedures. The Department of State likes to have twenty days to process such cases.

I shall personally keep myself informed about this matter.

Sincerely,

JACOB D. BEAM,
Ambassador.

FEBRUARY 13, 1970.

Hon. EMORY C. SWANK,
Deputy Assistant Secretary for European Affairs, Department of State, Washington, D.C.

MY DEAR MR. SWANK: I wanted you to have a copy of a letter which I have just sent to Ambassador Beam in Moscow, together with a copy of the letter of invitation which we have extended to Mr. Boris Averianov of the Soviet Trade Unions, inviting him to come to the United States as guest of the UAW.

I would appreciate very much your cooperation in helping to expedite the prompt issuance of a visa for Mr. Averianov. When last we had a delegation from the Soviet Union a few years ago, the members of the delegation were kept waiting in the wings until the very eleventh hour before they knew whether visas would be issued. I would hope that we could avoid such embarrassment again.

It is for this reason that I am alerting both you and our Ambassador to Moscow at the very moment when our invitation has been extended.

With all good wishes, I am.

Sincerely yours,

VICTOR G. REUTHER,
Director, International Affairs Department.

DEPARTMENT OF STATE,
Washington, D.C., May 5, 1970.

Mr. VICTOR G. REUTHER,
Director, International Affairs Department, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Washington, D.C.

DEAR MR. REUTHER: In the absence of Mr. Swank, who is presently traveling in Eastern Europe, I am replying to your letter to him of February 13 regarding the invitation extended by you to Mr. Boris Averianov to visit the United States as a guest of the UAW.

After careful consideration, the United States Government has concluded that it is inadvisable at this time to change our long-standing policy on the admission of Soviet labor officials to this country. You are, I am sure, familiar with the rationale underlying this policy.

The Department, therefore, does not plan to recommend that the Attorney General grant a waiver of Mr. Averianov's inadmissibility under the Immigration and Nationality Act, should he apply for a visa to come here under the circumstances outlined in your letter to Mr. Swank.

I know that this decision will disappoint you but perhaps you will find this information useful in connection with your invitation to Mr. Averianov.

Sincerely yours,

ADOLPH DUBS,
Country Director, Soviet Union Affairs.

WASHINGTON.—The State Department said today it has denied a visa to a Soviet labor leader who had wanted to attend a meeting of the United Auto Workers in Michigan in mid-June.

The Russian is Boris A. Averianov, director for International Affairs of the All-Union Central Council of Soviet Trade Unions. The UAW asked the State Department several months ago to grant him a visa so that he could attend a symposium being sponsored by the United Nations and the UAW June 14–20 at Onoway, Mich.

A department spokesman said the UAW was advised of the denial. The department also told the UAW it would not recommend to the Justice Department that a waiver be granted, as it has in the case of some Communists prohibited by law from securing visas through normal channels.

The Department spokesman declined to say why the Department would not ask a waiver. However, other officials said that in general it had been the policy to exclude Russian labor leaders unless they came as officials to attend some United Nations affair in New York.

[From the Washington Post, June 11, 1966]

REDS' VISAS BLOCKED BY AFL–CIO—SOVIET LABOR GROUP EXCHANGE THWARTED BY STATE DEPARTMENT AIDE

(By Stephen S. Rosenfeld)

The AFL–CIO, working through the State Department, has kept a Soviet labor group from coming to the United States on an exchange set up by a private American organization.

This is the most recent instance of an AFL–CIO block being placed across one of the "bridges" President Johnson says he would like to build to Communist countries.

It also helped determine United Auto Workers President Walter P. Reuther, earlier this week, to level an unprecedented public challenge to George Meany, head of the 13-million-member, politically powerful labor federation.

OBJECTS TO BOYCOTT

Reuther specifically objected to the AFL–CIO boycott of an International Labor Organization conference in Geneva, after a Pole was elected its first Communist president last week.

Meany held public silence yesterday on Reuther's challenge.

Nor would Meany comment on Geneva press reports that the AFL–CIO was contemplating a break with the ILO, a special United Nations agency. The labor delegation is expected to leave Geneva today.

VISAS DENIED

The thwarted labor exchange was worked out by a private New York based group, the Citizen Exchange Corps, headed by adman Stephen D. James. Eight Russians were to arrive June 8. On June 2, James said, he

learned their visa applications had been denied.

High Department sources made clear that AFL–CIO pressure was responsible for the denial. The Department's stated reason for the rejection mirrored the AFL–CIO stand: that the Soviet group included some union officials; that although they sought individual tourist visas, they were in fact a union delegation; and that admitting them would equate Soviet and American unions and lend unjustified status to the Russians.

Angry UAW officials, who had informally arranged the Russians' Washington and Detroit programs, are now lobbying for their visas in Upper Washington echelons.

OTHER GRIEVANCES

The UAW, the single big detente-minded union actively bucking the cold-war policies of the AFL–CIO, has other grievances:

The Federation throttled a proposal by the American Ambassador to Poland, John A. Gronouski, to send some Polish-speaking unionists from his home state of Wisconsin to Poland.

It warned locals to avoid a visiting Yugoslav union official last year and reportedly blocked a contemplated appearance by the man at American University. Said to be the only Communist union leader to get an American visa since the war, the Yugoslav was received informally by the UAW.

The AFL–CIO has stifled internal State Department efforts to funnel some of the American Government's foreign labor activities through separate American unions, instead of continuing to funnel them all through the AFL–CIO.

Sitting there as Meany's director of international affairs is Jay Lovestone, an ardent anti-Communist accused recently by his UAW counterpart and long-lasting foe, Victor Reuther, of being "involved" with the Central Intelligence Agency.

NOMINATED BY MEANY

Sitting at the State Department end of the labor-government conduit is George P. Delaney, Special Assistant to the Secretary and Coordinator of International Labor Affairs. Nominated by Meany for his job, Delaney formerly was an AFL–CIO international representative.

Delaney is one of two U.S. Government delegates to the Geneva ILO conference. Labor and business put up their own delegates. The U.S. pays the way for them all.

A State Department spokesman was asked yesterday whether Delaney was backing the AFL–CIO conference boycott or the U.S. Government position, which is to accept the tripartite delegation but to be against the boycott. The spokesman said "nobody knows" Delaney's position but it was "assumed" he supported the Government.

It is through Delaney that the AFL–CIO recommends candidates for the 80-odd labor attache posts in U.S. Embassies. Union sources say the attaches are generally union men dependent not on State but on the AFL–CIO for their careers.

That is why, informed critics say, the attaches tend to show the AFL–CIO distaste for unions it considers Communist or Communist-tainted, and why more Embassy overtures are not made to the democratic left abroad.

[From The Evening Star, June 14, 1966]

VISIT BY SOVIET UNION AIDES POSTPONED UNTIL SEPTEMBER

(By Lee Cohn)

A visit here by six Russian union leaders—blocked by the State Department and the AFL–CIO—has been postponed at least until September, American sponsors of the tour said today.

The Russians were denied visas for a visit scheduled to start June 6 under the cultural exchange program.

Upholding objections by AFL–CIO President George Meany, the State Department refused to allow the visit because the tour group looked too much like a trade union delegation.

Meany considers government-controlled unions in Communist countries a sham, and it is against State Department policy to recognize these unions as legitimate representatives of workers.

The department invoked this policy even though the six Russian union leaders and two rank-and-file workers who planned to accompany them had applied for visas as individual tourists, not as a delegation.

Stephen D. James of New York, head of the private organization sponsoring the tour, consulted department officials and said they indicated the unionists would receive visas if their group were enlarged to include more workers and representatives of the general community.

James, president of the Citizens Exchange Corps, advised the Russians to meet this condition.

In a cable received by James yesterday, Boris Averianov of the All-Union Central Trade Union Congress raised no objection to expanding the group. But Averianov said the visit should be postponed until September.

James had proposed rescheduling the visit to start this week, so it could be completed before the July 9 departure of 165 Americans for a tour of the Soviet Union. State Department officials told him, however, that it would be impossible to process the Russians' visas so quickly.

Although disappointed and embarrassed by the delay, James said he will proceed with plans for a September visit.

He said he will consult the State Department in an attempt to clarify policy, and will discuss tour plans with the Russians during his visit to the Soviet Union next month.

The dispute over the Russians' visit is expected to come up during a special meeting of the AFL–CIO executive council here Thursday. Walter P. Reuther, president of the United Auto Workers and a member of the council, objects vehemently to Meany's policy of trying to isolate Russian unions.

Meany called the council meeting mainly to thrash out a related quarrel with Reuther over the U.S. labor delegation's boycott of the International Labor Organization's conference, now in progress in Geneva.

With Meany's blessing, the delegation walked out of the conference because a Polish Communist was elected presiding officer. Reuther denounced Meany's role in the boycott in a letter last week.

The council, which normally is under Meany's firm control, is practically certain to uphold him in the dispute with Reuther.

PRESS CONFERENCE

Participants: Leonard Woodcock, President, United Auto Workers, and members of the press.

Question: Mr. Woodcock, in connection with pollution, problems of that sort generally, the United Nations and the UAW I understand are going to have a joint conference on environmental problems in Black Lake. The State Department yesterday made public the fact that it has rejected the application for a visa by the Russian trade union delegate.

Does the UAW plan to protest that?

Mr. WOODCOCK. Let me say I think that development was most unfortunate.

As I understand the release, it said they were refusing a visa to a Soviet labor delegate to come to an affair, an activity of the United Auto Workers at Black Lake in Onaway, Michigan.

The fact is, the United Auto Workers are the host, but the convenor of that conference, as you know, is the United Nations. This is a matter that lies between the United States Government and the United Nations.

As a layman, it is my understanding that the Convention which permitted the United Nations to be housed on American soil granted to them certain immunities as to the entry of necessary personnel. I am somewhat surprised that there seems to be only one class of personnel who are so barred, namely, labor personnel.

I can understand why a certain individual may be barred because of his personal past activity inimical to the United States, but this business of denying only certain, a certain class, namely, labor representatives, I suppose means either they think they are more red than the reds or that we in labor in the United States are more susceptible than a businessman or the farmer out in Iowa, who was the host to Chairman Khrushchev. I think it is most regrettable and I hope it can be reversed, and I certainly hope that the UN Conference can go ahead because the whole question of pollution of the atmosphere, this world being a total system, can only be done on an international basis.

Question: Mr. Woodcock, this increasing automation that you anticipate in the industry, what is that going to do to the auto workers and especially those on the assembly line, and do you, looking ahead, say, maybe to the next contract negotiations after this one, do you anticipate a situation in which you will have to press for a shorter work week in order to spread employment?

Mr. WOODCOCK. Well, let me add to it one illustration that I gave in response to Mr. Joyce, that it has always been axiomatic in the industry that an automobile assembly plant could only operate on a two-shift basis. So a few months ago in Norwood, Ohio, General Motors Corporation put into effect a third shift. It was widely expected that the third shift would fail, that they would not be able to do it, but every evidence shows that they are going to be able to . . .

JUNE 5, 1970.

Hon. WILLIAM P. ROGERS,
Secretary of State,
Washington, D.C.

DEAR MR. SECRETARY: Mr. Victor Reuther, Director, International Affairs Department, United Auto Workers, has sent me a copy of a letter dated May 5, 1970, which he received from Mr. Adolph Dubs, Country Director, Soviet Union Affairs. According to Mr. Dubs' letter, the United States Government has had a long-standing policy against the admission of Soviet labor officials to this country.

I would appreciate it if you would furnish me with a detailed explanation of the background and reasons for this policy, including a list of the foreign trade unionists (and their country of citizenship) whose visa applications have been denied within the past year. In addition, I would be interested in knowing what the prospects are for bringing about a change in our government's policy of excluding Soviet trade union representatives from the United States.

In this connection, I am enclosing a copy of an article dealing with this matter which appeared in the June 2 issue of the *Washington Post.* If you have any comments on the article, I would be glad to receive them.

Sincerely yours,

J. W. FULBRIGHT,
Chairman.

[From the Washington Post, June 2, 1970]

AFL–CIO CITED IN REFUSAL OF RUSSIAN'S VISA

(By Robert H. Estabrook)

UNITED NATIONS, June 1.—Intervention by the AFL–CIO is believed here to have prevented a United States visa for a Soviet trade union representative who was invited to a U.N.-sponsored conference.

The Soviet representative, Boris Averianov, had been invited by the United Auto Workers to participate in a meeting on the human environment sponsored jointly with the United Nations at Onaway, Mich., June 14–20.

According to the understanding here, Secretary of Labor George P. Shultz took the issue to President Nixon, who upheld the position of AFL–CIO President George Meany that Soviet trade union leaders represent the Communist government rather than bona fide labor organizations.

Following the decision, U.N. Secretary General U Thant raised the question with Ambassador Charles Yost, and a long series of conferences has been held between U.S. and U.N. officials.

Although the case of Avrianov himself is now considered academic because he is traveling elsewhere and would be unable to come to the U.S. in any event, the U.N. officials view the principle as important. A U.N. spokesman said today he thought the problem could be worked out.

Presumably this will affect the attendance of another Soviet representative, a government expert invited to deliver a paper. Some 40 heads from more than 20 countries are expected to attend the conference, which will be held in the UAW's new $14 million family education center.

OLD LABOR DISPUTE

Apart from reflecting Meany's strong feeling about the role of Soviet labor representatives, the case is also believed here to have involved the ideological feud between Meany and Walter Reuther, the late president of the UAW, who died in a plane crash last month. Reuther, who withdrew the auto workers from the AFL–CIO, was an anti-Communist but did not share Meany's aversion to contacts with Soviet labor.

Sources familiar with the case said no actual visa application on behalf of Avrianov was ever received by U.S. agencies. Instead, the UAW posed the question to the State Department on a "What would you do if . . .?" basis and received the negative response that the department disclosed last week.

ANOTHER ROUTE

Victor Reuther, UAW director of international affairs and brother of Walter Reuther, was told that the department could not waive its rule that visas are not granted to Soviet trade unionists. Avrianov's title is director for international affairs of the All-Union Central Committee of the Soviet Trade Unions.

One source familiar with the story said today that the State Department objection was not to Avrianov personally, and that the department apparently would be willing to issue a visa if he were to apply as a journalist or in any capacity other than as a trade unionist.

Ernest Lee, assistant director of international affairs of the AFL–CIO in Washington, disclaimed knowledge of the details but said the federation "would certainly applaud" a U.S. decision not to grant a visa to a Soviet labor representative.

"It sounds sensible to us," he declared.

A UAW spokesman in Washington said, however, that the rule had been waived in 1966 and that visas had been granted a delegation of Soviet trade unionists to visit the United States.

Despite the U.N. concern, some sources here question whether the decision violates the U.S.-U.N. headquarters agreement, since Avrianov was invited by the UAW rather than the U.N. The headquarters agreement applies mainly to U.N. activities in the New York area.

The Michigan conference on the effects of urbanization on the human environment is the first in which the U.N. and a labor union have joined in sponsorship, and there are no precedents about the status of invitees.

THIRTY-FOUR INVITED

The U.N. itself has invited 24 participants from 20 countries, and the UAW has nominated 10 others to attend at its expense. Six additional consultants are expected to read papers.

Presumably there would be no difficulty in obtaining a U.S. visa for a Soviet consultant representing the government. A UAW source said today that as far as the union knows such a representative will attend.

One candidate reportedly under consideration is Aleksy Kudvanavtsav, director of planning and urbanization of the State Committee for Civil Engineering and Architecture (Gostroy). Kudvanavtsav recently attended another conference in the U.S.

A second Soviet representative also said to be under consideration is Vyazheslav Shwaricov, director of Gostroy's central town planning research and design institute. G. Fomin, the Gostroy chairman, is expected to make the selection.

Conference planners have conferred with Soviet Ambassador Anatoly Dobrynin in Washington in an effort to expedite a decision.

DEPARTMENT OF STATE,
Washington, D.C., June 29, 1970.

Hon. J. WILLIAM FULBRIGHT,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Secretary Rogers has asked me to reply to your letter to him of June 5 concerning our policy on the admission of Soviet labor officials to this country.

Soviet officials generally are ineligible for visas under Section 212(a) (28) of the Immigration and Nationality Act. Such officials can be granted visas only if the Department of Justice approves waivers of ineligibility upon recommendations by the Department of State.

In the case of visa applications by Soviet labor officials coming to this country in their official capacity, the Department carefully reviews all relevant factors and determines whether or not entry in a given instance would be in the public interest. In the specific case referred to by you, we concluded that, on balance, it would not be in the public interest at this to change our long-standing policy in cases of this kind by recommending that the Attorney General grant a waiver of ineligibility. I can assure you that we gave the most careful consideration to this case and will continue to give our careful consideration to future cases of this kind.

Among other factors, the Department of State must consider the view that Soviet trade unions are not independent organizations but rather are controlled instruments of Soviet policy. As you know, the AFL–CIO attaches the highest importance to this factor and has long and vigorously opposed contacts with Soviet labor officials.

As regards your request for a list of the foreign trade unionists whose visa applications have been denied within the past year, no statistical records are kept either in the Department of State or at our Foreign Service posts abroad concerning requests for waivers filed pursuant to Section 212(d) (3) of the Immigration and Nationality Act. We are thus unable to provide you such a list.

I hope the above information will be helpful to you.

Sincerely yours,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

JULY 10, 1970.

Hon. DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations, Department of State, Washington, D.C.

DEAR MR. SECRETARY: I refer to your letter of January 29 concerning the Administration's policy on the admission of Soviet labor leaders to this country. Your reply leads me to raise the following questions:

(1) What are the specific criteria used by the Department of State to determine whether the admission of a Soviet labor leader is consistent with the public interest? When were the criteria formulated? Did the Department of State formulate the criteria or was it formulated on an interagency basis? If the latter, which of the other agencies participated?

(2) Please explain the application of the "public interest" criteria to the particular case of Mr. Boris Averianov. What were the "relevant" factors in this case?

(3) Aside from the AFL–CIO's objection, what difference is made by whether Soviet trade unions are independent of or subordinate to Soviet policy? What is the Department's view? Does it differ from that of the AFL–CIO?

(4) Please provide me with the names of all Soviet (and other Communist) labor leaders admitted in the last five years (by year) to this country. In each case, please specify the reason(s) for the individual's admission.

Sincerely yours,

J. W. FULBRIGHT,
Chairman.

INTERNATIONAL AFFAIRS DEPARTMENT,
Washington, D.C., July 15, 1970.

Hon. J. WILLIAM FULBRIGHT,
U.S. Senate,
Washingon, D.C.

MY DEAR SENATOR FULBRIGHT: I thank you for your kind letter of July 9, transmitting the text of the letter from the State Department dated June 5 and signed by David M. Abshire, Assistant Secretary for Congressional Relations, setting forth the Department's somewhat confused rationale concerning the denial of a visa to Mr. Boris Averianov, a Soviet trade union official. I should like to submit to you these additional comments which may be helpful to you in pursuing this matter with both the State Department and the Justice Department.

I have carefully gone through the wording of the Immigration and Nationality Act and particularly Section 212(a) (28) to which the State Department referred, and while I am not a Philadelphia lawyer, it is clear to me that the language of the Act makes no special reference as guidelines to the handling of visa applications from Soviet trade unionists. There is a general reference to those who may be communists, or members of other organizations considered inimical to our country's principles. Hence I conclude that if a member of the Communist Party from the Soviet Union, who is a government official, or a journalist, a scientist, or an agricultural expert for whom this section is waived and a visa is granted, why are not similar waivers issued where the applicant is a trade unionist.

The State Department indicates, "in the specific case referred to by you, we concluded that, on balance, it would not be in the public interest at this time to change our long-standing policy . . ." The question is,

what is this long-standing policy that requires change?

I was given to understand by the State Department that in the case of Mr. Averianov they would have been quite agreeable to issue a waiver if he had been willing to come to the U.S. as a journalist, but he could not come as a trade union official. I assume there has been a practice, engaged in by many governments over many long years, that people are not always what their titles indicate, and if his coming as a trade union official would somehow threaten the stability of our fragile democracy, how would it be less threatened if he came wearing the hat of a journalist.

The fourth paragraph in the State Department letter makes specific reference to the vigorous opposition of the AFL–CIO to contacts with any Soviet labor officials. It is fully within the right of the AFL–CIO, or any other organization in our country, to choose with whom they wish to associate. We are all familiar with the policy of the AFL–CIO, but what we seek are clarifications of what the policy is of our government. I was not aware that the State Department or the Justice Department contracted out to private organizations, or individuals, their legal obligations as government representatives. I must say that I am somewhat amused by the State Department letter which states that "the Department of State must consider the view that Soviet trade unions are not independent organizations but rather are controlled instruments of Soviet policy." If that is the considered judgment of the State Department, are we to conclude that the trade unions of Yugoslavia and Roumania are free and independent institutions without any state or party control. I am certain Mr. Meany does not share this view and yet the State Department has granted visas to official trade union delegations from Yugoslavia and Roumania, who have been received by the UAW as our guests.

It is somewhat ironic that this argument should be used by our State Department when it has entered into formal agreement with the AFL–CIO in which it has contracted to use the services of the AFL–CIO and various of its institutions as "agents in support of U.S. government policy." I, of course, refer to the agreement between the AFL–CIO and the U.S.–A.I.D. Agency of the State Department. Furthermore, if the State Department is to make independent judgment on the degree of autonomy of a given trade union movement from influence by its own government, I am sure that I could provide the State Department with a long list of countries whose trade unions are complete instruments of their state, but who, nonetheless, are looked upon by the State Department as friendly and visas are expedited without question.

This whole controversy becomes daily more ludicrous because since I have had this exchange of letters with you a leading Soviet trade union official, having completed a visit to a country in Latin America, arrived in New York and spent three or four days being officially hosted by trade union organizations in the U.S.

As to the final paragraph of the letter from Mr. Abshire, he indicates the Department of State keeps no statistics concerning requests for waivers, filed. Who needs statistics? What is needed and what was requested, as I understand it, is a specific listing of visa applications which were approved or denied, under Section 212(a)(28) of the Immigration and Nationality Act. I cannot believe that the Department of State does not keep records on such matters.

I shall be most grateful to you for your assistance in vigorously pursuing this matter with the responsible U.S. government officials.

Respectfully yours,

VICTOR G. REUTHER,
Director, International Affairs Department.

DEPARTMENT OF STATE,
Washington, D.C., July 17, 1970.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I refer to your letter of July 10 concerning the question of the admission of Soviet labor officials to this country.

As you are aware, the Department for a number of years has declined to recommend that the Department of Justice waive statutory prohibitions precluding visa issuance in the case of Soviet labor leaders seeking entry to the United States in their official capacities. Recommendation that such waivers be granted would represent an affirmative judgment on the part of the Department that the public interest would be served by their admission. To date and on balance, we have been unable to perceive a sufficient public interest in cases of this kind to justify a waiver recommendation. In each case, however, where the issue has been raised in the form of a visa application from a Soviet labor official, we have reviewed our policy in consultation with other concerned government agencies, in the interest of determining its current value and validity.

This review was most recently undertaken in connection with the visa application of Mr. Boris Averianov and it was determined that insufficient justification existed at this time for changing our policy. Similar reviews will, of course, be undertaken in the event of future applications for visas from Soviet labor officials.

As regards your request for the names of all Soviet (and other Communist) labor leaders admitted to the United States, we do not keep statistical records by occupation on individuals to whom visas are issued. Our records do, however, reveal that a Soviet tourist group which included five Soviet labor officials was admitted in April 1967. In that instance, unlike the case of Mr. Averianov, they sought entry as tourists rather than as labor officials and entry was therefore permitted.

I hope the above information will be helpful to you.

Sincerely yours,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

AUGUST 4, 1970.

Hon. DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations, Department of State, Washington, D.C.

DEAR MR. SECRETARY: I have your letter of July 17 commenting further on Executive Branch policy with respect to the admission of Soviet trade union officials to this country.

Although I appreciate having these additional comments, I would like the Department's answers to questions 1 through 3 which I posed in my letter of July 10. Moreover, I would appreciate knowing whether the Department would have issued a visa to Mr. Averianov if he had applied for one as a tourist? If so, why would it be in the public interest to have Mr. Averianov visit this country as a tourist as verus visiting here as a Soviet labor leader?

Sincerely yours,

J. W. FULBRIGHT,
Chairman.

DEPARTMENT OF STATE,
Washington, D.C., September 10, 1970.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations, U.S. Senate

DEAR MR. CHAIRMAN: I refer to your letter of August 4 concerning the admission of Soviet labor officials to this country. Our comments follow on questions 1 through 3 raised in your letter of July 10.

(1) The Department's long-standing policy on the admissibility of Soviet labor leaders acting in their official capacities is a coordinated position of the Administration and further reflects consultation and discussion with American labor organization which have an interest in this policy.

(2) In the case of Mr. Averianov, the Department carefully reviewed the circumstances of his application for admission in the light of his inadmissibility under existing legislation. As indicated in my letter of July 17, a decision to recommend a waiver would have represented an affirmative judgment that the public interest would be served by his admission. We were not convinced that this was the case and therefore did not make such a recommendation.

(3) In developing and maintaining its policy on the admission of Soviet labor leaders, the Department has found it appropriate to consult with and obtain the views of US labor. We believe it is of some importance that the AFL–CIO remains vigorously opposed to their admission. You will appreciate that, among other factors, the Department must take into consideration possible repercussions which might make visits of Soviet labor officials counterproductive.

Finally, the Department's position is that the public interest is served by allowing Soviet tourists to visit the United States. The current (1970–71) US–USSR Exchanges Agreement specifically provides in Section XII that the "Parties agree to encourage arrangements for tourist travel between the two countries." Should Mr. Averianov apply for admission as a tourist, consideration would be given to recommending issuance of a waiver. Before making a decision, however, we would study Mr. Averianov's proposal program and activities in the United States to ensure that tourism was in fact his purpose in seeking entry and that he would not be acting in his official capacity.

I hope the above additional information will be helpful to you and the Committee.

Sincerely yours,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

INTERNATIONAL AFFAIRS DEPARTMENT,
Washington, D.C., September 25, 1970.

Hon. J. WILLIAM FULBRIGHT,
U.S. Senate, Washington, D.C.

MY DEAR SENATOR FULBRIGHT: I am most grateful for your continued interest in seeking clarity and a more reasoned approach by the State Department toward the issuance of visas to Soviet labor officials. You, of course, have my full permission to use any of the material which I have sent either directly to you or to your Assistant, Mr. Lee Williams.

I welcome your invitation to me to provide still further comments. I think to properly understand the rationale of the State Department on this matter one must view the visa problem in its much broader context. You are, of course, fully aware I am sure of the extent to which this controversy mirrors and reflects a deeper malaise which is an outgrowth and byproduct of the cold war. It is somewhat ironic however that the State Department should still remain a prisoner of this vestigial structure of the cold war at a time when they seek improved relations with the Soviet Union in a desperate search for a solution to the Middle East crises, the continued war in Southeast Asia and in pursuit of a broad agreement on Arms Limitations.

In no area is the negativism and destructive character of this attitude more apparent than in the events which have led to a virtual isolation of the U.S. within the International Labor Organizations. Events in this controversy provide interesting background information. I enclose for your information a public statement issued by Walter Reuther in behalf of the International Executive Board of UAW dated June 16, 1966. You will note from this statement that within the ILO, the AFL–CIO is now pursuing policies which they themselves previously admitted

to be self-defeating, would lead us into blind isolation, and would cause us to "fall into a Soviet trap." U.S. relations with the ILO have reached such a low level that on recommendations of the AFL–CIO, the Chamber of Commerce and the Labor Department, U.S. funds to the ILO have been cut off. I enclose for your further information the text of a letter sent by UAW President, Leonard Woodcock, to Senator Ellender, protesting this cutoff of funds to the ILO.

Another bit of interesting and related background information: In 1959 when President Eisenhower invited Premier Khrushchev to visit the U.S., the Administration apparently felt that U.S. democracy was sufficiently strong as to be able to survive a direct exposure to Nikita Khrushchev, even before farmers of the midwest. During Chairman Khrushchev's visit, he repeatedly complained to U.S. officials that he was spending too much time with businessmen and bankers and that he wanted to meet workers. I was informed the State Department phoned the headquarters of the AFL–CIO and suggested that perhaps a meeting be organized between group of trade union leaders and Chairman Khrushchev. There was, however, no positive response from AFL–CIO. I then received a direct appeal from the State Department asking whether Mr. Walter Reuther could assist in organizing such a meeting. Apparently the State Department, under a Republican President, felt it was in the interest of our country that the world's leading communist have an opportunity to hear directly from spokesmen for American workers. Walter Reuther responded to this appeal from the State Department and a dinner meeting was arranged in San Francisco for the evening of September 20, 1959. Ten leading U.S. trade union leaders, including among them seven presidents of international unions, met with Chairman Khrushchev and his entourage over dinner for a three-hour exchange. The text of this interview is enclosed.

It has been acknowledged many times by the State Department that this exchange served a most useful purpose and from the viewpoint of those of us who participated, it gave us the opportunity to appraise this Soviet leader under circumstances seldom available to professional diplomats. It strikes me as rather ludicrous that whereas the Administration of General Eisenhower felt it constituted no threat to the internal democracy of our country and was in the overall interest of the nation to expose a group of U.S. trade union leaders to the views of the number one communist leader in the world, and in turn, expose him to U.S. workers, views, the Administration of President Nixon considers the issuance of a visa to a Soviet trade union official (minor in the Soviet hierarchy) somehow would endanger the internal security of the U.S.

I have no further comment on the most recent letter from Mr. David M. Abshire, Assistant Secretary for Congressional Relations of the State Department, other than to say that it is the height of self-deception to presume that it is within the purview of our laws and within the interest of our country to invite an individual to come as a tourist, but to deny him permission to come wearing his hat as a trade union official. I have always assumed that even tourists who come to the U.S. from the Soviet Union may include among them devoted communists. I presume the Soviets likewise assume that all of our tourists may not be tourists. If there is a legitimate and sound basis for denying an individual entrance, it should require that he be denied entrance no matter what hat he wears. To blanket all Soviet trade unionists and trade union leaders as ineligible for visas is to impose restrictions on one segment of Soviet citizenry which applies to no other.

Respectfully yours,

VICTOR G. REUTHER,
Director, International Affairs Department.

STATEMENT BY UAW PRESIDENT WALTER P. REUTHER ON BEHALF OF THE INTERNATIONAL EXECUTIVE BOARD OF THE UAW—PRESENTED TO THE AFL–CIO EXECUTIVE COUNCIL, WASHINGTON, D.C., JUNE 16, 1966

The question before the Executive Council of the AFL–CIO is not a matter of personalities. It is a matter of policy and democratic procedure.

The leadership and the membership of the UAW, like many other Americans, are deeply disturbed about the growing negative character of AFL–CIO policy in the field of international affairs, of which the withdrawal of AFL–CIO delegates from the current International Labor Organization (ILO) Conference is but the latest expression.

The UAW International Executive Board believes that the action of the AFL–CIO delegates in walking out of the ILO Conference was unwise, undemocratic and unfortunate, and was a distinct disservice to the AFL–CIO, to the free world labor movement, to our nation, and to the cause of international understanding, peace and freedom.

The ILO was created on the initiative of the American labor movement and is a specialized agency of the United Nations. Affiliation with the ILO and full participation in its work have been the historic policy of our movement, because it provides a mechanism through which American labor can advance the cause of free trade unionism, social justice and democracy throughout the world.

In June 1955, when the U.S. employers were threatening to walk out of the ILO because of the application for admission by delegates from the Soviet Union, President George Meany of the AFL correctly stated:

"We are not going to walk away from the ILO. We are not going to fall into a Soviet trap and aid them in destroying this organization."

George P. Delaney, at that time AFL worker representative to the ILO, was reported on June 10, 1955 in the *AFL News-Reporter* to have stated in response to the threatened walkout by U.S. employer delegates:

"I can conceive of many reasons why the men in the Kremlin would like nothing better than to see the U.S. out of the ILO."

In 1960 Rudolph Faupl, a U.S. worker delegate to the ILO, in a foreword to a published case study of experience in the International Labor Organization by Alfred Fernbach, stated:

"One thing is certain. We will not win the support of the representatives of the newly independent uncommitted nations by trying to run away from the ideological battle with the Communists. The free employer representatives in the ILO seem to have had the idea that if you somehow ignore the Communists they will just go away. They are learning the hard way that the Communists are not easily discouraged by cold shoulder treatment."

Monsignor George Higgins, Director of the Social Action Dept. of the National Catholic Welfare Conference, in his column for release June 13, 1966, wrote:

"Apparently the (Johnson) Administration thinks—as Meany put it when the shoe was on the other foot—that boycotting the ILO for the reason alleged by the labor delegation is a most unfortunate and obviously self-defeating way of fighting communism. I think the Administration is dead right, and I sincerely hope that, by the time this column appears in print, the U.S. labor delegation will have decided to call off its boycott. The opposition of our labor delegates to communism does them credit, but boycotting the ILO (unless there is considerably more to this controversy than meets the eye—strikes me as being an ineffective, not to say a silly way of fighting communism. Indeed I think it could be argued persuasively that the election of a communist as chairman of the current ILO conference in Geneva is, if anything, an added reason for active U.S. participation in the meeting.

"In summary, then, I would say that if the U.S. labor delegates go through with their boycott, they will be cutting off their own nose to spite their face. And nothing, I should think, could possibly please the communists more, for, in the absence of the U.S. labor delegations, they can the more easily and the more successfully use the ILO as a sounding board for their own propaganda."

The walkout of the AFL–CIO delegates from the ILO Conference has isolated the American labor movement and further strained our relationship with the other democratic free trade union organizations whose delegates stayed in the ILO Conference. No other delegates of the Free World, whether worker delegates, employer delegates or government delegates, walked out.

Does the action of the AFL–CIO delegates suggest that all of the other representatives from democratic nations, whether worker, employer or government delegates, have compromised their principles or are less committed to the principles of democracy and human freedom?

To think thus is obviously dangerous nonsense.

Following the establishment of the United Nations in 1945 the ILO was reorganized as a specialized agency of the United Nations and invited into membership all nations which qualified under the United Nations Charter, including the Soviet Union and other Communist nations.

Responding to this broadened membership within ILO, the American labor movement continued its participation in and support of the ILO.

This basic policy decision was reinforced in 1955 when the American labor movement urged the U.S. employer delegates to stay in the ILO as the only effective means of meeting the Communist challenge.

This sound policy has been repeatedly reaffirmed by official AFL–CIO Executive Council and Convention action.

Having made the decision to participate in the ILO, the American labor movement as well as all other parties were morally obligated to accept the results of the democratic process in the ILO even when it was not to their liking.

It is a gross disservice to democracy for delegates to work out of an ILO Conference merely because the result of an election—about which no question of impropriety has been raised—is not to their taste. This is precisely the kind of action for which American labor has in the past justifiably condemned the Communists.

The unwise and undemocratic decision to walk out of the ILO Conference can be best judged if applied to the United Nations itself. If the official representatives of the United States Government were to walk out of the United Nations Security Council each time the representative of the Soviet Union assumed the chairmanship, or were to walk out of the General Assembly or any special agency of the United Nations whenever a person not to our liking is elected to the chairmanship of such body, we would in fact destroy the United Nations which is man's last and best hope for peace and survival.

The question of the withdrawal of the AFL–CIO delegates from the ILO Conference in Geneva is a matter totally unrelated to the question of the American labor movement's uncompromising opposition to Communism and all other forms of totalitarianism. The UAW yields to no one in its opposition to Communist tyranny. UAW leadership and membership have fought and resisted Communism within our own Union and within the American labor movement. We are expending great effort and resources in helping to build democratic trade unions throughout the world in order to raise living standards and to resist Communism and all other forms of tyranny.

The UAW is fully aware that, in the absence of democracy, so-called unions in the Communist countries are not free and independent representatives of the workers but rather instruments of their governments. This has been true since Communist nations first affiliated with the ILO and it is true today. The UAW shares the view that the cause of human freedom will be advanced, not by isolating ourselves from the hundreds of millions of people now under Communist domination, but rather by promoting relations with them that will enable us to demonstrate the superior value of democratic institutions.

We share a deep faith in the values of freedom and our democratic institutions and we believe that these values, the values of free men, are equal to the test of competition with Communism or any other form of totalitarianism.

The real significance of the AFL–CIO walkout from the ILO Conference must be evaluated in the broader context of the world in which we live and in which the leaders of our nation, in cooperation with others, are desperately searching to find means by which we broaden understanding, minimize world tensions, and effectively meet the problems of nuclear proliferation in the hope of achieving a durable peace.

John F. Kennedy, in his persistent pursuit of peace, understood the compelling urgency for reducing world tension when he stated before the U.N. on September 25, 1961:

"Mankind must put an end to war or war will put an end to mankind."

Pope Paul VI, in his historic address before the United Nations, on October 4, 1965 stated:

"Strive to bring back among you any who have separated themselves, and study the right method uniting to your pact of brotherhood, in honor and loyalty, those who do not yet share in it. Act so that those still outside will desire and merit the confidence of all; and then be generous in granting such confidence."

* * * * *

"If you wish to be brothers, let the arms fall from your hands. One cannot love while holding offensive arms. Those armaments—especially those terrible arms which modern science has given you—long before they produce victims and ruins, nourish bad feelings, create nightmares, distrust . . ."

* * * * *

"No more war, war never again! Peace, it is peace which must guide the destinies of peoples and of all mankind."

In this spirit, President Johnson, before the U.N., committed our nation to the task of building bridges of understanding with the governments and the peoples of the world in an effort to move the world away from the dangers of nuclear war and self-destruction and toward the achievement of peace among the family of nations.

The walkout of AFL–CIO delegates undermines and runs counter to the spirit of this national effort and national commitment and it is for this reason that the UAW International Executive Board is deeply disturbed and urges the AFL–CIO to instruct its delegates to return to and to participate fully in the work of the ILO to the end that the AFL–CIO can make its contribution in cooperation with others to extend the frontiers of social justice and to make peace and human freedom secure.

The UAW International Executive Board is in sharp disagreement with the decision to boycott the ILO, which marks a sharp break and reversal of a long-standing policy of the AFL–CIO. We are equally in disagreement with the failure to respect and carry out democratic procedures in the making of this decision.

The free labor movement, like a free society, can achieve unity in diversity only if the democratic process is respected. This democratic process requires consultation, discussion and free and full debate in the determination of all basic policy matters. This essential democratic procedure was totally ignored in this situation.

A free labor movement belongs to all of its members and is not the private property of anyone. No other democratic trade union organization participating in the ILO followed the AFL–CIO example of boycotting the ILO Conference. It is moreover inconceivable and unthinkable that any democratic labor organization would make such a fundamental trade union decision with such far-reaching implications without prior consultation, deliberation and discussion among its leaders.

The leadership of the UAW first learned of the AFL–CIO boycott of the ILO Conference from a public statement by an AFL–CIO staff member in Geneva, which appeared in the Detroit press Sunday, June 5, 1966.

In the last twenty-four hours, the UAW has learned from authoritative sources that the boycott of the ILO by the AFL–CIO had been under consideration by the AFL–CIO headquarters for approximately a week prior to the walkout and it is, therefore, evident that there was ample time for consultation and discussion with the leadership of the AFL–CIO before any final decision was taken.

The UAW International Executive Board expresses its deep disappointment and concern about this unwise action of withdrawing from the ILO and we vigorously protest the violation of the democratic process within the AFL–CIO.

As an autonomous affiliate of the AFL–CIO, representing approximately 1,600,000 members, the UAW declares its intention to exercise is full democratic right to express its views on all policy matters, both foreign and domestic, that relate to the welfare of UAW members and the well-being of our nation.

SEPTEMBER 1, 1970.

Hon. ALLEN J. ELLENDER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ELLENDER: On August 24, 1970, the Senate voted to cut the appropriation for the State Department previously passed by the House by $3,700,000 representing monies which the United States is legally obligated to pay under the Constitution of the International Labor Organization (ILO).

On behalf of the UAW, I am writing to you and the other Conferees who will have the responsibility for reconciling the Senate and House versions of the bill to request urgently that you insist upon restoration of the full amount voted by the House.

Failure to restore that cut would not only be in violation of a legal commitment but would, in addition, jeopardize delicate negotiations in which our government is currently engaged that offer hope of relaxation of international tensions, conflict directly with the position our government has taken with respect to financial obligations to the United Nations, endanger the viability of intergovernmental organizations generally, inflict serious damage upon the ability of the ILO to carry on work in which the United States has an important stake and call into question the good faith and integrity of financial commitments made by the United States.

The Senate's action was precipitated by the appointment of a citizen of the Soviet Union to be one of eight assistant director generals of the ILO, serving under three deputy director generals and the director general of the Organization—in other words, to fill one of 11 posts in the top levels of the Organization, and in the third layer, at that.

It is difficult for me to understand how this can be considered sufficient reason for the action taken by the Senate. Citizens of the USSR fill comparable or more important posts in the United Nations and, I am advised, in all the specialized agencies of the UN, of which the ILO is one, except for the Food and Agricultural organization of which the Soviet Union is not a member. Certainly it cannot be the intention of all those who voted for the appropriation cut in the Senate to cut off our contributions to all these organizations. Why, then, if we can live with high-level Soviet staff members in the other UN agencies, must we take such drastic action when one is appointed in the ILO?

There is no question but that the appropriations cut, if permitted to stand, will embark the United States on an illegal course. That is made abundantly clear by the letter of William B. Macomber, Jr., Deputy Under Secretary of State for Administration printed at page 29879 of the CONGRESSIONAL RECORD for August 24, 1970. He pointed out that approval of the Constitution of the ILO by the Congress has the effect of a treaty under which the United States has undertaken a legal duty to pay assessments representing its share of the expenses of the ILO. He noted, also, that at the urging of the United States, the World Court had upheld the legal validity of similar assessments levied by the United Nations. The World Court ruling concerned the failure of France and the USSR to meet their obligations for financial support of the UN's peace-keeping operations—a matter which the United States is still attempting to resolve. Thus, if the Senate action should stand, while working to carry out the ruling with respect to the UN, we would be flouting it in the ILO.

Most serious, in my opinion, is the danger that the Senate action poses for the delicate negotiations in which the US and the USSR are currently involved concerning the Middle East and the proposed SALT agreement. These negotiations represent the first signs in a long time that there may be hope of relaxing tensions between the superpowers that, if continued, would threaten disaster to all mankind.

The reaction of the Senate to the appointment of a Soviet citizen to a post in an international organization would hardly be expected, in any event, to smooth the course of those negotiations. When, in addition, the vote of the Senate, if not reversed, would commit the United States to violation of a treaty obligation, the Soviets might well ask themselves what the value is of commitments made by a government that takes its obligations so lightly.

Moreover, if the appropriations cut is not restored, the viability of all intergovernmental organizations will be placed in jeopardy. No affiliate of any such organization is apt to be happy with every appointment made to its staff. If distaste for particular appointments were to become universally accepted as a reason for refusal to meet financial obligations to international organizations, no such organization would survive for very long. With the disappearance of such organizations—which are mechanisms for communication and cooperation among governments in the common interests of their peoples—would go one of humanity's last, best hopes for a just and peaceful world.

While the inviolability of commitments to support international organizations is a principle that must be upheld with respect to any such organization to which the United States voluntarily adheres, it is particularly distressing to our Union that the Senate proposes to breach the principle with respect to the ILO. It is now widely recognized that, aside from humane reasons, it is in the interests of the United States to promote the most rapid improvement possible in the living standards of workers throughout the world. Otherwise, as the nation with the world's highest living standards, we shall always be in danger of unfair competition on world markets based upon substandard labor conditions. The ILO was created for

and is dedicated to the purpose of improving labor standards on an international scale. The ILO has not done everything we would like to see it do in that regard. But, aside from direct union action which is not possible in all countries, it offers the best means available to eliminate or at least minimize exploitation of labor as a competitive factor in world trade.

For the reasons set forth above, to which a great deal more could be added, I earnestly hope you will work in Conference to restore the full appropriation for the United States contribution to the ILO.

Sincerely yours,

LEONARD WOODCOCK,
President, International Union, UAW.

FREE LABOR MEETS KHRUSHCHEV: TEXT OF INTERVIEW WITH PREMIER NIKITA S. KHRUSHCHEV, SAN FRANCISCO, CALIF., SEPTEMBER 20, 1959

(NOTE.—Besides Walter P. Reuther, American participants included James B. Carey, President of the International Union of Electrical Workers, and George L. P. Weaver of the IUE; Joseph Curran, President of the National Maritime Union; Karl Feller, President of the International Union of Brewery Workers; O. A. Knight, President of the Oil, Chemical and Atomic Workers International Union; Paul Phillips, President of the United Paperworkers of America; Victor Reuther of the UAW; and Emil Rieve, President Emeritus of the Textile Workers Union of America. Premier Khrushchev was accompanied by Foreign Minister Andrei Gromyko; Mikhail A. Menshikov, Soviet Ambassador to the United States; and other Soviet officials.)

Chairman Khrushchev and his party appeared in the Golden Empire Room exactly at 8 p.m., as previously arranged.

As the group went to the dining table, President Reuther pointed out to Mr. Khrushchev that it had been discovered that the table legs fell precisely at the center of the oval therefore he had shifted Mr. Khrushchev slightly to the right.

Mr. REUTHER. Even though I have shifted you to the right, Mr. Chairman, I assure you there is no political significance in it.

Mr. KHRUSHCHEV (laughing). No matter how much you move me, I will still hold to a basic Communist position. Everything is fluid and everything progresses toward Communism.

Mr. CURRAN. Has this part of your journey been fairly restful?

Mr. KHRUSHCHEV. What do you think?

Mr. CAREY. We are impressed by the statements you are said to have made at the Lincoln Memorial in Washington. We are afraid, however, that you may have seen too many bankers and businessmen.

Mr. KHRUSHCHEV. That is because you didn't want to meet me. (Laughter.)

Mr. REUTHER. Tell the Chairman we are happy he is going to the Garst farm. He must understand that here we eat corn as well as feed it to cattle. When my brother and I were in the Soviet Union in 1934 we went down the Volga to the Dongas and to Yalta and Batum and to Baku.

I'd like to tell this little story. We know you have made great progress in terms of food since we were there in the early thirties. In the stores there was always one kind of canned goods we could readily buy—Amerikanski corn, because the Russians did not eat corn. When we got to Baku we bought four cans of corn, took it home and found it was pork and beans. The cans were so old the labels had worn off. We went back and asked for eight more cans, specifying we preferred ones without labels. The man at the store said it was the same with the paper or without the paper, so we got eight without labels. We again found they were all pork and beans and as a result we lived like capitalists for a while. I bet they still don't eat corn to any extent in Russia.

Mr. KHRUSHCHEV. Not much. Some of our northerners can't conceive of eating corn. Some tried to eat it raw and found it impossible.

Mr. REUTHER. In Iowa you'll see big corn and we hope you will be able to use our techniques to raise more food and therefore raise living standards.

Mr. KHRUSHCHEV. That is so, and we thank you. But we want you to know we are at no lower level than the U.S. on corn growing.

Mr. REUTHER. Your major problem is with meat?

Mr. KHRUSHCHEV. Our hybrid corn is no worse than yours. Garst knows that. What we need is to extend the growing of corn. Now we are extending limits up to the farthest north. We now want to devote one-third of the land of those northern areas to corn.

Mr. CAREY (laughing). By the way, this chicken is corn-fed.

Mr. KHRUSHCHEV. I once said that to take away corn from Americans would be to starve them to death.

Mr. CAREY. No, not that, but certainly it's one of our most important grains, President Curran, here, of the Maritime Union, knows that. He raises cattle and knows the importance of corn.

Mr. REUTHER. I worked in the technical division of the Gorky auto plant. I trained Russians to do what I did in Detroit. I worked eighteen months and then made an 18,000-mile tour from one end of Russia to another. So I saw Soviet Russia during that period quite clearly. (Krushchev inquired about an engineer at Gorky who had worked at Ford, now a U.S.S.R. minister.)

Mr. REUTHER. What is the production in the Gorky auto plant these days?

Mr. KHRUSHCHEV. I don't think I could even suggest any figure.

Mr. CURRAN. In 1945, when I went through the Gorky plant, they were making chiefly trucks then. I sailed to your country in the early thirties, bringing Ford motor equipment and other materials to Russia.

Mr. KHRUSHCHEV. I remember in 1922 a group of United States workers came to the mines where they worked with their own tools. Fine men. A lot left when they saw the conditions.

Mr. REUTHER. I grew up in West Virginia, in a coal mine country and came to know mines, and I have been into mines all over the world. I paid special attention to the mines in the Donbas.

Mr. KHRUSHCHEV. The Donbas mines are the most difficult for workers.

Mr. REUTHER. Like the most difficult mines for the British workers that extend out under the seas. One thing we must do, most of all, in the future, is to harness the atom for peace and get all of the miners out of the earth.

Mr. KHRUSHCHEV. Our scientists tell me we are approaching that. They want to produce coal by utilizing the hydrogen atom.

Mr. REUTHER. This is a venture in which we would favor a mutual effort to pool the abilities and scientific knowledge of all nations.

Mr. KHRUSHCHEV. A very noble goal.

Mr. CAREY. We are familiar with the speech that the Chairman made at the United Nations and your splendid comments at the Lincoln Memorial. We are familiar with the eloquent speech you delivered to the U.N. General Assembly on disarmament. We are also familiar with the history of the past efforts to get agreement on effective control measures, which we of labor consider to be at the heart of the disarmament problem. Will you tell us what specific implementation you have in mind with respect to enforcement of any disarmament agreement?

Mr. KHRUSHCHEV. What is it you have difficulty understanding?

Mr. CAREY. It appears now that 25 per cent of Soviet production goes for military purposes, and 8 per cent to 10 per cent of U.S. production goes to military services. All nations of the world are spending now about $100 billion a year for military purposes. Of this, the U.S. spends about $40 billion a year, and the Soviet Union spends about $40 billion. The rest of the world spends about $20 billion. Certainly with disarmament a large percentage of this could be devoted to development of underprivileged nations and areas.

Mr. REUTHER. I think we can all agree that the most pressing problem is how we can preserve the peace. We all understand that the United States and the Soviet Union have produced the kind of weapons that make war inconceivable, that make war now a question simply of human survival. The question today becomes, what will we do in a practical sense. The only war America wants to fight is war against poverty, hunger, ignorance, and disease. It's the only war mankind can win

The Chairman has said repeatedly that he believes in no interference in the internal affairs of the United States and the kind of government we prefer to live under, and we share that feeling about the kind of government the Russians may prefer to live under. We think the people of Russia have a right to choose their own government and all other people should have the same right.

Therefore, as we see it, the "cold war" is not an attempt to change each other's systems of government, but to influence those that are uncommitted. Therefore, I want to ask the Chairman, is the Soviet Union prepared to contribute to the ending of the "cold war" by joining the United States and other countries through the United Nations in a cooperative effort to aid the underprivileged nations to abolish poverty and ignorance?

Mr. KHRUSHCHEV (talking very quietly and into his napkin). In our proposal, which I submitted on behalf of the U.S.S.R., it is made clear that the outlays on armaments would be greatly reduced and a certain percentage of the reduction switched from the amount saved to the under privileged countries.

Mr. REUTHER (reminds Khrushchev of a proposal Reuther submitted to the President of the United States in 1950 and passes a copy to him). It seems to me that if we wait for disarmament to start we lose great opportunities. Our proposal would create the better climate in which disarmament could be carried forward faster and more effectively.

Mr. KHRUSHCHEV. I am not familiar with your program so at this moment I cannot comment on it. But we are not waiting for disarmament to render this economic aid to needy nations.

Mr. ADZHUBEI (editor of *Izvestia*). We already render such aid through the United Nations and through the various funds, medical and food funds, and we have bilateral agreements to aid underprivileged countries. For example, we have contributed our designs and our equipment to chemical and pharmaceutical plants in India. (He continued to cite the Arab countries, Indonesia, Ethiopia and other who received Soviet aid. He placed emphasis especially on the thousands of students who are brought to Russia as part of the aid program.)

Mr. CAREY. Let us go back for a moment. When there is such a tremendously high percentage of the national incomes of both countries spent on military preparations, doesn't it become more and more demanding that we find a formula of control and inspection? Your country is spending $40 billion a year on the military, our country is spending $40 billion a year. If there were a completely safe inspection and control system how much more aid could we provide to the underprivileged countries of the world?

Mr. KHRUSHCHEV. We agree. And that's why we submitted our proposals.

Mr. REUTHER. There's no value in this, just going around the barn, as we seem to be now. I am familiar with the steel plant in India and other enterprises. When you do it, it's part of the "cold war." When we do it, you charge it's capitalist imperialism. Why can't we do it together? Through the U.N.? Do it together for their benefit, not for our separate advantage.

Mr. KHRUSHCHEV. We don't agree.

Mr. REUTHER. Why not?

Mr. KHRUSHCHEV. America has now surrounded us with military bases, alliances such as NATO and SEATO, and by these means the United States wants to obtain world domination. In the United Nations we are always outvoted. Thus it would be up to the United States to decide how the money would be used.

Mr. REUTHER. How about a U.N. commission with equal representation? Equal representation of Russia and the United States and U.S. friends and Soviet friends.

Mr. KHRUSHCHEV. That would already be progress, but it won't be accepted.

Mr. REUTHER. Why not expose the two positions to public air? That's what we do with unreasonable employers.

Mr. KHRUSHCHEV. So long as we are surrounded by U.S. bases, we can have no agreement on this.

Mr. REUTHER. Why can't we work together to fight poverty and hunger with the U.S. entitled to no advantage, and the U.S.S.R. entitled to no advantage?

Mr. KHRUSHCHEV. But we do take part in these programs.

Mr. REUTHER. You do it unilaterally, and that's the basis for the charge that you are penetrating economically and subverting politically.

MR. KHRUSHCHEV. When the U.S. sends arms and creates bases, what kind of penetration is that?

MR. REUTHER. But what we are proposing here is an equal commission with equal control. After all, most of the people who are hungry are workers and peasants.

MR. KHRUSHCHEV. Unilateral bread has no smell. If it has a Socialist smell, it is a pleasant smell.

MR. REUTHER. If it's politically motivated, it's not a pleasant small.

MR. KHRUSHCHEV. We've sent to Yemen thousands of pounds of wheat. That's not a Socialist country.

A few words more on the preceding subject, one more motive in my United Nations speech. The United States exploits the wealth of other countries, underdeveloped countries, for profits. England and France do the same. They exploit the wealth of countries that need aid. We do not exploit any country—we only engage in trade.

MR. REUTHER. You exploit the workers of East Germany.

MR. KHRUSHCHEV. Where did you dream that up?

MR. REUTHER. If you don't exploit them, why should 3 million of them cross the border into West Germany?

MR. KHRUSHCHEV. You are feverish. (Several voices interchanging across the table.)

MR. REUTHER. The workers in West Germany are free.

MR. KHRUSHCHEV. We are free, too.

MR. REUTHER. Do you have credentials to speak for the workers of the world?

MR. KHRUSHCHEV. Do you have credentials to poke your nose into East Germany?

MR. CAREY. This is part of our difficulty: the fear of the Chairman that the United States actually wants to dominate the world.

MR. KHRUSHCHEV. Not just wants—striving!

MR. CAREY. And the other way around, there is the fear in the United States, based on much evidence, that the Soviet Union wants to dominate the world.

MR. KHRUSHCHEV. The Soviet ruble does not kow-tow to the American dollar. [At this point, Khrushchev raised his voice loudly and vehemently.] You have been spoiled by everyone bowing down, by everyone cringing and crawling.

Mr. CAREY. It is a privilege having this sort of discussion. We have been given reason to wonder whether the Chairman's U.N. speech was chiefly for propaganda purposes. I want to reemphasize that unless we can find some way to implement the Chairman's disarmament proposals then we might have to start hunting all over again. A reduction in the $40 billion military budget of the Soviet Union and our $40 billion budget, that reduction could be devoted to helping underprivileged nations as the Chairman cited as the most desirable objective.

Mr. KHRUSHCHEV. It is not $40 billion, but $25 billion, and that's no small sum either. I, as a former miner, have to say that I pity you as representing the working class, but your thinking is not of the working class. When Hearst says it, I am not offended. But when a representative of the workers says it, it is different.

Mr. REUTHER. The key is universal inspection and control, and to stop hydrogen bomb testing. We expect the same conditions as you expect. We believe that neither nation should be treated as a second-class power. Why can't you agree?

Mr. KHRUSHCHEV. Why are you so familiar with the Dulles arguments and not with the Khrushchev proposals?

Mr. CAREY. Dulles is dead.

Mr. KHRUSHCHEV. We say what we are saying because we have already clarified these issues.

Mr. REUTHER. You will not agree to universal inspection and control?

Mr. KHRUSHCHEV. Have you been asleep all the time? That is what we are for. I am sure you haven't read my speech.

Mr. CAREY. Yes, we have read your speech, and other propaganda. But we failed to find the basis for implementing the proposals.

(Knight again raised the self-determination question.)

Mr. KHRUSHCHEV (interrupting): I've never liked fleas when they jumped all over.

Mr. REUTHER. We would prefer not to jump all over. We would prefer to exhaust one question at a time, but it's all a matter of time. Tell the Chairman we will go slower if he has the time.

MR. VICTOR REUTHER. The Chairman has said he wants to talk to workers, and there are workers' representatives.

MR. REUTHER. How much time will the Chairman be willing to give?

MR. CAREY. We want to be considerate of our guest but . . .

MR. KHRUSHCHEV. 10:30, another hour. Disarmament is the question of questions, and if you misunderstand this there is almost no way out. What the Americans propose is control first, and then disarmament. What does this mean? Nothing! Let us station our bases in Mexico and Canada, then maybe you will have an understanding.

(There was a fast two-or-three-minute interchange across the table. At one point Khrushchev, talking at Curran, exclaimed: "How can you open your mouth like that and represent the workers? Do you want a discussion, or is this a bazaar?" At this point Khrushchev became quite excited and pounded the table.)

MR. CAREY. Here is the question on disarmament (passing it across the table) as I have phrased it. We fear there is lack of attention being given by you and your colleagues to the whole question of inspection and control.

Mr. KHRUSHCHEV. I would like to tell you, gentlemen, so long as America continues to manifest a high-handed attitude toward other people there can be no agreement.

MR. CURRAN. We ought to talk sense here, and we're not talking sense yet. I don't want to be confused with statesmen. I am a worker speaking for workers and I'm pretty sure the rest of the guys here do.

(Rieve raised the question of Socialism versus Communism, and particularly public ownership under capitalism, pointing out that social ownership is compatible with the highest forms of political democracy as practiced in Scandinavia.)

Mr. KHRUSHCHEV. There is a different understanding between us. Capitalist countries can own production and it doesn't make them Socialists.

MR. REUTHER. It is more than a matter of degree. We think that the country in the free world nearest to democratic socialism is Israel. Yet the Russian attitude toward Israel has been most unfriendly.

Mr. KHRUSHCHEV. We don't have an instrument that could measure the Socialism there. (He tossed his head almost disdainfully here.)

Mr. REUTHER. You haven't been there, I have been there, and I have seen how Histadrut, the magnificent Israel labor movement, which owns 60 per cent of the production, supports the nation and aids its progress.

Mr. CURRAN. I appreciate the Chairman's fatigue. (Here came a heated interchange with Khrushchev, for the most part, apparently, over the interpretation of fatigue.)

Mr. REUTHER. Mr. Chairman, you are agitated again. You don't even understand a friendly question. Curran was inquiring about your weariness after a tough schedule.

Mr. CURRAN. Please accept my apologies. I was asking about your tiredness from your journey.

(Curran, returning to issues under consideration, mentioned his sailings to Russia in 1945. Curran's question was "Specifically, will workers be permitted to exercise freedom to secure redress of their grievances by the only test of industrial democracy, the right to strike, the right collectively to withhold their labor power? When will workers be able to negotiate agreements in Russia, including the right to strike?")

Mr. KHRUSHCHEV. I quite understand you, but you do not understand anything of the workings of the Socialist system. I do not want to offend you—You just do not know, you have not been there. You measure everything by U.S. standards. What I like about you is that you do have a class sense, that feeling, yes, they do have those rights. [Presumably this refers to the right to negotiate agreements and strike.] I understand your question. The working class does have the juridical right to strike. Does the worker have the right to exercise the right to strike? Yes. Have there been strikes since the October Revolution? Yes, I spoke at some of the strike meetings. Are there strikes now? No. Because workers and unions and the government have one thought, because in what other country would the government announce that wages would be raised and the working day reduced without pressure? In capitalist countries they would need to fight for this.

I would think that if our disarmament proposals were accepted—we are now planning a six-hour day in 1964—we could immediately reduce it to a six-hour day and raise wages. Our workers are all organized in unions and they are learned and they know the economic conditions and the economic possibilities in our country.

Mr. CURRAN. But in spite of that, knowing economic conditions and possibilities, do they have the right to strike?

Mr. KHRUSHCHEV. Juridically, yes.

Mr. REUTHER. I grew up in a working-class home in West Virginia.

(Interruption by Khrushchev, with hand waving.)

Mr. REUTHER. Is he afraid of my questions?

Mr. KHRUSHCHEV. I am not afraid of the devil and you're a man.

Mr. REUTHER. I worked with the anti-Hitler underground in Germany before going to

Russia. What bothers me about your social system is not that you're not making economic progress for the workers and peasants. You're making tremendous technical progress. And I know all about your rationale of workers not striking against themselves. But the Chairman himself exposed—in his exposure of Stalin's crimes—the cult and power of an individual. How could the worker in that period get justice if he would not strike or publicly protest?

Mr. KHRUSHCHEV. His trade union.

Mr. REUTHER. The union is an extension of government, the Soviet government. Does a union ever disagree with the government? Can you give us one single example in which one of your unions ever disagreed with government policy?

Mr. KHRUSHCHEV. Why poke your nose into our business?

Mr. REUTHER. Freedom is everybody's business. You are always expressing a concern for the workers of Asia. There is a thing called international labor solidarity. When I was in Russia I was a member of a union, and it was what we would call a company union.

(Fast and frequently indignant interchanges between the Chairman and the labor side of the table, too fast to be recorded.)

Mr. REUTHER. Every time we push a sharp question, the Chairman gets angry.

Mr. KHRUSHCHEV (Getting red in face, and just slightly loud). And what we call what you represent—capitalist lackeys.

Mr. REUTHER. Every time I ask a question he has no answer for he gets angry.

Mr. KNIGHT. Mr. Chairman, since it took me so long to get the floor, I want to exercise my democratic rights and ask two questions. Mr. Chairman, you have made repeated statements regarding self-determination and the freedom of people from outside interference.

We agree with you on both of these principles. However, we cannot understand, since you say you favor the right of the German people both East and West to decide for themselves on unification, how do you visualize the German people making this decision since you continue to oppose a free and democratic vote by the German people on this issue?

My second question is, in view of your statements favoring self-determination and noninterference in the internal affairs of other nations and your statements supporting peaceful coexistence, how do you reconcile these statements with the harsh military suppression of the Hungarian Freedom Fighters by the Soviet military powers?

Mr. KHRUSHCHEV. The Capitalists have certainly trained some very good cadres. May I just voice my thoughts aloud! Do you know anything about Germany? Have you ever been there? The German Democratic Republic is based on the most democratic foundations. There is no private ownership of the means of production.

Mr. KNIGHT. If it is on the most democratic foundations, then they should not be afraid of a democratic election.

Mr. REUTHER. In Eastern Germany there is only a one-party system.

(Interchange of ten voices.)

Mr. KNIGHT. Why do you oppose a democratic vote for reunification of Germany?

Mr. KHRUSHCHEV. It depends not on me but on the two Germanies.

Mr. KNIGHT. But you take a position against democratic reunification in your propaganda throughout the world.

Mr. KHRUSHCHEV. Tell me where I said that Hungary has its own constitution and laws, and is freely developing.

Mr. KNIGHT. Why did the Russians interfere in Hungary?

Mr. KHRUSHCHEV. There was no interference. There was a counterrevolution, thugs and hooligans who receive arms from outside and took power in Budapest. And the government asked us for aid and we gave it, and we're proud of it. We are proud of it as a feat. There would be Fascism there if we had not.

Mr. REUTHER. Was Nagy a Fascist, I thought he was a Communist?

Mr. KHRUSHCHEV. Don't mix things with dirt. (Exchanges around the table.) Have we exhausted the Hungarian question?

Mr. CAREY. We have touched on it; we have certainly not exhausted it.

(Phillips brought up the question of radio jamming of Radio Free Europe and Voice of America.)

Mr. KHRUSHCHEV. What do you prefer to have for dinner? [Looking at Phillips] What is your favorite dish?

Mr. PHILLIPS. Probably roast beef.

Mr. KHRUSHCHEV. I, borscht . . . You continue to enjoy roast beef, and I, borscht.

Mr. REUTHER. But you prescribe and insist on borscht for all.

Mr. KHRUSHCHEV (rising to his feet at 10:22 p.m.): If you don't read what I have stated, what can I expect?

Mr. REUTHER. You advocate more trade. How come you oppose a free flow of ideas?

Mr. KHRUSHCHEV. As head of the working class I will protect workers from capitalist propaganda.

(At this point, unexpectedly, Khrushchev, still on his feet, gave a burlesque demonstration of his idea of the can-can he witnessed during the Hollywood rehearsal of the forthcoming film *Can-Can*. He turned his back to the table, bent downward, flipped his coat up and gave an imitation of the can-can.)

Mr. KHRUSHCHEV. This is a dance in which girls pull up their skirts. You're going to see that, we are not. This is what you call freedom—freedom for the girls to show their backsides. To us is pornography. The culture of people who want pornography. It's capitalism that makes the girls that way.

(Khrushchev still on his feet while saying this.)

Mr. PHILLIPS. Does the Chairman think that the girls should be prohibited by law from showing their backsides?

Mr. KHRUSHCHEV. There should be a law prohibiting the girls from showing their backsides, a moral law.

Mr. CAREY. I may not see it, I may not want to see it . . .

Mr. KHRUSHCHEV. Your children will go to see it.

Mr. REUTHER. Perhaps it was a stupid movie—it was stupid of them to show it to you. But that has nothing to do with our question of why not a free flow of ideas between our countries.

Mr. KHRUSHCHEV. Why don't you want to trade with us? The sausage tastes the same in all countries.

(Khrushchev referred to the press conference statement by Georgi A. Zhukov on cultural exchange.)

Mr. CAREY. I will read this press statement and I'm sure that all of our colleagues will follow it up.

Mr. SATYUKOV (editor of *Pravda*). We printed in *Pravda* in full Reuther's statement at the unemployment conference in Washington. We didn't change a word, but at the same time the New York papers said that it was a Red scheme. We wrote back in *Pravda* there was no collusion between us and Reuther. The Voice of America didn't broadcast it. If it did, we wouldn't jam it.

Mr. REUTHER. No, you wouldn't because that report on unemployment would reflect upon us. But why didn't you and why don't you publish my May Day speech of this year in West Berlin? I invite you to publish and broadcast that speech.

Mr. KHRUSHCHEV. We only publish speeches that contribute to friendly relations between countries.

Mr. REUTHER. There were at least 600,000 workers who heard my speech in West Berlin, and I am certain that my speech was far less provocative than the May Day speakers in the Eastern Sector of Berlin.

Mr. CAREY. I think the Chairman answered the question, in part, in his reply to Spyros Skourus. Actually Skourus knows little about the problems of unemployment in the United States.

Mr. REUTHER. The record of struggle of U.S. unionism stands for itself. Personally, I have been shot and beaten. I have been criticized by the reactionary press as a Moscow agent and by you as a lackey of Wall Street.

Mr. KHRUSHCHEV. Without sharp edges, I would like to ask whether we cannot find a common approach. But we think differently. We pity you.

Mr. REUTHER. We don't want your pity.

Mr. CURRAN. Maybe the word he wanted was sympathize. Pity is a bad word. We don't want his pity.

Mr. KHRUSHCHEV. We are progressing toward Communism. You want to strengthen capitalism.

Mr. REUTHER. We are interested in how best to advance the interest of the workers under freedom. We disagree on how best to advance the interests of the workers.

Mr. KHRUSHCHEV. You have your point of view; we have ours. They are irreconcilable.

Mr. REUTHER. Why can't we believe in our system of individual freedom without your feeling it is a necessity to say we are betraying the workers?

Mr. KHRUSHCHEV. We did not come to this meeting to aggravate our relations. They are bad enough as they are. Let's not raise questions that disunite us. Let us join our efforts for peace. Let us not be hotheaded. Questions like Hungary are pinpricks. What good do they do? Suppose we raised the question of Guatemala?

Mr. REUTHER. We criticized the situation in Guatamala but the most important fact is that no one in Russia could or did criticize your intervention in Hungary.

Mr. CAREY. We are making some progress, however, when we can have meetings like this. This is more pointed than any discussion we have had in recent years. If this kind of discussion is continued it holds some hope for the future.

Mr. FELLER. Mr. Chairman, I cannot understand since the Communist party proclaims itself to be the liberator of the working class, yet we see mass exodus of workers in other countries following the Communist seizure of power. You have the example of 3 million workers fleeing from East Germany to West Berlin, and about 3 million fleeing from North Korea to South Korea, and, as mentioned a moment ago, 300 or so thousands of Hungarians braved arrest and death in escaping to freedom.

Mr. Khrushchev, can you tell us of a single instance where, following Communist seizure of power, there has been a mass influx of workers from surrounding non-Communist countries into the Communist country? If the Communist party is the liberator of the working class, why don't we see this phenomena?

Mr. KHRUSHCHEV. Is that all? Think it over. Drink your beer. Perhaps that will help you to find the answer to your question.

Mr. FELLER. That certainly is no answer and apparently nothing will make you understand why millions want to escape from Communism.

Mr. KHRUSHCHEV. I've told you, I'm not afraid of the devil.

Mr. CAREY. Wall Street says Reuther is a representative of the devil.

Mr. REUTHER. Wall Street says I am an agent of Moscow, and Moscow says I am an agent of Wall Street.

Mr. WEAVER. I would like to pose this question, Mr. Chairman. In fact, one of the problems as I see it and which you just referred to—for example, Hungary as a "pinprick"—is how do we establish a basis of trust which must precede understanding? Recently I

served as a labor representative at a conference of the World Association of United Nations, in Geneva. At this conference, the U.S.S.R. and the United States delegations agreed on a resolution attempting to diminish the tensions of the "cold war." However, at the same time the friends of the Soviet Union from the Eastern European countries were raising the kind of provocative questions you just referred to, that do not lead to understanding. How do we arrive at a basis of understanding with this kind of attitude? For our people the questions that have been raised here with you this evening must be answered.

Mr. KHRUSHCHEV. It is true that there are many issues on which we differ. Let us have more contacts. We may not solve all the issues at once but through contacts we can begin to settle the little issues which will lead to more progress. Let us not aggrevate our relations. It is only our opponents who will benefit. Do you want to see a change in the social order of our country? No! We don't want to see a change in the social order of your country. I confess I myself have never been a trade union functionary. But why shouldn't you gentlemen visit us? You won't become Communists.

Mr. CAREY. We've been there; we've seen your country, time and again. I've been there three times; our other colleagues have been there.

Mr. REUTHER. It is important that the Chairman understand that changes are occurring here in the United States and that we have people as dedicated to advancing the working class as there could be anywhere else (throwing across the table to Khrushchev U.S. wage rates). How can we say these people are wage slaves exploited by capitalism, making these kinds of wages in America? How can he say that they have nothing to lose but their chains !

Mr. KHRUSHCHEV. We saw what we do in retaliation for what you say about us. Take, for example, Meany's speeches. I read most of them. They sound like Dulles—they sound like Dulles.

Mr. REUTHER. We have our disagreements and we recall you had some disagreement with Molotov. However, when we have disagreements, no one is exiled.

Mr. CAREY. We thank the Chairman. I suggest our guest of honor has been quite generous with his time. We thank you for joining us, and may our two great countries work together for peace and the good of all mankind.

STUDY OF JUVENILE DELINQUENCY PREVENTION PROGRAMS IN WASHINGTON, D.C.

Mr. MATHIAS. Mr. President, juvenile delinquency is one of the most urgent and complicated problems confronting urban society. It is intertwined with virtually all of the social and economic difficulties of our cities, including the failures of urban public education, breakdowns in law enforcement, family dissolution, the persistence of poverty, and shortages of employment opportunities. In many cities today, in fact, it is hard for a young man or woman to grow up right and tragically easy to go wrong.

Washington, D.C., like all major cities, has made many efforts to prevent and combat juvenile delinquency, but can point to relatively few obvious gains. I believe the experience of Washington should be reviewed both for its own sake and as an example close at hand of the difficulties which may be faced by most American cities.

The Committee on the District of Columbia reviewed some aspects of the problem of delinquency while shaping the recently enacted D.C. crime legislation, particularly the badly needed reforms of the juvenile courts. I believe that equal attention should be given to reforming delinquency prevention programs, those efforts intended to help youth before they come within the jurisdiction of the courts.

In considering this field, I found that the first need was a simple inventory of delinquency programs in Washington and the efforts being made to evaluate these programs and to pull them together into a coordinated whole. Last winter the assignment of making such a survey was accepted by Mrs. Barbara Hartman, a 1970 graduate of the Maryland School of Social Work, who was affiliated with my office for several months through the school of Social Work's program of field placements for graduate students.

Given the dearth of written materials on D.C. delinquency prevention programs Mrs. Hartman relied heavily on a large number of interviews with individuals in many public and private agencies and organizations involved in youth programs. Her investigations focused on five specific programs and on a variety of coordinating efforts of the District Government. Perhaps predictably, her study raises more questions than it answers, and provides the basis for many additional inquiries.

Since Mrs. Hartman completed her research last spring, some improvements have been registered, notably in the enactment of major reforms of the juvenile court system and in the continuing reorganization of the District government. Her findings are, however, extremely pertinent and provocative, and I am pleased to make her study available to the Senate and the public.

I ask unanimous consent to include Mrs. Hartman's report in the RECORD at this point.

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

REPORT ON THE PREVENTION OF DELINQUENCY IN WASHINGTON'S URBAN GHETTO

This report is the result of an appraisal of a variety of programs, organizations and agencies in the District of Columbia which are concerned with the prevention of delinquency. The focus is on: 1) the adequacy or inadequacy of the prevention programs which exist; 2) the problems resulting from the proliferation of services for youth; and 3) the need for coordination of these services to increase effectiveness and decrease overlapping of programs.

DIMENSIONS OF DELINQUENCY

Juvenile delinquency contributes disproportionately to crime in the District. The reduction of crime is thus greatly dependent on the city's ability to reduce juvenile delinquency and youth crime. During fiscal year 1968, nearly 40% of the serious crime in Washington was committed by youngsters under 18 years of age. Juvenile crime increased in fiscal year 1969 by 29.4% over fiscal 1968.[1]

The most frightening increase is in the area of armed robberies: There were 183 in fiscal 1968 and 304 in fiscal 1969, an increase of 121. The use of drugs among the teenage population is spiraling upwards at a tremendous pace. Drug arrests of the city's youth in 1967 number 14 compared to 51 in 1968 and 121 in 1969. An estimated 75% of the youth in local high schools have used drugs at least once, and an undetermined amount of experimentation with drugs is carried on in junior high and elementary schools.

[1] *Annual Report, Youth Division of the Metropolitan Police Department,* Washington, D.C. Fiscal, 1969

DEFINITION OF DELINQUENCY

Delinquency has always been a difficult term to define:

The legal definition—"a violation of the law or municipal ordinance by a person under a certain age," includes neglected, wayward and habitually disobedient children as well as truants. Thus, children are labeled deliquent because of home conditions beyond their control. The stigma often does irreparable harm to a child's self-concept.

There is a disproportionate number of low income youth who show up in the official statistics because of the social class variable in how such problems are reported and handled. Comparison of urban and suburban crime becomes meaningless.

Many delinquent acts go unreported, so official statistics tend to be accurate only for the most serious crimes of violence which are nearly always reported.

An increase in the official statistics could reflect an increase in delinquency; but it also could represent a "get tough" approach by the police, Congressional pressure to reduce crime, or increased harassment of minority groups.

For purposes of this report, delinquency will be defined as unlawful behavior whether or not it brings the child to the attention of the police and courts. Official delinquency refers to those youth who come to the attention of the police and thus become part of official statistics.

THE CAUSE OF DELINQUENCY

Numerous studies have attempted to determine the cause of delinquency. A variety of characteristics, psychological and sociological, have been identified as significantly correlated with crime and delinquency—though few studies, if any, have been replicated or are undisputed.

The most common variable linked to delinquency is the emotionally inadequate home which engenders deep conflict in the child. This conflict often expresses itself in neurotic disorder and in delinquency. Emphasis on this factor should not, however, lead to neglect of other factors in the environment or in the personality of the child who becomes delinquent.

This report asks, how do certain programs which propose to prevent delinquency deal with the delinquent or potentially delinquent child? Are they successful? The approach is usually related to what a program's planners consider to be the cause of delinquency. For example, consider two types of approaches—both necessary and both valid.

(1) *The educational and therapeutic approach* places emphasis on identifying the child and family in need of help, and then providing education, casework and therapy directed toward modification of the behavior. It is a traditional approach, basic to programs developed by the more traditional agencies like the Welfare Department and the Public Schools.

(2) *The environmental approach* is based on the belief that delinquency might be prevented by improving unfavorable environmental conditions such as overcrowded nousing, poor schools, lack of jobs and inadequate health facilities. These environmental problems themselves are beyond the scope of this report, but the approach is relevant because the "opportunity theory," recently in vogue, places its emphasis on the environment as well as on the youth who is unprepared to

take advantage of opportunities if they were made available.

The "opportunity theory," devised by Richard Cloward and Lloyd Ohlin,[2] asserts that delinquency is the product of a lack of access to legitimate means and the availability of illegitimate means. Since education is the principal avenue to upward mobility in this country, Cloward and Ohlin noted a number of barriers, cultural and structural, which allow only limited access to the education route for lower class youth.

For example, one structural barrier is the economic one—the high cost of education. For most, college is out of the question. But the cost of high school is almost as prohibitive to many youth. Some are able to withstand the humiliation of lacking money for clothes, school supplies and everyday social activities. Many are not. The most crippling factor, however, is that most lower class youth have no choice but to attend the local public school, with little hope of graduating with anything that can be recognized as an education. The options of private school, or moving to the suburbs are not open to them.

When pressures from unfulfilled aspirations and blocked opportunities become sufficiently intense, many lower class youth turn away from legitimate channels, adopting other means to "success"—to getting money and status in the eyes of their peers. The poor are victims of incompatible demands. Society expects their conduct to be oriented toward upward mobility, and the prospect of wealth. But opportunities are effectively denied through normal institutions. Consequently, there is a high rate of deviant behavior. The apparently permanent quality of the dilemma—that is, the limited jobs available and the increasing requirement of education and technical training, plus racial discrimination—makes the situation all the more acute.

PREVENTION OF DELINQUENCY

Prevention as opposed to control of delinquency refers to measures taken before a delinquent act has actually occurred for the purpose of forestalling such an act. Control is a measure taken after a delinquent act has been committed. Few programs are purely preventive in nature. For example, projects in high delinquency areas usually attempt both to interrupt criminal careers already in progress and to forestall the involvement of new recruits in criminal activities.

The ambiguity of the concept of prevention is one of the main obstacles to discussing prevention meaningfully; to obtaining significant research data; and even to describing existing preventive programs. Peter Lejins, Criminologist at the University of Maryland, identifies three basic types of prevention.

(1) *Punitive Prevention* occurs where the threat of punishment presumably forestalls the criminal act. Supporters of this theory point out that its effectiveness depends on the certainty and severity of punishment. (The D.C. Juvenile Court System with a blacklog of 3,483—June 30, 1969—has had little preventive effect from this standpoint.)

(2) *Corrective Prevention* is based on the assumption that criminal behavior is influenced by certain factors, and is the result of a certain motivation. Preventive action means the elimination of those causes, factors or motivations before the criminal behavior has actually taken place.

(3) *Mechanical Prevention* emphasizes procedures which make it difficult or impossible for the offender to commit the offense: i.e. increased police protection, gun control measures, security measures such as dependable locking systems, bars on windows, and burglar alarms.[3]

Corrective Prevention, as it relates to the approaches mentioned above—Educational-therapeutic, and Environmental most closely identify the programs to be evaluated. It will become obvious, however, that most programs are a mixture of approaches. A caseworker or a roving leader may be dealing not only with delinquent personality factors, but also with locating a job, encouraging certain businesses to provide jobs, or proposing specialized training to appropriate institutions.

EVALUATION OF PREVENTIVE EFFORTS

Evaluation of programs through a review of their accomplishments is one approach. The limitation of this approach lies in the fact that few organizations or agencies adequately evaluate themselves in these terms, especially in the area of delinquency prevention. The reasons became obvious when past evaluative efforts of major delinquency prevention programs are analyzed.[4] It becomes apparent that there is no agreement on a definition of the "disease" for which a cure is sought.

There is no definitive description of the characteristics of those who are vulnerable to delinquency: There are no precise methods to be used in the prevention of delinquency; there is no agreed-upon criteria for determining the relative success of the cure.

Even when sponsors define precisely the nature of the services they intend to offer, designate the individuals or groups they plan to serve, they are usually stymied in spelling out their criteria of success. The sophisticated know full well that to rely on such indices as no further court appearances is deceptive. Furthermore, since the clients are not enclosed in test tubes, there is no certainty that the factor X (their service) rather than Y or Z alone or in combination may not be the responsible agent in changing the behavior, if change occurs.[5]

If there were a defined accomplishment, another approach might be to compare the programs in terms of the cost of such an accomplishment. The difficulty with this study is that the programs to be looked at are not comparable in any sense of the word, nor are they adequately evaluated to produce the data necessary for the most general comparisons.

Therefore, it must be kept in mind that the object of this report is not to compare these programs in terms of their effectiveness, although their effectiveness and their attempts to evaluate such will be questioned. The object here is not to condemn one program and praise another, though relative merits will become apparent. The object is to look at five of the main preventive programs in Washington, D.C., and in that context to raise questions about the broader implications of preventing delinquency:

1. Knowing that there is no panacea for preventing or reducing delinquency, where should efforts be focused in the effort to stem the tremendous increase in the use of drugs and in crime?

2. Given the programs which exist, how can the coordination of such efforts best be facilitated?

3. And finally, is there federally legislation or Congressional pressure which might help to improve the situation?

DELINQUENCY PREVENTION PROGRAMS

There are numerous programs in Washington, D.C., which directly or indirectly try to prevent delinquency. Five programs in operation or in the planning stage have been chosen for investigation because they are ghetto-wide, if not city-wide in nature, and have as a primary objective the prevention of delinquency. These five are:

1. *The Roving Leader Program*—D.C. Department of Recreation (in operation).

2. *The United Planning Organization*:

a. *Manpower programs* (in operation).

b. *Neighborhood Development Youth Program* (ended December, 1969), *Youth Development Division* (proposal).

3. *Project Progress*, Office of Youth Development Services (in operation).

4. *Action for Children in Trouble* (AGT), D.C. Department of Public Welfare (now being implemented).

5. *Pupil Personnel Services*, D.C. Public Schools (in operation).

A sixth "program" should also be mentioned—for to overlook it would be to ignore the designated public body concerned with the coordination and planning of programs for the prevention of delinquency under the Juvenile Delinquency Prevention and Control Act of 1968. This is:

6. *"An Integrated Neighborhood Services Program for the Prevention and Control of Juvenile Delinquency"*—The Office of Youth Development Services (a proposal).

I. THE ROVING LEADER PROGRAM

The Roving Leader Program of the D.C. Department of Recreation is perhaps the best known D.C. program planned for the prevention and control of delinquency. Its staff has grown from one worker in 1956 to 22 workers this year. The program is valued quite highly by the District government as can be seen by the request in the fiscal '71 budget for 200 more personnel for this program at a cost of $2 million.

Several goals provide an example of the program's focus:

To reduce the severity and frequency of offenses, i.e. gang warfare, murder, theft.

To redirect behavior into more socialized channels . . .

To locate conflict-producing elements in community life, and to secure cooperation in alleviating these situations.

To work out strategy for attacking community situations that produce delinquent behavior . . . (long range).

The Roving Leaders operate on flexible schedules; most of their time is spent in informal meetings with the gangs or individual youths. The worker attempts to help these youths solve their problems, adopt new values and use available community resources to accomplish legitimate goals. The annual report, 1968–69 offered the following summary:

Elementary Groups: 38.

832 elementary children served.

Positive improvement: 420 required continuous services, 412 made satisfactory social adjustment.

Teen Groups: 73.

63 male groups and 9 female groups.

---

[2] Omitted.

[3] Peter P. Lejins, "The Field of Prevention" *Delinquency Prevention: Theory and Practice*, William E. Amous and Charles F. Wellford (editors) (Englewood Cliffs, N.J.: Prentice-Hall, Inc, 1967).

[4] Maude M. Craig and Philip W. Furst, "What Happens after Treatment: A Study of Potentially Delinquent Boys," *Social Service Review*, June, 1965, p 165–171; Sheldon and Eleanor T. Glueck, *One Thousand Juvenile Delinquents, Their Treatment by Court and Clinic* (Cambridge: Harvard University Press, 1934); Henry J. Meyer, Edgar F. Borgatta and Wyatt C. Jones, *Girls at Vocational High* (New York: Russell Sage Foundation, 1965); Edwin Powers and Helen Witmer, *An Experiment in the Prevention of Delinquency: The Cambridge-Sumerville Youth Study*, (New York: Columbia University Press, 1951); and C. Downing Tait Jr. and Emory F. Hodges, *Delinquents, Their Families, and the Community* (Springfield, Ill.: Charles C. Thomas, 1962).

[5] Sophia M. Robinson, "Why Juvenile Delinquency Preventive Programs Are Ineffective," *Federal Probation*, December, 1961, p. 41.

Positive improvements: 50 groups have made positive adjustments, 23 groups need more intensive services.

The number of elementary groups served by Roving Leaders has increased in recent years, reflecting a recommendation made by the D.C. Crime Commission Report that preventive measures be directed to this group. Children are referred to the group by the school teacher, counselor and principal. For teen groups, the Roving Leaders emphasize counseling services, sports, cultural and training activities, and stress the value of work, staying in, or returning to school and the importance of learning a skill which is currently in demand.

The most relevant service given is in the area of employment. In 1969 the Department of Recreation employed 518 "Roving Leader youth" for the summer, 46 of these on a year-round basis. They referred 2,500 youths to the U.S. Employment Service for summer employment and over 500 to private employment agencies. The report lists 34 private and public agencies which provided employment for 454 youths in fiscal 1969.

Evaluation

The Roving Leaders appear to serve as an ad hoc coordinator of community services for a few specified neighborhood "hot spots" of crime. Their effectiveness depends on their individual ability to make contacts with groups and individuals. It also depends on the quality of available services. They may work hard to get a teenager back in school but if the school lacks a relevant, stimulating program; if it lacks the vitality and innovation needed to hold the drop out and the potential delinquent, their efforts will be to no avail. The same goes for the availability of relevant jobs and job training, of mental health services, drug addiction treatment centers and family casework services.

The Roving Leader finds himself locating jobs if USES (the Manpower Administration) fails; coaching athletic teams, if the local recreation center leadership is inadequate; and counseling school children on study problems because of inadequate Pupil Personnel Services. Such services are essential because there are always youth (and their families) who either don't know where to turn, are unable to maneuver within the red tape of a system, or have given up trying to find legitimate channels of "survival". In this sense, the Roving Leaders try to fill the gaps between services, to motivate youth to use those services which exist, and are in a position to suggest changes in services which are not meeting the needs of ghetto youth.

The Roving Leader Program also provides a vital function of cooling tempers when things get "hot." They were invaluable during the April '68 riots because they were known and could circulate in riot areas to calm groups down. This aspect of their work prevents outbreaks of violence, and helps to control crime, but it does not prevent the development of delinquent habits and antisocial attitudes. Of course twenty-two Roving Leaders are not able to cover the city. A representative of that office has stated that 91 "hot spots" in this city are not covered by Roving Leaders.

Coordination of youth services will be considered later in this paper. It must be mentioned now, however, that as difficult as formal coordination of youth programs appears to be in this city, the Roving Leader Program is central to an informal network which touches most agencies serving local youth. The most pointed example of this is the development of joint inservice training and staff meetings between Roving Leaders and the Welfare Department's aftercare staff, who work with youth after they are released from institutions. They work together in designated areas of the city. As teams, they also work closely with the schools, police and other agencies in their areas.

Does the Roving Leader Program prevent delinquency? The Crime Commission Report (1966) recommended that "some attempt be made to evaluate the impact of the Roving Leader Program systematically." This in-depth comprehensive study has yet to be undertaken because of insufficient resources. As was stated earlier, there is no conclusive knowledge from previous research that a roving leader type program is effective in reducing delinquency. The director of the Roving Leaders has stated that, given funds for research staff, plans are being drawn up for a joint evaluative research project to be conducted with the Welfare Department ACT program and under the guidance of the Office of Crime Analysis. Such a project, carefully designed and carried out, would be a tremendous contribution to the whole field of delinquency prevention.

THE UNITED PLANNING ORGANIZATION

Manpower programs

UPO is Metropolitan Washington's arm for the War on Poverty. The main philosophy of this effort to erase poverty is the "opportunity theory" mentioned above—opportunity for education, training, jobs and legitimate means for obtaining a decent income. UPO's budget reflects this focus with over half coming from the Labor Department and being used for education and manpower training programs.

In fiscal '69, approximately $10.8 million was applied to manpower programs. It is difficult to determine what percentage of that figure was used for youth 16 to 21 years of age. Figures were provided by the manpower division of the youth involved in these programs from October 1, 1968 through September 30, 1969:

	Youth
1. Washington Concentrated Employment Program (WCEP)	9,409
2. Neighborhood Youth Corps (NYC) (regular program)	9,313
3. Neighborhood Youth Corps (summer program)	8,314
4. Job Corps	193
Total	27,229

Evaluation

The whole field of manpower programs and job development for the low income disadvantaged warrants a thorough investigation in relation to the prevention of crime and delinquency. It is a very complex field intimately related to such economic factors as inflation, as well as automation and technology which continually alter the employment picture. UPO has made an impact through aggressive recruitment efforts to attract the disadvantaged and through prevocational, vocational training and placement efforts to place persons in fulltime career type jobs. Programs include:

Washington Concentrated Employment Program (WCEP):[6]

From June 1967 to July 1969:

Placed directly on jobs	11,721
Placed after training	11,947
Drop-out rate	7%

In a given week, 170 persons pass through the intake center, half of whom are placed directly in jobs.

The "Work Experience in the Public Sector" program (WEPS) is a component of WCEP.[7]

Its goal is to help young men and women who would not previously have qualified even for entry level civil service jobs to get those jobs, keep them, and move up the civil service ladder.

The program is aimed at youths ages 17–25 who have been unable to get government jobs through normal channels.

[6] Community, (Newsletter of the United Planning Organization), Sept. 1969.

[7] *Community*, January, 1970.

WEPS currently operates under a $684,000 Labor Department grant, most of which goes for enrollees salaries.

At present WEPS operates *Project Value* which provides some 225 jobs in the Department of Defense.

There are many gaps in this information. It doesn't begin to describe the total scope of the program, the adequacy of different training programs, or the whereabouts of specific enrollees of two and three years ago. It doesn't begin to look at the hard questions of coordination, for instance, between UPO and the public schools. Is the vocational education department of the D.C. school system involved in manpower programs? Should it be? Does the public school's inadequacy promote the development of these special training programs? Such questions go to the center of the bureaucratic problems and tensions which exist between the D.C. Public Schools, the City Government and UPO.

The Neighborhood Development Youth Program (NDYP)

NDYP, another component of UPO, is in the process of being reorganized. Funds for this network of ten youth centers ran out December 31, 1969. Since then, some of the youth and staff have been developing a new proposal which would focus programs around skill development and prevocational training.

It is instructive to look at the history of NDYP, which was started expressly for the prevention of delinquency. The original funds for this program were drawn from a $5 million HEW grant for *comprehensive anti-delinquency programming* which was committed to Washington Action for Youth (WAY) in 1964. (WAY was the predecessor of UPO). UPO assumed responsibility for the grant in 1965 and in addition to filling the youth organization void with NDYP, promoted other demonstration programs to show existing institutions better ways of meeting the problems of youth. Among these were three types of halfway houses for "shelter," "probation," and "rehabilitation" for youth who have already been in trouble with the law. The Department of Public Welfare has since assumed complete responsibility for the program. There were two other demonstration projects—a Pre-release Guidance Center for youthful felons being released from Lorton Reformatory, and a rehabilitation program for misdemeanants at the Occoquan, Virginia, workhouse which included job training and remedial education.

Evaluation

The stated purpose of NDYP indicates why it is impossible to evaluate it:

NDYP seeks to provide a framework through which District youth have the opportunity to gain increased awareness of self, obtain a real knowledge of economic and political ssytems, think independently and objectively when choosing methods to solve their problems, and design, plan and operate programs aimed at gaining political-economic independence and power.[8]

The goals here are nebulous and impossible to measure. "Increased awareness" and independent thinking" may be important steps in moving from total alienation and isolation to a point where a youth feels motivated to train for and look for a legitimate job, but there is no objective way to measure success or failure based on that purpose.

The population being served by this program was, perhaps, the most difficult and challenging to work with: the school dropouts, youthful offenders and welfare recipients between ages 16 and 22. The following points are representative of the problems, failures and successes:

[8] *NDYP Proposal* (not dated), for the program running from June, 1968 through December 31, 1969. p. 18. The HEW grant totaled $1,500,000 for 157 staff members plus NYC's.

1. An evaluation of the programs cites as one of its major contributions the level of youth participation in the decision-making process. The makeup of the staff supports this conclusion: 58% of the administrative staff (22 of 38) were youth either full time or on a rotating basis, while most of the staff at the ten centers were youth.[9]

2. Beyond the staffing of the program, it has been impossible to find out how many other youth have been touched by the program or affected in any way. Few if any records were kept.

3. Some 250 "training sessions" in Negro History and U.S. Government Political Structure were held during the 20 months. The youth and adult staff were both involved in a learning and training capacity at least once a week but there is no indication that youth not on the staff became regularly involved in these sessions. They drifted in and out, coming to the centers mostly for recreation and social affairs.

3. One youth who was involved in the program for six years and in fact worked his way from an NYC (Neighborhood Youth Corps) position to Deputy Director (a youth position) of the program estimated that even within the youth staff, only about one-half really began to "pull themselves together" in terms of education and looking forward to better jobs; one-fourth is still searching for an "identity" and one-fourth is still "lost."

4. "Success stories" never give the whole picture of a program, but it must be admitted that some youth were significantly helped by NDYP. John (not his real name) the boy mentioned above illustrates what success can be. At the age of 20, he had already been incarcerated several times for robbery and house breaking. He got a job in the NYC so he wouldn't have to go back to court. He graduated from Cardoz but had never completely read a book and couldn't read well. At $1.25 per hour, he began recruiting youth to come to the NDYP leadership center for recreation and education. From there, one step at a time, he became a Community Developer, Senior Community Developer, Assistant Director and Center Director, and now the Deputy Director of the Youth Program, at $9.550 per year. John is now helping to develop the new proposal for a new Youth Development Division of UPO.

In evaluating the Neighborhood Development Youth Program, it must be remembered that one of the functions of UPO and of the War on Poverty was to experiment with new ways of reaching those youth who were drop outs or "push-outs" of society—youth not reached by the "old line" institutions. The problems of ghetto life have been too massive for most institutions to handle with available resources. UPO therefore has not only been asked to solve the problem of poverty, but because of Federal funding patterns, has also been forced to fight frequently for its own survival. Programs, as well as the administrative unit are sometimes pointed to as examples of failure when they never had adequate resources or community support; and when they were expected to solve problems which can never be solved with programs as such, but must be seen as problems of social policy rooted deeply in society's structure.

The Crime Commission Report of 1966 summed up the problems of UPO in relation to delinquency prevention in this way:

UPO has frequently supplemented inadequate or nonexistent public services for the poor in vtial areas such as housing, recreation, employment, and community organization. It has been *unable* to put into effect an integrated, broad spectrum of services for youth, before and after official delinquency contacts, in part because it is essentially a *private agency* whose leverage with public agencies consists solely of persuasion and money. In too many cases UPO has assumed the actual operation of isolated programs at the expense of its overall planning and coordination function. *As a non-governmental agency it has had no official status in urging improved treatment of youth by schools, police, courts, or juvenile institutions.* (Emphasis added.) [10]

This analysis is essentially correct and still appears to hold true. The coordination of a comprehensive program of delinquency prevention requires official status and sanction. (The question will be further dealt with it relation to coordinating efforts by the District Government.) It appears that UPO will never be in that position. Rather, UPO's major task is (or should be) to experiment with the kinds of programs that other agencies rarely have the money or the latitude to deal with. The most regrettable fact is that the programs it has set up (at least for youth) have been so poorly designed in terms of providing usable data for evaluation. Generally, the manpower programs supported by the Labor Department have been more specific in their objectives and thus have provided usable data for evaluation. HEW on the other hand has traditionally funded programs which are harder to objectify. Apparently, NDIP has learned from the weaknesses of past programs and is incorporating into the new proposal periodic evaluations of projected programs.

PROJECT PROGRESS

Project Progress is a group which operates ten leadership centers in ghetto areas of the city. It was started with a grant of $75,000 from the Washington Board of Trade in the fall of 1968. Their budget up to the present has totaled approximately $445,000, with other funds coming from various foundations, the Labor Department and private sources. At the moment (spring 1970) a grant of $240,000 from OEO is pending.

Project Progress is popularly known as the operating arm of the Mayor's Office of Youth Development Services. (The office was recently combined with the Youth Program Unit to form a single Youth Opportunity Office under the Mayor.) A "professional", paid by the D.C. Government, works out of each leadership center as a program director. They work closely with the directors of each center (who are exconvicts) to develop a program relevant to that community. The total staff numbers about 52, plus NYC's, College work/study students and volunteers.

The stated goal is the prevention of delinquency through counseling, tutoring, encouraging teenagers to stay in school or return to school and providing a variety of courses (Black History, English, Math, Sewing, Typing and Shorthand) at the centers. Through the use of street workers (also exconvicts or "street wise" NYCs), they actively search out the hard core dropout; the teenagers most in need of help. About 2,500 children and teenagers are or have been registered at the centers as "regulars." Every center has a Youth Board of Directors which has the responsibility or formulating rules and regulations and developing programs. Each is supported by an Adult Advisory Board made up of parents and businessmen from that community.

Evaluation (spring 1970)

Is this program successful at preventing delinquency? No one seems to know. They don't believe in keeping track of who is helped and in what way. They are not sure how many have been steered into jobs or back to school through Project Progress. In fact, there is an anti-bureaucratic reaction against any kind of paper work or serious evaluation. They only want to do a "job."

Project Progress represents a kind of development which has become more common in recent years. It is a grassroots organization—begun by a group of black men and women, including ex-convicts, school dropouts, ex-dope addicts and college graduates. The organization or lack of organization reflects their rejection of middle class agencies and approaches. They realize there is a hard-core group of ghetto dwellers who will not respond to the traditional agencies. So there is a conscious attempt to attract children and teenagers, and to help them provide for themselves alternatives other than crime and violence.

Like most grassroots organizations, they are eternally dependent on others for funds. They run their programs on a "shoestring;" have little money for emergencies (i.e. breakdown in plumbing or electricity) and work under the threat of having to close down in a month or so if money doesn't come through. (Present funds run out the end of June, 1970.) Their greatest asset, reports an employee, is that they are attracting the hard to reach. It is questionable, however, whether they are providing any substantial help in preventing delinquency. It has been said by observers that if Project Progress is ever closely examined, and their books audited, they would probably fold. OEO is apparently conducting such an examination at the present.

A tremendous gap exists between grassroots operations like Project Progress and the basic city institutions like Public Welfare, Recreation and the Public Schools. Some of the administrators of such institutions see little good coming from grassroots organizations, and object to the non-professional approach, the lack of records and evaluation, and the "hustling" which they feel is still going on among excons. Professional administrators may feel threatened at times by the "success" of such programs, (ie. the drug program of Colonel Hassan) which more easily attract the very people they are suppose to be helping. The result is a lack of trust and communication.

The lack of trust makes coordination of programs, exchange of ideas and mutual support of neighborhood based staff almost impossible. For example, last year, Project Progress was working very closely with the junior high and senior high schools, counseling troublesome youth, and generally patrolling some of the schools much as the new School Community Aides (guards) do now. In many cases, this was a healthy example of how the two types of organizations were able to work together. However, several on the D.C. School Board decided that Project Progress should not be in the schools counseling the youth. Shortly thereafter, the cooperation ended.

In contrast, the Director of the Roving Leaders feels that "someone at city hall" saw that the Roving Leader type of program was a good thing and could be expanded in a new way . . . using exconvicts, NYC's and "street wise" people under supervision of a professional. The biggest difference between Project Progress and the Roving Leaders Program is that the latter realizes the need for street workers to know what they're doing, and provides education in psychology, sociology and group work. Their standards are high, and most Roving Leaders have College degrees and are continuing their formal education while on the job. Their program is far superior to Project Progress in this way.

The established institutions also object to the fact that the Office of Youth Development Services is actually directing Project Progress. As will be discussed later in this report, OYDS was the office under the Mayor, responsible for coordinating efforts to prevent juvenile delinquency. Many assert that it is difficult, if not impossible, to coordinate

[9] *Summary of an Evaluation of the NDYP*, by Dorothy Gilliam, John Gibson and Roy Kennix (no date—approximately December, 1969).

[10] *Report of the President's Commission on Crime in the District of Columbia* (Washington, D.C.: U.S. Government Printing Office, 1966), p. 711.

the provision of certain services when the coordinating body, itself, operates a competing program.

Questions have been raised about the difficulties, and the risks of hiring for delinquency prevention ex-cons and teenagers who have already had problems of their own. The risks are always there. The factors that must be assessed are the selection process, the kind of supervision, and the quality of training which must be built into the program. The principle of hiring ex-drug addicts to help treat drug addicts, alcoholics to support other active alcoholics, handicapped persons to aid in the rehabilitation of similar individuals has been tried in a variety of fields and under qualified conditions resulted in definite success. The success is identified both in the increased ability of an agency to reach and treat the client and in the therapeutic effect on the ex-addict or ex-delinquent. The teacher often seems to learn even more than the student.

ACTION FOR CHILDREN IN TROUBLE, D.C. DEPARTMENT OF PUBLIC WELFARE

The Department of Public Welfare operated a pilot "pre-test Prevention Project" in the 6th Police District, April–November, 1969, and is now in the process of fielding six delinquency prevention teams and six diagnostic and evaluation teams in each of the six Police Districts. This is the newest program explicitly developed for the prevention of delinquency.

The basic function of both teams is to provide to both delinquency prone youth and their families directly or through referral, a variety of needed services including individual and/or family treatment which will prevent the youth from developing delinquent tendencies or becoming a delinquent.[11]

Initially, referrals will be made through the 379 forms from the Youth Division (Police Contact Forms).[12] Additional referrals will be accepted from anyone, including the schools, health clinics, churches, community organizations, neighbors and parents. The teams will be placed in strategic areas throughout the city in order to provide on-the-spot, immediate response.

Evaluation

This appears to be a much needed program. Right now, if a youth gets into trouble with the law, but is not referred to Juvenile Court for ajudication, he rarely gets any attention, counseling, therapy or job referral. If he does get this follow-up, it is because a Roving Leader happens to be working in his residential area and learns about his case from the police or the school. Or he may get referred to the Police Boy's Club at which time a Policeman will make contact with him and his family and try to get him involved in their recreational program.

Chances are he and his family will not get any official attention or help until he commits a serious enough crime to be channeled through Juvenile Court and their social service department. Even then, caseloads are such that he will only get superficial treatment; and his humiliation at becoming a "delinquent" is such that he probably won't cooperate willingly, but will begin the journey toward becoming a hardened criminal. The stigma of passing through the judicial system significantly affects a child's self-concept, making it that much more likely that he will return again and again.

The crux of delinquency prevention, from the standpoint of this program, is to deal with the deviations and problems of youth without dramatizing youngsters as evil, and hence cut short or even avoid their public definition and self-identification as delinquents. This program also places a great deal of importance on the coordination of neighborhood resources, especially among the police, the schools, the Health Department and local organizations. Other parts of the Welfare Department will be called upon to provide needed family services (i.e., shelter, food and financial aid). The treatment to be used by ACT will be group work and family therapy, as well as traditional casework and counseling.

The question to be raised again is, will this program prevent delinquency? Since it is too early to evaluate the program, all we have to go by is the proposal. The plan appears well thought out. Many of its features are selected to overcome the failures of past programs, and are building upon what are seen to be successful attempts to prevent delinquency.

For example, the staff of ACT will include a variety of backgrounds and degrees of formal preparation and experience from psychiatrists and social workers to youth workers and case aides. According to a recent article in the *Washington Post* (April 13, 1970) one of the youth workers will be a 20 year old boy who has "served time" at both the National Training School for Boys and the Laural Children's Center. Willie was an exceptional case of rehabilitation. It is felt that Willie (not his real name) and other non-professionals, under professional supervision, would be able to relate to the clientele and inspire the community confidence needed to make the program a success. A community advisory council is to work with each of the area teams, providing additional community support and involvement.

Another asset provided in this program but often missing in others including the Public School Pupil Personnel Teams, is the provision for a Diagnostic and Evaluation Section, which draws its expertise and supervision from the Georgetown University (two teams) and Howard University (one team), with other teams possibly being staffed and supervised by the Health Department and Catholic University. (The variations in the six teams will provide a comparison of the relative effectiveness of different professional approaches to treatment.) Children and their families requiring intensive treatment because of deep-seated behavior patterns and diagnosed social pathologies would receive it from the Diagnostic and Evaluation team.

Such an innovative program is fertile ground for evaluative research. The proposal suggests that an on-going evaluation will be established under guidance of an Evaluation and Research Committee which will be composed of consultants and research experts from area universities and other community resources. The potential is there for making a tremendous contribution to the field of delinquency prevention. The question is, will it work? Will the Welfare Department be able to coordinate effectively with other agencies in the city? Will it be able to overcome the image many lower income families have of such a department being hostile or irrelevant? (The open reception by residents of the pilot project suggests that this will be no problem.) These and other questions, however, can only be answered by time, since the program has only begun (February, 1970) and will expand gradually, reaching full strength by the end of the year.

PUPIL PERSONNEL SERVICES—TITLE I PROGRAM[13] D.C. PUBLIC SCHOOLS

In relation to the public school system, the temptation is to think in terms of the total educational process as being a preventive measure. Ideally it provides the child and youth with the educational and technical skills necessary for finding a job, earning a living, or raising a family and operating effectively in a complex urban community. Persistent criticism has been directed against the school for an apparent failure in teaching even the basic skills of reading, writing and arithmetic. The Passow Report supports this with comparative achievement scores which place ghetto schools consistently in the lower percentiles.[14] According to the opportunity theory, such a failure to provide the means for legitimate entrance into the main stream of life produces intense frustration among youth.

From another point of view, the schools must be seen in perspective as part of the total environment, and as part of the total failure of society to deal effectively with the economic and racial issues of urban areas today. No matter how you look at it, the schools are in trouble—bearing the brunt of public attack; surprising the tremendous financial loss through vandalism and robbery; and being under pressure to produce basic changes in the educational process to make it more relevant to urban minority groups.

Where does the pupil personnel service fit in the prevention of delinquency? Two answers were received for that question. An administrative official stated that the public school had neither the capability to recognize the pre-delinquent, nor the capacity for preventing delinquency. (He was referring to the breakdown in administrative machinery, where a teacher recognizes a "child-in-trouble"—a potential delinquent, and conveys this to the central office, whereupon immediate action can be taken to prevent further problems.) A few weeks later, one of the directors of the Title I Pupil Personnel Office replied that everything they do relates to the prevention of delinquency. Both answers represent the dilemma of this program.

The purpose of the Title I program as stated in the Annual Report is—the identification, prevention, and remediation of all factors which cause educational disabilities of the most seriously disadvantaged students identified by teachers, counselors and principals in the 34 Title I schools.[15]

A variety of supportive services are provided to those students who are referred to them for a number of reasons:

	Ranking	Number
1. Reading retardation	4	2,789
2. Arithmetic retardation	7	1,899
3. Speech and language handicap	9	1,413
4. Failure in class subjects	5	2,337
5. Absenteeism	3	3,109
6. Health problems	6	1,913
7. School transfer	10	993
8. Emotional and behavior problems	2	3,461
9. Economic need	1	4,947
10. Other, family problems	8	1,427
Total		10,513

A Pupil Personnel Aide or Social Worker (depending on the difficulty of the case) fol-

[11] *Action For Children in Trouble*, D.C. Department of Public Welfare, December 1969, p. 10.

[12] Police Department Form 379 is utilized by all police department personnel when they have contact with a juvenile involved in a minor offense. The 379's are then forwarded to the Youth Division where they are evaluated by an official. If the case indicates that follow-up investigation is required, a hearing is set by a Youth Division investigator to whom each such case is assigned. The 379's are placed in file at the Youth Division to establish that a contact has been made, but they do not constitute a criminal record and are destroyed when the offender reaches his eighteenth birthday. *Annual Report of the Youth Division*, Fiscal, 1969, Metropolitan Police Department, Washington, D.C.

[13] The Title I Program of the Pupil Personnel Services is responsible for 34 schools in low income areas of the city, serving approximately 12,200 children—50% of the student body in those schools—so far in fiscal 1970.

[14] The "Passow Report"—*Toward Creating a Model Urban School System: A Study of the Washington, D.C. Public Schools* (New York: Teachers College, Columbia University, 1967), pp. 96, 100 & 101.

[15] Department of Pupil Personnel Services, Annual Report, 1968–1969. District of Columbia Public Schools, Washington, D.C.

lows up on the specific problems until a solution is found. According to the figures of 1968–69, one-half of the Title I children referred were from families where economic need was identified; one-third had emotional or behavior problems; and one-third had problems with absenteeism. Many of these problems were overlapping, with only the problem causing the initial recommendation being registered here.[16]

The full range of activities covered by PPS will not be covered here. The evaluation would be too superficial to be meaningful. Such an examination needs to be carried out in relation to the entire school system because other departments, such as Special Education, also deal with "problem children" and such interrelation of activities is necessary for a full picture. The administration of the Public Schools has been recognized as a major problem by most agencies which must deal with the schools in one way or another. It would be a full-time job just to gather the relevant information about how the school really deals with "problem children," and then evaluate it, because the investigator must touch base with so many different persons and departments to get the total picture.

Evaluation

The Pupil Personnel Service operates an essential service for the school system. In its own way, it attempts to coordinate its specific needs with the neighborhood resources available. The main criticism of the services provided by PPS, made both by a representative of that office and by persons outside the system, is that their operation is and can only be a "bandaid" operation. They don't have the staff or facilities to provide indepth counseling or psychiatric services for the children, much less the family therapy or multiple family services which are needed and become apparent when individual cases are checked out. Thus they become a referral service which means they too are at the mercy of the other resources—Health, Welfare and Private agencies—present in the local neighborhoods. The referral of a client doesn't terminate the case, because all the cases are followed up to a "satisfactory" conclusion, but the referral becomes the means by which they expand the services they are able to offer.

They do offer tangible services which effect tangible results: eye glasses and hearing aides result in better ability to function; free lunch and clothing and family services remove impediments to school attendance; tutoring, remedial services and home visits are responses to academic problems. The frustration occurs because many problems go much further than is apparent in these categories. Chances are that the same group of children will show up in PPS records year after year—soon becoming the dropout or the delinquent. PPS officials admit that their services are not always enough, but believe they are doing the best they can with the personnel and resources available.

AN INTEGRATED NEIGHBORHOOD SERVICE PROGRAM FOR THE PREVENTION AND CONTROL OF JUVENILE DELINQUENCY

THE OFFICE OF YOUTH DEVELOPMENT SERVICES

The Office of Youth Development Services was the office designated by the Mayor to develop a comprehensive plan of delinquency prevention as called for by the Juvenile Delinquency Prevention and Control Act of 1968. Approximately $150,000 was provided by HEW as a planning grant covering fiscal '69 and going through December, 1970. But what has happened to the plans?

Dr. Jones, new director of the combined Office of Youth Development Services and the Youth Program Unit—now called the Office of Youth Opportunity Services—stated (spring 1970) that the plans would be held in a state of limbo until he had time to gather the needed data on youth programming in this city and develop a rational basis upon which to propose a comprehensive program. He stated that this should have been done long ago. A representative of the planning team (now out-of-commission) has stated that Dr. Jones has completely rejected the entire package of plans, that three-fourths of the old staff has resigned, and that Dr. Jones has not been in communication with that office. The activities of the new Office of Youth Opportunities Services are considered in the section under coordination.

It is very difficult to evaluate what has really been accomplished with this planning money. Many meetings were held, and extensive plans were drawn up for 23 projects. At least eight agencies, two colleges and three contracted corporations were involved. The "integrated neighborhood service program" was to be a demonstration program to test the efficiency of an integrated team including representatives of Health, Welfare, Recreation, the Public Schools, Police, Courts, and Project Progress. They were to work on a neighborhood level, dealing with the day-to-day problems of youth and their families much as the ACT program plans to do.

It becomes understandable why agencies are so upset with the District's comprehensive planning efforts. A year of work has netted zero and cost $150,000 plus the time and efforts of many high level agency personnel who spent hours attending meetings helping to draw up the plans. Now someone else is starting out from the beginning again.

SUMMARY OF REVIEW OF DELINQUENCY PREVENTION PROGRAMS

This study, though not comprehensive, has reviewed the basic programs and touched base with some of the most knowledgeable people in the field of delinquency prevention in Washington. To summarize:

(1) *Investment in programs.*—A tremendous amount of money has been poured into these specific programs in the past few years, as summarized in Appendix I. The total investment in the five programs reviewed here appears to exceed $15 million, although a precise figure cannot be identified because it is impossible to determine how much of the total of over $5.7 million for WCEP was spent directly for manpower training for youths as opposed to adults. The general magnitude of the combined Federal, local and private spending for delinquency prevention programs, however, is such that it is reasonable to ask which of these programs could, if challenged, justify their cost with hard evidence of success, or even with indications of a contribution to the understanding and prevention of delinquency.

(2) *Evaluation capability.*—There is currently no adequate evaluation of any of the programs reviewed. This study suggests, however, the following capsule descriptions:

(a) Pupil Personnel Services produce at least short-range improvements in the students served, as seen by their teachers;

(b) The Roving Leader program has yet to be adequately evaluated;

(c) The Welfare Department's ACT program has the potential for a full evaluation of results as the program develops;

(d) UPO's NDYP appears to produce successful results primarily for some of the youth staff members, while other UPO programs can not be evaluated in terms of their impact on delinquency; and

(e) Project Progress has no date and has generated considerable criticism.

The problems resulting from a tremendous proliferation of services.—Aside from the cost result issue, the existence of many types of youth programs operating mostly alone, with informal coordination here and there, affects the District in a number of ways. The image produced is that of a recreation center or agency serving youth almost every other block, but with most of them understaffed; with staff under-trained; lacking equipment and resources; and, most serious, with low morale and motivation to tackle a problem which is more than they alone can handle. Meanwhile, the teenagers in question are not at these centers, but hanging around the neighborhood liquor store or pool hall, shooting craps, and taking heroin or dope. Of course there are many other teenagers at home, or on the job, or doing constructive things. But they are not the subject of this report. They and their parents may be equally confused, however, about where to go if they need which agency does what, and why many agencies don't do anything.

The tragic result which exposes such a situation is often reflected in a newspaper article about a teenager who has been in trouble with the police since his eighth birthday; who has had emotional difficulties all through school; whose family is known to numerous agencies which have never worked together on the case; and who now has been involved in a felony. The question is always asked: Didn't anyone know this boy or try to help him along the way? Do we have to wait for a crisis before we realize how bad the situation really is? Isn't there some way to coordinate the services to youth . . . or to coordinate all services, so that the effectiveness of programs could be improved, and the senseless overlapping of services and staff stopped? Could funds and people be put to better use?

COORDINATION

This report must ultimately deal with the problem of coordination. Obviously, there is a need for it in the District of Columbia. In fact, one look at a list of Mayor Washington's staff indicates, beyond a doubt, that he realizes the need exists, and that he is trying hard to develop coordinating structures. The question being raised frequently these days is who is going to coordinate the coordinators? One of the problems facing this attempt to analyze coordinating structures is the simple fact that things are in such a state of flux that what appears here for the month of May, 1970 may be changed by June or July. (Note the reorganization of the Office of Youth Opportunity Services, or the creation of the Department of Human Resources.)

To give this portion of the report a frame of reference, consider three types or models of coordination which are relevant to the situation in Washington, D.C.

INFORMAL COORDINATION

The informal network already mentioned in this report depicts an intermittent kind of coordination. It is developed by persons who see the need to interrelate their services with those offered by other departments. But unable to work through formal channels, or stymied by bureaucratic problems of organized formal channels, they develop an informal network. This way, the Roving Leaders have made connections with receptive persons in other city governments and agencies—police, schools, Welfare, Health and private agencies—to the benefit of their own program and clients. They have learned how to get the services—jobs, medical checkup, drug information, family financial assistance—they need for their clients.

Such coordination is spotty and insufficient to help very many people. It does mean,

[16] For example, a child may have been referred to PPS for absenteeism, with economic need and arithmetic retardation also noted as problems. Upon investigation, it was found that he was blind in one eye and losing sight in the other; plus family problems which aggravated his getting to school on time, having his eyes checked, or getting a tutor. These problems were attended to so that the boy now attends school regularly, has tinted glasses to cover the blind eye and is scheduled to be examined soon to determine condition of the other eye. (Taken from an actual case record.)

however, that there is a core group of people in communication with each other, who recognize the need for coordination and are ready to pull their various services and resources together on a formal basis when the right leadership comes along. The director of the Roving Leaders said that if the right kind of knowledgeable person were appointed to formally coordinate services, and were respected by the various agencies, he could name six to eight persons who would meet tomorrow and have a system operating within a week.

A small coordinating body situated in the Mayor's office.—This is the kind of coordination referred to above, by the director of the Roving Leaders. It would have to operate with the sanction of the Mayor's office, but even that sanction would be insufficient if the "coordinator" did not command the respect of the agencies and organization involved. This is the kind of coordination that agency heads really seem to want because it leaves them relatively free to develop their own service but with the added fact that they now have formal access to combined "service delivery systems" which alleviate gaps and overlapping. For example, the health department could assign its personnel to work in and with the school from August through October to ensure that every entering student gets a full examination. Or another example, suggested by a School Board member, would be the setting up of a system which regulates the identification of children with various problems (especially in the early grades) and has a systematic way of seeing that each is provided with the needed services. The Pupil Personnel Service begins to do this but they do not really coordinate their services with Welfare and Health Departments.

An additional problem with PPS is its confusion of roles resulting from inadequate coordination and reliance on welfare services. The school's main function is education and PPS should be mainly concerned with those children who have learning difficulties. Where the child needs health services, or he and his family need welfare or recreational services, there should be some mechanism to provide such to the degree necessary for the child as well as for his family—income, job training for his parents, parttime job for teenager—what ever it takes to solve the immediate problems of this child and begin to solve the long term problems of his family. This is the program that the Welfare Department is putting together in ACT. The Pre-delinquency Section helps to locate the youth, and receives referrals and initially assesses the needs of each child and family. The Diagnostic and Evaluation Team (one of which will include 3rd and 4th year psychiatric students, psychiatric social workers and possibly pediatricians) would provide the technical assessment and treatment of the more serious cases of emotional disturbance and family pathology. This service would be enhanced if it were one of a number of services being coordinated by a youth coordinating office under the Mayor.

Coordination through executive department grouping (Superagency).—The third type of coordination, of which there are many varieties, is the development of a superagency such as the Department of Human Resources which becomes an umbrella covering many agencies. This type of coordination has tremendous potential as well as possible pitfalls, The potential is seen in the creation of a centralized mechanism to coordinate actions and interactions of agencies related to the development of human resources. The pitfalls include the questionable building of a super-empire; an additional layer of bureaucracy which is interposed between agency heads and the mayor; and the possibility of this superagency seizing the authority to draw up the budget of individual agencies, essentially usurping their individual authority.

Having outlined three possible means of coordination, let us review the super-structure of the District Building (spring 1970), especially in relation to youth services.

COORDINATING UNITS IN D.C. GOVERNMENT

The Office of Criminal Justice Planning.—This office was established by the mayor in compliance with Section 203 of the Omnibus Crime Control and Safe Streets Act of 1968. Its basic functions are:

Comprehensive planning functions, including setting goals and objectives, description of problem areas and needs, determination of priorities, program development, and recommendations for implementation.

Continuing analysis and description of the system of law enforcement and criminal justice.

Monitoring and evaluation of action programs funded by the office and of other agency programs.

Action program proposal review and funding.

Technical assistance to agencies in action program proposal development and in planning.

Policy decisions are made by the Criminal Justice Coordinating Board, appointed by the Mayor and composed of 21 members who are representative of the criminal justice and law enforcement agencies as well as of the public at large in the District of Columbia. The board meets monthly to consider relevant problems and issues.

In relation to the youth programs discussed in the first part of this report, this office helped with the development of the Welfare Department's ACT program and is funding a comprehensive evaluation of a joint project between ACT and the Roving Leaders. They will also be involved in helping with or coordinating with the "comprehensive planning" of the Office of Youth Opportunities Services.

The Office of Community Services.—As stated in the Mayor's executive order, No. 69–183 (April 25, 1969):

The Director of the Office of Community Services shall, on behalf of the Commissioner, plan and establish a system of decentralized administrative and service facilities including multipurpose community or neighborhood service centers; relate the activities of such centers to other District departments and agencies: assist in coordinating the decentralization of municipal services by District departments and agencies; coordinates other municipal services with the District's Model Cities program; direct the operation of the Information and Complaint Center; and serve as the District's general liaison officer with the United Planning Organization and the Office of Economic Opportunity and between those organizations and District departments and agencies.

Through this office considerable work has been done and charted to show not only the multiple private, civic, community, D.C. and Federal programs and services which exist in Washington, D.C., but how they overlap in geographical territories as well as in provision of services. In graphic form, its findings illustrate the lack of coordination of services and the waste of Federal, D.C. government and private funds in many areas, not only in youth services.

Mayor Washington's goal is to establish District Service Areas to which all District departments, agencies and offices will conform in their organization of the delivery of services. He hopes eventually to establish Multi-service Centers which embrace the whole range of interrelated, coordinated public and private activities in a region. The problems of developing such are multifaceted and beyond the scope of this report. The question here is, how youth programs and preventive services will be fitted into this design, if the design is feasible at all? More important, how does this move fit into the total scheme of developments in the District building?

The Department of Human Resources.—As stated in the executive order No. 70–83 (March 6, 1970), which is an amendment to No. 69–96, the creation of the Office of Human Resources,

The Director of the Department of Human Resources is responsible for planning, implementing, and administering District of Columbia health and social service programs, services and facilities and for promoting other programs designed effectively to maintain and improve the health and well-being of the people of the District of Columbia, including the prevention and control of disease, provision of medical and health care, prevention and treatment of drug addiction, institutional care of the mentally ill and retarded, related medical and paramedical services, social welfare programs, vocational rehabilitation, and veterans services; and for maintaining primary liaison relationships with the District of Columbia Unemployment Compensation Board.

Maintain liaison with Federal Agencies and private agencies including the United Planning Organization.

The Department of Human Resources was originally developed as the Office of Human Resources (June, 1969) to coordinate those agencies which deal with human resources—health, welfare, vocational rehabilitation, promotion of the arts and recreation and to assure effective relationships between these programs and those serving youth and manpower development.

When the office became a department, the Recreation Department was left out, although it continues to meet with agency heads under the Department of Human Resources. The Director of the Recreation Department is "greatly concerned" about his department being placed under the newly formed Office of Youth Opportunity Services, because the Recreation Department serves all age groups and not just youth.

The Department of Human Resources has great potential if it is used as a central planning office for the better utilization of services and facilities. This kind of coordinating mechanism is necessary for developing comprehensive planning, a central data collection system, and a central "clearing house" kind of service which provide programming direction, eliminates gaps in services and decreases overlapping and consequent waste of money.

The pitfalls of this office are already evident. The department is becoming a superstructure where the span of responsibility is too great, as admitted by a representative of that office. The danger of such a development is in its becoming a monopoly on certain services, dictating direction and controlling budget, rather than coordinating services and freeing agencies to better accomplish thier major objectives.

A preoccupation with coordination may also become a substitute for service expansion, innovation and improvement in the service delivery system. It could end up protecting the status quo rather than moving ahead in vital areas. For this reason, there must remain within the Department of Human Resources a "checks and balance" system where agency heads maintain some autonomy and are "free" and encouraged to develop and innovate in their area of expertise. Coordination is not an answer to all the problems of the District and must not be seen at a fetish. It is a tool to be used, among others, to improve services.

The Office of Youth Opportunity Services.—The purpose of this office, as stated in executive order No. 70–93 (March 17, 1970), is:

Assist the Commissioner in his functions of planning, coordinating, and assuring maximum interrelationship and effectiveness among the District of Columbia's programs concerned with the counseling, employment, health, *recreation* and training of children and youth;

On behalf of the Commissioner in matters affecting children and youth of D.C., and in association with the Director of the Department of Human Resources, maintain liaison and continuing relationships with those public agencies . . . and with private agencies serving District of Columbia children and youth;

Recommend to the Commissioner a comprehensive plan for combatting juvenile delinquency and rehabilitating delinquent youth, embracing projects and programs proposed by local public or private organizations.

This office resulted from combining the Youth Program Unit, previously in charge of coordinating youth activities and the Neighborhood Planning Councils,[17] with the Office of Youth Development Services, which has been developing comprehensive plans for the prevention and control of juvenile delinquency in accordance with the Delinquency Prevention and Control Act of 1968, as well as running Project Progress on the side.

The direction in which this office is heading has caused wide skepticism on the part of the directors of those agencies and organizations dealing with youth. The impression is that these two offices in city hall, now combined, have been planning and operating (Project Progress and the Neighborhood Planning Councils) quite apart from the established structure of the major agencies (Health, Education, Welfare, and Recreation). When these agencies must be involved or consulted, it is not in a "coordinating way" they are told how they will fit into the scheme of things. It is for this reason that the comprehensive plans of the Office of Youth Development Services—which looked good on paper—are being scrapped, consequently delaying the development of a comprehensive plan and the receipt of a sizable grant from HEW. The agencies with the know-how for program operation were never central in the planning, felt coerced into going along, and never had (for these and other reasons) professional respect for the group doing the planning.

It is believed by many that there is "politics" involved in the latest move to develop the Office of Youth Opportunity Services. Why isn't it placed under the Department of Human Resources where it belongs? The Director of this office clearly stated he was not responsible to the Department of Human Resources, although he meets with the central planning group of agency directors. Why was the Recreation Department placed under this office (YOS) when it clearly deals with much more than youth services? The Director of the Recreation Department expressed the fear that this group under the Mayor's office would coopt recreation facilities and resources for its own purposes.

Some defend this kind of maneuver as a necessary use of executive authority in order to shake up a non-functioning department. They argue that the Recreation Department in many ways is not fulfilling its basic function and consequently such action from the Mayor is not all that bad.

To others, however, the move represents something much more ominous, with serious consequences if it is allowed to continue. The fear is that creation of this office is a move toward the development of some sort of Youth Authority which would become responsible for coordinating and maybe running all agencies or portions of agencies and institutions dealing with youth—with a section specially geared to prevent and control delinquency.

The most potent argument against such a development is that, based on past experience, delinquency has *never* successfully been prevented through services to the youth or child alone. Authorities, including those at the D.C. Department of Public Welfare realize the necessity for (1) identifying "children in trouble" at an early age; (2) providing universal services to them without producing any stigma which suggests "potential delinquent"; and (3) dealing with the total family constellation of problems which create or contribute to the "troubled child." A youth authority is limited in what it can provide in terms of total services. Its image leans toward repressive or diversionary tactics rather than preventive and rehabilitative measures, not because of philosophy, but because of the services generally at its command.

The Office of Youth Opportunity Services, in its reorganization, is developing a "Youth Strategy Room" (also called the "War Room" by one concerned person) which will, include desks (38 in all) for representatives of each agency or department which deals with youth. This room—to be operational in June 1970—will have specfic data and wall charts to indicate the "state" of youth programs and the progress of delinquency prevention and control. A separate room will include desks for representatives of private organizations (Health and Welfare Council, UPO, Council of Churches, etc.) to coordinate the same.[18]

Again, the basic idea is good—to collect data for the purpose of comprehensive planning. The questions raised at this point by concerned officials include: What's right to be done with the information, and who's going to make the decisions? If the Office of Youth Opportunity Services doesn't have the respect and the responsible agencies and officials the results could be serious for this city. For example: One high official in the ACT program has said that the wrong kind of "coordination" would ruin two years of hard work building cooperative relations with the various agencies and universities in planning for and developing these teams. If ongoing programs are thwarted by the development of a Youth Activity there would be less progress instead of more. There could be more delinquency instead of less.

SUMMARY OF EVALUATION OF COORDINATING EFFORTS AND NEEDS

This study suggests that one of the most urgent problems—nothing new in Washington, but growing more serious in recent years—is the credibility gap between established district agencies and those new structures being developed for the purpose of coordinating programs. A certain amount of resistance can usually be attributed to vested interests. But the proportion of the problem here, and the commonality of feeling and concern among a core of people in various agencies who are professionally capable, seriously doing a job and not "marking time and maintaining the status quo," gives credence to the problem.

The feeling of many is that the most effective approach would be a youth program coordinator with a small staff under the Department of Human Resources. The purpose would be to collect significant data on youth programs and gaps in service; to convene interagency meetings to facilitate the development of comprehensive programs; and, under sanction of the Mayor's office, to develop mechanisms which make the planning and coordinating of interagency programs easier. This coordinator would be able to draw on the full resources of agencies in the Department of Human Resources, and to maintain communications with other agencies and community groups.

The second point that needs to be made is the inappropriateness of assigning any coordinating office to operate a program. It is a well established principle in the field of social planning that a Youth agency set up to coordinate programs defeats its own purpose by operating a program to show the others how it should be done. The result is alienation and lack of cooperation.

CONCLUSION

The focus of this report is really the youth of the District of Columbia and the alternatives open to them when they need help. The conclusion is not a happy one. It appears that this city, despite all its programs and coordinators, has not yet developed a means of bringing consistent help to children or teenagers short of their committing a serious delinquent act.

The questions which persistently appeared in the course of this study involve both the substance of individual programs and the tangled relationships among them. There are serious gaps in data and a generally inadequate factual base for the evaluation of programs. There are insufficient evaluative plans in most cases and therefore an inability to learn from experience in any systematic way. There appear to be coordinators who do not coordinate well with each other, whose jurisdictions overlap tremendously, and whose planning efforts often seem to be divorced from operating agencies.

Without effective coordination, without overall focus on the goals and objectives of youth programming and delinquency prevention services, without an objective evaluation of results, progress is likely to be slow and sporadic.

Further inquiries are needed to develop a full understanding of the current scope, organization and effectiveness of youth programs in Washington, an understanding which is essential before any truly comprehensive program can be shaped. Hearings, either by a Congressional committee or by the D.C. City Council, might be one vehicle for seeking such an understanding.

Among the questions which should be investigated further are the following:

1. Questions prompted specifically by this study:

a. City "coordinators" could be asked to define their areas of operation explicitly in relation to existing programs and to each other.

b. Those agencies operating youth programs could be asked how they evaluate success or failure and how findings must be related to improvements in their programs.

c. Private agencies, especially the United Planning Organization and the Health and Welfare Council, could be asked to define their relationship to city-operated programs and their concepts of effective coordination.

2. Areas for broader investigation, beyond the scope of this study:

a. Health services:

1. What counseling services are available to disturbed youth?

2. What interrelation (overlap or coordination) exists among various types of counseling offered by the public schools, public health, psychiatric services, and the welfare department?

3. The drug addiction problem is just beginning to get the attention needed from the new Narcotics Treatment Agency. What is the extent of the problem among youth and how can agencies most effectively work together?

b. Welfare services:

1. What effect do institutional programs have on the prevention of further delinquent behavior? Do they, in reality, become a training ground for crime?

[17] NPC—born in 1966 out of the need for citizen involvement in planning and operating summer youth programs at the neighborhood level. Twenty NPCouncils were developed and subsequently elected in the 20 designated geographical areas. The past year has seen the program changed from summer funding to year round programming with varying degrees of success.

[18] A request for an interview with the Director of the Office of Youth Opportunity Services was flatly rejected because he "didn't have time" to sit down and talk about his plans, ideas and approach to the coordination of youth programming.

2. Does the Aftercare Program provide adequate supportive services for youth released from institutions?

3. How adequately are welfare services coordinated with Juvenile Court, the Public Schools, and other agencies and programs?

c. Public schools:

1. The public schools are fertile ground for additional research in this area:

The quality of education provided;

The adequacy of teacher training;

The relevance of vocational education;

The effectiveness of special programs like the Urban Service Corps; and

The impact of Community School and Model School programs.

2. What is being done to upgrade the efficiency of the school administration?

d. Higher education:

1. What is the real availability of higher educational opportunities for ghetto youth—especially at area institutions such as Federal City College, Washington Technical Institute, and Howard University?

2. What types of education does each offer, and how effective are special programs for poorly prepared high school graduates and dropouts?

e. Manpower training programs:

1. What is the extent of training provided in the various programs offered?

2. Are there relevant jobs at the end of the training?

3. What is the success record for the past and present programs?

f. Police department:

1. What are the criteria used for arresting ghetto youth, and what determines who must be held in the Receiving Home?

2. Are there alternatives to the present procedure? Could a task force of representatives from welfare, police, and juvenile court evaluate procedures in terms of cause and result of present backlog, and possible alternatives?

g. Recreation:

1. The recreation department comes in contact with many youth. What is their real and unique contribution to youth through special athletic programs, special training in arts and crafts, music, and other leisure activities?

2. Do recreation workers receive adequate supervision and training?

3. Is there any quality control of neighborhood and regional programs?

h. Health and Welfare Council:

1. What role does the Health and Welfare Council play in the planning and provision of youth services in Washington, D.C.?

2. What specific functions does or can HWC perform for the city—ie. the coordination of, and counselor training for summer camping programs for most District agencies?

i. United Planning Organization:

1. What is the original objective of UPO in relation to youth programming?

2. Do they overlap with the programming and provision of services performed by other agencies?

3. What contributions have they made to the provision of services for youth in this city?

j. Contribution of universities to youth programs:

1. Many universities in the Washington area make a variety of contributions to solving city problems—ie. special research; providing students as interns who are getting on-the-job experience in relation to their studies; social action groups which provide volunteers for various programs; etc. Has there ever been an evaluation of the quality, quantity or pattern of this contribution?

2. What factors encourage or discourage such involvement?

3. What are the connecting links of this involvement? (ie. Pupil Personnel Services has a contract with one University for an evaluation of their Title I program.)

k. Contribution of business:

1. What is the current contribution of the business community to youth programs and to the solution of problems highlighted in this report?

2. What is the potential for business involvement?

l. Federal programs:

1. What contribution does the overlapping of federal programs make to the chaos in youth programs?

2. How could Federal programs be strengthened to provide greater incentives for local coordination and comprehensive planning?

5 DELINQUENCY PREVENTION PROGRAMS

Funding		Staff		Program size	
ROVING LEADER PROGRAM					
Federal (Labor)	$34,075	Roving leaders	20	Elementary:	
District of Columbia	405,213	Youth aides	11	Groups	38
Private	5,849	Supporting staff	6	Individuals	832
Total	445,137	Total	37	Teenagers: groups	73
Pending (District of Columbia special appropriations) (fiscal 1969).	116,529				
UNITED PLANNING ORGANIZATION					
NDYP					
Federal (HEW) (June, 1968–December 1969)	$1,152,966	Adults	20	"Touched" approximately 5,000 hardcore youth in 3-year period.	
		Youth [1]	150		
		Clerical [1]	15		
		Total [1]	185		
MANPOWER					
Federal, Labor Department:					
WCEP (youth and adults).	$5,751,567			WCEP	9,409
NYC	4,450,072			NYC:	
Job Corps	126,000			Regular	9,313
				Summer	8,314
				Job Corps	193
Total (fiscal 1969)	10,327,639			Total (October 1968 to September 1969).	27,229
PROJECT PROGRESS					
Federal (Labor)	$240,000	Nonprofessional staff	52	2,500 children and youth registered at 10 centers.	
Private	205,000	Professional-Program Director plus NYC's college work/study volunteers.	8		
Total	445,000				
Pending (OEO)	240,000				
		Total	60		

ACTION FOR CHILDREN IN TROUBLE				
District of Columbia	$1,352,719	Predelinquency section.	64	Just getting started.
		Executive direction	4	
		6 teams (10 members).	60	
		Supervisor	1	
		Youth worker	5	
		Case aides	2	
		Clerks	2	
		Total	10	
		An example of 1 team developed in consultation with Georgetown University.		
		Diagnostic and evaluation.	52	
		Executive direction	4	
		6 teams (8 members).	48	
		Psychiatrist	1	
		Psychologist	2	
		Psychiatric S.W.	2	
		Psychometrist	1	
		Clerk	1	
		Case aide	1	
		Total	8	

PUPIL PERSONNEL SERVICES TITLE I PROGRAM				
Federal (HEW)	$1,200,000	Supervising directors	2	34 schools, population of about 24,000.
		Assistant directors	3	
		Pupil personnel workers.	63	12,200 cases in fiscal 1970.
		Pupil personnel aides	49	
		Clinical psychologists	9	
		Psychiatric S. W.	6	
		Clerical staff	10	
		Total	142	

[1] Approximately.

OREGON'S ASSISTANCE TO PERUVIAN CHILDREN ORPHANED BY EARTHQUAKE

Mr. PACKWOOD. Mr. President, Oregon is the first State in our country to take action to assist Peruvian children orphaned by the recent earthquake that killed an estimated 60,000 persons and left 300,000 homeless. Thirty thousand children lost their homes and families in that tragedy.

Oregonians, in cooperation with the Portland Chamber of Commerce, have undertaken a fund-raising drive to establish "Los Hermanos de Oregon," a children's town near Lima, Peru.

The goal of the drive is to raise $57,000 for the purchase of a hacienda manor and 20 acres of land. That amount also would assist in constructing and equipping five cottages and would help oper-

ate the orphanage for 1 year. Long-term support would be provided by St. Vincent de Paul and other international charity organizations.

So far, $7,000 has been donated to the Peruvian Orphans Fund at the Portland Chamber of Commerce.

At "Los Hermanos de Oregon," 50 children would be housed in groups of 10 with trained "parents" living in each cottage. Every effort would be made to provide a home-like atmosphere for the children while they receive an education and vocational training to prepare them for a normal and productive adult life. For most of the children, who are natives of impoverished Andean villages, the children's town would provide their first opportunity to receive an education. According to Mr. Teodulo Cruz, president of Peru's St. Vincent de Paul, the town would be similar to Nebraska's Boys' Town.

This effort is typical of Oregonians' concern for their neighbors and of their ability to take the lead and act for a worthwhile cause. I commend the people of Oregon for their humanity, and I hope that the citizens of other States will follow their example.

AMERICAN PRISONERS OF WAR IN VIETNAM

Mr. SCOTT. Mr. President, if it is true—as Campbell wrote in Hallowed Ground—that to live in the hearts we leave behind is not to die, then surely the spirit of tenacity, and bravery, and allegiance to an ideal is not dead. Today, more than 1,400 American men are held prisoner by the Government of North Vietnam in a manner which violates the Geneva Convention. When, we must ask, will the Government of North Vietnam join with the civilized nations of the world, and accord these men the minimum decencies of treatment? When, Mr. President, will the North Vietnamese learn the simple lessons of humanity?

PRESERVATION OF ENVIRONMENT ENDANGERED BY INTERNAL REVENUE SERVICE RULINGS

Mr. PACKWOOD. Mr. President, I wish to express my concern over a recent action by the Internal Revenue Service which presents a grave threat to our national struggle against environmental pollution.

The health and happiness of Americans is threatened by blighted landscapes, dirty air, and polluted water. President Nixon has accorded highest priority to maintaining the quality of life against this threat. Terming environmental protection "a cause as fundamental as life itself," the President this year called for "greater citizen involvement." He said:

> The task of cleaning up our environment calls for a total mobilization by all of us. It involves governments at every level; it requires the help of every citizen.

Last Friday the Internal Revenue Service announced that it had suspended the issuance of tax exemption rulings to nonprofit organizations which engage in legal actions for the preservation of the environment. The Service indicated that it intends over the next 60 days to study whether such groups ought to be granted exemptions. The most serious consequence of denying tax exempt status to such groups would be that contributions to them would not be tax deductible to donors. Without qualification to receive deductible contributions, these organizations will suffer severe curtailment of their support. Therefore, a decision not to grant exemptions would substantially curb private legal action against threats to the environment.

Denial of tax-exempt status would be a reversal of well-established IRS policy. The Wilderness Society, the Audubon Society, the Environmental Defense Fund, and the Sierra Club Foundation, among others, all engage in litigation. In a recent letter to the Commissioner of Internal Revenue, Russell Train, Chairman of the President's Council on Environmental Quality, outlined the valuable contributions to environmental defense which these tax-exempt organizations have made:

> [L]itigation brought by private groups which must rely on contributions for their support have performed at least three key functions in aid of our environmental protection programs:
>
> They have strengthened and accelerated the process of enforcement of antipollution laws.
>
> They have identified gaps in our regulatory procedures as for example in our pesticide controls and spurred action to remedy these gaps, and
>
> They have brought before the courts the public's interest in enforcement of such new governmental procedures as the Section 102 environmental impact statement requirement.

The magnitude of the pollution problem has been generally recognized only in the last year. Public officials are moving rapidly to meet the challenge; but government at all levels suffers from understaffing in efforts to enforce existing pollution laws. Private assistance is required. The Legal Advisory Committee of the President's Council on Environmental Quality has adopted a resolution stating that:

> Private litigation before courts and administrative agencies has been and will continue to be an important environmental protection technique supplementing and reinforcing government environmental protection programs.

In its announcement, IRS expressed concern about a lack of standards for litigation by charitable organizations. The Service overlooks the elaborate and effective standards which are inherent in the court system itself. The litigation process is governed by both procedural and substantive safeguards which have been evolved over a considerable period of time in Anglo-American jurisprudence. Hence, among other things, courts have effective means to deal with plaintiffs whose motives are harassment or other improper objectives. Suits which are frivolous or otherwise lack merit can be dismissed in the first pretrial stages. Courts can require that plaintiffs put up bonds. They can, with or without bond, impose the costs of the suit on plaintiffs who abuse their legal rights. In extreme cases, courts can find harassing plaintiffs in contempt. In class actions—and most major environmental litigation so far has consisted of such suits—improper cases may be dismissed on the ground that the plaintiff does not adequately represent the public or other class interest involved. Finally, harassing plaintiffs will be reported by defendants to the bar and the IRS for appropriate sanctions.

The Internal Revenue Service is at least to be commended for its intention to reach a decision within 60 days. Delay threatens the existence of organizations which can contribute significantly to the fight against pollution. One such group is the Natural Resources Defense Council. NRDC is an organization designed to preserve and protect natural resources through legal means. It was organized early in 1970 by Whitney North Seymour—now U.S. attorney in New York. Two weeks ago I wrote the Internal Revenue Service urging prompt and favorable action on NRDC's application for tax exemption. Delay in IRS action on the application threatens the existence of the organization. Several major pledged contributions await tax-exempt clearance. Without those contributions, the organization will lose most of its staff—a highly qualified group of lawyers, several of whom recently completed clerkships on the Supreme Court and other Federal courts. NRDC had originally applied for tax exemption in February 1970, and had renewed the application seeking expedited consideration in June. I hope very much that IRS will adhere to its resolution to reach a decision within 60 days. The Federal Government should not allow itself to cripple through administrative delay so promising a contributor to the battle against pollution.

NRDC and groups like it seek only to have legal rights and obligations enforced by courts. Their litigation is based on democratically created Federal, State, and local laws. Their actions would complement the efforts of public enforcement bodies. Ours is a pluralistic society which has long and wisely favored private as well as governmental responsibility in national concerns. As President Nixon observed in his message on the environment:

> The tasks that need doing require money, resolve and ingenuity—and they are too big to be done by government alone.

I strongly urge the Internal Revenue Service to conduct its study with all due speed and to end the present uncertainty by reaffirming its policy and the policy of the Federal Government to bring to bear all available resources necessary to save our Nation's beauty, clean air, and water for ourselves and future generations.

FOURTEENTH ANNIVERSARY OF THE HUNGARIAN REVOLUTION

Mr. BELLMON. Mr. President, on behalf of the distinguished Senator from Illinois (Mr. SMITH), who is necessarily absent, I ask unanimous consent to have printed in the RECORD a statement by him relating to the 14th anniversary of the Hungarian Revolution and also the final communique of the Sixth Congress of the World Federation of Hungarian Freedom Fighters.

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

Mr. SMITH of Illinois. Mr. President, next week marks the fourteenth anniversary of the Hungarian Revolution when the world watched as valiant men and women died in a brave attempt to restore freedom to their country.

Since then, more than 30,000 Hungarian refugees have sought the freedoms of our shores. And with them came the spirit of the Hungarian Freedom Fighters.

The Sixth Congress of the World Federation of Hungarian Freedom Fighters met in London, August 28-31st and restated their determination to see the restoration of freedom in their homeland.

This declaration was endorsed by the Executive Committee of the Hungarian Freedom Fighters Federation, U.S.A. at their meeting last week in Chicago.

I am proud of the fine work being done by the Hungarian Freedom Fighters. They remind us of the true value of the liberties we sometimes take for granted.

Mr. President, I ask unanimous consent that the Final Communique of The Sixth Congress of the World Federation of Hungarian Freedom Fighters be printed in the RECORD.

FINAL COMMUNIQUE OF THE SIXTH CONGRESS OF THE WORLD FEDERATION OF HUNGARIAN FREEDOM FIGHTERS HELD IN LONDON, UNITED KINGDOM, AUGUST 28–31, 1970

The VI. Congress of the World Federation of Hungarian Freedom Fighters is compelled to state that it cannot observe any appreciable changes in the state of Hungary since its last Congress held in Ottawa (Canada) in 1967. The country, lacking self-determination, is still occupied by divisions of the Red Army and the citizens of Hungary are deprived of their basic human and political rights.

The Congress therefore sees no reason to change the Federation's long-standing objectives, goals and policies.

The Federation observes the ongoing international negotiations with great reservation. It expresses its concern over the possibility that these negotiations seek relaxation by neglecting the principle of self-determination. The Congress is hopeful that the resulting agreements will consider the political independence of the Central- and East-European nations and the supreme human value: right of individual freedom.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The 10-minute period allotted to morning business has now expired, and, in accordance with the previous order——

Mr. BAYH. Mr. President——

The ACTING PRESIDENT pro tempore. For what purpose does the Senator from Indiana rise?

Mr. ERVIN. I thought we had a 3-minute period.

The ACTING PRESIDENT pro tempore. There was 3 minutes for each individual Senator. There was a 10-minute total limitation on the period for the transaction of routine morning business.

Mr. GRIFFIN. I ask unanimous consent that the Senator from North Carolina now have 3 minutes.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. BAYH. I object, Mr. President.

The ACTING PRESIDENT pro tempore. Objection is heard. In accordance with the previous order——

Mr. BAYH. Mr. President, the Senator from Indiana would like to propose a unanimous-consent request that the previous order be laid aside and each side be permitted 10 minutes on the matter now before us.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. BYRD of West Virginia. Mr. President, I ask that the unfinished business first be laid before the Senate.

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.

Mr. BAYH. Mr. President, I renew my unanimous-consent request that the period for debate on the Ervin amendment be extended to 10 minutes on each side.

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

Mr. BAYH. Mr. President, the Senator from Michigan has raised a very good point. There has been a considerable amount of inconsistency on this one point, and, as the Senator from Michigan pointed out, I have been involved to some extent in that inconsistency.

But I think, if the Senator from Michigan would read in toto what the chief House sponsor had to say on this matter, and particularly if he had been on the floor when I made my speeches on this subject, he would have to admit that the Senator from Indiana has been absolutely consistent on this subject during floor debate.

We can differ as to what the impact would be, but I quote from a floor statement that I made a week or so ago, in which I said:

I disagree with the contention of some persons that if this measure becomes law, women will automatically be drafted.

I shall also read a statement of the lady from Michigan (Mrs. GRIFFITHS). She said:

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.

Then she went on to make this further statement:

The real effect, before this amendment is finally passed, would probably be to permit both sexes to volunteer on an equal basis, which is not now the case.

I have been arbitrary about allowing additional debate because, although I am certain the Senator from Michigan does not fit into this category, I am concerned that there may be some who want to talk this matter to death. We had extensive debate yesterday, in which nothing new was brought before us. Nothing new is contained in the letter sent to all Senators by the Senator from Kentucky and myself. I said exactly the same thing for over 2 hours yesterday.

As floor managers of this bill, it is our contention that because of compelling reasons of public policy and national interest, Congress could reasonably exclude women from the draft. That is the position of the two floor managers of the bill. If the Senator from Michigan wants to assume a different position, of course, he is within his rights to do just that.

Mr. ERVIN. Mr. President, I yield 5 minutes to the distinguished Senator from Michigan.

Mr. GRIFFIN. Mr. President, the distinguished Senator from Indiana (Mr. BAYH) quoted a statement by Representative MARTHA GRIFFITHS, as follows:

The real effect, before this amendment is finally passed, would probably be to permit both sexes to volunteer on an equal basis, which is not now the case.

I would interpret that as meaning that we are moving toward, and may sometime have, an all-volunteer army. Of course, in the future that may or may not be the case. But the fact is that at the present time we do have military conscription. And, as I understand her position, if and while any draft law is in effect women would be equally subject to military service, if the proposed equal rights amendment should be adopted.

She is reinforced in that interpretation, as I have said, by a report of the Subcommittee on Constitutional Amendments, chaired by the Senator from Indiana (Mr. BAYH). As I have indicated earlier, that report from his subcommittee states:

It could be expected that women will be equally subject to military conscription.

Furthermore, Mr. President, as I have already indicated, two earlier reports by the same subcommittee included the same legislative history.

Mr. President, I ask that statements on this point made earlier this year by witnesses before the subcommittee and, by Representatives in the other body, be printed in the RECORD.

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

STATEMENTS MADE BY WITNESSES WHO APPEARED THIS YEAR BEFORE THE SUBCOMMITTEE

Adele T. Weaver, President-Elect, National Association of Women Lawyers, Statement before the Senate Subcommittee on Constitutional Amendments, May 1970: "Amongst other possible legal effects of the proposed Equal Rights Amendment would be the eligibility of young women for military service."

Mrs. Jacqueline G. Gutwillig, Chairman, Citizens Advisory Council on the Status of Women, Statement before the Senate Subcommittee on Constitutional Amendments, May 6, 1970: "But I wish to note that the Equal Rights Amendment would also equalize the responsibilities for jury service and Military Service."

STATEMENTS BY MEMBERS OF THE HOUSE OF REPRESENTATIVES DURING THE DEBATE EARLIER THIS YEAR

Representative Martha Griffiths (August 10, 1970, Congressional Record, p. 28005): "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."

Representative David W. Dennis, Indiana (Aug. 10, 1970, Congressional Record, p. 28011): "To me perhaps the most distasteful thing of all, is that, as long as we keep selective service on the books, or, if it is repealed, then at any time when we may reinstate it, women, along with men, must be equally subject to military conscription. Conscription is objectionable enough, many think, where men are concerned, but I can think of no more far-reaching social change, nothing more likely to destroy the family unit, nothing so likely to transform us into a national socialistic type of state, than to conscript American women into the Armed Forces."

Representative Donald M. Fraser, Minnesota (Aug. 10, 1970, Congressional Record, p. 28018): "Women would be equally subjected to military service, but they would not be required to serve in the Armed Forces where they are not fitted any more than men are required to serve when they are not fitted."

Representative Bill Chappell, Jr., Florida (Aug. 10, 1970, Congressional Record, p. 28022): "Military service—this amendment will open affirmatively the selective service laws extended to women. Many of the people in my district have told me that they are opposed to this action."

Representative Mrs. Shirley Chisholm, New York (Aug. 10, 1970, Congressional Record, p. 28028): "The selective service law would have to include women, but women would not be required to serve in the Armed Forces where they are not fitted any more than men are required to serve."

On three separate occasions in recent years the Senate Subcommittee on Constitutional Amendments has reported out the so-called Equal Rights Amendment in its present form, and in each such reports has stated: "It could be expected that women will be equally subject to military conscription . . ." (1963, 1965, 1969)

Mr. GRIFFIN. In light of all this legislative history, frankly, I am surprised by the argument made to the Senate this morning by the Senator from Indiana. It appears to me that all the legislative history, up to this point, leads to a conclusion exactly the contrary to the interpretation now suggested by the Senator from Indiana.

I yield back whatever time remains to the Senator from North Carolina.

Mr. ERVIN. I yield myself whatever time I have remaining.

Mr. President, a great many years ago, when some people believed that the earth was flat and others believed that the earth was round, a vacancy arose in the position of teacher of geography in a school down in North Carolina. An applicant appeared before the school board and applied for the vacant job as teacher of geography. The chairman of the school board said:

There is a good deal of controversy as to whether the earth is flat or whether the earth is round.

What would be your position as teacher of that subject, if we elect you as teacher of geography?

I am satisfied that this teacher belonged to the supporters of the women's liberation movement, because this teacher replied:

I'll leave that up to the school board. I teach either or both systems.

Here we have the distinguished Representative from Michigan, who teaches one system, and the distinguished Senator from Indiana, who teaches the other.

I hold in my hand a document inserted in the RECORD on March 25, 1970, by the distinguished Representative from Michigan (Mrs. GRIFFITHS). This document was prepared by a group headed by a lawyer whose testimony the distinguished Senator from Nebraska (Mr. CURTIS) assured us yesterday he would take in preference to that of the able lawyer from Indiana, the Senator from Indiana (Mr. BAYH).

This document says flatly that there are discriminations based on sex that the women want removed, and one of the discriminations based on sex that the women want removed is stated in these words: Exclusion of women from the requirements of the Military Service Act of 1967.

So the declaration of the women's liberation movement, insofar as its position is not voiced by the distinguished Senator from Indiana, is that the purpose of this amendment is to make women subject to military service and subject to the draft, just as men are.

The declaration did not stop with that. It proceeded further to discuss the question: What would happen if this amendment were adopted? It was stated in this document, placed in the RECORD in the House by the distinguished Representative from Michigan (Mrs. GRIFFITHS), that if this amendment were adopted, men and women would be equally subject to military service. That is what the declaration says. That is teaching that the earth is flat. But the distinguished Senator from Indiana now comes in and tells the Senate that the earth is round.

This illustrates that the backers of this amendment, as I said yesterday, stand in need of the most compassionate prayer ever uttered:

Father, forgive them, for they know not what they do.

One of them says that women will be subject to the draft; the other says that they will not be subject to the draft. The world is flat—the world is round.

It is not surprising that a very keen observer of the passing scene, Robert Sherrill, had this to say about the proposed amendment:

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.

Hence, we are asked to adopt a constitutional amendment in total ignorance—not only in our total ignorance but also in the total ignorance of its proponents.

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

Mr. ERVIN. I yield to the Senator from Michigan the time I have remaining.

Mr. GRIFFIN. Mr. President, the Senator from Indiana says that he is not for conscripting women into the military service, and he interprets the so-called equal rights amendments as not doing that. His view, of course, happens to be a minority view, because the overwhelming weight of the legislative history is the other way. It can be said, at the very least, that a serious question or doubt now exists. I would think, in view of his position, that he would support the proposed amendment of the Senator from North Carolina so that there could be no question about the interpretation of the equal rights amendment.

I feel strongly that if the amendment offered by the Senator from North Carolina were adopted, the House of Representatives would accept it. I do not believe there would not be any problem at all about this particular point.

Indeed, I do not understand the opposition of the Senator from Indiana to the amendment offered by Mr. ERVIN if he does not believe that women should be conscripted into the military service. Unless that amendment is adopted, we will be at the mercy of the Supreme Court. While we cannot be sure as to what the Supreme Court would say, we must expect, at least, that the view indicated by the weight of opinion reflected in the legislative history may be adopted by the Court.

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

Mr. BAYH. Mr. President, I must say that I appreciate the argument put forth by the Senator from Michigan and the Senator from North Carolina. I do not agree with the final conclusion of their logic, however. But I, for one, would not suggest that either one of them has proceeded in total ignorance. I would hope that those of us in this body could have legitimate differences without suggesting that those who oppose or take a different position are victims of total ignorance.

The facts are these: There is a question, a legitimate question, about whether or not women will be drafted. The legislative history will be an important aid to the final determination of that question. We have been making and are now making that legislative history. A good deal has happened in legislative history since that report was written by the Senate Judiciary Committee, and it is for this reason that the Senator from Indiana has changed his mind.

The principal House sponsor, the Representative from Michigan (Mrs. GRIFFITHS), established what, in the opinion of the Senator from Indiana, is a new and different standard by which we should analyze the possibility that women would be drafted under this amendment. I read from what she said:

Separation of the sexes by law would be forbidden under the amendment except in situations where the separation is shown to be necessary because of an overriding and compelling public interest.

"An overriding and compelling public interest." Who establishes that overriding and compelling public interest? I suggest that Congress does. Historically, it always has. If Congress establishes a standard that women should be drafted, they will be drafted. If Congress establishes a contrary standard, they will not be.

I do not believe that this body would draft women under the present circumstances. Someday, however, this body might change its mind, God forbid, we might be confronted with an international crisis or a national crisis in which we would need to draft women. But I think under the standards set by Representative GRIFFITHS, the language of this

bill permits that but does not require the drafting of women. I want to read once more what the distinguished lady from Michigan said:

> 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.

Then she went on to say:

> The real effect before this amendment is finally passed would probably be to permit both sexes to volunteer on an equal basis which is not now the case.

Mr. President, I do not think the distinguished lady from Michigan was talking about a future volunteer army. I think she was talking about the very real facts of life which exist today. Women are being discriminated against if they try to volunteer for the Army yet any man who can breathe and is physically able can qualify and volunteer for the Armed Forces. A woman, however, must have a high school diploma in order to volunteer. That is not required of men. I think this clearly shows that there is real discrimination going on in the Army today insofar as a woman's being able to volunteer is concerned.

One last word, Mr. President, I think we should all realize the practical purpose and the practical effect of adoption of the amendment. If it is agreed to, we will have taken a major step toward killing it because the opponents of the measure want to hook on a significant amendment. Then it will have to go to conference and we are advised that, if it does, it will never see the light of day.

Therefore, we must decide whether we are going to risk this possibility or let the legislative history speak and interpret what the words of the amendment do, in fact, say.

I personally feel that we do not need more debate. The situation has been adequately covered. The Supreme Court will look not only at what the Senator from Indiana and the Senator from Kentucky say, but at what the Senator from Michigan says. I think that this standard of overriding and compelling public interest will decide the issue.

If we adopt the amendment of the distinguished Senator from North Carolina, if we specifically except women from the draft, then before the sun goes down tonight, there will be another amendment to except any laws applicable to women who are orphans or widows; then there will be another amendment applicable to mothers with children in the home; and then there will be another amendment applicable to the children themselves.

This has been the history of the equal rights amendment. We have set up these riders one after the other, just like the Hayden rider which giveth with one hand and taketh away with the other. Then it is sent to committee and the issue is dead, as it has been for 47 years.

Now, if that is what we want to do, that is what we will do. But this amendment should not be taken lightly. This proposed amendment to House Joint Resolution 264 is only the first step in an assault to see that this effort to give women equality before the law is dealt with the same way it has been dealt with for 47 years. Nothing has happened and nothing will happen if we allow this amendment to be accepted.

Mr. DOLE. Mr. President, I am pleased to support the movement for women's rights and specifically to be a cosponsor of the equal rights amendment, Senate Joint Resolution 61 which is identical to House Joint Resolution 264. I was also a cosponsor and advocate of a similar measure while I served in the House.

In supporting these measures, I am keeping in the tradition of the people of Kansas who have long been leaders in the fight for women's equality. Kansas, on November 5, 1867, had the distinction of being the first State in the Union to submit women's suffrage to a popular vote. Kansas, in 1912, enacted women's suffrage, and in 1919 it was the third State in the Union to ratify the 19th amendment. Moreover, two Kansans, Senator Charles E. Curtis and Representative Daniel R. Anthony first introduced in December, 1923, in the Senate and House a proposed constitutional amendment to grant equal rights to women—the forerunner of the amendment we are considering today. And it was another Kansan, Senator Arthur Capper who during the 1940's came forth as one of the chief proponents of this amendment.

There is one aspect of the House-passed amendment that concerns me and has been the source of some doubts in the minds of many women and supporters of equal rights in my State. I am referring to the so-called equal right of women to be required to serve in compulsory military service on the same basis as men. The question of whether women would be "equally subject to the draft" was raised in a widely circulated memorandum on the proposed equal rights amendment prepared by a study group of the citizens' advisory council on the status of women. It was submitted for the RECORD by Representative MARTHA GRIFFITHS on March 26 of this year. Mr. President, recently I supported a bill designed to end compulsory military service for men. It would be anomalous at this time to support a constitutional amendment that so easily lends itself to an interpretation requiring compulsory military service or even combat duty for women. Certainly, the simplest way to prevent women from becoming liable to the draft would be to accept the proposed langauge of Senator ERVIN's amendment.

Mr. President, there is nothing in this amendment that would prohibit Congress, during a period of grave national emergency, from conscripting women if such action were determined to be necessary to maintenance of national security. But this amendment simply prohibits the invalidation of any present law which exempts women from compulsory service. This amendment in no way abridges the inherent rights of any women, but clearly delineates current national policy of exempting women from the draft. Neither does this language introduced by Senator ERVIN restrict women from voluntarily enlisting in the military and joining with the tens of thousands of women who have distinguished the uniform of our country. On the contrary, it encourages their service by guaranteeing military women promotion rights and salary raises consistent with those enjoyed by men. After the ambiguity exposed yesterday on the floor regarding this amendment's relation to military service, it would seem that every Senator who favors the equal rights amendment would want to make his intent perfectly clear and vote for the Senator from North Carolina's perfecting amendment.

I support the two additional perfecting provisions offered by Senator ERVIN. The first provision requiring that the amendment be ratified within 7 years has been included in amendments proposed by Congress commencing with the 18th, and will prevent an anomaly amendment from lingering in limbo for an indefinite number of years. A section of the Bill of Rights passed by Congress in 1789 was submitted to the States in 1810, and as of today is still pending ratification. The second provision providing States 2 years instead of 1 to implement this amendment will prevent undue confusion for States where legislatures meet biannually.

Mr. President, in supporting these perfecting provisions of Senator ERVIN, I adhere to the long established tradition of the State of Kansas on behalf of women and the equal rights amendment, and in doing so, afford our women the equality they justly demand.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment No. 1049 of the Senator from North Carolina (Mr. ERVIN).

On this question the yeas and nays have been ordered, the amendments will be voted on en bloc, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from North Dakota (Mr. BURDICK), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Connecticut (Mr. DODD), the Senator from Tennessee (Mr. GORE), the Senator from Alaska (Mr. GRAVEL), 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 New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PASTORE), the Senator from Missouri (Mr. SYMINGTON), the Senator from Maryland (Mr. TYDINGS), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that, if present and voting, the Senator from Tennessee (Mr. GORE), the Senator from Alaska (Mr. GRAVEL), the Senator from Minnesota (Mr. MCCARTHY), and the Senator from Rhode Island (Mr. PASTORE) would each vote "nay."

I further announce that, if present and voting, the Senator from New Mexico (Mr. MONTOYA) would vote "yea."

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 Nebraska (Mr. HRUSKA), the Senator from California (Mr. MURPHY), the Senator from Illinois (Mr. SMITH), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Oregon (Mr. PACKWOOD) and the Senator from South Carolina (Mr. THURMOND) are detained on official business.

On this vote, the Senator from South Dakota (Mr. MUNDT) is paired with the Senator from Texas (Mr. TOWER). If present and voting, the Senator from South Dakota would vote "yea" and the Senator from Texas would vote "nay."

On this vote, the Senator from South Carolina (Mr. THURMOND) is paired with the Senator from New York (Mr. GOODELL). If present and voting, the Senator from South Carolina would vote "yea" and the Senator from New York would vote "nay."

The vote was recapitulated.

Mr. ERVIN. I call for the regular order.

The PRESIDING OFFICER. The regular order is called for.

The result was announced—yeas 36, nays 33, as follows:

[No. 375 Leg.]

YEAS—36

Allen	Eastland	Metcalf
Allott	Ervin	Miller
Anderson	Fannin	Pearson
Baker	Griffin	Russell
Bennett	Hansen	Saxbe
Byrd, Va.	Holland	Sparkman
Byrd, W. Va.	Hollings	Spong
Cooper	Jackson	Stennis
Cotton	Jordan, Idaho	Talmadge
Dole	Long	Williams, Del.
Dominick	Magnuson	Yarborough
Eagleton	McClellan	Young, N. Dak.

NAYS—33

Bayh	Harris	Nelson
Bellmon	Hart	Pell
Bible	Hatfield	Percy
Boggs	Hughes	Proxmire
Brooke	Inouye	Randolph
Case	Javits	Ribicoff
Cook	Jordan, N.C.	Schweiker
Curtis	Mathias	Scott
Ellender	McGovern	Smith, Maine
Fulbright	McIntyre	Stevens
Gurney	Mondale	Young, Ohio

NOT VOTING—31

Aiken	Hartke	Packwood
Burdick	Hruska	Pastore
Cannon	Kennedy	Prouty
Church	Mansfield	Smith, Ill.
Cranston	McCarthy	Symington
Dodd	McGee	Thurmond
Fong	Montoya	Tower
Goldwater	Moss	Tydings
Goodell	Mundt	Williams, N.J.
Gore	Murphy	
Gravel	Muskie	

So Mr. ERVIN's amendment (No. 1049) was agreed to.

Mr. ERVIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HOLLAND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. THURMOND. Mr. President, I regret that I was unable to be present this morning when the Senate voted on the Ervin amendment No. 1049 to House Joint Resolution 264. I had arranged my schedule so that I could be present. However, due to inclement weather and an abnormally high level of air traffic at Washington National Airport, the commercial plane in which I was riding was unable to land and I was delayed for over 1 hour.

I wish the RECORD to show, that if I had been present and voting, I would have voted "aye."

INVESTMENT COMPANY AMENDMENTS ACT OF 1970

Mr. SPARKMAN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2224.

The PRESIDING OFFICER (Mr. EAGLETON) laid before the Senate the amendment of the House of Representatives to the bill (S. 2224) to amend the Investment Company Act of 1940 and the Investment Advisers Act of 1940 to define the equitable standards governing relationships between investment companies and their investment advisers and principal underwriters, and for other purposes, which was to strike out all after the enacting clause, and insert:

That this Act may be cited as the "Investment Company Amendments Act of 1970".

SEC. 2. (a) Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)) is amended as follows:

(1) Paragraph (5) is amended by striking out "under section 11(k) of the Federal Reserve Act, as amended" and inserting in lieu thereof "under the authority of the Comptroller of the Currency".

(2) Paragraphs (19) through (35) are redesignated as paragraphs (20) through (36), respectively, and paragraphs (36) through (42) are redesignated as paragraphs (38) through (44), respectively.

(3) A new paragraph is inserted immediately after paragraph (18) to read as follows:

"(19) 'Interested person' of another person means—

"(A) when used with respect to an investment company—

"(i) any affiliated person of such company,

"(ii) any member of the immediate family of any natural person who is an affiliated person of such company,

"(iii) any interested person of any investment adviser of or principal underwriter for such company,

"(iv) any person or partner or employee of any person who at any time since the beginning of the last two fiscal years of such company has acted as legal counsel for such company,

"(v) any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such a broker or dealer, and

"(vi) any natural person whom the Commission by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two fiscal years of such company, a material business or professional relationship with such company or with the principal executive officer of such company or with any other investment company having the same investment adviser or principal underwriter or with the principal executive officer of such other investment company:

Provided, That no person shall be deemed to be an interested person of an investment company solely by reason of (aa) his being a member of its board of directors or advisory board or an owner of its securities, or (bb) his membership in the immediate family of any person specified in clause (aa) of this proviso; and

"(B) when used with respect to an investment adviser of or principal underwriter for any investment company—

"(i) any affiliated person of such investment adviser or principal underwriter,

"(ii) any member of the immediate family of any natural person who is an affiliated person of such investment adviser or principal underwriter,

"(iii) any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued either by such investment adviser or principal underwriter or by a controlling person of such investment adviser or principal underwriter,

"(iv) any person or partner or employee of any person who at any time since the beginning of the last two fiscal years of such investment company has acted as legal counsel for such investment adviser or principal underwriter,

"(v) any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such a broker or dealer, and

"(vi) any natural person whom the Commission by order shall have determined to be an interested person by reason of having had at any time since the beginning of the last two fiscal years of such investment company a material business or professional relationship with such investment adviser or principal underwriter or with the principal executive officer or any controlling person of such investment adviser or principal underwriter.

For the purposes of this paragraph (19), 'member of the immediate family' means any parent, spouse of a parent, child, spouse of a child, spouse, brother, or sister, and includes step and adoptive relationships. The Commission may modify or revoke any order issued under clause (vi) of subparagraph (A) or (B) of this paragraph whenever it finds that such order is no longer consistent with the facts. No order issued pursuant to clause (vi) of subparagraph (A) or (B) of this paragraph shall become effective until at least sixty days after the entry thereof, and no such order shall affect the status of any person for the purposes of this title or for any other purpose for any period prior to the effective date of such order."

(4) A new paragraph is inserted immediately after redesignated paragraph (36) (formerly paragraph (35)) as follows:

"(37) 'Separate account' means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company."

(5) A new paragraph is inserted immediately after redesignated paragraph (44) (formerly paragraph (42)) as follows:

"(45) 'Savings and loan association' means a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution, and a receiver, conservator, or other liquidating agent of any such institution."

(b) Section 13(b) of such Act (15 U.S.C. 80a-13(b)) is amended by striking out "paragraph (40)" and inserting in lieu thereof "paragraph (42)."

SEC. 3. (a) The second sentence of paragraph (2) of section 3(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(b)(2))

is amended by inserting "in good faith" and "paragraph".

(b) Section 3(c) of such Act (15 U.S.C. 80a–3(c)) is amended as follows:

(1) The material preceding paragraph (1) is amended to read as follows:

"(c) Notwithstanding subsection (a), none of the following persons is an investment company within the meaning of this title:".

(2) Strike paragraph (8); redesignate paragraphs (5) through (15) as paragraphs (4) through (13), respectively; and strike "paragraphs (3), (5), and (6)" in redesignated paragraph (6) (formerly paragraph (7)) and insert in lieu thereof "paragraphs (3), (4), and (5)".

(3) Redesignated paragraph (5) (formerly paragraph (6)) is amended by inserting "redeemable securities," before "face-amount certificates".

(4) Redesignated paragraph (8) (formerly paragraph (10)) is amended to read as follows:

"(8) Any company subject to regulation under the Public Utility Holding Company Act of 1935."

(5) Redesignated paragraph (11) (formerly paragraph (13)) is amended to read as follows:

"(11) Any employees' stock bonus, pension, or profit-sharing trust which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954; or any collective trust fund maintained by a bank consisting solely of assets of such trusts; or any separate account the assets of which are derived solely from (A) contributions under pension or profit-sharing plans which meet the requirements of such section or the requirements for deduction of the employer's contribution under section 404(a)(2) of such Code, and (B) advances made by an insurance company in connection with the operation of such separate account."

(c)(1) Section 8(b)(2) of such Act (15 U.S.C. 80a–8(b)(2)) is amended to read as follows:

"(2) a recital of all investment policies of the registrant, not enumerated in paragraph (1), which are changeable only if authorized by shareholder vote;".

(2) Paragraphs (3) and (4) are redesignated as paragraphs (4) and (5), respectively.

(3) A new paragraph is inserted immediately after paragraph (2) to read as follows:

"(3) a recital of all policies of the registrant, not enumerated in paragraphs (1) and (2), in respect of matters which the registrant deems matters of fundamental policy;".

(d) Section 13(a)(3) of such Act (15 U.S.C. 80a–13(a)(3)) is amended to read as follows:

"(3) deviate from its policy in respect of concentration of investments in any particular industry or group of industries as recited in its registration statement, deviate from any investment policy which is changeable only if authorized by shareholder vote, or deviate from any policy recited in its registration statement pursuant to section 8(b)(3);".

SEC. 4. (a) That part of section 9(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(a)) which precedes paragraph (1) is amended by inserting "employee," before "officer".

(b) Section 9 of such Act (15 U.S.C. 80a–9) is further amended by redesignating subsection (b) as subsection (c) and inserting immediately after subsection (a) a new subsection to read as follows:

"(b) The Commission may, after notice and opportunity for hearing, by order prohibit, conditionally or unconditionally, either permanently or for such period of time as it in its discretion shall deem appropriate in the public interest, any person from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, if such person—

"(1) has willfully made or caused to be made in any registration statement, application or report filed with the Commission under this title any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such registration statement, application, or report any material fact which was required to be stated therein; or

"(2) has willfully violated any provision of the Securities Act of 1933, or of the Securities Exchange Act of 1934, or of title II of this Act, or of this title, or of any rule or regulation under any of such statutes; or

"(3) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of the Securities Act of 1933, or of the Securities Exchange Act of 1934, or of title II of this Act, or of this title, or of any rule or regulation under any of such statutes."

SEC. 5 (a) Section 10(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(a)) is amended to read as follows:

"(a) No registered investment company shall have a board of directors more than 60 per centum of the members of which are persons who are interested persons of such registered company."

(b) Section (10b) of such Act (15 U.S.C. 80a–10(b)) is amended—

(1) by striking out "After one year from the effective date of this title, no" and inserting in lieu thereof "No"; and

(2) by striking out "affiliated", each place it appears in paragraph (2) and inserting in lieu thereof "interested".

(c) Section 10(c) of such Act (15 U.S.C. 80a–10(c)) is amended to read as follows:

"(c) No registered investment company shall have a majority of its board of directors consisting of persons who are officers, directors, or employees of any one bank, except that, if on March 15, 1940, any registered investment company had a majority of its directors consisting of persons who are directors, officers, or employees of any one bank, such company may continue to have the same percentage of its board of directors consisting of persons who are directors, officers, or employees of such bank."

(d) Section 10(d) of such Act (15 U.S.C. 80a–10(d)) is amended to read as follows:

"(d) Notwithstanding subsections (a) and (b)(2) of this section, and, in the case of a registered investment company which is a collective or other pooled fund maintained by a bank for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as managing agent, if such a collective or other pooled fund is otherwise permitted by law, notwithstanding subsections (b) (3) and (c) of this section, a registered investment company may have a board of directors all the members of which, except one, are interested persons of the investment adviser of such company, or are officers or employees of such company, if—

"(1) such investment company is an open-end company;

"(2) such investment adviser (A) is registered under title II of this Act and is engaged principally in the business of rendering investment supervisory services as defined in title II, or (B) is a bank;

"(3) no sales load is charged on securities issued by such investment company;

"(4) any premium over net asset value charged by such company upon the issuance of any such security, plus any discount from net asset value charged on redemption thereof, shall not in the aggregate exceed 2 per centum;

"(5) no sales or promotion expenses are incurred by such registered company; but expenses incurred in complying with laws regulating the issue or sale of securities shall not be deemed sales or promotion expenses;

"(6) such investment adviser is the only investment adviser to such investment company, and such investment adviser does not receive a management fee exceeding 1 per centum per annum of the value of such company's net assets averaged over the year or taken as of a definite date or dates within the year;

"(7) all executive salaries and executive expenses and office rent of such investment company are paid by such investment adviser; and

"(8) such investment company has only one class of securities outstanding, each unit of which has equal voting rights with every other unit."

SEC. 6. Section 11(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–11(b)) is amended to read as follows:

"(b) The provisions of this section shall not apply to any offer made pursuant to any plan of reorganization, which is submitted to and requires the approval of the holders of at least a majority of the outstanding shares of the class or series to which the security owned by the offeree belongs."

SEC. 7. Section 12(d) of the Investment Company Act of 1940 (15 U.S.C. 80a–12(d)) is amended to read as follows:

"(d)(11)(A) It shall be unlawful for any registered investment company (the 'acquiring company') and any company or companies controlled by such acquiring company to purchase or otherwise acquire any security issued by any other investment company (the 'acquired company'), and for any investment company (the 'acquiring company') and any company or companies controlled by such acquiring company to purchase or otherwise acquire any security issued by any registered investment company (the 'acquired company'), if the acquiring company and any company or companies controlled by it immediately after such purchase or acquisition own in the aggregate—

"(i) more than 3 per centum of the total outstanding voting stock of the acquired company;

"(ii) securities issued by the acquired company having an aggregate value in excess of 5 per centum of the value of the total assets of the acquiring company; or

"(iii) securities issued by the acquired company and all other investment companies (other than Treasury stock of the acquiring company) having an aggregate value in excess of 10 per centum of the value of the total assets of the acquiring company.

"(B) It shall be unlawful for any registered open-end investment company (the 'acquired company'), any principal underwriter therefor, or any broker or dealer registered under the Securities Exchange Act of 1934, knowingly to sell or otherwise dispose of any security issued by the acquired company to any other investment company (the 'acquiring company') or any company or companies controlled by the acquiring company, if immediately after such sale or disposition—

"(i) more than 3 per centum of the total outstanding voting stock of the acquired company is owned by the acquiring company and any company or companies controlled by it; or

"(ii) more than 10 per centum of the total outstanding voting stock of the acquired company is owned by the acquiring company and other investment companies and companies controlled by them.

"(C) It shall be unlawful for any investment company (the 'acquiring company') and any company or companies controlled by the acquiring company to purchase or otherwise acquire any security issued by a registered closed-end investment company, if immediately after such purchase or acquisition the acquiring company, other investment companies having the same investment

adviser, and companies controlled by such investment companies, own more than 10 per centum of the total outstanding voting stock of such closed-end company.

"(D) The provisions of this paragraph (1) shall not apply to a security received as a dividend or as a result of an offer of exchange approved pursuant to section 11 or of a plan of reorganization of any company (other than a plan devised for the purpose of evading the foregoing provisions).

"(E) The provisions of this paragraph (1) shall not apply to a security (or securities) purchased or acquired by an investment company if—

"(i) the depositor of, or principal underwriter for, such investment company is a broker or dealer registered under the Securities Exchange Act of 1934, or a person controlled by such a broker or dealer;

"(ii) such security is the only investment security held by such investment company (or such securities are the only investment securities held by such investment company, if such investment company is a registered unit investment trust that issues two or more classes or series of securities, each of which provides for the accumulation of shares of a different investment company); and

"(iii) in the event such investment company is not a registered investment company, the purchase or acquisition is made pursuant to an arrangement with the issuer of, or principal underwriter for the issuer of, the security whereby such investment company is obligated—

"(aa) either to seek instructions from its security holders with regard to the voting of all proxies with respect to such security and to vote such proxies only in accordance with such instructions, or to vote the shares held by it in the same proportion as the vote of all other holders of such security, and

"(bb) to refrain from substituting such security unless the Commission shall have approved such substitution in the manner provided in section 26 of this Act.

"(F) The provisions of this paragraph (1) shall not apply to securities purchased or otherwise acquired by a registered investment company if—

"(i) immediately after such purchase or acquisition not more than 3 per centum of the total outstanding stock of such issuer is owned by such registered investment company and all affiliated persons of such registered investment company; and

"(ii) such registered investment company has not offered or sold after January 1, 1971, and is not proposing to offer or sell any security issued by it through a principal underwriter to otherwise at a public offering price which includes a sales load which, when added to the maximum sales load applicable to the acquisition of its portfolio securities, is excessive within the meaning of section 22(b) of this Act.

No issuer of any security purchased or acquired by a registered investment company pursuant to this subparagraph shall be obligated to redeem such security in an amount exceeding 1 per centum of such issuer's total outstanding securities during any period of less than thirty days. Such investment company shall exercise voting rights by proxy or otherwise with respect to any security purchased or acquired pursuant to this subparagraph in the manner prescribed by subparagraph (E) of this subsection.

"(G) For the purposes of this paragraph (1), the value of an investment company's total assets shall be computed as of the time of a purchase or acquisition or as closely thereto as is reasonably possible.

"(H) In any action brought to enforce the provisions of this paragraph (1), the Commission may join as a party the issuer of any security purchased or otherwise acquired in violation of this paragraph (1), and the court may issue any order with respect to such issuer as may be necessary or appropriate for the enforcement of the provisions of this paragraph (1).

"(2) It shall be unlawful for any registered investment company and any company or companies controlled by such registered investment company to purchase or otherwise acquire any security (except a security received as a dividend or as a result of a plan of reorganization of any company, other than a plan devised for the purpose of evading the provisions of this paragraph) issued by any insurance company of which such registered investment company and any company or companies controlled by such registered company do not, at the time of such purchase or acquisition, own in the aggregate at least 25 per centum of the total outstanding voting stock, if such registered company and any company or companies controlled by it own in the aggregate, or as a result of such purchase or acquisition will own in the aggregate, more than 10 per centum of the total outstanding voting stock of such insurance company.

"(3) It shall be unlawful for any registered investment company and any company or companies controlled by such registered investment company to purchase or otherwise acquire any security issued by or any other interest in the business of any person who is a broker, a dealer, is engaged in the business of underwriting, or is either an investment adviser of an investment company or an investment adviser registered under title II of this Act, unless (A) such person is a corporation all the outstanding securities of which (other than short-term paper, securities representing bank loans, and directors' qualifying shares) are, or after such acquisition will be, owned by one or more registered investment companies; and (B) such person is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, or any one or more of such or related activities, and the gross income of such person normally is derived principally from such business or related activities."

SEC. 8. (a) Section 15(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–15(a)) is amended to read as follows:

"(a) It shall be unlawful for any person to serve or act as investment adviser of a registered investment company, except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company, and—

"(1) precisely describes all compensation to be paid thereunder;

"(2) shall continue in effect for a period more than two years from the date of its execution, only so long as such continuance is specifically approved at least annually by the board of directors or by vote of a majority of the outstanding voting securities of such company;

"(3) provides, in substance, that it may be terminated at any time, without the payment of any penalty, by the board of directors of such registered company or by vote of a majority of the outstanding voting securities of such company on not more than sixty days' written notice in the investment adviser; and

"(4) provides, in substance, for its automatic termination in the event of its assignment."

(b) Section 15(b) of such Act (15 U.S.C. 80a–15(b)) is amended to read as follows:

"(b) It shall be unlawful for any principal underwriter for a registered open-end company to offer for sale, sell, or deliver after sale any security of which such company is the issuer, except pursuant to a written contract with such company, which contract—

"(1) shall continue in effect for a period, more than two years from the date of its execution, only so long as such continuance is specifically approved at least annually by the board of directors or by vote of a majority of the outstanding voting securities of such company; and

"(2) provides, in substance, for its automatic termination in the event of its assignment."

(c) Section 15(c) of such Act (15 U.S.C. 80a–15 (c)) is amended to read as follows:

"(c) In addition to the requirements of subsections (a) and (b) of this section, it shall be unlawful for any registered investment company having a board of directors to enter into, renew, or perform any contract or agreement, written or oral, whereby a person undertakes regularly to serve or act as investment adviser of or principal underwriter for such company, unless the terms of such contract or agreement and any renewal thereof have been approved by the vote of a majority of directors, who are not parties to such contract or agreement or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval. It shall be the duty of the directors of a registered investment company to request and evaluate, and the duty of an investment adviser to such company to furnish, such information as may reasonably be necessary to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company."

(d) Section 15 of such Act (15 U.S.C. 80a–15) is amended by striking out subsection (d) and redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

SEC. 9. (a) Section 17(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–17(f)) is amended to read as follows:

"(f) Every registered management company shall place and maintain its securities and similar investments in the custody of (1) a bank (including in the case of a registered investment company which is a collective fund maintained by a bank (if such a collective fund is otherwise permitted by law), the bank maintaining such fund or banks having the qualifications prescribed in paragraph (1) of section 26(a) of this title for the trustees of unit investment trusts; or (2) a company which is a member of a national securities exchange as defined in the Securities Exchange Act of 1934, subject to such rules and regulations as the Commission may from time to time prescribe for the protection of investors; or (3) such registered company, but only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors. Subject to such rules, regulations, and orders as the Commission may adopt as necessary or appropriate for the protection of investors, a registered management company or any such custodian, with the consent of the registered management company for which it acts as custodian, may deposit all or any part of the securities owned by such registered management company in a system for the central handling of securities established by a national securities exchange or national securities association registered with the Commission under the Securities Exchange Act of 1934, or such other person as may be permitted by the Commission, pursuant to which system all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of such securities. Rules, regulations, and orders of the Commission under this subsection, among other things, may make appropriate provision with respect to such matters as the earmarking, segregation, and hypothecation of such securities and investments, and may provide for or require periodic or other inspections by any or all of the following: Independent public accountants, employees and agents of the Commis-

sion, and such other persons as the Commission may designate. No such member which trades in securities for its own account may act as custodian except in accordance with rules and regulations prescribed by the Commission for the protection of investors. If a registered company maintains its securities and similar investments in the custody of a qualified bank or banks, the cash proceeds from the sale of such securities and similar investments and other cash assets of the company shall likewise be kept in the custody of such a bank or banks, or in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors, except that such a registered company may maintain a checking account in a bank or banks having the qualifications prescribed in paragraph (1) of section 26(a) of this title for the trustees of unit investment trusts with the balance of such account or the aggregate balances of such accounts at no time in excess of the amount of the fidelity bond, maintained pursuant to section 17(g) of this title, covering the officers or employees authorized to draw on such account or accounts."

(b) Section 17(g) of such Act (15 U.S.C. 80a–17(g)) is amended to read as follows:

"(g) The Commission is authorized to require by rules and regulations or orders for the protection of investors that any officer or employee of a registered management investment company who may singly, or jointly with others, have access to securities or funds of any registered company, either directly or through authority to draw upon such funds or to direct generally the disposition of such securities (unless the officer or employee has such access solely through his position as an officer or employee of a bank) be bonded by a reputable fidelity insurance company against larceny and embezzlement in such reasonable minimum amounts as the Commission may prescribe."

(c) Section 17 of such Act (15 U.S.C. 80a–17) is further amended by adding at the end thereof a new subsection as follows:

"(j) It shall be unlawful for any affiliated person of or principal underwriter for a registered investment company or any affiliated person of an investment adviser of or principal underwriter for a registered investment company, to engage in any act, practice, or course of business in connection with the purchase or sale, directly or indirectly, by such person of any security held or to be acquired by such registered investment company in contravention of such rules and regulations as the Commission may adopt to define, and prescribe means reasonably necessary to prevent, such acts, practices, or courses of business as are fraudulent, deceptive or manipulative. Such rules and regulations may include requirements for the adoption of codes of ethics by registered investment companies and investment advisers of, and principal underwriters for, such investment companies establishing such standards as are reasonably necessary to prevent such acts, practices, or courses of business."

SEC. 10. Section 18(f)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–18(f)(2)) is amended to read as follows:

"(2) 'Senior security' shall not, in the case of a registered open-end company, include a class or classes or a number of series of preferred or special stock each of which is preferred over all other classes or series in respect of assets specifically allocated to that class or series: Provided, That (A) such company has outstanding no class or series of stock which is not so preferred over all other classes or series, or (B) the only other outstanding class of the issuer's stock consists of a common stock upon which no dividend (other than a liquidating dividend) is permitted to be paid and which in the aggregate represents not more than one-half of 1 per centum of the issuer's outstanding voting securities. For the purpose of insuring fair and equitable treatment of the holders of the outstanding voting securities of each class or series of stock of such company, the Commission may by rule, regulation, or order direct that any matter required to be submitted to the holders of the outstanding voting securities of such company shall not be deemed to have been effectively acted upon unless approved by the holders of such percentage (not exceeding a majority) of the outstanding voting securities of each class or series of stock affected by such matter as shall be prescribed in such rule, regulation, or order."

SEC. 11. Section 19 of the Investment Company Act of 1940 (15 U.S.C. 80a–19) is amended by inserting "(a)" after "SEC. 19.", and by adding at the end thereof a new subsection as follows:

"(b) It shall be unlawful in contravention of such rules, regulations, or orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors for any registered investment company to distribute long-term capital gains, as defined in the Internal Revenue Code of 1954, more often than once every twelve months."

SEC. 12. (a) Section 22(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–22(b)) is amended to read as follows:

"(b)(1) Such a securities association may also, by rules adopted and in effect in accordance with said section 15A, and notwithstanding the provisions of subsection (b)(8) thereof but subject to all other provisions of said section applicable to the rules of such an association, prohibit its members from purchasing, in connection with a primary distribution of redeemable securities of which any registered investment company is the issuer, any such security from the issuer or from any principal underwriter except at a price equal to the price at which such security is then offered to the public less a commission, discount, or spread which is computed in conformity with a method or methods, and within such limitations as to the relation thereof to said public offering price, as such rules may prescribe in order that the price at which such security is offered or sold to the public shall not include an excessive sales load but shall allow for reasonable compensation for sales personnel, for reasonable opportunity for profit for brokers and dealers and underwriters, and for reasonable sales loads to investors. The Commission shall on application or otherwise, if it appears that smaller companies are subjected to relatively higher operating costs, make due allowance therefor by granting any such company or class of companies appropriate qualified exemptions from the provisions of this section.

"(2) At any time after the expiration of eighteen months from the date of enactment of the Investment Company Amendments Act of 1970, or after a securities association has adopted rules as contemplated by this subsection, the Commission may make such rules and regulations pursuant to section 15(b)(10) of the Securities Exchange Act of 1934 as are appropriate to effectuate the purpose of this subsection with respect to sales of shares of a registered investment company by broker-dealers subject to regulation under section 15(b)(8) of that Act: Provided, That the underwriter of such shares may file with the Commission at any time a notice of election to comply with the rules prescribed pursuant to this subsection by a national securities association specified in such notice, and thereafter the sales load shall not exceed that prescribed by such rules of such association, and the rules of the Commission as hereinabove authorized shall thereafter be inapplicable to such sales.

"(3) At any time after the expiration of eighteen months from the date of enactment of the Investment Company Amendments Act of 1970, (or, if earlier, after a securities association has adopted for purposes of paragraph (1) any rule respecting rule excessive sales loads) the Commission may alter or supplement the rules of any securities association as may be necessary to effectuate the purposes of this subsection in the manner provided by section 15A(k)(2) of the Securities Exchange Act of 1934.

"(4) If any provision of this subsection is in conflict with any provision of any law of the United States in effect on the date this subsection takes effect, the provisions of this subsection shall prevail."

(b) Section 22(c) of such Act (15 U.S.C. 80a–22(c)) is amended to read as follows:

"(c) The Commission may make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in subsection (a) of this section in respect of the rules which may be made by a registered securities association governing its members. Any rules and regulations so made by the Commission, to the extent that they may be inconsistent with the rules of any such association, shall so long as they remain in force supersede the rules of the association and be binding upon its members as well as all other underwriters and dealers to whom they may be applicable."

(c) Section 22(d) of such Act (15 U.S.C. 80a–22(d)) is amended to read as follows:

"(d) No registered investment company shall sell any redeemable security issued by it to any person except either to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person except a dealer, a principal underwriter, or the issuer, except at a current public offering price described in the prospectus. Nothing in this subsection shall prevent a sale made (i) pursuant to an offer of exchange permitted by section 11 including any offer made pursuant to section 11(b); (ii) pursuant to an offer made solely to all registered holders of the securities, or of a particular class or series of securities issued by the company proportionate to their holdings or proportionate to any cash distribution made to them by the company (subject to appropriate qualifications designed solely to avoid issuance of fractional securities); or (iii) in accordance with rules and regulations of the Commission made pursuant to subsection (b) of section 12."

(d) Section 22 of such Act (15 U.S.C. 80a–22) is further amended by adding a new subsection at the end thereof as follows:

"(h) Subject to any provision of any law of any State or of the United States prohibiting the creation or operation of an investment company by a bank or banks or by a savings and loan association or savings and loan associations and also subject to any restrictions or requirements imposed by any law of any State or of the United States—

"(1) the creation or operation of a registered investment company by a bank or banks shall be unlawful unless such creation or operation is in compliance with any applicable regulations of the Comptroller of the Currency, and

"(2) the creation or operation of a registered investment company by a savings and loan association or savings and loan associations shall be unlawful unless such creation or operation is in compliance with any applicable regulations of the Federal Home Loan Bank Board, and

"(3) the underwriting, distribution, or sale by a bank, or by a savings and loan association, of securities issued by a registered investment company shall be unlawful

unless the registered investment company issues such securities only for distribution and sale by banks or by savings and loan associations,

and further provided that such securities issued by such investment company are sold at a public offering price which does not include a sales load and are sold only by officers and employees of banks and savings and loan associations who meet such standards with respect to training and experience as the Comptroller of the Currency and the Federal Home Loan Bank Board shall prescribe by regulations which are consistent with the rules and regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934."

SEC. 13. (a) Section 24(d) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(d)) is amended to read as follows:

"(d) The exemption provided by paragraph (8) of section 3(a) of the Securities Act of 1933 shall not apply to any security of which an investment company is the issuer. The exemption provided by paragraph (11) of said section 3(a) shall not apply to any security of which a registered investment company is the issuer, except a security sold or disposed of by the issuer or bona fide offered to the public prior to the effective date of this title, and with respect to a security so sold, disposed of, or offered, shall not apply to any new offering thereof on or after the effective date of this title. The exemption provided by section 4(3) of the Securities Act of 1933 shall not apply to any transaction in a security issued by a face-amount certificate company or in a redeemable security issued by an open-end management company or unit investment trust if any other security of the same class is currently being offered or sold by the issuer or by or through an underwriter in a distribution which is not exempted from section 5 of said Act, except to such extent and subject to such terms and conditions as the Commission, having due regard for the public interest and the protection of investors, may prescribe by rules or regulations with respect to any class of persons, securities, or transactions."

(b) Section 24 of such Act (15 U.S.C. 80a–24) is further amended by adding at the end thereof a new subsection to read as follows:

"(f) In the case of securities issued by a face-amount certificate company or redeemable securities issued by an open-end management company or unit investment trust, which are sold in an amount in excess of the number of securities included in an effective registration statement of any such company, such company may, in accordance with such rules and regulations as the Commission shall adopt as it deems necessary or appropriate in the public interest or for the protection of investors, elect to have the registration of such securities deemed effective as of the time of their sale, upon payment to the Commission, within six months after any such sale, of a registration fee of three times the amount of the fee which would have otherwise been applicable to such securities. Upon any such election and payment, the registration statement of such company shall be considered to have been in effect with respect to such shares. The Commission may also adopt rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors to permit the registration of an indefinite number of the securities issued by a face-amount certificate company or redeemable securities issued by an open-end management company or unit investment trust."

SEC. 14. Section 25(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–25(c)) is amended to read as follows:

"(c) Any district court of the United States in the State of incorporation of a registered investment company, or any such court for the district in which such company maintains its principal place of business, is authorized to enjoin the consummation of any plan of reorganization of such registered investment company upon proceedings instituted by the Commission (which is authorized so to proceed upon behalf of security holders of such registered company, or any class thereof), if such court shall determine that any such plan is not fair and equitable to all security holders."

SEC. 15 (a) Section 26 of the Investment Company Act of 1940 (15 U.S.C. 80a–26) is amended by redesignating subsections (b) and (c) thereof as subsections (c) and (d), respectively, and by inserting immediately after subsection (a) a new subsection as follows::

"(b) It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title."

(b) Redesignated subsection (c) (formerly subsection (b)) of section 26 of such Act is amended to read as follows:

"(c) In the event that a trust indenture, agreement of custodianship, or other instrument pursuant to which securities of a registered unit investment trust are issued does not comply with the requirements of subsection (a) of this section, such instrument will be deemed to meet such requirements if a written contract or agreement binding on the parties and embodying such requirements has been executed by the depositor on the one part and the trustee or custodian on the other part, and three copies of such contract or agreement have been filed with the Commission."

SEC. 16. Section 27 of the Investment Company Act of 1940 (15 U.S.C. 80a–27) is amended by adding at the end thereof the following new subsections:

"(d) Notwithstanding subsection (a) of this section, it shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the certificate provides that the holder thereof may surrender the certificate at any time within the first year after the issuance of the certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from such underwriter or depositor, equal to that part of the excess paid for sales loading which is over 20 per centum of the gross payments made by the certificate holder. The Commission may make rules and regulations applicable to such underwriters and depositors specifying such reserve requirements as it deems necessary or appropriate in order for such underwriters and depositors to cary out the obligations to refund sales charges required by this subsection.

"(e) With respect to any periodic payment plan certificate sold subject to the provisions of subsection (d) of this section, the registered investment company issuing such periodic payment plan certificate, or any depositor of or underwriter for such company, shall in writing (1) inform each certificate holder who has missed three payments or more, within thirty days following the expiration of ten months after the issuance of the certificate, or, if any such holder has missed one payment or more after such period but prior to the expiration of one year after the issuance of the certificate, at any time prior to the expiration of such one year period (or, if later, at any time prior to the expiration of ten days after such payment was missed), of his right to surrender his certificate as specified in subsection (d) of this section, and (2) inform the certificate holder of (A) the value of the holder's account as of the time the written notice was given to such holder, and (B) the amount to which he is entitled as specified in subsection (d) of this section. The Commission may make rules specifying the method, form, and contents of the notice required by this subsection.

"(f) With respect to any periodic payment plan, the custodian bank for such plan shall mail to each certificate holder, within sixty days after the issuance of the certificate, a statement of charges to be deducted from the projected payments on the certificate and a notice of his right of withdrawal as specified in this section. The Commission may make rules specifying the method, form, and contents of the notice required by this subsection. The certificate holder may within thirty days of the mailing of the notice specified in this subsection surrender his certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from the underwriter or depositor, equal to the difference between the gross payments made and the net amount invested. The Commission may make rules and regulations applicable to underwriters and depositors of companies issuing any such certificates specifying such reserve requirements as may be reasonably necessary in order for such underwriters and depositors to carry out the obligations to refund sales charges required by this subsection.

(g) Notwithstanding the provisions of subsections (a) and (d), a registered investment company issuing periodic payment plan certificates may elect, by written notice to the Commission, to be governed by the provisions of subsection (h) rather than the provisions of subsections (a) and (d) of this section.

"(h) Upon making the election specified in subsection (g), it shall be unlawful for any such electing registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate, if—

"(1) the sales load on such certificate exceeds 9 per centum of the total payments to be made thereon;

"(2) more than 20 per centum of any payment thereon is deducted for sales load, or an average of more than 16 per centum is deducted for sales load from the first forty-eight monthly payments thereon, or their equivalent;

"(3) the amount of sales load deducted from any one of the first twelve monthly payments, the thirteenth through twenty-fourth monthly payments, the twenty-fifth through thirty-sixth monthly payments, or the thirty-seventh through forty-eighth monthly payments, or their equivalents, respectively, exceeds proportionately the amount deducted from any other such payment, or the amount deducted from any subsequent payment exceeds proportionately the amount deducted from any other subsequent payment;

"(4) the deduction for sales load on the excess of the payment or payments in any month over the minimum monthly payment, or its equivalent, to be made on the certificate exceeds the sales load applicable to payments subsequent to the first forty-eight monthly payments or their equivalent;

"(5) the first payment on such certificate is less than $20, or any subsequent payment is less than $10;

"(6) if such registered company is a management company, the proceeds of such certificate or the securities in which such proceeds are invested are subject to management fees (other than fees for administrative services of the character described in clause (C) of paragraph (2) of section 26 (a)) exceeding such reasonable amount as the Commission may prescribe, whether such fees are payable to such company or to investment advisers thereof; or

"(7) if such registered company is a unit investment trust the assets of which are securities issued by a management company,

the depositor of or principal underwriter for such trust, or any affiliated person of such depositor or underwriter, is to receive from such management company or any affiliated person thereof any fee or payment on account of payments on such certificate exceeding such reasonable amount as the Commission may prescribe."

SEC. 17. Section 28 of the Investment Company Act of 1940 (15 U.S.C. 80a–28) is amended by adding at the end thereof a new subsection as follows:

"(i) The foregoing provisions of this section shall aply to all face-amount certificates issued prior to the effective date of this subsection; to the collection or acceptance of any payment on such certificates; to the issuance of face-amount certificates to the holders of such certificates pursuant to an obligation expressed or implied in such certificates; to the provisions of such certificates; to the minimum certificate reserves and deposits maintained with respect thereto; and to the assets that the issuer of such certificate was and is required to have with respect to such certificates. With respect to all face-amount certificates issued after the effective date of this subsection, the provisions of this section shall apply except as hereinafter provided.

"(1) Notwithstanding subparagraph (A) of paragraph (2) of subsection (a), the reserves for each certificate of the installment type shall be based on assumed annual, semiannual, quarterly, or monthly reserve payments according to the manner in which gross payments for any certificate year are made by the holder, which reserve payments shall be sufficient in amount, as and when accumulated at a rate not to exceed 3½ per centum per annum compounded annually, to provide the minimum maturity or face amount of the certificate when due. Such reserve payments may be graduated according to certificate years so that the reserve payment or payments for the first three certificate years shall amount to at least 80 per centum of the required gross annual payment for such years; the reserve payment or payments for the fourth certificate year shall amount to at least 90 per centum of such year's required gross annual payment; the reserve payment or payments for the fifth certificate year shall amount to at least 93 per centum of such year's gross annual payment; and for the sixth and each subsequent certificate year the reserve payment or payments shall amount to at least 96 per centum of each such year's required gross annual payment: Provided, That such aggregate reserve payments shall amount to at least 93 per centum of the aggregate gross annual payments required to be made by the holder to obtain the maturity of the certificate. The company may at its option take as loading from the gross payment or payments for a certificate year, as and when made by the certificate holder, an amount or amounts equal in the aggregate for such year to not more than the excess, if any, of the gross payment or payments required to be made by the holder for such year, over and above the percentage of the gross annual payment required herein for such year for reserve purposes. Such loading may be taken by the company prior to or after the setting up of the reserve payment or payments for such year and the reserve payment or payments for such year may be graduated and adjusted to correspond with the amount of the gross payment or payments made by the certificate holder for such year less the loading so taken.

"(2) Notwithstanding paragraphs (1) and (2) of subsection (d), (A) in respect of any certificate of the installment type, during the first certificate year, the holder of the certificate, upon surrender thereof, shall be entitled to a value payable in cash not less than 80 per centum of the amount of the gross payments made on the certificate; and (B) in respect of any certificate of the installment type, at any time after the expiration of the first certificate year and prior to maturity, the holder of the certificate, upon surrender thereof, shall be entitled to a value payable in cash not less than the then amount of the reserve for such certificate required by clauses (1) and (2) of subparagraph (D) of paragraph (2) of subsection (a), less a surrender charge that shall not exceed 2 per centum of the face or maturity amount of the certificate, or 15 per centum of the amount of such reserve, whichever is the lesser, but in no event shall such value be less than 80 per centum of the gross payments made on the certificate. The amount of the surrender value for the end of each certificate year shall be set out in the certificate."

SEC. 18. Section 32(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–31(a)) is amended to read as follows:

"(a) It shall be unlawful for any registered management company or registered face-amount certificate company to file with the Commission any financial statement signed or certified by an independent public accountant, unless—

"(1) such accountant shall have been selected at a meeting held within thirty days before or after the beginning of the fiscal year or before the annual meeting of stockholders in that year by the vote, cast in person, of a majority of those members of the board of directors who are not interested persons of such registered company;

"(2) such selection shall have been submitted for ratification or rejection at the next succeeding annual meeting of stockholders if such meeting be held, except that any vacancy occurring between annual meetings, due to the death or resignation of the accountant, may be filled by the vote of a majority of those members of the board of directors who are not interested persons of such registered company, cast in person at a meeting called for the purpose of voting on such action;

"(3) the employment of such accountant shall have been conditioned upon the right of the company by vote of a majority of the outstanding voting securities at any meeting called for the purpose to terminate such employment forthwith without any penalty; and

"(4) such certificate or report of such accountant shall be addressed both to the board of directors of such registered company and to the security holders thereof. If the selection of an accountant has been rejected pursuant to paragraph (2) or his employment terminated pursuant to paragraph (3), the vacancy so occurring may be filled by a vote of a majority of the outstanding voting securities, either at the meeting at which the rejection or termination occurred or, if not so filled, at a subsequent meeting which shall be called for the purpose. In the case of a common-law trust of the character described in section 16(b), no ratification of the employment of such accountant shall be required but such employment may be terminated and such accountant removed by action of the holders of record of a majority of the outstanding shares of beneficial interest in such trust in the same manner as is provided in section 16(b) in respect of the removal of a trustee, and all the provisions therein contained as to the calling of a meeting shall be applicable. In the event of such termination and removal, the vacancy so occurring may be filled by action of the holders of record of a majority of the shares of beneficial interest either at the meeting, if any, at which such termination and removal occurs, or by instruments in writing filed with the custodian, or if not so filed within a reasonable time then at a subsequent meeting which shall be called by the trustees for the purpose. The provisions of paragraph (42) of section 2(a) as to a majority shall be applicable to the vote cast at any meeting of the shareholders of such a trust held pursuant to this subsection."

SEC. 19. Section 33 of the Investment Company Act of 1940 (15 U.S.C. 80a–32) is amended to read as follows:

"FILING OF DOCUMENTS WITH COMMISSION IN CIVIL ACTIONS

"SEC. 33. Every registered investment company which is a party and every affiliated person of such company who is a party defendant to any action or claim by a registered investment company or a security holder thereof in a derivative or representative capacity against an officer, director, investment adviser, trustee, or depositor of such company, shall file with the Commission, unless already so filed, (1) a copy of all pleadings, verdicts, or judgments filed with the court or served in connection with such action or claim, (2) a copy of any proposed settlement, compromise, or discontinuance of such action, and (3) a copy of such motions, transcripts, or other documents filed in or issued by the court or served in connection with such action or claim as may be requested in writing by the Commission. If any document referred to in clause (1) or (2)—

"(A) is delivered to such company or party defendant, such document shall be filed with the Commission not later than ten days after the receipt thereof; or

"(B) is filed in such court or delivered by such company or party defendant, such document shall be filed with the Commission not later than five days after such filing or delivery."

SEC. 20. Section 36 of the Investment Company Act of 1940 (15 U.S.C. 80a–35) is amended to read as follows:

"BREACH OF FIDUCIARY DUTY

"SEC. 36. (a) The Commission is authorized to bring an action in the proper district court of the United States, or in the United States court of any territory or other place subject to the jurisdiction of the United States, alleging that a person serving or acting in one or more of the following capacities has engaged within five years of the commencement of the action or is about to engage in any act or practice constituting a breach of fiduciary duty involving personal misconduct in respect of any registered investment company for which such person so serves or acts—

"(1) as officer, director, member of any advisory board, investment adviser, or depositor; or

"(2) as principal underwriter, if such registered company is an open-end company, unit investment trust, or face-amount certificate company.

If such allegations are established, the court may enjoin such person from acting in any or all such capacities either permanently or temporarily and award such injunctive or other relief against such person as may be reasonable and appropriate in the circumstances, having due regard to the protection of investors and to the effectuation of the policies declared in section 1(b) of this title.

"(b) For the purposes of this subsection, the investment adviser of a registered investment company shall be deemed to have a fiduciary duty with respect to the receipt of compensation for services, or of payments of a material nature, paid by such registered investment company, or by the security holders thereof, to such investment adviser or any affiliated person of such investment adviser. An action may be brought under this subsection by the Commission, or by a bona fide security holder of such registered investment company on behalf of such company acting in good faith and with justifiable cause, against such investment adviser, or any affiliated person of such investment adviser, or any other person enumerated in subsection (a) of this section who has a fiduciary duty concerning such compensation or payments, for breach of fiduciary duty in respect of such compensation or payments paid by such registered investment company

or by the security holders thereof to such investment adviser or person. With respect to any such action the following provisions shall apply:

"(1) It shall not be necessary to allege or prove that any defendant engaged in personal misconduct, and the plaintiff shall have the burden of proving a breach of fiduciary duty by clear and convincing evidence.

"(2) In any such action approved by the board of directors of such investment company of such compensation or payments, or of contracts or other arrangements providing for such compensation or payments, and ratification or approval of such compensation or payments, or of contracts or other arrangements providing for such compensation or payments, by the shareholders of such investment company, shall be given such consideration by the court as is deemed appropriate under all the circumstances.

"(3) No such action shall be brought or maintained against any person other than the recipient of such compensation or payments, and no damages or other relief shall be granted against any person other than the recipient of such compensation or payments. No award of damages shall be recoverable for any period prior to one year before the action was instituted. Any award of damages against such recipient shall be limited to the actual damages resulting from the breach of fiduciary duty and shall in no event exceed the amount of compensation or payments received from such investment company, or the security holders thereof, by such recipient.

"(4) This subsection shall not apply to compensation or payments made in connection with transactions subject to section 17 of this title, or rules, regulations, or orders thereunder, or to sales loads for the acquisition of any security issued by a registered investment company.

"(5) Any action pursuant to this subsection may be brought only in an appropriate district court of the United States.

"(6) No finding by a court with respect to a breach of fiduciary duty under this subsection shall be made a basis (A) for a finding of a violation of this title for the purposes of sections 9 and 49 of this title, section 15 of the Securities Exchange Act of 1934, or section 203 of title II of this Act, or (B) for an injunction to prohibit any person from serving in any of the capacities enumerated in subsection (a) of this section."

SEC. 21. The last sentence of section 43(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–42(a)) is amended by striking out "sections 239 and 240 of the Judicial Code, as amended" and inserting in lieu thereof "section 1254 of title 28, United States Code".

SEC. 22. Section 44 of the Investment Company Act of 1940 (15 U.S.C. 80a–43) is amended—

(1) by striking out the next to the last sentence and inserting in lieu thereof "Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28, United States Code."; and

(2) by adding at the end thereof a new sentence as follows: "The Commission may intervene as a party in any action or suit to enforce any liability or duty created by, or to enjoin any noncompliance with, section 36(b) of this title at any stage of such action or suit prior to final judgment therein."

SEC. 23. Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)) is amended as follows:

(1) Paragraph (2) is amended by striking out "under section 11(k) of the Federal Reserve Act, as amended" and inserting in lieu thereof "under the authority of the Comptroller of the Currency."

(2) Paragraphs (17) through (20) are redesignated as paragraphs (18) through (21), respectively, and a new paragraph is inserted immediately after paragraph (16) to read as follows:

"(17) The term 'person associated with an investment adviser' means any partner, officer, or director of such investment adviser (or any person performing similar functions), or any person directly or indirectly controlling or controlled by such investment adviser, including any employee of such investment adviser, except that for the purposes of section 203 of this title (other than subsection (f) thereof), persons associated with an investment adviser whose functions are clerical or ministerial shall not be included in the meaning of such term. The Commission may by rules and regulations classify, for the purposes of any portion or portions of this title, persons, including employees controlled by an investment adviser.'

SEC. 24. (a) Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(b)) is amended to read as follows:

"(b) The provisions of subsection (a) shall not apply to—

"(1) any investment adviser all of whose clients are residents of the State within which such investment adviser maintains his or its principal office and place of business, and who does not furnish advice or issue analyses or reports with respect to securities listed or admitted to unlisted trading privileges on any national securities exchange;

"(2) any investment adviser whose only clients are insurance companies; or

"(3) any investment adviser who during the course of the preceding twelve months has had fewer than fifteen clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under title I of this Act."

(b) Section 203(c) of such Act (15 U.S.C. 80b–3(c)) is amended by striking out subparagraph (F) and inserting in lieu thereof the following:

"(F) whether such investment adviser, or any person associated with such investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such investment adviser under the provisions of subsection (e), and".

(c) Section 203 of such Act (15 U.S.C. 80b–3) is further amended by redesignating subsection (d) as subsection (e), redesignating subsection (e) as subsection (g), and inserting after subsection (c) a new subsection as follows:

"(d) Any provision of this title (other than subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce are used in connection therewith shall also prohibit any such act, practice, or course of business by any investment adviser registered pursuant to this section or any person acting on behalf of such an investment adviser, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith."

(d) Redesignated subsection (e) (formerly subsection (d) of section 203 of such Act) (15 U.S.C. 80b–3(d)) is amended to read as follows:

"(e) The Commission shall, after appropriate notice and opportunity for hearing, by order censure, deny registration to, or suspend for a period not exceeding twelve months, or revoke the registration of, an investment adviser, if it finds that such censure, denial, suspension, or revocation is in the public interest and that such investment adviser or any person associated with such investment adviser, whether prior to or subsequent to becoming such—

"(1) has willfully made or caused to be made in any application for registration or report filed with the Commission under this title, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or who has omitted to state in any such application or report any material fact which is required to be stated therein; or

"(2) has been convicted within ten years preceding the filing of the application or at any time thereafter of any felony or misdemeanor which the Commission finds (A) involves the purchase or sale of any security, (B) arises out of the conduct of the business of a broker, dealer, or investment adviser, (C) involves embezzlement, fraudulent conversion, or misappropriation of funds or securities, or (D) involves the violation of section 1341, 1342, or 1343 of title 18, United States Code; or

"(3) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, or dealer, or an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security; or

"(4) has willfully violated any provision of the Securities Act of 1933, or of the Securities Exchange Act of 1934, or title I of this Act, or of this title, or of any rule or regulation under any of such statutes; or

"(5) has aided, abetted, counseled, commanded, induced, or procured the violation by any other person of the Securities Act of 1933, or the Securities Exchange Act of 1934, or of title I of this Act, or of this title, or of any rule or regulation under any of such statutes or has failed reasonably to supervise, with a view to preventing violations of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision: *Provided*, That, for the purposes of this paragraph (5), no person shall be deemed to have failed reasonably to supervise any person, if—

"(A) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person; and

"(B) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with; or

"(6) is subject to an order of the Commission entered pursuant to subsection (f) of this section barring or suspending the right of such person to be associated with an investment adviser, which order is in effect with respect to such person."

(e) Section 203 of such Act (15 U.S.C. 80b–3) is further amended by redesignating subsections (f) and (g) as subsections (h) and (i), respectively, and inserting after redesignated subsection (e) a new subsection as follows:

"(f) The Commission may, after appropriate notice and opportunity for hearing, by order censure any person or bar or suspend for a period not exceeding twelve months any person from being associated with an investment adviser, if the Commission finds that such censure, barring, or suspension is in the public interest and that such person has committed or omitted any act or omission enumerated in paragraph (1), (4), or (5) of subsection (e) of this section, or has been convicted of any offense specified in paragraph (2) of subsection (e) within ten years of the commencement of the proceedings under this subsection, or is enjoined from any action, conduct, or practice specified in paragraph (3) of

subsection (e). It shall be unlawful for any person as to whom such an order barring or suspending him from being associated with an investment adviser is in effect, willfully to become, or to be, associated with an investment adviser, without the consent of the Commission, and it shall be unlawful for any investment adviser to permit such a person to become, or remain, a person associated with such investment adviser without the consent of the Commission, if such investment adviser knew, or in the exercise of reasonable care should have known of such order."

SEC. 25. Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5) is amended to read as follows:

"INVESTMENT ADVISORY CONTRACTS

"SEC. 205. (a) No investment adviser, unless exempt from registration pursuant to section 203(b), shall make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to enter into, extend, or renew any investment advisory contract, or in any way to perform any investment advisory contract entered into, extended, or renewed on or after the effective date of this title, if such contract—

"(1) provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

"(2) fails to provide, in substance, that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contractor;

"(3) fails to provide, in substance, that the investment adviser, if a partnership, will notify the other party to the contract of any change in the membership of such partnership within a reasonable time after such change.

Paragraph (1) of this section shall not (A) be construed to prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date, or (B) apply to an investment advisory contract with—

"(i) an investment company registered under title I of this Act, or

"(ii) any trust, collective trust fund or separate account referred to in section 3(c)(11) of title I of this Act, provided that the contract relates to the investment of assets in excess of $5 million, or

"(iii) any other person, provided that the contract relates to the investment of assets in excess of $1 million,

which contract provides for compensation based on the asset value of the company or the fund under management averaged over a specified period and increasing and decreasing proportionately with the investment performance of the company or fund over a specified period in relation to the investment record of an appropriate index of securities prices or such other measure of investment performance as the Commission by rule, regulation, or order may specify. For purposes of clause (B) of preceding sentence, the point from which increases and decreases in compensation are measured shall be the fee which is paid or earned when the investment performance of such company or fund is equivalent to that of the index or other measure of performance, and an index of securities prices shall be deemed appropriate unless the Commission by order shall determine otherwise. As used in paragraphs (2) and (3) of this section, "investment advisory contract' means any contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account of another person other than an investment company registered under title I of this Act.

"(b) Subsection (a) shall not apply to any investment advisory contract with an investment company which (1) is not registered nor required to be registered under title I of this Act, (2) is not organized or otherwise created under the laws of the United States or of a State, and (3) does not make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to offer for sale, sell, or deliver after sale, in connection with a public offering, any security of which such company is the issuer."

SEC. 26. The Investment Advisers Act of 1940 (15 U.S.C. 80b–1–21) is further amended by inserting immediately after section 206 a new section as follows:

"EXEMPTIONS

"SEC. 206A. The Commission, by rules and regulations, upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person or transaction, or any class or classes of persons, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title."

SEC. 27. (a) Section 2 of the Securities Act of 1933 (15 U.S.C. 77b) is amended by adding at the end thereof two new paragraphs as follows:

"(13) The term 'insurance company' means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner, or a similar official or agency, of a State or territory or the District of Columbia; or any receiver or similar official or any liquidating agent for such company, in his capacity as such.

"(14) The term 'separate account' means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, the District of Columbia, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company."

(b) Section 3(a)(2) of such Act (15 U.S.C. 77c(a)(2)) is amended to read as follows:

"(2) Any security issued or guaranteed by the United States or any territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or territory, or by any public instrumentality of one or more States or territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing; or any security issued or guaranteed by any bank; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank; or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian; or any interest or participation in a single or collective trust fund maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, or (B) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of such Code, other than any plan described in clause (A) or (B) of this paragraph which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of such Code. The Commission, by rules and regulations or order, shall exempt from the provisions of section 5 of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title. For the purposes of this paragraph, a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; and the term 'bank' means any national bank, or any banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; except that in the case of a common trust fund or similar fund, or a collective trust fund, the term 'bank' has the same meaning as in the Investment Company Act of 1940."

(c) Section 3(a)(5) of such Act (15 U.S.C. 77c(a)(5)) is amended to read as follows:

"(5) Any security issued (A) by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution, except that the foregoing exemption shall not apply with respect to any such security where the issuer takes from the total amount paid or deposited by the purchaser, by way of any fee, cash value or other device whatsoever, either upon termination of the investment at maturity or before maturity, an aggregate amount in excess of 3 per centum of the face value of such security; or (B) by (i) a farmer's cooperative organization exempt from tax under section 521 of the Internal Revenue Code of 1954, (ii) a corporation described in section 501(c)(16) of such Code and exempt from tax under section 501(a) of such Code, or (iii) a corporation described in section 501(c)(2) of such Code which is exempt from tax under section 501(a) of such Code and is organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization or corporation described in clause (i) or (ii);".

SEC. 28 (a) Section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)) is amended to read as follows:

"(12) The term 'exempted security' or 'exempted securities' includes securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States; such securities issued or guaranteed by corporations in which the United States has a direct or indirect interest as shall be designated for exemption by the Secretary of the Treasury as necessary or appropriate in the public interest or for the protection of investors; securities which are direct obligations of or obligations guaranteed as to principal or interest by a State or any political subdivision thereof, or by any agency or instrumentality of a State or any political subdivision thereof, or by any municipal corporate instrumentality of one or more States; and interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of

assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian; any interest or participation in a collective trust fund maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (A) a stock-bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, or (B) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of such Code, other than any plan described in clause (A) or (B) of this paragraph which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of such Code; and such other securities (which may include, among others, unregistered securities the market in which is predominantly intrastate) as the Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an 'exempted security' or to 'exempted securities'."

(b) Section 3(a)(19) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(19)) is amended to read as follows:

"(19) the terms 'investment company', 'affiliated person', 'insurance company', and 'separate account' have the same meanings as in the Investment Company Act of 1940."

(c) Section 12(g)(2) of such Act (15 U.S.C. 781 (g)(2)) is amended by adding at the end thereof a new subparagraph as follows:

"(H) any interest or participation in any collective trust funds maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (i) a stock-bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, or (ii) an annuity plan which meets the requirements for deduction of the employer's contribution under section 404(a)(2) of such Code."

SEC. 29. (a) Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end thereof the following new subsection:

"(g) All persons including officers, directors, and employees employed by a national securities exchange registered pursuant to the provisions of this Act and any officer, director, or employee of a clearing corporation affiliated with such registered national securities exchange employed on or after September 1, 1970, shall, as a condition of employment, be fingerprinted. Every set of fingerprints taken pursuant to this subsection shall be promptly submitted to the Commission. The Commission shall make rules and regulations to provide for the appropriate processing and use of these fingerprints."

(b) Section 15(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(1)) is amended by adding at the end thereof the following: "All persons including partners, officers, directors, and employees employed by a broker-dealer registered under this section employed on or after September 1, 1970, shall, as a condition of employment, be fingerprinted. Every set of fingerprints taken pursuant to this section shall be promptly submitted to the Commission. The Commission shall make rules and regulations to provide for the appropriate processing and use of these fingerprints."

SEC. 30. The provisions of the Securities Act of 1933 and the Investment Company Act of 1940 shall not apply, except for purposes of definition of terms used in this section, to any interest or participation (including any separate account or other funds providing for the sharing of income or gains and losses, and any interest or participation in such account or funds) in any contract, certificate, or policy providing for life insurance benefits which was issued prior to March 23, 1959, by an insurance company, if (1) the form of such contract, certificate, or policy was approved by the insurance commissioner, or similar official or agency, of a State, territory, or the District of Columbia, and (2) under such contract, certificate, or policy not to exceed 49 per centum of the gross premiums or other consideration paid was to be allocated to a separate account or other fund providing for the sharing of income or gains and losses.

SEC. 31. This Act shall take effect on the date of its enactment, except that—

(1) sections 5(a), (b), and (c); 9(a); 11; 18; 24(a); and 25; (amending sections 10(a), (b), and (c); 17(f); 19; and 32(a) of the Investment Company Act of 1940 and sections 203(b) and 205 of the Investment Advisers Act of 1940, respectively) shall take effect upon the expiration of one year after the date of enactment of this Act;

(2) that part of section 5(d) which substitutes "interested persons" for "affiliated persons" in section 10(d) of the Investment Company Act of 1940 shall take effect upon the expiration of one year after the date of enactment of this Act;

(3) sections 16 and 17 (amending sections 27 and 28 of the Investment Company Act of 1940) shall take effect upon the expiration of six months after the date of enactment of this Act; and

(4) that part of section 20 which adds a subsection (b) to section 36 of the Investment Company Act of 1940 shall take effect upon the expiration of eighteen months after the date of enactment of this Act.

Mr. SPARKMAN. Mr. President, I move that the Senate disagree to the amendment of the House and ask for a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer (Mr. EAGLETON) appointed Mr. SPARKMAN, Mr. PROXMIRE, Mr. WILLIAMS of New Jersey, Mr. MCINTYRE, Mr. BENNETT, Mr. TOWER, and Mr. PACKWOOD conferees on the part of the Senate.

ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous order the Senator from Arkansas is recognized for 30 minutes.

RESOLUTION DECLARING THAT THE SENATE REJECT THE FINDINGS AND RECOMMENDATIONS OF THE COMMISSION ON OBSCENITY AND PORNOGRAPHY

Mr. McCLELLAN. Mr. President, under the previous order I send to the desk a resolution which is to be immediately considered. I ask that the resolution be stated.

The PRESIDING OFFICER. The resolution will be stated.

The legislative clerk proceeded to read the resolution.

Mr. McCLELLAN. Mr. President, I ask unanimous consent that further reading of the resolution be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the resolution will be printed in the RECORD.

The resolution, with its preamble, reads as follows:

S. RES. 477

A resolution declaring that the Senate rejects the findings and recommendations of the Commission on Obscenity and Pornography

Whereas the Congress, in response to the increasing volume and amount of traffic in obscene and pornographic material and the uncertainty of the state of the law regulating the flow of this material resulting from a series of decisions of the Supreme Court of the United States, has found and declared commercialized obscenity and pornography to be matters of national concern;

Whereas, in seeking a solution to the problems caused by obscene and pornographic materials, the Congress passed Public Law 90–100 in 1967 creating the Commission on Obscenity and Pornography;

Whereas the Commission on Obscenity and Pornography was required by law to report to Congress and to the President on its findings and recommendations with respect to four specific assignments:

"(1) with the aid of leading constitutional law authorities, to analyze the laws pertaining to the control of obscenity and pornography; and to evaluate and recommend definitions of obscenity and pornography;

"(2) to ascertain the methods employed in the distribution of obscene and pornographic materials and to explore the nature and volume of traffic in such materials;

"(3) to study the effect of obscenity and pornography upon the public, and particularly minors, and its relationship to crime and other antisocial behavior; and

"(4) to recommend such legislative, administrative, or other advisable and appropriate action as the Commission deems necessary to regulate effectively the flow of such traffic, without in any way interfering with constitutional rights.";

Whereas the Commission has now submitted its findings and recommendations in a report based on unscientific testing, inadequate review of such testing, and an attempted denial of the rights of the minority members of the Commission;

Whereas the Commission's own findings indicate that its recommendations, in many respects, are not based upon adequate research and information; and

Whereas the Commission has failed to carry out the mandate of Congress and its statutory duties by ignoring potential effects of long-term exposure to obscene and pornographic materials: Now, therefore, be it

Resolved, That the Senate specifically rejects the following findings and recommendations of the Commission on Obscenity and Pornography:

(1) that there is "no evidence to date that exposure to explicit sexual materials play a significant role in the causation of delinquent or criminal behavior among youths or adults";

(2) that "a majority of American adults believe that adults should be allowed to read or see any sexual materials they wish";

(3) that "there is no reason to suppose that elimination of governmental prohibitions upon the sexual materials which may be made available to adults would adversely affect the availability to the public of other books, magazines, and films";

(4) that "nor is there evidence that exposure to explicit sexual materials adversely affects character or moral attitudes regarding sex and sexual conduct"; and

(5) that "Federal, State, and local legislation prohibiting the sale, exhibition, or distribution of sexual materials to consenting adults should be repealed".

SEC. 2. The Senate declares that—

(1) generally the findings and recommendations are not supported by the evidence considered by or available to the Commission; and

(2) the Commission has not properly performed its statutory duties nor has it complied with the mandates of Congress.

Mr. McCLELLAN. Mr. President, I ask for the yeas and nays on the pending resolution.

The yeas and nays were ordered.

Mr. McCLELLAN. Mr. President, I would like to note that the pending resolution is cosponsored by 26 Democratic Senators and 24 Republican Senators. It is a bipartisan resolution. It is an effort to have the Senate express its views regarding the findings and recommendations of a Presidential Commission that was created by Congress in 1967.

Mr. President, during the past decade, the Supreme Court, through a series of decisions, has emasculated obfuscated, and thrown into a complete state of confusion, laws relating to obscene and pornographic material. The merchants of smut and the purveyors of filth have taken advantage of this muddled situation to increase the volume of and trafficking in their salacious material. Public outrage over this deplorable situation was translated in 1967 into the enactment of legislation to establish a Commission on Obscenity and Pornography. Such a Commission was declared to be necessary because the Congress found the traffic in obscenity and pornography had, indeed, become a matter of grave national concern. In an effort to determine the dimensions of the problem and to frame remedial action, the Congress assigned four tasks to the Commission.

(1) To analyze the laws pertaining to the control of obscenity and pornography; and to evaluate and recommend definitions of obscenity and pornography;

(2) To ascertain the methods employed in the distribution of obscene and pornographic materials and to explore the nature and volume of traffic in such materials;

(3) To study the effect of obscenity and pornography upon the public, and particularly minors, and its relationship to crime and other anti-social behavior; and

(4) To recommend such legislative, administrative, or other advisable and appropriate action as the Commission deems necessary to regulate effectively the flow of such traffic, without in any way interfering with constitutional rights.

Now, 2 years and $2 million later, the Commission completed its work and has submitted a report that has been characterized as a "scientific scandal" and a "magna carta for pornographers."

In short, the majority report of the Commission has made recommendations which involve repeal of all laws pertaining to sale or distribution of pornography to adults, and the same for children—except for pictorial material.

Mr. President, the Congress might just as well have asked the pornographers to write this report, although I doubt that even they would have had the temerity and effrontery to make the ludicrous recommendations that were made by the Commission.

The Commission bases its conclusions on the following considerations:

First, that extensive empirical investigations, both by the Commission and by others, provides no evidence that exposure to or use of explicit sexual materials play a significant role in the causation of social or individual harms such as crime, delinquency, sexual or nonsexual deviancy, or severe emotional disturbances;

Second, that public opinion in America does not support the imposition of legal prohibitions upon the rights of adults to read or see explicit sexual materials. While a minority of Americans favor such prohibitions, a majority of the American people presently are of the view that adults should be legally able to read or see explicit sexual materials if they wish to do so; and

Third, that society's attempts to legislate for adults in the area of obscenity have not been successful. Present laws prohibiting the consensual sale or distribution of explicit sexual materials to adults are extremely unsatisfactory in their practical application.

I do not think that the Senate should allow this report—which would substitute hedonism for morality—to stand unchallenged.

Mr. President, I reject the conclusions and recommendations of this Commission, and I am introducing this resolution declaring it to be the sense of the Senate to likewise refute and reject the Report of the Commission on Obscenity and Pornography.

I am particularly concerned over this report because it was the Government Operations Committee, which I am privileged to chair, which processed the bill creating this Commission.

A brief review of this report, its major findings and recommendations, and the Commission's procedures, plainly shows why the Senate and public opinion must be mobilized to reject it.

Although two-thirds of the 18-member Commission agreed with these recommendations, strong dissent has been filed by three of its members.

I believe that the minority views of Reverends Hill and Link, in which Charles Keating concurs, represents a responsible position on the issues and a well reasoned response to the majority's position.

Even a cursory study of this document sustains the minority's charge that "it is slanted and biased in favor of protecting the business of obscenity and pornography, which the Commission was mandated by Congress to regulate."

Substantial justification for many of the Commission's findings, and specifically the request to repeal laws regulating the flow of this material, is based on their contention that:

A majority of the American people presently are of the view that adults should be legally able to read or see explicit sexual materials if they wish to do so.

Anyone who will examine the study which allegedly supports this statement will find this a flagrant distortion of facts. The Commission blandly fails to mention two national polls refuting such a conclusion.

In 1969 Louis Harris conducted a national study of moral attitude among Americans in an effort to "illuminate the changing U.S. moral climate." The result of his poll found Americans, in general, far more permissive about morals than they were only a few years ago. However, Mr. Harris found that by no means did a majority endorse "sexual revolution; 76 percent of those tested want pornography outlawed and 72 percent believe that erotica robs sexual relations of beauty."

Collaborating this conclusion is George Gallup's poll of June 1969, in which he found that most Americans favor stricter laws on pornography. Of every 100 adults interviewed in this survey, 85 said that they favored more stringent State and local laws dealing with salacious literature; and 76 of every 100 demanded a tougher stand on the types of magazines and newspapers available at newsstands.

In contrast to these concurring surveys, the Commission found only 2 percent of those questioned believed pornography a serious problem. The reason for this dichotomy is apparent when you consider the question that the Commission asked was: "Would you please tell me what you think are the two or three most serious problems facing our country today?" Such a blatant distortion of the significance of such a question and answer tests our credulity. This example sustains the minorities' outrage and their charge that "this sort of picking and choosing of favorable statistics is indefensible."

The keystone of the report is the finding that "empirical research designed to clarify the question has found no evidence to date that exposure to explicit sexual materials plays a significant role in the causation of delinquent or criminal behavior among youths or adults." This statement is refuted by all the minority members. Dr. Victor Cline, University of Utah psychologist and specialist in social science research methodology and statistics finds that conclusion lacking credibility and states that the Commission rejected data suggesting the linkage between pornography and sexual deviancy. Moreover, Dr. Cline calls the findings and recommendations of the Commission's effects panel a "scientific scandal." In one minority report, two dissenters flatly charge the majority with surreptitiously omitting information detrimental to this finding. In essence they charge that this conclusion is fraudulent.

There is evidence that a significant percentage of nationally recognized psychiatric authorities and many law enforcement officials at all levels disagree with this finding.

The previously mentioned dissenters, Father Morton A. Hill and Winfrey C. Link, state that this conclusion is ridiculous and that, in fact, "no adequate causal studies were done."

This brings us to another point, Mr. President, and that is that all of the dissenters criticize the limitations of the research done by the majority. Some of these are that: First, there were no studies on the long-range effects of exposure to pornography; second, there were no in-depth clinical studies; third, the omission of studies on "porno-violence" suggested by the Commission on the Causes and Prevention of Violence; and, fourth, omission of research suggesting a significant amount of learning occurs through watching and imitating the behavior of others.

The minority reports cite with particularity a series of relevant studies which they say contain detrimental evidence serious enough to question the findings of the majority.

The Commission downplays the relationship between the increase in crime and the flow of this material. Yet, one only needs to review the staggering available statistics to realize that crime and the volume of these materials are on a parallel upswing. The overwhelming bulk of erotica began in the early sixties and since that time verified reported rapes have been up 116 percent. Arrests for rapes between 1960 and 1969 for all ages is up 56.6 percent, prostitution and commercialized vice is up 80 percent. No one can deny these statistics, and they would appear to reflect some relationship between crime and pornography.

I fear that if we allow and encourage the flow of obscene material, there will be no stopping these sex offenders. This filth is stimulating to them, they feed on it, and the Commission would guarantee that they have their fill.

Although the Commission believes that pornography does not cause antisocial behavior, they give no serious or in-depth study into problems normally considered ancillary to the distribution of this material such as sexual promiscuity, abortion, divorces, or venereal disease.

The U.S. Public Health Service shows, for example, than gonorrhea veneral disease is up 76 percent since 1960. The rise in illegitimate births since 1940 has been a catastrophic 350-percent increase. What about these blights on our citizens? Are they insignificant to this report? I think not.

Mr. President, this body has shown grave concern over the deteriorating quality of our air, our water, and our other natural resources. To me, our greatest and most treasured natural resource is our youth, for they are the repositories of whatever values or norms we intend to leave history and future generations. We must be concerned about the "moral pollution" which might well inhibit and stunt their physical, mental, and moral well-being.

The Commission finds that constitutionally we cannot restrain the flow of this material to adults in order to halt its flow to minors. Second, they suggest that wide use of this material will not affect the malleable minds of our youth.

The Commission recommendations in this area, Mr. President, leave much to be desired. They recommend only against the sale of pictorial obscenity to children—specifically exempted are printed words or textural materials.

I seriously question the Commission's suggestion that our youth, who do not have the benefit of mature selectivity, will be able to emotionally withstand flagrant and licentious material and behavior. I agree with the words of minority member, Charles Keating, when he said:

> At a time when the spread of pornography has reached epidemic proportions in our country and when the moral fiber of our nation seems to be rapidly unraveling, the desperate need is for enlightened and intelligent control of the poisons which threaten us—not the declaration or moral bankruptcy inherent in the repeal of the laws which have been the defense of decent people against the pornographers for profit.

Mr. President, it is apparent why the minority has charged that "the entire report is suspect and lacking in credibility." The traffic in obscenity is increasing each passing day, and the adoption of the majority report will only open the floodgates wider for the commercializing of pornography. They minimize the volume of this traffic, yet they publish statistics which prove that the great majority of films showing in the country today have certain age restrictions because of their erotic content. The majority states that the previous estimates of gross sales of literature in this area are exaggerated, yet they find that sexually oriented periodicals alone grossed 163 million dollars in 1969 retail sales. Total sales of "adult only" publications accounted for $70 to $90 million in retail sales in 1969.

The Commission estimates that approximately $14 million was earned in retail mail sales in 1969. Another $4 to $10 million in retail sales was realized in foreign publications. The amount of trafficking of this material is most disturbing, and the Commission's response to the problem is wholly inadequate.

Americans receive over 21 billion pieces of mail each year which advertise products and solicit purchases. The Commission attempts to gloss over and to minimize the volume of sexually oriented materials by stating that less than 0.25 percent of the 21 million is of a salacious nature. Mr. President, this comes to approximately 52 million pieces a year, or, in other words, a full 25 percent of our people—man, woman, and child—can mathematically expect to receive a piece of this unsolicited garbage annually.

Equally disturbing is the Commission's summary statement that "professional workers in this area of human conduct generally believe that sexual materials do not have harmful effects." The minority members suggest that we disregard the significance of that statement because it is based on "a mail-back survey in which only a third of their sample responded." They also neglect to state, Hill, Link, and Keating tell us, "that 254 psychiatrists and psychologists had seen cases where they reported they had found a direct causal linkage between involvement with pornography and a sex crime, while another 324 professionals reported seeing cases where such a relationship was suspected."

Mr. President, these inconsistencies are an unacceptable infringement upon sound scientific methodology, or, as the minority reports:

> What the American people have here for the $2 million voted by Congress, and paid by the taxpayer, is a shoddy piece of scholarship that will be quoted ad nauseum by cultural polluters and their attorneys within society.

It is surprising that the Commission had the courage to recommend such sweeping reform based on its findings, yet are unwilling to accept full responsibility for their conclusions. They state in the final sections of their report that—

> The Commission's effort to develop information has been limited by time, financial resources, and the paucity of previously existing research. Many of its findings are tentative and many questions remain to be answered. We trust that our modest pioneering work in emperical research into several problem areas will help to open the way for more extensive long-term research based on more refined methods directed to more refined questions.

I believe, Mr. President, that America needs to protect its moral fiber; not tear it asunder or subvert it. The libertarian attitudes of this Commission are not new. We have seen them before, and they add up to a consistent and pervasive posture of permissiveness. It runs as a common thread in arguments against strict law enforcement, against punishment for criminals and anarchists who are bent on destroying our campuses, against new tools to fight organized crime and against many other constructive measures previously proposed. I can only say that such exaggerated "sophisticated permissiveness" will lead to certain further moral corruption.

Unfortunately, the Commission's procedures were as unsound as its substantive recommendations. Messrs. Hill and Link describe them in the following language:

> Using procedures wholly undemocratic, the Commission's Chairman has marched the Commission from a *preconceived* assumption along a *precharted* path to a *predetermined* conclusion.

From the outset the mandates of Congress were ignored. Although Public Law 90–100 required that a Chairman and Vice Chairman be elected by the Commission from its members, a White House press release dated January 2, 1968, reported that William B. Lockhart has been "selected" Chairman of the Commission, 5 months before the Commission even met.

The Commission from the outset felt it necessary to deny information to the public. Although the report admits that several commissioners requested public hearings, a majority chose a clandestine procedure, arguing that public hearings would not be a likely source of accurate data or a wise expenditure of its limited resources. Because this body refused to hear about how the people of this Nation really felt about obscenity, two of the Commissioners were forced to hold hearings in eight cities of this Nation. Astonishingly enough, the Commission voted not to reimburse these two Commissioners and refused to give consideration to their work. In the waning months of the Commission's life, 4 days of hearings were held to enhance its record.

The Commission was divided into four panels—legal, effects, traffic, and positive approaches. Each of these panels was to study designated problems and propose a separate report to the full Commission. From the conclusions reached by these reports, the full Commission would make its recommendations. A summary of all the panel reports and the various recommendations by the Commission was to be, and is, printed in a "overview report."

The panel reports were to represent an accumulation of the information and evidence gathered by the individual groups. At the outset the Commission determined that almost all of the previously gathered matter was inconclusive and unempirical in approach and "had

little anchoring in objective evidence." To supplement their own research, the Chairman and staff of the Commission, with the advice and consent of a few individual Commissioners, but not with the approval or knowledge of the whole Commission, contracted for various studies to be called "technical reports."

Although this procedure gives the appearance of good organization as well as providing a fair, logical, and educated procedure to evolve recommendations, it apparently did not work that way.

In fact, Mr. Keating informs us, all the Commissioners were not allowed to participate in the determination of what research should be performed, the technical reports were not finally completed to use as a basis for the panel reports, and unbelievable as it may seem, the four panel reports were not finalized prior to when the Commission had determined its conclusions and recommendations.

The situation became so grave that a minority member was forced to file suit against the Commission and request the Federal district court to grant him adequate time to compose and submit a minority report as well as adequate space to print it. Never before, to my knowledge, in the history of congressionally created Presidential commissions, have constitutional rights been so infringed upon that one of its members was compelled to seek judicial relief.

This matter, Mr. President, was finally resolved by stipulation, which has been filed with the court, allowing the dissenter reasonable time and realistic printing space. That same stipulation provides that "each and every technical report to be printed and published by the Commission shall bear the following legend: 'this technical report has not been reviewed or approved by the full Commission.' This legend is to be printed on the title page of each report." It is these unfinished and unreviewed "technical reports" which were the basis for the findings and recommendations of the majority report.

Minority members Hill, Link, and Keating find the entire report "irrelevant and deserving condemnation as inimical to the welfare of the United States, its citizens and its children." They requested that it be excluded from consideration by the Congress and States. I wholeheartedly concur. I, therefore, introduce for appropriate reference, a resolution rejecting certain findings and recommendations of the Commission on Obscenity and Pornography and declaring that the Commission has failed adequately to perform its statutory duties and to comply with the mandate of Congress.

The resolution states that the report is not based on adequate research and that it requests sweeping reform yet ignores potential effects of long-term exposure to obscene and pornographic materials. The resolution specifically rejects those findings of the Commission: First, that there is no evidence linking exposure to explicit sexual materials and juvenile delinquency and criminal behavior; second, that a majority of Americans believe in no censorship laws; third, that repeal of these laws will not affect or increase the availability of additional materials; fourth, that there is no evidence that exposure to explicit sexual materials adversely affects character or moral attitudes; and fifth, that all Federal, State and local legislation prohibiting this material to adults be repealed. The Senate would also find that the Commission did not adequately perform its statutory duties and that their findings are not supported by the evidence before the Commission.

Mr. President, this report should not be approved. If we affirm or even recognize its unfounded and unproven conclusions, even by silence, it will be a direct threat to this Nation's moral, mental and physical health, and it will also have been, on our part, an abdication of our duty to condemn it. I have no doubt that it will in the immediate future represent the "bible" to those who debase the true meaning and functions of sex, to those who wish to perpetuate excessive eroticism, to those who have a marked preoccupation with sex, and to those who wish to subvert our values by inciting immoral and antisocial activity.

I recall a quote from Mr. Reo Christenson which appeared on September 13, 1970, in the Washington Post on this point. Mr. Christenson said:

> A society can tolerate only so much emotional turmoil, so much disruption, so many assaults upon its sensibilities and its mores. At some point, the public's patience becomes exhausted; it cries "Enough." This denouncement may not be far off in America. When it comes, the entertainment industry should be assigned its full share of responsibility in the area of pornographic presentations for the general repression which follows.

Mr. Christenson continues:

> A final word, maybe all the "dumb people" are not so dumb after all. Maybe they are right in sensing that sex needs to be treated with some caution, that sexual privacy needs to be preserved from commercial contamination, that relations must not be divested of all sexual sanctity, all mystery, and reduced to the level of leer and titter.
>
> It is a disturbing democratic idea that the common man just might be smarter, now and then, than many of our avant-garde intellectuals.

Mr. President, our people have chosen to have laws regulating the dissemination of obscene and pornographic material for close to 200 years. Those laws were based on moral norms, designed to secure the family structure, and intended for the purpose of protecting the well being of all our people. They may well need to be clarified, and perhaps even modified, but they certainly need to be retained—not repealed, as recommended by this Commission.

Mr. President, I ask unanimous consent to have printed in the RECORD immediately following my remarks the following documents:

Public Law 90–100.

A list of the Commissioners on the Commission on Obscenity and Pornography.

A stipulation entered into by Commissioner Lockhart and Commissioner Keating.

Minority views of Commissioners Hill and Link, concurred in by Commissioner Keating.

An editorial entitled "Floodlights on Sex," published in the National Observer issue of October 12, 1970.

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

PUBLIC LAW 90–100, 90TH CONGRESS, S. 188, OCTOBER 3, 1967

An act creating a commission to be known as the Commission on Obscenity and Pornography

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

FINDING OF FACT AND DECLARATION OF POLICY

SECTION 1. The Congress finds that the traffic in obscenity and pornography is a matter of national concern. The problem, however, is not one which can be solved at any one level of government. The Federal Government has a responsibility to investigate the gravity of this situation and to determine whether such materials are harmful to the public, and particularly to minors, and whether more effective methods should be devised to control the transmission of such materials. The State and local governments have an equal responsibility in the exercise of their regulatory powers and any attempts to control this transmission should be a coordinated effort at the various governmental levels. It is the purpose of this Act to establish an advisory commission whose purpose shall be, after a thorough study which shall include a study of the causal relationship of such materials to antisocial behavior, to recommend advisable, appropriate, effective, and constitutional means to deal effectively with such traffic in obscenity and pornography.

COMMISSION ON OBSCENITY AND PORNOGRAPHY

SEC. 2. (a) ESTABLISHMENT.—For the purpose of carrying out the provisions of this Act, there is hereby created a commission to be known as the Commission on Obscenity and Pornography (hereinafter referred to as the "Commission"), whose members shall include persons having expert knowledge in the fields of obscenity and antisocial behavior, including but not limited to psychiatrists, sociologists, psychologists, criminologists, jurists, lawyers, and others from organizations and professions who have special and practical competence or experience with respect to obscenity laws and their application to juveniles.

(b) MEMBERSHIP OF THE COMMISSION.—The Commission shall be composed of eighteen members appointed by the President.

(c) VACANCIES.—Any vacancy in the Commission shall be filled by appointment by the President.

(d) ORGANIZATION OF COMMISSION.—The Commission shall elect a Chairman and a Vice Chairman from among its members.

(e) QUORUM.—Ten members of the Commission shall constitute a quorum, but five members shall be sufficient for the purpose of taking testimony or interrogating witnesses.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 3. (a) MEMBERS EMPLOYED BY UNITED STATES.—Members of the Commission who are officers or full-time employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States; but they shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(b) OTHER MEMBERS.—Members of the Commission who are not officers or full-time employees of the United States shall each receive $75 per diem when engaged in the actual performance of duties vested in the Commission. In addition, they shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section

5703 of title 5, United States Code, for persons in the Government service employed intermittently.

STAFF OF THE COMMISSION

SEC. 4. Such personnel as the Commission deems necessary may be appointed by the Commission without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subtitle III of chapter 53 of such title relating to classification and General Schedule pay rates.

DUTIES OF THE COMMISSION

SEC. 5. (a) INVESTIGATION AND RECOMMENDATIONS.—It shall be the duty of the Commission—

(1) with the aid of leading constitutional law authorities, to analyze the laws pertaining to the control of obscenity and pornography; and to evaluate and recommend definitions of obscenity and pornography;

(2) to ascertain the methods employed in the distribution of obscene and pornographic materials and to explore the nature and volume of traffic in such materials;

(3) to study the effect of obscenity and pornography upon the public, and particularly minors, and its relationship to crime and other antisocial behavior; and

(4) to recommend such legislative, administrative, or other advisable and appropriate action as the Commission deems necessary to regulate effectively the flow of such traffic, without in any way interfering with constitutional rights.

(b) REPORT.—The Commission shall report to the President and the Congress its findings and recommendations as soon as practicable and in no event later than January 31, 1970. The Commission shall cease to exist ten days following the submission of its final report.

POWERS OF THE COMMISSION

SEC. 6. (a) HEARINGS AND SESSIONS.—The Commission or, on the authorization of the Commission, any committee thereof, may, for the purpose of carrying out the provisions of the Act, hold such hearings and sit and act at such times and such places within the United States as the Commission or such committee may deem advisable.

(b) CONSULTATION.—In carrying out its duties under the Act, the Commission shall consult with other Federal agencies, Governors, attorneys general, and other representatives of State and local government and private organizations to the extent feasible.

(c) OBTAINING OFFICIAL DATA.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality, information, suggestions, estimates, and statistics for the purpose of this Act, and each such department, bureau, agency, board, commission, office, establishment, or instrumentality is authorized and directed, to the extent permitted by law, to furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairman or Vice Chairman.

(d) OBTAINING SCIENTIFIC DATA.—For the purpose of securing the necessary scientific data and information the Commission may make contracts with universities, research institutions, foundations, laboratories, hospitals, and other competent public or private agencies to conduct research on the causal relationship of obscene material and antisocial behavior. For such purpose, the Commission is authorized to obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code.

COMMISSIONERS—COMMISSION ON OBSCENITY AND PORNOGRAPHY

Mrs. Barbara Scott, Commissioner, 300 West End Avenue, New York, New York.

Dr. Frederick H. Wagman, Commissioner 1407 Lincoln Avenue, Ann Arbor, Michigan.

G. William Jones, Commissioner, Building B–16, Apt. 7, New Slocum Heights, Syracuse New York.

Rev. Morton A. Hill, Commissioner, St. Ignatius Church, 980 Park Avenue, New York, New York.

Dr. Edward D. Greenwood, Commissioner, 1915 Webster, Topeka, Kansas.

Mrs. Cathryn A. Spelts, Commissioner, 414 Belmont Avenue, Rapid City, South Dakota.

Thomas D. Gill, Commissioner, 279 Sedgwick Road, Hartford, Connecticut.

Rabbi Irving Lehrman, Commissioner, 2925 Flamingo Drive, Miami Beach, Florida.

Dr. Joseph T. Klapper, Commissioner, 340 East 57th Street, New York, New York.

William B. Lockhart, Commissioner, 4300 Shoreline Drive, Minneapolis, Minnesota.

Charles H. Keating, Jr. Commissioner, 18th Floor, Provident Tower, Cincinnati, Ohio.

Otto N. Larsen, Commissioner, 5407 Ravenna, N.E., Seattle, Washington.

Dr. Morris A. Lipton, Commissioner, 2004 Lakeshore Drive, Chapel Hill, North Carolina.

Marvin E. Wolfgang, Commissioner, Room 203, 3718 Locust Street, Philadelphia, Pennsylvania.

Freeman Lewis, Commissioner, c/o Simon & Schuster, Inc., 630 Fifth Avenue, New York, New York.

Edward E. Elson, Commissioner, 5131 Northside Drive, N.W., Atlanta, Georgia.

Thomas C. Lynch, Commissioner, 98 Clarinden, San Francisco, California.

Rev. Winfrey C. Link, Commissioner, McKendree Manor, Hermitage, Tennessee.

[U.S. District Court for the District of Columbia, civil action No. 2671–70]

CHARLES H. KEATING, JR., COMMISSIONER, PLAINTIFF, *v.* WILLIAM B. LOCKHART, COMMISSIONER, ET AL., DEFENDANTS

STIPULATION OF DISMISSAL

It is hereby stipulated and agreed by and between Charles H. Keating, Jr., Commissioner, Commission on Obscenity and Pornography, plaintiff to this action and William B. Lockhart, Chairman, Commission on Obscenity and Pornography in behalf of the Commission on Obscenity and Pornography hereinafter called "Commission" this 14th day of September, 1970 as follows:

1. Each and every technical report to be printed and published by the Commission shall bear the following legend: "This technical report has not been reviewed or approved by the full Commission." This legend is to be printed on the title page of each report.

2. With respect to each technical report submitted by Commissioner Charles H. Keating, Jr. the following legend, which shall be printed on the title page, shall appear: "This technical report was submitted by Commissioner Charles H. Keating, Jr. on (date) and has not been reviewed or approved by the full Commission."

3. The technical reports submitted to the Commission by Commissioner Keating on or before November 1, 1970 not to exceed three hundred (300) pages, double-spaced type, 8½ x 11, shall be printed by the Government Printing Office along with all other technical reports of the Commission and shall be included in the same set of volumes.

4. The report of Commissioner Keating together with copies shall be delivered by Commissioner Keating to the Commission on or before 5 P.M., September 29, 1970 and shall not exceed two hundred and sixteen (216) pages, double-spaced, type, 8½ x 11. Thereafter Commissioner Keating's report and other reports of the Commission shall be delivered together by the Commission to the President of the United States, and the appropriate officers of the Congress.

5. The report of Commissioner Keating shall be published with the other separate statements of other Commissioners as a part of the total Commission report.

6. All technical reports available to the Commission shall be made available to Commissioner Keating by 5 P.M. this 14th day of September 1970. Other technical reports shall be made available to Commissioner Keating upon receipt by the Commission.

7. The final version of the Commission report and the final version of the four Panel Reports shall be made available to Commissioner Keating by 5 P.M. this 14th day of September, 1970.

8. All art work and single-spaced matter utilized by Commissioner Keating in his report and technical reports shall be prepared at Commissioner Keating's expense in such form as will be acceptable by the Government Printing Office for inclusion with the Commission report and statements of other Commissioners.

9. Commissioner Keating will secure and provide to the Commission copyright releases where necessary.

In view of the foregoing stipulation and agreement, the Clerk of Court will please dismiss this action.

CHARLES H. KEATING, JR.,
Commissioner, Commission on Obscenity and Pornography.

WILLIAM B. LOCKHART,
Chairman, Commission on Obscenity and Pornography.

RICHARD M. BERTSCH,
W. STANFIELD JOHNSON,
Counsel for Plaintiff.

JOSEPH M. HARMON,
Assistant U.S. Attorney, Counsel for Defendant: WILLIAM S. LOCKHART.

TEXT OF MINORITY REPORT OF THE COMMISSION ON OBSCENITY AND PORNOGRAPHY

(Report of Commissioners Morton A. Hill, S.J., and Winfrey C. Link; concurred in by Charles H. Keating, Jr.* of the Commission on Obscenity and Pornography)

OVERVIEW

The Commission's majority report is a Magna Carta for the pornographer.

It is slanted and biased in favor of protecting the business of obscenity and pornography, which the Commission was mandated by the Congress to regulate.

The Commission leadership and majority recommend that most existing legal barriers between society and pornography be pulled down. In so doing, the Commission goes far beyond its mandate and assumes the role of counsel for the filth merchant—a role not assigned by the Congress of the United States.

The Commission leadership and majority recommend repeal of obscenity law for "consenting adults." It goes on, then, to recommend legislation for minors, public display and thrusting of pornography on persons through the mails.

The American people should be made aware of the fact that this is precisely the situation as it exists in Denmark today. The Commission, in short, is presumptuously recommending that the United States follow Denmark's lead in giving pornography free rein.

We feel impelled to issue this report in vigorous dissent.

The conclusions and recommendations in the majority report will be found deeply offensive to Congress and to tens of millions of Americans. And what the American people do not know is that the scanty and manipulated evidence contained within this report is wholly inadequate to support the conclusions and sustain the recommendations. Thus, both conclusions and recommendations are, in our view, fraudulent.

What the American people have here for the two million dollars voted by Congress,

*Mr. Keating, while concurring in this report is preparing a separate dissent.

and paid by the taxpayer, is a shoddy piece of scholarship that will be quoted ad nauseam by cultural polluters and their attorneys within society.

The fundamental "finding" on which the entire report is based is: that "empirical research" has come up with "no reliable evidence to indicate that exposure to explicitly sexual materials plays a significant role in the causation of delinquent or criminal behavior among youth or adults."

The inference from this statement, i.e., pornography is harmless, is not only insupportable on the slanted evidence presented; it is preposterous. How isolate one factor and say it causes or does not cause criminal behavior? How determine that one book or one film caused one man to commit rape or murder? A man's entire life goes into one criminal act. No one factor can be said to have caused that act.

The Commission has deliberately and carefully avoided coming to grips with the basic underlying issue. The government interest in regulating porongraphy has always related primarily to the prevention of moral corruption and *not* to prevention of overt criminal acts and conduct, or the protection of persons from being shocked and/or offended.

The basic question is whether and to what extent society may establish and maintain certain moral standards. If it is conceded that society has a legitimate concern in maintaining moral standards, it follows logically that government has a legitimate interest in at least attempting to protect such standards against any source which threatens them.

The Commission report simply ignores this issue, and relegates government's interest to little more than a footnote—passing it off with the extremist cliche that it is "unwise" for government to attempt to legislate morality. Obscenity law in no way legislates individual morality, but provides protection for public morality. The Supreme Court itself has never denied society's interest in maintaining moral standards, but has instead ruled for the protection of the "social interest in order and morality."

The Commission report ignores another basic issue: the phrase "utterly without redeeming social value." This language has been propagandized by extremists and profit-seekers, and it is so propagandized in this report as being the law of the land. It is not the law of the land, since no Supreme Court ever voiced such an opinion, yet this erroneous concept has been built into the statutes of the states as a result of extremists asserting that it is a necessary "test" enunciated by the Supreme Court. This erroneous conception has led to a vast upsurge in the traffic in pornography in the past four years. The fact is, it is nothing more than an opinion of three judges, binding on no one, neither court nor legislature.

In sum, the conclusions and recommendations of the Commission majority represent the preconceived views of the chairman and his appointed counsel that the Commission should arrive at those conclusions most compatible with the viewpoint of the American Civil Liberties Union. Both men singlemindedly steered the Commission to this objective.

In the interest of truth and understanding, it should be noted here that the policy of ACLU has been that obscenity is protected speech. Mr. Lockhart, the Chairman of the Commission, has long been a member of the American Civil Liberties Union. Mr. Bender, his general counsel, is an executive of the Philadelphia Civil Liberties Union.

The two million dollars voted by Congress have gone primarily to "scholars" who would return conclusions amendable to the extreme and minority views of Mr. Lockhart, Mr. Bender and the ACLU.

OUR POSITION

We stand in agreement with the Congress of the United States: the traffic in obscenity and pornography is a matter of national concern.

We believe that pornography has an eroding effect on society, on public morality, on respect for human worth, on attitudes toward family love, on culture.

We believe it is impossible, and totally unnecessary, to attempt to prove or disprove a cause-effect relationship between pornography and criminal behavior.

Sex education, recommended so strongly by the majority, is the panacea for those who advocate license in media. The report suggests sex education, with a plaint for the dearth of instructors and materials. It notes that three schools have used "hard-core pornography" in training potential instructors. The report does not answer the question that comes to mind immediately: Will these instructors not bring the hard-core pornography into the grammar schools? Many other questions are left unanswered: How assure that the instructor's moral or ethical code (or lack of same) will not be communicated to children? Shouldn't parents, not children, be the recipients of sex education courses?

Children cannot grow in love if they are trained with pornography. Pornography is loveless; it degrades the human being, reduces him to the level of animal. And if this Commission majority's recommendations are heeded, there will be a glut of pornography for teachers and children.

In contrast to the Commission report's amazing statement that "public opinion in America does not support the imposition of legal prohibitions upon the consensual distribution" of pornography to adults, we find, as a result of public hearings conducted by two of the undersigned in eight cities throughout the country, that the majority of the American people favor tighter controls. Twenty-six out of twenty-seven witnesses at the hearing in New York City expressed concern and asked for remedial measures. Witnesses were a cross-section of the community, ranging from members of the judiciary to members of women's clubs. This pattern was repeated in the cities of New Orleans, Indianapolis, Chicago, Salt Lake City, San Francisco, Washington, D.C., and Buffalo. (And yet, one member of the Commission majority bases his entire position for legalization on the astounding "finding" of the Commission survey that "no more than 35% of our people favor adult controls in the field of obscenity in the absence of some demonstrable social evil related to its presence and use.")

Additionally, law enforcement officers testifying at the Hill-Link hearings were unanimous in declaring that the problem of obscenity and pornography is a serious one. They complained that law enforcement is hampered by the "utterly without redeeming social value" language. The Commission's own survey of prosecuting attorneys indicates that 73% of prosecutors polled said that "social value" is the most serious obstacle to prosecution. The decision not to prosecute is usually a manifestation of this obstacle. This figure and information is strangely missing from the report's "Overview of Findings."

We point also to the results of a Gallup poll, published in the summer of 1969. Eighty-five out of every 100 adults interviewed said they favored stricter state and local laws dealing with pornography sent through the mails, and 76 of every 100 wanted stricter laws on the sort of magazines and newspapers available on newsstands.

We believe government must legislate to regulate pornography, in order to protect the "social interest in order and morality."

OUR REPORT

To the end that Congress asked for recommendations to regulate the traffic in obscenity and pornography, we will—at the close of this report—as much as it is in our power, carry out the mandate given us by the Congress to analyze the laws on obscenity (see Appendices), recommend definitions, and recommend such legislative, administrative and other advisable or appropriate action to regulate effectively and constitutionally the traffic in obscenity and pornography.

In addition, we will point up the astonishing bias of the Commission majority report by presenting to the President, the Congress and the American people, a history of the creation of the Commission, and a brief report on the heretofore secret operation of this Commission.

We shall document Commission bias and slant in the area of Effects, on which the entire report is based, and in the Legal area where the American people are asked to accept a misleading philosophy of law.

1. HISTORY OF CREATION OF COMMISSION

For several years prior to 1967 legislation to create a Commission on Obscenity and Pornography was introduced into the Congress. It passed the Senate each time, and each time died in House Committee.

Legislation was vigorously opposed by the American Civil Liberties Union, which reads the First Amendment in an absolutist way (cf. Annual Report, American Civil Liberties Union, July 1, 1965 to January 11, 1967, page 9). Their position that "obscenity as much as any other form of speech or press, is entitled to the protection of the First Amendment," can be found in an *amicus* brief in *Jacobellis v. Ohio*, 1964, among others.

In 1967, however, the feeling of the Congress was such that legislation to create a Commission was certain to pass. Now, the ACLU strategy changed. In April of that year, the Director of the Washington Office of the American Civil Liberties Union testified on such legislation before the House Subcommittee on Education and Labor.

He called for "scientific studies" in effects on the part of such a Commission, and maintained that *the public* and private groups should not be involved in the workings of the Commission.

A bill to create the Commission was considered by the Senate in May of 1967. The bill made no mention of effects studies, and drew for membership from both houses of Congress, from various governmental agencies, education, media, state attorneys general, prosecutors and law enforcement. It provided for public hearings and power of subpoena.

The bill which ultimately passed the Congress called for effects studies, drew heavily from the behavioral sciences for membership, and the power of subpoena had been removed. In other words, it was considerably weakened, and much more in line with the libertarian concept of such a Commission.

A White House press release dated January 2, 1968 reported that William B. Lockhart had been "selected" Chairman of the Commission, although public law 90–100 mandated that a chairman and vice-chairman be elected by the Commission from among its members.

Five months later, the Commission met for the first time. After five months, during which Mr. Lockhart had laid much groundwork, talking "effects" with several universities, the Commission voted to affirm his chairmanship.

Mr. Lockhart had present as an observer, at all sessions of the first Commission meeting, Mr. Paul Bender, who was later retained as general counsel to the Commission.

Mr. Lockhart has long contended that "scientific proof" of harmful effects is needed

before an item can be adjudged obscene. (See Lockhart-McClure articles, U. of Minn. Law Rev.) This reasoning, followed to its logical conclusion, would have all obscenity laws repealed, for it is virtually impossible to prove that one book or one film caused one person to commit an anti-social act or a crime. No court, nor any legislature, has ever demanded such "scientific proof" as requested by Mr. Lockhart and his civil libertarian confreres.

After the appointment of the Commission and the "selection" of the Chairman, no further word was heard, to our knowledge, from the Civil Liberties Union until October of 1969, when the same director of the Washington office testified before the House Subcommittee on Postal Operations. This time, he urged that no legislation against pornography be enacted *until the issuance of the Commission report.*

The Commission thus had its beginning in bias and never changed course. Using procedures wholly undemocratic, the Commission Chairman has marched the Commission from a preconceived assumption along a precharted path to a predetermined conclusion.

II. OPERATION OF COMMISSION

At this first meeting of the Commission, the Chairman asked for "confidentiality" or secrecy on the part of the members. The commission concurred.

No by-laws have ever been drawn up to our knowledge. No parliamentary procedure has been observed. There has not been a call for approval or amendment of minutes, distributed by mail. Because of this, one of the undersigned asked that meetings be taped or recorded. This request was refused.

Agenda for Commission meetings and for panel meetings were prepared by a hand-picked staff, and received shortly before meetings, giving Commission members little time for preparation.

Two or three members who were in obvious and open disagreement with the Commission leadership was all but excluded from participation. From the beginning, Commission members heard only one viewpoint; seldom hearing alternatives.

Because of this, and because the Commission under its leadership had consistently refused to go to *the public* and hear other views firsthand, two Commissioners conducted public hearings at their own expense in eight cities throughout the country. At the completion of the hearings of Commissioners Hill and Link the Commission voted to refuse them reimbursement for expenses incurred, deciding to hold two "official" hearings lest their report not receive public acceptance. (Note above the libertarian specification that *the public* should not be involved in the workings of such a Commission. Note also Commission majority explanation for not having conducted hearings until the end of the Commission's life.)

Commissioners themselves were not put into direct contact with the problem of obscenity in the concrete. A few films were shown at the first meeting; samples were "available," but no Commissioner was asked to become conversant with the problem in the concrete, so that he could be equipped to make judgments.

At the first meeting the Commission was summarily divided into four "working" panels. Panel members were not aware of what was transpiring in other panels, except for oral reports at meetings and brief written reports distributed by mail.

Full Commission meetings were held approximately every other month in the beginning. However, from October 1969 to March 1970 there was a lapse of five months between full meetings.

III. CRITIQUE OF COMMISSION BEHAVIORAL RESEARCH

Dr. Victor B. Cline, University of Utah psychologist and specialist in social science research methodology and statistics, has called the Commission's Effects Panel Report—upon which the majority report and its recommendations are based—a "scientific scandal."

Dr. Cline is the author of over 40 published research papers, principle investigator on a number of research projects funded by the Office of Naval Research, National Institutes of Mental Health, Offices of Education, etc. He teaches courses in clinical, experimental and child psychology, and is a practicing clinical psychologist.

Testifying before the Commission in Los Angeles on May 4, Dr. Cline called for, and has since repeatedly called for, the assemblage of an unbiased panel of scientists to (a) evaluate the original research sponsored by the Commission, and (b) assess what conclusions might legitimately be drawn from the assembled evidence. The Commission leadership and majority have ignored his request. In view of this, the signers of this dissenting report asked Dr. Cline to serve as an unpaid consultant. He agreed to do so, in the interest of scientific honesty and truth.

Following is Dr. Cline's evaluation of the Commission report, Effects Panel report, and "findings."[1]

A careful review and study of the Commission majority report, their conclusions and recommendations, and the empirical research studies on which they were based, reveal a great number of serious flaws and grave shortcomings. There are so many, in fact, that the entire report is suspect and lacking in credibility.

Readers of the majority report are at the "mercy" of the writers of that report, and must assume that evidence is being presented fairly and in good faith on both sides of the issue. This is also true for most Commission members themselves. It should be stated that members of the Commission Minority were allowed to look at most of the Commission-sponsored 85 research studies but only after repeated, dogged requests. And then a number were finally and most reluctantly released to them perilously close to the Commission-set deadline for this dissent.

A number of the research studies upon which the report is based suggest significant relationships between pornography, sexual deviancy and promiscuity. Yet, time and again data suggesting this linkage are omitted or "concealed." Findings from seriously flawed research studies or findings which do not follow from the data are frequently presented as fact without mentioning their very serious limitations. The scholarship in the preparation of this report, in short, is unusually shoddy. Since most of their studies are unpublished it will be virtually impossible for any interested social scientists to adequately critique their report—at least at the present time.

A typical example of omission is found in a Commission-contracted study by Alan Berger and associates in Illinois. In the study, they surveyed 473 adolescents, primarily in the age range of 14–18 (from working class backgrounds) with an extensive questionnaire which asked questions about their exposure to pornography, their sexual behavior, etc. In carefully reviewing these findings, it is distressing to note that those data not "favorable" to the Commission leadership and majority point of view are either played down or not mentioned.

In the study of the 473 high schools students, they found a relationship between frequency of seeing movies depicting sexual intercourse and the adolescent engaging in intercourse (their table 46, page 101 is duplicated in part below.)

FREQUENCY OF SEEING MOVIES DEPICTING SEXUAL INTERCOURSE

[In percent]

	Not at all	1 to 4 times	5 to 10 times	11 or more times
Percent of males engaging in premarital intercourse	53	62	73	88
Percent of females engaging in premarital intercourse	10	29	44	----------

This data is in the Commission-financed technical report, but is not discussed[2] or presented, despite the fact that it has an important bearing on the "effects" question.

One example of improper reporting of research results is found in Chapter V of the Effects Panel Report. Here the Commission majority states:

"A comparison study of 39 delinquents and 39 non-delinquent youth (Berninghausen & Faunce, 1964) found no significant differences between these groups in the number of 'sensational' (obscene) books they had read. Non-delinquent youth were somewhat more likely (75%) than delinquent youth (56%) however, to report having read at least one 'possibly erotic' book."

What the Commission majority does not tell the reader is that:

(a) A significantly greater number of delinquent boys (than non-delinquent) had read two or more adults books (with erotic content); and a greater number of delinquents had read three or more erotic books than the non-delinquents.

(b) The authors of this particular research concluded that their primary measuring instrument (which determined what books were actually read) was unreliable. So the results appear to be worthless and should not be cited.

The writers of the Commission report make three errors: (a) They cite data to prove a point from a worthless study.

(b) They do not tell the reader that the study is flawed.

(c) They present only that evidence which favors their point of view. They fail to cite contrary findings.

Readers who will never read the original study will assume that the writers of the report are honestly supplying complete data. This is not the case.

The majority report of the Commission has made recommendations which involve repeal of all laws pertaining to sale or distribution of pornography to adults, and the same for children (except for pictorial materials).

However, whenever sweeping changes in social policy, laws, regulations, etc., are recommended, changes which might affect the health and welfare of the nation's citizens, the burden of proof for demonstrating "no harm" or "no adverse results" is ordinarily thought to be on the shoulders of the innovators. The innovators, the Commission majority, in this case, have not adequately demonstrated "no harm," and in fact have repeatedly "withheld" evidence suggesting negative effects, or potential deleterious consequences of being exposed to pornography.

A number of brief comments should be made about the research evidence which the Commission staff assembled and led them to

[1] Since the minority were allowed only a limited amount of space to respond to the Final Report and the 4 Panel Reports this critique will necessarily be very limited and deal only with some of the flaws and limitations found.

[2] Except for a single sentence.

conclude that they had "found *no* evidence to date that exposure to explicit sexual materials plays a significant role in the causation of delinquent or criminal behavior among youth or adults . . . or that exposure to erotic materials is a factor in the causation of sex crimes or sex delinquency," when *no* adequate casual studies were done. And again—it should be emphasized: To say *"we have no evidence,"* as they do, is not sufficient when one is recommending major changes in law and social policy which might effect the health and welfare of the nation's citizens.

1. *No Longitudinal Studies.* There were no longitudinal studies contracted by the Commission, studying the long-range effects on sexual activities, sex offenses, changes in moral values, etc. Nearly all studies involved covered only a few days or weeks or less (and in many cases only an hour or two).

2. *No Clinical Studies.* There were no in-depth clinical studies of individuals assessing the impact of use of pornography on attitudes, sex offenses, character, anti-social, or other types of behavior.

3. *Omission of Studies on "Porno-Violence."* No attention was paid to the problem of porno-violence where pornography and violence are linked together in fiction and in motion pictures. This omission is particularly surprising since the Commission focused most heavily on "effects" and in view of the findings in the Final Report of the National Commission on the Causes and Prevention of Violence (1969) which link visual presentations of violence to aggressive acting-out behavior. Their findings would appear to have some important implications for situations where violence and pornography are combined (e.g., sexual abuse, assault, etc. directed toward the female).

4. *Omission of Studies and Evidence in "Imitative Learning" Area.* There is an omission of research, concern or even discussion of studies in the area of imitative and social learning by such investigators as Albert Bandura and his associates at Stanford University. Since this body of research suggests that a significant amount of learning occurs through watching and imitating the behavior of others, this would logically appear to have great relevance to any pornography effects" studies.

If Bandura's work (as well as others in this area) have any validity, it would suggest that certain types of pornography, involving whole sequences of behaviors, probably would effect some individuals if they saw it consistently modeled on the screen or in fiction. In view of this type of evidence and findings presented by the Bandura "school" it would seem, at the very least, that the Commission staff would indicate some cautions or concerns. There are none when one reads their recommendations.

5. *Over Reliance on Questionnaire and Verbal Self-Report Data.* Nearly all of the studies presented in evidence relied heavily on "verbal self report" without outside verification. A number of factors can make this data suspect, and caution must be exercised. (a) Subjects may consciously falsify or distort. (b) Questions in the sexual area in particular could lead to defensiveness, distortion, or "protective dishonesty" of responses. (c) It has been repeatedly demonstrated that slight changes in wording a question can make major differences in the number of people who will respond "yes" or agree with it. This was demonstrated in this study in a most dramatic fashion, when in the Commission-sponsored national survey of a national sample by Abelson, only 23% of the males admitted that pornography sexually roused them vs. 77% agreeing to this in the Kinsey studies. Whom can you believe? (d) Confusingly written questions or difficult vocabulary frequently render your data useless. Thus when in one study cited 40% of a male prison group denied ever having a "sexual orgasm," their response was most probably due to not knowing what the word "orgasm" meant.

The Commission writers tend to treat all "verbal report" as fact, and when there are discrepancies they tend to consider as significant only that data which favors their point of view.

Example:

Harris Poll (1969): 76% of U.S. wants pornography outlawed.

Gallup Poll (1969): 85% of U.S. favor stricter laws on pornography.

Commission Study (1970): 2% of U.S. viewed (Abelson) pornography as a serious problem.

However, when one looks at the question which Abelson asked in this Commission-financed study, it is not difficult to see why he came up with such a low percentage: "Would you please tell me what you think are the two or three most serious problems facing the country today?" It is doubtful that even the most concerned citizen would list pornography as among the first two or three when the country is faced with the problems of war, racial conflict, youth rebellion, law and order disruption, pollution, etc.

The Commission recommends abolition of nearly all laws regulating pornography, and justifies this by saying in their Legal Panel Report: *"A majority of the American people presently are of the view that adults should be legally able to read or see explicit sexual materials if they wish to do so."* They are basing this only on *some* of the responses of U.S. Citizens to Abelson's survey, but not on other data from the *same* survey (e.g. 88% would prohibit sex scenes in movies, when they were put there for entertainment). And, of course, they are rejecting out-of-hand results of the Harris and Gallup Polls who have been in business for several decades. This sort of picking and choosing of favorable statistics is indefensible, especially when most Americans, or even social scientists will probably never have an opportunity to view the original data on which their recommendations and conclusions are based.

Another example of flagrant distortion in the presenting of "results" is in the Legal Panel Report. For some reason they *also* review the empirical research findings on pornography's effects, public attitudes toward it etc., duplicating part of the Effects Panel Report.

While the writers of the Effects Panel Report have made major changes and modifications in which they say, but only after heavy fire and criticisms by the minority and others about "flawed methodology" etc., which has resulted in some modesty and more care in their presentation of results—the same cannot be said for Legal Panel Report. Any law student or other reader of that report will find data which has been systematically marshalled to favor one point of view. This is particularly true in the "public attitudes" toward pornography section. Key data giving opposing evidence is excluded.

6. *Flawed Methodology.* Some of the studies were badly flawed methodologically. These limitations were rarely mentioned when discussing their conclusions. In fairness it should be stated that since the writing of the first draft of the "Effects Panel Report", which was so severely criticized, a major attempt has been made to be more cautious, accurate, and scientifically modest.

Some of the studies did not have control groups. This means that if you expose people to pornography and get "before" and "after" measures of their sex behavior you never know for sure to what the changes or no changes may be attributed to.

Example: In the Mann (1970) study of married couples exposure to pornography, they found that after the study was over their couples reported being more "stimulated" by having to fill out a lengthy sex diary every morning (which listed a number of explicit sex activities which they had to check as to whether or not they were engaged in) than by the several erotic movies shown them. In this study which thoughtfully did use control couples (who were *not* exposed to pornography), they found the "control" wives *significantly* higher at the study's conclusion on self ratings of "being adequate as marital partners." These women had not been exposed to anything. This kind of startling and explainable finding is not unusual in social science research. If this kind of "spontaneous result" had occurred with the wives exposed to pornography it would have been tempting to conclude that pornography was the cause. Control groups attempt, though not always successfully, to minimize this type of error.

The Kutschinsky study

In the final "Effects Panel Report" the Commission staff wrote. *"A survey (Kutschinsky, 1970) of Copenhagen residents found that neither public attitudes about sex crimes nor willingness to report such crimes had changed sufficiently to account for the substantial decrease in sex offenses between 1958 and 1969."*

In the Final Report "summary section" they put it even more strongly,

"Other research showed that the decrease in reported sexual offenses cannot be attributed to concurrent changes in the social and legal definitions of sex crimes or in public attitudes toward reporting such crimes to the police, . . ."

The average reader or even social scientist will probably never get an opportunity to see what this Danish psychologist actually wrote in this report or what he did. He, of course, was studying the issue of why, with increasing pornography in Denmark, has the rate of sex crimes apparently dropped. Maybe pornography has a "therapeutic effect" on sex criminals. What Kutschinsky did, in fact, was intensively interview a carefully drawn sample of adult men and women throughout Cophenhagen surveying (a) whether they had even been a victim in a sex crime, (b) did they report it, (c) would they report certain types of sex crimes now (or ignore it, (d) have they "changed their mind" over the past few years about the seriousness of certain sex offenses, and (e) how did they feel about these same things 10 years ago. He found that 26% of the men and 61% of the women of Copenhagen had been victims of some category of "sex crime" (some minor, some serious). However, only 6% of the male viewed (Primarily homosexual molestation) and 19% of the female victims reported it to the police. This is consistent with statements made by the U.S. Department of Justice in their 1970 Unified Crime Reports referring to rape, "This offense is probably one of the most under reported crimes due primarily to fear and/or embarrassment on the part of the victims." This means overall that sex crime statistics are very "shaky" and have to be viewed with caution simply because most are probably never reported.

Kutschinsky concludes after a careful and extended analysis of his data that, "The decrease in (sexual) exhibitionism registered by the police during the last 10 years may be fully explained by a change in people's attitudes toward this crime and towards reporting it to the police." He concludes in about the same terms with regards to the sex crime of "indecency towards women" (which can involve anything short of a direct rape attempt on a female.) If the reader will go back and read again what the Commission said about Kutschinsky findings, we again get an example of critical omissions of important factual data. With regards to "peeping" a non-violent sex crime which has declined 79.9% in that last decade his data

suggest that the availability of all sorts of visual pornography, films and live sex shows probably have reduced the need of the peeper to risk arrest looking through people's windows when he can see much more in any porno shop. We would agree with this conclusion. In the only other sex crime which he evaluated, "Indecency toward girls" his data suggested little or no change in public attitudes towards its seriousness or lack of willingness to report it. The decline in this offense remains a puzzle with Kutschinsky suggesting pornography possibly being a (poor) substitute for little girls for this type of offender.

The Commissions presentation of the Denmark sex crimes data omits certain types of sex offenses such as incest which most people would regard as fairly serious. If as Kutschinsky's study suggests, there have been no real declines in sex crimes in certain categories, only a change in people's conception about their seriousness and a lessened inclination to report them, this should be given thoughtful and careful consideration. That Danish people have more liberal sex attitudes has been documented by various surveys including another by Kutschinsky which indicated that only 32% of Danes regard sex intercourse with an agreeable 14 year old as a crime, and only 12% would regard the rape of a female as a crime where she permitted the rapist to engage in prior petting.

The kind of sex crime most people would be concerned with would involve a personal assault as in rape, or on a child, or the situation involving exhibitionism which might "traumatize" some women and possibly effect their psychosexual feelings and attitudes negatively.

If we look at the Copenhagen rape statistics (combining rape, rape with robbery, attempted rape, and intercourse on threat of violence) which all involve a sexual assault on another—we get the following picture:

Rape (all categories)—Number of cases

Year:	
1958	57
1959	55
1960	37
1961	48
1962	53
1963	50
1964	39
PORNOGRAPHY FREELY AVAILABLE	
1965	42
1966	70
1967	44
1968	50
1969	35

If one looks at the table and notes that it was in about 1965 when pornography became generally available (even though legal recognition of this wasn't to come for several years) it presents a rather puzzling picture—in that until 1969, there were no major changes in rape rate other than the normal fluctuations common to preceding years. In any event it would certainly be injudicious to conclude that there has occurred a true change or decline in some sex crimes, at least yet, in the light of the above statistics or in view of Kutschinsky's findings that with certain sorts of sex offenses the "decline" can be partially or fully attributable to changes in people's attitudes about certain sex crimes and their changes in "reporting" practices. Other sorts of data which would be useful to have in studying this whole problem would be divorce rate figures for the past 10 years, venereal disease rates, changes in extra marital sex patterns, and prostitution figures for the decade.

The Propper study

The Commission in the summary of their Effects Panel Report conclude:

"In sum, the empirical research has found no evidence to date that exposure to explicit sexual materials plays a significant role in the causation of delinquent or criminal behavior among youth or adults. The Commission cannot conclude that exposure to erotic materials is a factor in the causation of sex crime or sex delinquency."

Based on the above paragraph, cited again and again in various forms throughout the whole report, we have the basis for recommending the removal of all pornography controls for adults and all controls (except pictorial pornography) for children.

Yet if we review the research of Propper, in his study of 476 reformatory inmates (see table 1 [3]) we note again and again a relationship between high exposure to pornography and "sexually promiscuous" and deviant behavior at very early ages, as well as affiliation with groups high in criminal activity and sex deviancy. This study was financed and contracted by the Commission, and while they refer to Propper's study often, no mention is made of any of these specific results in the Commission Report. This study was for many months in the hands of the professional committee that assembled and wrote the report as well as available for inspection of any of the Commission members who wished to read it (but no one else). As the reader can scarcely fail to note, there is a striking relationship between heavy use of pornography and various kinds of sexual "acting out," deviancy, and affiliation with high crime risk groups.

Davis and Braught study

Davis and Braught (1970) in a study of seven different populations of subjects comprising 365 people assessed the relationship between exposure to pornography and moral character, deviance in the home, neighborhood, sex behavior, etc. Samples of city jail inmates, Mexican-American college students, black college students, white fraternity men, conservative protestant students and Catholic Seminarians were studied intensively. In addition each had one female friend fill out a character scale about their behavior. In their study, which was impressive in its rigorous methodology and statistical treatment, they state, *"One finds exposure to pornography is the strongest predictor of sexual deviance among the early age of exposure subjects"*. (page 36). They note that since exposure in this subgroup is not related to having deviant peers (bad associations and companions) and similar type variables, it would be difficult to blame the sexual promiscuity and deviancy of these subjects on other influences such as being influenced by friends (rather than pornography) into these kinds of anti-social activities.

Once again it should be noted that this research report was contracted and financed by the Commission, was in the hands of the Commission staff, for many months, is referred to many times in their report—but not a single mention is made of these findings. This is a particularly important finding in that it suggests real dangers in exposing children and young adolescents to heavy quantities of pornography, the strong implication being that pornography can affect and stimulate precocious heterosexual activity and deviant sex behavior (homosexuality). Obviously more research must be done here, but like the studies linking smoking with lung cancer, it would seen incredibly irresponsible not to report such findings and especially in a report such as this where so few people have access to the original research, and where publication in the scientific literature, if it does occur, would be at least one or two years in the future. It is entirely possible that only one or two of the actual members of the Commission have read this report, and it is doubtful if many of the others would understand fully the scientific jargon and extended discussions of statistical treatment of the data.

The Mosher-Katz study

In another Commission sponsored study by Mosher and Katz (1970) studying male aggression against women in a laboratory setting, they concluded (page 23) that, "The data clearly support the proposition that aggression against women increases when that aggression is instrumental to securing sexual stimulation (through seeing pornography)." This finding was particularly true for men with severe conscience systems as well as for those feeling guilt about being aggressive. This suggests that the need for sexual stimulation (via pornography) can overrule conscience and guilt in "permitting" aggressive behavior towards women. And while this is only a laboratory demonstration, with many limitations, it still constitutes another "negative effects" type of evidence which no attention is paid to by the writers of the Commission report.

Berger's study

In Berger's study (1970) two of the most significant relationships in his research with young people was between exposure to large amounts of pornography and engaging in high levels of sexual activity. This was true for both high school students (gamm: .394 (males) page 48), and college age subjects (gamma: .380 (males) page 62). These relationships were lower (but still significant) for women. An example can be seen below.

Percent college males engaging in sex intercourse, etc.

Amount of pornography exposed to student:	
Hi 5–6	77
4	62
3	60
2	44
Lo 1	4

And while the Commission Report writers correctly point out that just because there is a high association between two variables this doesn't necessarily mean that one "caused" the other. But it does suggest the *possibility* of causation, as in the early smoking-lung cancer studies.

The Walker study

Another Example of Using Flawed Data:

In Chapter V of the Effects Panel Report the Commission reviews the research of Walker (1970) studying sex offenders and non-offenders.

"The mean age of first exposure (to pornography) of the rapists was ½ year or more later than that of the matched non-sex offenders in reference to eight of the 15 items (types of pornography) and ½ a year or more earlier in reference to two. The biggest difference between the groups occurred in relation to depiction of heterosexual intercourse for which non-sex offenders had a mean age of first exposure of 14.95 and rapists a mean age of first exposure of 18.19."

The Commission reports this as fact when a quick look at Walker's tables shows that it can possibly be true. The table below is produced directly from their data.[4]

To claim that the Non-Sex Offenders saw pictures of a male and female having intercourse 1.3 years before they first saw a picture of a male sex organ, or nude female with breasts exposed, etc., demands a great deal of credulity from the reader. It likewise stretches the imagination for one to believe that the Sex Offender group witnessed pictures of animal-human intercourse, oral intercourse, and homosexual relations a year or less before ever seeing pictures of male-female intercourse. These data are obviously in error. And while it's not too difficult to imagine a single typographical error, we have two independent errors here both occurring

[3] Table omitted.

[4] Table omitted.

in the same area. Common sense would dictate a recheck of this data by Walker or the Commission. This never occurred.

The issue of whether sex offenders come from sexually deprived backgrounds

The Commission in their Effects Panel Report, Final Summary Report and elsewhere again and again cite data to show that sex offenders come from conservative, repressed, sexually deprived backgrounds. Quotations from Chapter V, Effects Panel Report, capture well the essence of their conclusions:

"Sex offenders generally report sexually repressive family backgrounds, immature and inadequate sexual histories and rigid and conservative attitudes concerning sexuality."

Or another quote:

"The early social environment of sex offenders may be characterized as sexually repressive and deprived. Sex offenders frequently report family circumstances in which, for example, there is a low tolerance for nudity, or absence of sexual conversation, punitive or indifferent parental responses to children's sexual curiosity and interest. Sex offenders histories reveal a succession of immature and impersonal sociosexual relationships, rigid sexual attitudes, and severely conservative behavior."

Or still another quote:

"Suggest that sex offenders inexperience with erotic material is a reflection of their more generally deprived sexual environment. The relative absence of such experience probably constitutes another indicator of atypical and inadequate sexual socialization."

There are a number of things very wrong about these conclusions. In some of the studies where they compare sex offenders and non-offenders they, inexcusably lump all different types of offenders together "into one bag" (e.g., Cook & Fosen, & Johnson, et al., 1970). The problem here, as the Kinsey Institute studies well demonstrate, is that there are at least 21 categories of sex offenders, some of whom show striking differences in family, sexual and psychosocial backgrounds. To draw general conclusions about such a diverse group is like doing a study on what religious people are like and include in your group Catholics, Unitarians, Buddhists and Black Panthers, treating them as a single "type." For example, aggressive rapists are very impulsive, having extremely high levels of sexual activity from an early age with very high degrees of criminality. They are very dangerous. The "Peeper" on the other hand tends to have very low rates of sexual experience, tends not to marry, and is poorly socialized.

Another type of problem is the use of an inadequate control group. To illustrate how this might cause serious problems consider the following: "Protestants are a more criminally inclined group of citizens than atheists." We study a group of protestants at the state prison and compare them with atheists taken from the general population, and sure enough our conclusion is correct. Or another (again made purposely absurd to illustrate the point). "Men who drink carrot juice will have a high sex drive" and we compare men 20–25 years of age who drink carrot juice with men 90 and over who don't drink it on a variable like frequency of intercourse. If we conclude this study shows that drinking carrot juice is related to or causes a "higher sex drive," we are in error. It has demonstrated no such thing. If we report this and also fail to mention that we didn't have a comparable control or comparison group, or not mention that the controls exceeded 90 years of age, then we've made a second serious error.

One of the studies that the Commission cites as giving evidence that "sex offenders" come from sexually deprived backgrounds is that of Thorne and Haupt (1966). Six percent of their college students report true "I have never had a sexual orgasm" vs almost 30% for the rapists. While they don't have a matched control group to compare the rapists to, they do have data on murderers and property crimes offenders who one might guess would tend to be more similar in social class background, intelligence and age to the rapists (than the college students). When we look at their responses to this question we find an amazing 40% who indicate never having sexual orgasm. Since by the very nature of their offenses it would be difficult to believe that 30% of the rapist sample never had orgasm, and in view of the Kinsey findings, findings that very nearly all of rapists (which they studied) engaged in premarital intercourse and nearly 80% engaged in extramarital sex after they married, these findings appear even more difficult to believe. However, if one is aware of the fact that most rapists, murderers, and property crimes felons come from lower socioeconomic backgrounds, have lesser education, etc. a very simple explanation offers itself. A significant number of these men didn't understand what the term "sexual orgasm" meant. Again, incorrect conclusions are drawn from the data.

Thus one can see the extreme importance of having matched control groups. If we use the murderers and property crimes felons as controls for the rapist sample (a risky thing to do) and compare how this typical sex offender compares on sexual repression, deprivation, etc., we find that (because they are in jail) they do tend to feel more guilty about their sex behavior, but there are no real differences overall. However, if one compares all the prison population against the college students on attitudes we do find them a little more prudish in what they say—but not apparently in what they do, compared to the college students. This undoubtedly reflects the difference between current middle and lower class cultures out of which they emerge.

In the study of Goldstein and associates (1970) they attempted to obtain a good control sample to compare their sex offenders against. But unfortunately they were not too successful. His controls were significantly younger and better educated than his offender groups. (Example: nearly 80% of his controls were under 30 vs only 25% for one of the child molester groups). This makes it very dangerous to say that sex offenders are different or the same compared to "normals" when your comparison group is different. Remember the carrot juice and its relation to sexual activity?

The almost total disregard for these very elementary considerations in evaluating research findings by the Commission report writers leaves one very concerned about how they arrived at their conclusions.

Sex crimes in the United States data

The Commission after being criticized for inaccuracies in their early reports on incidence of sex crimes in America have made a number of corrections. However, a summary of this data would be in order here. Some have argued that because sex crimes have apparently declined in Denmark while the volume of pornography has increased, we need not be concerned about the potential effect in our country of this kind of material, because, essentially, of Denmark's benign experience. However, two considerations must be noted. First, we are a different culture with a major commitment to the Judeo-Christian tradition (which Denmark tends not to be); and secondly, we are actually only a year or so behind Denmark in the distribution and sale of pornography. Hardcore written pornography can be purchased anywhere in the U.S. now. Hardcored still pictures and movies can now be purchased over the counter in some cities. Anything can be purchased through the mails. And in a few cities people can attend hardcore pornographic movies. About the only thing we don't have, which Denmark has, are live sex shows. What is most relevant are sex crime statistics in this country, *not* Denmark. Since it was in about 1960, at the beginning of the decade that pornography began to flower in the U.S. relevant statistics should be examined carefully.

Reported rapes (verified): Up 116 percent 1960–69; up 93 percent 1960–69 per 100,000 females.

Rape arrests: Up 56.6 percent all ages, 1960–69; up 85.9 percent males under 18, 1960–69.

Prostitution and commercialized vice: Up 80.1 percent 1960–69 all ages; up 120.2 percent 1960–69 girls under 18.

Note: The bulk of prostitutes are 15–24 years, peak age: 22; only 13 percent of sex offenses (arrests) are women.

Source: "Unified Crime Statistics," 1970.

Illegitimate births—General note: During decade 1947–67 rate of illegitimacy doubled per 1,000 never married females. 1960–67 illegitimacy ratio up 71 percent (which is the number of illegitimate births per 1,000 live births).

Source: P. 31, 1970, "Natality Statistics."

Illegitimate births 1940 to 1967: Under 15, 2.1 to 6.9 (350 percent increase); 15–19, 40.5 to 144.4 (350 percent increase). During this period, the population of the United States increased 50 percent. "The greatest current rate of increase in illegitimacy is with 15–19 year olds" (source: p. 31, "Natality Statistics" 1970, U.S. Public Health Department).

VD—Gonorrhea—All ages: 1960–69: Up 76 percent; females 15–19: Up 52 percent, 1965–68; females 20–24: Up 36 percent 1965–68; females 25–29: Up 25 percent, 1965–68. VD fact sheet, 1969, U.S. Public Health Service.

"Sex offenses" (homosexual acts, statutory rape, etc.), All ages, 1960–69; Down 17 percent; under 18, 1960–69. Down 21 percent. This is spurious decline. Is due to change in law enforcement policy, primarily involving homosexual acts—Justice Department.

Source: "Unified Crime Report," 1970.

Divorce rate 1960, 393,000 (2.2 per 1,000 population); 1969, 660,000 (3.3 per 1,000 population).

Source: Monthly Vital Statistic Report, Mar. 12, 1970, U.S. Public Health Service.

From this data it would be difficult to argue for a decline in sex crimes and other social indicator data in the U.S. associated with an increase in all types of pornography. It would appear from all the social indicator data that our society is going through a period of considerable social upheaval and distress.

OPINIONS OF PROFESSIONAL WORKERS

In their summary section the Commission states, "Professional workers in the area of human conduct generally believe that sexual materials do not have harmful effects." While this appears to be true, these conclusions are based on a mail-back survey in which only a third of their sample responded. They also neglect to state that 254 psychiatrists and psychologists *had* seen cases where they reported they had seen/found a direct causal linkage between involvement with pornography and a sex crime, while another 324 professionals reported seeing cases where such a relationship was suspected. This totals, in actual numbers, 578. While these therapists represent a small group percentagewise, it would seem to this reviewer irresponsible to gloss over them as if they didn't exist. What if 900 of 1000 physicians indicated that they had found no relationship between cancer of the cervix and use of the coil contraceptive; but the other 100 physicians indicated that in their practice they had come across cases where there was a suspected or definite relationship. Do we discount the experience of the minority because they are outvoted where a possible health hazard is involved.

Additionally, they do not report (though they were aware of its existence) of another survey conducted by a religious group, the Archdiocese of New Jersey, in 1967 of professionals seeing a relationship between involvement with pornography and anti-social sex behavior. The majority of therapists here

reported noting such a relationship at some time during their practice. This study is also flawed because of a low return of "mail-backs" by the professionals. But such is also true of the Lipkin and Carns study. Such omission of contrary evidence is difficult to understand.

The Goldstein study

In another Commission financed study by Goldstein (1970)[5] a study was made of the exposure to pornography and its relationship to sex activities of groups of sex offenders and others. In all, nine separate groups of male subjects were studied and compared. They found that the rapists were the group reporting the highest "excitation to masturbation" rates by pornography both in the adult (80%) as well as teen (90%) years. Considering the crime they were imprisoned for, this suggests that pornography (with accompanying masturbation) did not serve adequately as a catharsis, prevent a sex crime or "keep them off the streets." Fifty-five percent of the rapists report being "excited to sex relations by pornography." When reporting on "peak experiences" in exposure to pornography during their teens, 80% of the rapists report "wishing to try the act" that they had witnessed or seen demonstrated in the pornography exposed to them. This is far higher than with any other group. When asked if in fact *they did follow through* with such sexual activity immediately or shortly thereafter 30% of the rapists replied "yes." An even higher number of blacks (38% replied "yes") which is consistent with many studies showing very high rates of sexual activity early in life for this group. Even among the "normal" controls 28% replied "yes." If we can accept what they say at face value, this would suggest that pornography potentially does affect behavior and possibly adversely. This would also suggest serious concerns about exposing young people, especially to pornographic-violence. Since the writers of the Commission Report base most of their findings on data using "verbal self report" there is little reason not to at least consider as partially valid what these people say about pornography and its influence in their lives. When one asks them about the adult years and to what extent they "tried out behaviorally" what pornography had suggested to them, the figures drop somewhat (15% for rapists, 25% for child molesters, etc.) but still suggests an "effect."

CONCLUSION

Since the Commission is recommending sweeping changes in laws and social policy, the burden of proof is on them to demonstrate "no harm" in suggesting exposure of wider sections of the population to more intense types of pornographic stimuli. This they never do. They can conclude only, as they do, that they have *found no evidence* that it causes harm. This is a shaky foundation for recommending such changes when a number of people *do* claim to have found such evidence including 254 clinical psychologists and psychiatrists (in the Lipkin and Carnes survey) a majority of law enforcement personnel, etc.

Their recommendations are especially surprising when one considers the possible "mental health" implications of the problem as well as the issue of values and "public morality."

With the absence of any significant data clearly demonstrating that pornography is generally "harmless or just a nuisance" and with the presence of a considerable body of data from their own studies that exposure to pornography IS related to a variety of anti-social and sexually deviant behaviors (which is not mentioned in the majority report) serious questions about credibility certainly must be raised about this report. There are a number of excellent studies available to the Commission which could yield a great deal of useful information. Instead, the Commission report is fraught with flaws, omissions, and inaccuracies.

The writer again strongly urges that an independent panel of unbiased social scientists competent in behavioral science research methodology, be called to review the original studies assembled, as well as review what conclusions could be drawn from them.

LEGAL "FINDINGS" OF COMMISSION

We vigorously object to the words "findings" with regard to legal issues. Section IV of the majority report is an attempt to foist upon the people and upon the President and the Congress a philosophy of law which is misleading at best.[6]

The section headed letter "C" states that the "prevailing view" in the Supreme Court is that to be classified as obscene an item must meet three—and all three—criteria. These criteria, the report claims, are: (1) the dominant theme of the material, taken as a whole, must appeal to the prurient interest of the average person; (2) the material must be patently offensive according to contemporary community standards; and (3) the material must lack redeeming social value.

This is a misinterpretation of the law, as counsel to the Commission must know, for he originally stated in his Legal Panel Report that No Majority of the U.S. Supreme Court has ever accepted the proposition that "utterly without redeeming social value" is a "test" for obscenity. To say that an item may not be adjudged obscene if it does not meet all three of these criteria is false. It is exactly the promotion of this canard which has brought us to the deplorable state we are in today in this nation insofar as obscenity is concerned. No Supreme Court opinion so holds. In fact, the *Roth* case says the opposite. This is the only case where the Supreme Court gives us a definition of obscenity. The "utterly without redeeming social value" language is assumed to have been built into the *Roth* test by an opinion in the *Memoirs* (Fanny Hill) case of 1966.

However, this was the opinion only of three Justices: Brennan, Warren and Fortas. It was not the opinion of the Court, and so is not the law of the land. It is a three-Justice out of nine opinion, not binding on anyone. In 29 American Jurisprudence 2nd, at Section 195 of the topic "Courts," we find the following:

"A decision by an equally divided court does not establish a precedent required to be followed under the stare decisis doctrine. And where the members of the court unanimously or by a majority vote reach a decision, but cannot even by a majority agree on the reason therefor, no point of law is established by the decision and it cannot be a precedent covered by the stare decisis rule."

The Supreme Court of the United States has said in 218 U.S. at 213 that unless a majority of the Supreme Court agrees on an opinion the case cannot become "an authority either in this or in inferior courts."

The *Roth* case gives us only the prurient interest test and this test has not been modified by *any* subsequent Supreme Court decision. In *Roth* the Court said, an item is obscene when to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to the prurient interest.

This brings us to the Legal Panel Report, prepared by general counsel Bender and staff, with the apparent assistance of Mr. Lockhart, from which the "Legal Findings" section is drawn, and upon which legislative recommendations are based.

The Legal Panel Report should reflect the concepts of the Commission, their conclusions, their interpretations and analysis and their recommendations for legislative action. Instead, the Commission is asked to adhere to ideas, concepts, suggestions, analyses and recommendations prepared by staff members appointed by the Chairman and his general counsel, and reflecting their points of view.

This Bender-Lockhart Panel Report is misleading in many fundamental areas of the law, and so misleads the Commission, so as to cause those members, many of whom are unlearned in the law, to come to fundamentally erroneous conclusions of the state of the law. We object specifically to the following misleading statements in the Bender-Lockhart Legal Panel Report:

1. "Unless there is a basis for finding that certain sexually explicit materials create such a danger (clear and present danger of significant social harm), therefore, general prohibitions upon the dissemination of 'obscene' speech would appear constitutionally invalid under ordinary principles." We are told on the next page that this analysis was rejected in *Roth* by the Supreme Court. Why then do they state it as a fact and ask the Commission to accept it?

2. Shortly after this, the Panel Report begins to take after the United States Supreme Court decision in *Roth* and suggests that it is erroneous and should be reversed and in fact has in effect been reversed by the decision in *Stanley* v. *Georgia* in 1969. They discuss the meaning of *Stanley* vis-a-vis *Roth* as they interpret it and make the following statements:

(a) "Obscenity prohibitions were found constitutional in the *Roth* decision * * * without investigation into or conclusions regarding the actual social effect of the dissemination of obscene materials. It is the conclusion—that obscenity prohibitions regulating what even consenting adults may obtain may be upheld without any indication of social harm—that has been brought into question by * * * *Stanley*."

(b) "*Redrup* may be read as doubting whether *Roth* was actually still the law."

(c) "In *Stanley* * * * the Court threw greatly into doubt the continuing validity of the fundamental premise of the *Roth* case that the dissemination of 'obscene' materials may be prohibited without reference to First Amendment values, and suggested, instead, the strong constitutional significance of the question whether such materials are in fact socially harmful."

(d) "The question of the social effect of obscenity, which *Roth* had deemed irrelevant has assumed critical importance in *Stanley* 'in order to determine whether the state there had a valid regulatory interest sufficient to prohibit private possession of obscene materials.' The Court held in *Stanley* that it did not."

(e) "Prohibition upon the commercial dissemination of obscenity to consenting adults may interfere with the right of adults to read or see what they wish in their own homes."

(f) "*Stanley* appears to have held that government may not rest prohibitions upon what consenting adults may read or view upon a desire to control their morality."

(g) "It further held that adult prohibitions premised upon a desire to prevent crime or anti-social behavior must, at least, rest upon a solid empirical foundation."

A Commission member, reading these statements and the continual "pounding" of *Stanley* v. *Georgia* at every opportunity throughout the rest of this panel report, would naturally assume that these statements are true and that *Roth* in some way has been overturned in a very fundamental manner by *Stanley* v. *Georgia*. But as a matter of fact *Roth* has not been overturned.

[5] Table 9–10, pages 48, 50.

[6] On September 10, as this dissent was going to press, Mr. Lockhart called Commissioner Gill and instructed him to make certain modifications in these statements so that the legal panel report no longer reads the same as it did when the Commission was influenced by it to vote for the legalization of obscenity at their first meeting of August 11 and 12 and the final meeting of August 26 and 27.

It has been specifically confirmed in *Stanley* at 22 L. Ed. 2d 542, where the Court says:

"Roth and the cases following that decision are not impaired by today's holding. As we have said, the states retain broad power to regulate obscenity; that power simply does not extend to mere possession by the individual in the privacy of his own home."

If the Bender-Lockhart Panel Report was intended to give the Commission an unbiased view of the state of the law, why was not the meaning of this phrase expounded? Since *Roth* is still the law of the land, then the following are the true facts (as stated in *Roth*):

(1) It is not necessary to prove that "obscene material will perceptively create a clear and present danger of antisocial conduct or will induce its recipients to such conduct."

(2) That the basis for federal and state proscription for obscentity is "the social interest in order and morality."

It is also to be noted that the Court said its decisions following *Roth* are not impaired.

In *Ginsberg* v. *New York*, at 20 L. Ed. 2d 195, the Court said:

"Our conclusion in *Roth* * * * that the clear and present danger test was irrelevant to the determination of obscenity made it unnecessary * * * to consider the debate among the authorities whether exposure to pornography caused antisocial consequences."

The *Ginsberg* case was subsequent to *Roth*. Why was it not mentioned? Among other United States Supreme Court decisions subsequent to *Roth* that should have been mentioned are the following, all contradicting the Bender-Lockhart thesis that somehow *Stanley* has changed things:

1. *Times Film (1960)*—(State has right to censor obscene motion pictures.)

2. *Freeman v. Maryland (1965)*—(State may require prior submission of motion pictures to a Board of Censors.)

3. *Ginzburg v. U.S. (1966)*—(State has a valid interest in preventing pandering to "the widespread weakness for titillation by pornography" books and magazines.)

4. *Mishken v. New York (1966)*—(State has interest in protecting homosexuals from obscenity.)

5. *Interstate Circuit v. Dallas (1968)*—(Municipality may enact an ordinance regulating motion pictures for adults as well as children and censoring those obscene.)

Each of the statements made in (a), (b), (c), (e), (f), and (g) above in the Bender-Lockhart Report are incorrect when we look at *Stanley v. Georgia's* reaffirmation of *Roth* and cases thereafter. The statement made in (d) above is misleading that "private possession" is permissible because it fails to complete the quotation "in the privacy of his home."

It would appear that for purposes of the Bender-Lockhart Panel Report, the "wish is father to the thought." They would like *Stanley v. Georgia* to say what they say it says but that desire is not borne out by the facts of that case.

It is quite clear that *Stanley v. Georgia* stands for a very narrow position and that is that a state may not convict a person of a crime "for mere possession of printed or filmed matter in the privacy of a person's *own home*." 22 L. Ed. 2d 542. And again, at 22 L. Ed. 2d 551, the "right to be free from state inquiry into the contents of *his library*." The State has no business "telling a man sitting alone *in his own home*, what books he may read or what films he may watch."

It could not be much clearer that this was the narrow proposition decided. The Court said it *four* times while specifically upholding *Roth* and all subsequent decisions.

3. The Bender-Lockhart Panel Report hits us with two phrases. One appears to be the invention of the authors in lieu of the use of the word "obscene" and that is the phrase "explicit sexual material." The other phrase is the catchword "consenting adults" which is a euphemism to express the authors' position that there are no restraints on "explicit sexual material" as long as "consenting adults" patronize it. Translated simply, it means "Legalize Obscenity for Adults" and the authors of this report should have so labeled it since this is the net effect of their suggestions. Nowhere is it explained that neither of these terms is used in any Supreme Court opinion, nor is it explained that this is the phrase used by those who would have the Court legalize the showing of "I Am Curious (Yellow)" in both Massachusetts and Maryland where it has been held obscene. In fact, there is an amazing parallel between the Bender-Lockhart Panel Report and the language used in the briefs for the distributors of that motion picture. Both sing the same tune. The Panel Report suggests that adults have "a right to obtain [explicit sexual materials] they wish to see." They cite no justification for setting up this false premise. Certainly *Stanley v. Georgia* never said it. They then proceed to state the motivations of the government in regulating "explicit sexual materials" (which we translate to "obscene"). They fail completely, however, to give the real reason which is the "social interest in order and morality." Having set up two false premises, they then proceed to obfuscate the true situation. There is a bald misstatement of the law when the Panel Report says:

"In a series of cases subsequent to *Roth*, the Court made clear that where attempts were made to prohibit only specific distributional activities connected with sexual materials—and not to prevent consenting adults from obtaining material they wished to see—more inclusive definitional standards than that imposed in *Roth* would be permitted to be applied. The first case leading in this direction was *Ginzburg* v. *United States*. There the Court * * * permitted the conviction of the defendant to stand because he was found to have 'pandered' the materials in an offensive manner rather than merely to have sold them to persons who wished to obtain them. Thus the Court permitted a conviction which it would not have permitted had the defendant merely been engaged in neutral dissemination to consenting persons.

You would assume that Mr. Bender and staff, who ought to know, have told the Commission members what the *Ginzburg* case held. Nothing could be further from the truth. As they ought to know, this is *not* what *Ginzbury* held, since:

(a) The term "consenting adults" is nowhere used or implied in that case.

(b) The Court did not say anything about *Ginzburg* not having "merely sold them to persons who wished to obtain them." It didn't mention that at all.

(c) The implication that the case stands for the right to receive "obscenity" by consenting adults is misplaced. The Courts said in *Ginzburg* that the materials *were not* "obscene in the abstract".

4. The Bender-Lockhart Panel Report suggests that "some of" the federal mailing statute may be unconstitutional under *Stanley*. This is another non-sequitur. The mailing statute has nothing to do with invading a man's home.

5. The implication on page 13 that there is something in *Redrup* which proves a theory that "consenting adults" have a right to receive obscenity is also misplaced. *Redrup* found the materials not to be obscene.

6. On page 16, the Bender-Lockhart panel Report states that:

"*Stanley v. Georgia*, if given full effect, would mean * * * that the individual's right to see materials of his own choice may only be overcome where there is a substantial social basis for government regulation. As a result, many applications of general prohibitions may no longer be permissible. The *Roth* standard for determining the 'obscene' retains potential validity only in those areas where *Stanley* permits general prohibitions to apply."

Now, if this problem were not so important to our country, the immediate reaction to such a non-sequitur from *Stanley* v. *Georgia* would be to shrug it off as ridiculous. There is absolutely nothing in *Stanley* to warrant this misinformation.

***Roth* is supreme,"** says Stanley—not the other way around. *Stanley* cannot be exploited or expanded to help the pornographers in this fashion.

7. Eventually, the Legal Panel Report abandons the position that *Fanny Hill* has modified the *Roth* test and engages in the business of counting Justices who have adopted the "patently offensive" test. Four of these six Justices are no longer on the Court so this maneuver fails. The footnote reference to Black and Douglas also fails since they have never enunciated this standard. The reference to Stewart and Harlan refers to federal cases only. The reference to the American Law Institute standard is misleading since that Institute never used the phrase "patently offensive".

8. Again, the Panel Report abandons its original claim that the *Roth* test included an "utterly without redeeming social value" element, and now tries to give new dignity to the opinion of three Justices (two of whom, if we use his technique, we should note are no longer on the Court) by calling it a plurality opinion. As we point out in our discussion of "Fanny Hill," under the decisions of the United States Supreme Court, an opinion of three Justices is no precedent, does not establish the law and does not bind either the United States Supreme Court or "any inferior court."

9. The Legal Panel Report finally admits that *Memoirs* "utterly without redeeming social value" "test" is not a test at all, not having been adopted by a majority, but they suggest that it is nice to incorporate the same in statutes because Black and Douglas are on the bench and this is two strikes against you. They state, "So long as at least three other Justices employ the three-part test," no application of a general prohibition which does not employ this test will be upheld on appeal. What kind of specious reasoning is this? The Bender-Lockhart Legal Panel Report seems so intent on keeping this unnecessary language in our statutes (which contradicts *Roth*—see our comments under *Memoirs case*) that they employ the scare tactics that you only need two more people against you and you lose. Is this what our statutes should be based on in this vital area? Is this what this Commission was formed for, "to estimate percentages"? Fortas and Warren are gone, leaving only Brennan who adheres to this pernicious concept. Presumably then, eight out of nine Justices will adhere to *Roth*, which rejects this so-called test and says that once it is obscene by the *Roth test* (which has no social value language), then it is proscribable. But this is not our function. We are to interpret *Roth* honestly and give the country an honest definition of obscenity. Such a definition does not include the "Brennan" so-called "test". It is to be noted, that the Legal Panel Report does not quote the recent decisions in Maryland, Massachusetts and Arizona that say that there is no "social value" test in *Roth* (see our comments in Appendix under *Fanny Hill*) nor do they say that New York is proposing repeal of this part of their statute (see our remarks under *Fanny Hill*).

10. The Bender-Lockhart Panel Report states that the Supreme Court believes that the *Roth* standard does not permit a finding of obscenity to be made under a prohibition of what consenting adults may obtain with regard to a large class of pictorial material. Again we note that there is no opinion of

the Supreme Court that supports this statement that somehow "consenting adults" are a separate class under the *Roth* standard. That phrase is not used in any Supreme Court opinion.

V. CONCLUSIONS

We submit: That the Commission majority has not carried out the mandates of Congress.

We submit: That its legislative recommendations should be excluded from consideration by the Congress and States, since they are not responsive to the mandate of Congress to regulate the traffic in pornography. It is irrelevant legislation and deserves condemnation as inimical to the welfare of the United States, its citizens and its children.

We submit: That the purpose of the Commission's report is to legalize pornography.

In the pursuit of the mandates of the Congress, and in compliance therewith, we have made a review of the law and the decisions of the United States Supreme Court; and have analyzed the same in detail. This review is attached as Appendix I. In the light of that review and comment thereunder, and in view of our other mandates, we make the following recommendations.

VI. RECOMMENDATIONS

1. Recommended test or definition of obscenity

A thing is "obscene" if, by contemporary community standards, and considered as a whole, its predominant appeal is to the prurient interest. As a matter of public policy, anything which is obscene by the definition shall be conclusively deemed to be utterly without redeeming social importance. Any slight social value in such obscenity shall be deemed outweighed by the social interest in order and morality.

"Prurient interest" is defined as a shameful or morbid interest in nudity, sex or excretion which goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for, or directed to a specially susceptible audience, the subject matter shall be judged with reference to such audience. When the subject matter is distributed or exhibited to minors who have not attained their 18th birthday, the subject matter shall be judged with reference to an average person in the community of the actual age of the minor to whom such material is distributed or exhibited. In all other cases, the subject matter shall be judged with reference to the average person in the community.

Comment

This formulation is taken from the *Roth* case which is the only case in which the Supreme Court defined obscenity and the *Ginsberg* case, in which the Supreme Court accepts the concept of variable obscenity as it applies to minors. It rejects the suggestion of three of the nine Justices that "utterly without redeeming social value" is a test for obscenity, since the Supreme Court has never adopted this suggestion. In fact, it is this unnecessary "test" that has caused the flood of hardcore pornography in motion pictures, books, magazines and other publications.

A complete review of the lack of constitutional necessity for this so-called "test" is found in Appendix I in our comments under the *Memoirs* (*Fanny Hill*) case.

The *Roth* Test, it is claimed by some is subjective. Upon examination, however, it is plain that the individual juror is not instructed to apply his subjective concept of what is obscene, but to determine something objective *viz.* "the prurient interest of the average person." This is very similar to what juries are called upon to do in negligence cases where the juror is asked to determine if a person used that degree of care that a "reasonably prudent man" would use. This determination has never been thought to be subjective nor too impractical or difficult to apply. We have confidence in the ability of the Anglo-Saxon jury system to determine obscenity if properly instructed. (See Judge's charge in *Roth* case Appendix I).

Our recommendations are squarely based on the concept that the State has, as the Supreme Court says, a right to enact obscenity legislation based on the "social interest in morality." There is a distinction that should be made between individual morality and the level of general morality which the state needs to protect.

A person's beliefs and practices depend on what he relies on for an authority as to what is right and best. As children grow up, they come under various authorities' influences: parents, relatives, friends, teachers, writers, actors, celebrities, clergyman and a host of others. They are also influenced in various ways by other forces of good and evil.

At every point in life a person has a certain moral character. It is the sum total of what he then believes and practices in the area of right and wrong. This overall moral character is constantly changing under the interplay of the aforementioned influences. Thus if a person accepts higher standards, his moral character improves; if he accepts lower standards, his moral character deteriorates.

Not only does every individual reflect a certain moral character, but so does every group of individuals, a club, a city, a state, or even a nation—*the essence of which is determined by a general consensus of individual standards.* It is, stated another way, the distillation of all the individual moralities or the *level* of morality generally. It is this level, this distillation, this average, this essence, which the state has an interest in protecting. The state protects this level from falling and creates an atmosphere by which it can rise. The obvious morals protected are chastity, modesty, temperance, and self-sacrificing love. The obvious evils being inhibited are lust, excess, adultery, incest, homosexuality, bestiality, masturbation and fornication.

A discussion of the background of the other aspects of this definition may be found in our comment on the Model State Obscenity Statute in Appendix II.

2. Recommended Federal legislation

We recommend:

(a) That the United States Codes Sections 1461, 1462, 1463, 1464, 1465, of Title 18, and Section 1305 of Title 19, and Section 4006 of Title 39 be amended to define "obscene" in accordance with our recommended definition of obscenity mentioned above.

(b) That so much of our recommended Model State Statute, found in Appendix II, which is suitable for incorporation in these federal statutes be therein incorporated.

(c) We recommend that Congress note that Section 4009 of Title 39, Prohibiting of Pandering Advertisements in the Mails, was specifically upheld by the U.S. Supreme Court in *Rowan* v. *U.S.*, decided May 4, 1970. This statute, it should be noted, gave a parent the right to require also, that the mailer stop sending mail to "any of his minor children who have not attained their nineteenth birthday, and who reside with the addressee."

While the decision did not turn on this specific point, it is nevertheless an indication that the Supreme Court will accept at least an age 18, and possibly 19 or older, as a division line between minor and adult in the obscenity field. Certainly under 16 is too low.

(d) We have reviewed anti-obscenity legislation now before Congress which we believe will help, effectively and constitutionally, to regulate obscenity. This review is attached as Appendix III.

(e) We recommend legislation or a Presidential Directive establishing a Division, in the Office of the Attorney General of the United States, under the direction of a Deputy Attorney General, made up of a team of skilled lawyers ready and able to assist District Attorneys throughout the nation in prosecutions against sex exploiters. We have personal knowledge of the fact that district attorneys generally are desperately in need of this type of assistance. The urgent necessity for the same was enunciated in March of 1965 by the presiding Judge of Franklin County, Pa., Judge Chauncey M. Depuy, when he said:

"Whenever a prosecution for obscenity occurs in a country, the well-heeled purveyors of smut act with lightning alacrity to provide high-priced counsel for the defendant. Legal smut specialists are called into the county from the nationwide staff. These professionals soon place the local district attorney's staff, unacquainted with a highly specialized field of law, at a great disadvantage. The average district attorney or assistant is no match for these well-experienced 'pros' who move from county to county and state to state . . . There is no hope for government to serve the interest of the general citizen in managing this flood of pornography unless a massive effort is made at the Department of Justice level. An effective mechanism must be devised, on a permanent basis, as a division of the department, having . . . highly skilled lawyers ready to be loaned at any time . . . to assist the district attorney in connection with any prosecution against the sex exploiters."

It should be noted that if it is believed that such a mechanism could not be set up on the federal level without enabling legislation, such legislation could be based on the Commerce clause, since most obscenity is transported interstate or imported. A model could be found in language used in the Civil Rights Act of 1964.

(f) We recommend the establishment, by Federal legislation, of a National Crime Research and Reference Library on the Law of Obscenity. The Library will be unique, since the Librarian of Congress has indicated that after diligent search, "no reference to any special law library in this area has been found, and . . . such a library would be unique and unduplicated as a single collection."

The purpose of the library will be to service prosecutors nationwide to expedite preparation of cases. It will be available also to the judiciary, behavioral scientists, clergymen, writers and other professionals who can contribute to the effort to stem the flow of obscene material. The district attorneys of New York City are of the unanimous opinion that such a library will prove invaluable to law enforcement agencies. It will contain everything written on the law of obscenity: statutes, ordinances, decided cases, text, commentaries, etc. It will also contain a section on medical, psychiatric and psychological research relative to obscenity. Law enforcement officials believe that the convenience of finding all precedents, statutes, briefs, etc. in one location will save countless hours in case preparation.

3. Recommended State legislation

(a) *Model State Obscenity Statute.*—Attached to this Report as Appendix II is our recommended Model State Obscenity Statute based on the concept of variable obscenity and taking into consideration all U.S. Supreme Court cases. We believe it is a constitutionally effective statute that will effectively regulate the traffic in obscenity. The suggested statute is explained and annotated in the Appendix.

(b) We also recommend to the States that they establish, by legislation, a Board of Film Review which would require—under carefully prescribed rules based on Supreme Court decisions discussed in Appendix I—the

submission of all motion pictures for licensing prior to their exhibition. This proposed statute is taken from Maryland Statutes Article 66A which has been revised to comply with *Freedman* v. *Maryland*, a Supreme Court decision. In our opinion it will withstand constitutional attack. A copy of this proposed Model Statute on Film review is attached as Appendix IV.

(c) In addition, we suggest that some States might desire to permit local ordinances for the establishment of Film Review Boards, generally, or for the purpose of establishing classification of films as suitable or unsuitable for minors under 18. Such States should enact legislation confirming the existing right of municipalities to adopt such legislation, and permitting them to apply for injunctive relief in the courts; and requiring a prompt judicial determination of the issue. A suggested statute to be used as a model is Section 418A, again of the State of Maryland, found in Appendix V. It should be used as a supplement to any State statute or local ordinance on Film Review or classification. This model should be modified where used in aid of local ordinances to permit the Chief Legal Officer of the municipality, or the Film Review or Classification Board, to apply also for an injunction in the case of motion pictures.

(d) We recommend the employment of the injunctive remedy, found in 22a of the New York Statute or 418A of the Maryland Statute, to supplement the Model State Statute generally. This is a most effective weapon sanctioned by the decisions of the U.S. Supreme Court, and will reach all types of obscenity. See appendix V.

(e) We recommend that the Attorney General's Office be required to review for possible prosecution and type of suspected obscenity distributed or about to be distributed, of which he gains knowledge, and which falls into any of the descriptive categories listed below:

1. The Stag Film.
2. The Sexploitation Film.
3. The Commercial X-rated Film.
4. The Commercial Unrated Film.
5. Advertisements for X and Unrated Films.
6. Underground Sex Publications.
7. Underground Newspapers.
8. Mimeographed Underground Newspapers.
9. Sensational Tabloids.
10. Homosexual Magazines.
11. Sex-violence Magazines.
12. "Spreader" or "Tunnel" Magazines.
13. Teenage Sex Magazines.
14. Pseudo-Scientific Sex Publications.
15. So-called Nudist Magazines.
16. Lyrics on Commercially Distributed Rock Records.
17. Sex-action Photographs.
18. Sex-action Records.
19. Sex-action Slides and Tapes.
20. Mail Order Advertisements for the Above.
21. Paperbacks with themes of: Homosexuality, Sado-masochism, Incest, Bestiality.
22. Hardcover Books Devoted to Homosexuality, Sado-masochism, Incest.

(f) We advocate the establishment in the office of the Attorney General of each State, a team of one or more skilled attorneys, under the direction of a Deputy Attorney General, to be used to assist in the local prosecutions where intrastate commerce is involved or where federal assistance from the Department of Justice is not readily available.

(g) We advocate the establishment in State Police headquarters of a similar division, working closely with the legal staff just mentioned. The state police have experts in arson, ballistics and other specialties. The formation of a special unit on pornography is long overdue.

(h) We advocate the establishment of permanent State Commission to examine the laws on obscenity, to make recommendations to the legislature, and recommendations for more effective means of enforcement. A suggested statute is attached in Appendix VI, and is modeled on a statute of the State of Illinois, approved September 6, 1967.

(i) We recommended the establishment of a State Commission to review and classify Motion Pictures and printed materials for minors. A suggested statute in this respect, based on our review of *Bantam Books v. Sullivan* is attached as Appendix VII.

(j) As minimum legislation, we advocate elimination of the phrase "utterly without redeeming social value" in any State statute. A suggested statute is attached as Appendix VIII.

4. Recommended local ordinances

(a) We recommend a review of existing ordinances in the light of our review of U.S. Supreme Court decisions in Appendix I, and the modifying or amending of same to comply therewith, including the elimination of the phrase, "utterly without redeeming social value" whenever found.

(b) We recommend the adoption of local ordinances (wherever the State has not adopted a Film Review Statute) to review Motion Pictures—based on Maryland Statute recommended above.

(c) On an optional basis, or as part of a general ordinance on motion picture review, we recommend a Film Review and Classification Ordinance for minors. The suggested ordinance, attached as Appendix IX is liberally designed to meet Supreme Court requirements.

(d) We recommend an ordinance designed to protect minors from being exposed, on the highway or street, to drive-in movie scenes of motion pictures that are unsuitable for children. The suggested ordinance attached as Appendix X has been approved by the United States Court of Appeals for the Fifth Circuit in the case of *Chemline Ind. v. City of Grand Prairie*, decided August 8, 1966, 364 F 2d 721.

(e) We recommend a local ordinance to penalize the showing of obscene motion pictures, and to penalize the licensee found guilty. See Appendix XII, based on a second ordinance upheld in *Chemline* case above, containing pure *Roth* test.

5. Recommended private action by the public

(a) We recommend that private citizens join with or form private, non-sectarian, community organizations that take organized, but constitutional action against obscenity.

(b) We recommend citizens bring official legal complaints whenever evidence of obscenity comes to their attention.

(c) We recommend that citizens continually urge their municipal, State and federal officials, to prosecute obscenity cases. Here, again, this is best accomplished in an organized manner, working through an existing community organization.

NOTE.—Appendices are withheld.

[From the National Observer, Oct. 12, 1970]

FLOODLIGHTS ON SEX

"The very foundation of our society rests upon healthy sexual attitudes grounded in appropriate and accurate sexual information."

Thus declares the majority report of the commission authorized by Congress to study obscenity and pornography and their effects on American life. The statement is made in connection with a plea for more extensive sex education programs, and it exemplifies the commission's belief that the success of the pornography business is related to a popular reticence about sexual matters.

Throughout the commission's report is a recurring theme: Let's throw a bank of floodlights on the sex act. That way we can help to eliminate the mental repressions and other sources of unhappiness that sometimes arise from keeping the subject in a shadowy corner. And let's follow that by legalizing pornography because there's no proof it does any damage, and, anyway a lot of people want it.

Well, as we have stated in the past, we think a carefully prepared program of sex education, geared to the student's level of maturity, is desirable. But unlike the commission, we are unable to make the jump from that position to one advocating the free dissemination of exploitive sex materials. Thoughtful sex education enlightens the student and should ennoble the act. Pornography does the opposite.

While we question whether the social foundation rests upon "healthy sexual attitudes" (food, shelter, clothing, and the willingness to live in an orderly, lawful manner might be more reasonable "foundation" candidates), we question even more what the commission means by "healthy" and how pornography can contribute to that happy-sounding condition.

Too often these days "healthy" means an absence of restriction, a determination to obey-that-impulse. Certainly one risks fewer mental repressions that way. But human inhibitions are exactly what make the social order possible. We do not say everything we think; we do not act every way we feel.

In order to protect social stability, people make many unspoken agreements about what behavior is tolerable and what is not. Whether we call these agreements customs or taboos, their effect is the same. They serve to minimize the friction among individuals. When the matter is important enough, society makes laws to reinforce restrictions on behavior.

Most people believe that pornography, because it devalues human life and love, should be restricted by law. The First Amendment consideration is not a genuine issue, because there are many areas in which the law draws the line on what may be expressed in advertisements (misrepresentation), newspapers, magazines, and books (libel), and even in speech (slander).

It would be impossible, of course, to eliminate obscene materials altogether, no matter what final definition of the stuff is agreed upon or how heavy the penalties are made. But pornography can be controlled. It can be kept not only away from children, but out of public sight. If it could not be, indeed if the commission had its way, we might be approaching the time when the least pleasing representations of sexual activity were placed on subway cards and roadside billboards.

If a society is to have a "healthy" attitude toward sex, that society must have more than "right" information. It must continue to regard some areas of its humanity with delicacy and discretion. By tilting a rose-colored shade over the floodlights, a society does the decent thing. And probably the wise thing as well.

Mr. McCLELLAN. Mr. President, I hope the resolution will be unanimously agreed to.

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

Mr. McCLELLAN. I am happy to yield to the distinguished Senator. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 11 minutes.

Mr. McCLELLAN. I yield 3 minutes to the Senator from Mississippi.

Mr. STENNIS. Mr. President, I thank the Senator. I first want to thank him for his fine interest in this subject, for his splendid analysis in his speech, and for the action that he has proposed here today. I commend him highly.

The Senator from Arkansas is exactly right: If by our silence we seek to duck this matter, or dodge it, or fail to act, it is the equivalent of giving it our ap-

proval, and it does not deserve the approval of this body, or any other body.

Mr. McCLELLAN. If I may interject, I say to the Senator it would certainly be interpreted that way by the public.

Mr. STENNIS. Certainly. That is the only interpretation that reasonable minds could put on it. I thank the Senator.

Mr. President, I cannot accept in any measure, in the slightest degree, that the Commission report reflects the beliefs and opinions of the American public, of the administration, or of the Congress. I consider the report irresponsible, and in effect degrading. In fact, I believe that this report does not reflect the opinions and beliefs of the American people. It does not reflect the sense of decency and morality of the great majority of the American people.

It seems to me that on the one hand the Commission went far beyond the role intended for it by the Congress, and at the same time fell woefully short of what could have been expected from such extensive deliberations.

The report offers what appears to be a series of opinions unsupported or flimsily documented, resting largely upon a philosophy of permissiveness. There is a pronounced lack of fact established by research, and much reference to the difficulty of obtaining factual evidence on many key aspects of the problem. The document purports to reflect the opinion of the majority of adult Americans, but fails to establish that premise. The dissenting minority of the Commission asserts strongly that the report does not, in fact, respond to public opinion as they heard it expressed in hearings.

I find some consolation in the fact that five of the 17 members of the Commission dissented. Two did so because of the shortage of persuasive evidence to support the Commission findings. Three differed completely from the entire philosophy, expressed in the report. They reject, I am glad to say, the Commission conclusion that all legislation should be repealed which denies to adults any obscene or pornographic materials which they might desire to obtain.

The report gives the impression that the majority of the Commission have essentially given up on human nature, and are prepared to accept a very cynical view of any inherent good in the human soul. They tend to blame people, rather than what is inflicted upon them in the way of offensive and degrading books, pictures and words. They concede without question the very doubtful assumption that if morally degrading material is not openly available and thrust upon people, then the people will seek it covertly. This is doubtless true with some individuals but I believe they represent only a small percentage of the people.

I sense a real confusion on the part of the majority of the Commission. I believe they are confusing the individual and society as a whole. They are preoccupied with the personal rights of the individual and negligent of the very legitimate concern of society in maintaining suitable moral standards for the public as a group. We have seen too much in recent years of the tendency to move toward excesses in permissiveness to the individual, to the detriment of the rights of the group.

The Commission would repeal existing legislation aimed at the distribution of obscene and pornographic matter to adults. They would offer the pornographic industry legal sanction, and strip the public of what slight protection it now enjoys. They would leave the country without standards of decency and without a sense of decency.

Mr. President, I hold that national morals are a matter of national concern. Therefore, they are a matter of concern to the Congress. The Commission report comes as a shock to the majority of American people. It should be condemned, and I do condemn it. It should be repudiated, as the Senator from Arkansas says, and I believe it will be repudiated by this body and by the American people. The fact that such a report can originate from an official commission is fair warning that we should work for practical and effective legislation for the control of obscenity and pornography.

The Commission seems to think that the American people have lost their sense of decency and have no sense of propriety. The American people have not lost their sense of decency nor their sense of propriety. They demand a worthy inheritance for their children.

I have absolutely no sympathy with the position or the approach of the majority of this Commission, and I think that, representing the American people, the Senate should repudiate this report and officially reject it by a resounding vote. We shall make a new start from that point, but we must start from the point of condemning and repudiating this Commission report.

I again commend the distinguished Senator from Arkansas for his work in this matter.

Mr. McCLELLAN. I thank the distinguished Senator from Mississippi.

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

Mr. McCLELLAN. I yield 4 minutes to the Senator from Michigan.

Mr. GRIFFIN. Mr. President, the recommendations of the Commission on Obscenity and Pornography, which was appointed by President Johnson in 1968, are, to say the least, shocking and totally unacceptable.

The Commission's report should be tossed into the trash can along with all the foul and corrupting pornographic material that it would make available to the public.

The gist of the report is that erotic materials do not contribute to the development of character deficits, nor operate as a significant factor in antisocial behavior. Mr. President, the members of Congress and the American people simply do not agree with such a view.

The Congress on a number of occasions has indicated that the smut traffic in this country is a matter of national concern, and should be more effectively controlled. Indeed, it was primarily for this reason that Congress in 1967 adopted the resolution which authorized President Johnson in 1968 to appoint this Commission on Obscenity and Pornography.

After 3 years of study and expenditures of $2 million of the taxpayers' money, the Commission tells us, in effect, that Congress does not know what it is talking about.

The Commission report not only defies commonsense, it disregards the views of experts.

Purveyors of filth have extended their activities alarmingly. In several cities of Michigan, children can now walk into "porno shops" and buy material of the most offensive nature. An increasing number of citizens in small communities receive unsolicited filth in the mails.

The Commission report contains the amazing statement that "public opinion in America does not support the imposition of legal prohibitions upon the consensual distribution" of pornography to adults. I invite the Commission to examine the thousands of letters and telegrams on this subject which I have received from my constituents in the past several years. All of them urge stricter controls.

I was glad to note that not all the Commission members agreed with the views and recommendations set forth. Minority views were filed. Among those who dissented was the only member of the Commission appointed by President Nixon, an appointment made to fill a vacancy.

The real danger of the report is not that it will be accepted by Congress. It has been assailed by leaders of both parties in both Houses, and by spokesmen for the present administration. However, the report has served to provide ammunition to the self-proclaimed experts who are campaigning for even more pornographic permissiveness.

In order to make it clear to the American people that the Members of Congress do repudiate the Commission's recommendations, I urge the Senate to adopt the resolution of the Senator from Arkansas by an overwhelming vote. I commend him for the outstanding leadership he has provided on this issue.

Mr. McCLELLAN. I thank the distinguished Senator from Michigan.

Mr. ALLOTT. Mr. President, will the Senator yield to me for a unanimous-consent request?

Mr. McCLELLAN. I yield 1 minute to the Senator from Colorado.

Mr. ALLOTT. Mr. President, I ask unanimous consent that I may proceed for 8 minutes on the subject of the pending resolution.

Mr. BYRD of West Virginia. Mr. President, reserving the right to object, how much time remains?

The PRESIDING OFFICER. The Senator from Arkansas has 4 minutes remaining.

Mr. BYRD of West Virginia. The Senator from Colorado wishes how much time?

Mr. ALLOTT. I do not want to take the distinguished Senator's 4 minutes.

Mr. McCLELLAN. I do not intend to use any more time. Another Senator has asked for 1 minute. I can yield the Senator from Colorado 2 minutes. I have to yield 1 minute to the Senator from South Carolina.

Mr. ALLOTT. Three minutes, then.

Mr. McCLELLAN. All right, 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Colorado has 3 additional minutes.

Mr. ALLOTT. Mr. President, I rise to support the resolution of the distinguished Senator from Arkansas.

I cannot imagine anything more revolting than the situation that has come before us, and I hope that this resolution will have a beneficial effect upon the people of this country.

Ever since I became a Member of Congress 16 years ago, we have been wrestling with the problem of pornography. Permissive court decisions, marshmallow-headed thinking, and I do not know what else have led us into a situation in which our law officers and our postal people are unable to cope with it.

This Commission was given a four-part mandate:

First, with the aid of leading constitutional law authorities, to analyze the laws pertaining to the control of obscenity and pornography.

Second, to ascertain the methods employed in the distribution of this material.

Third, to study the effect of obscenity and pornography on the public, particularly minors, and its relationship to crime and other antisocial behavior.

Fourth, to recommend such legislative, administrative, or other advisable and appropriate action as the commission deems necessary to regulate effectively the flow of such traffic.

Now we have a Commission report which says, in effect, that pornography has no effect upon anyone. I want to talk about one phase of this. First, I should like to say that I am getting a little worn out with some of these commissions, because they do not have the responsibility, nor do they have to take the responsibility, for implementing and accounting to constituents for the irresponsible things they do upon commissions.

The first thing that bothers me about this matter is that Cody Wilson, the director of this Commission, came to my office when the Commission was formed. I was astounded by his point of view. I was convinced then as to what the Commission would come out with. It has come out with exactly what I thought it would, and I have kept track of this ever since, through my appropriations work on the Committee on Post Office and Civil Service.

One of the things that was done was a ludicrous attempt and a flimsy so-called demonstration, arrived at by means of some experiments, which only demonstrate again the arrogant refusal of the Commission to abide by the stated will of Congress.

I must say that subsequent to this I had a long talk with Father Hill, and I heartily approved of the attitude which he demonstrated on the Commission.

But the so-called demonstrating is one of the worst abuses of Commission powers that I have ever seen. The ludicrous attempt to demonstrate the innocuousness of pornography involved paying young people to expose themselves to pornography. I shall not elaborate on the exact nature of this experiment, but it is a matter of record; and this was done despite the fact that the Chairman of the Commission had previously told Congress that such experiments would not take place. See page 1052 of the testimony given June 10, 1969, before the Senate Appropriations Committee, Senate Hearings, Treasury, Post Office, and Executive Office Appropriations, H.R. 11582, 91st Congress. He subsequently gave his personal authorization to these so-called experiments. Not to put too fine a point on it, the chairman's statements to Congress certainly did not match his subsequent behavior.

Mr. President, I heartily endorse the resolution of the Senator from Arkansas, and I sincerely hope that he will include me as a cosponsor of the resolution.

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

Mr. THURMOND. Mr. President, will the Senator from Arkansas yield?

Mr. McCLELLAN. I yield 1 minute to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina is recognized for 1 minute.

Mr. THURMOND. Mr. President, I am honored to be a cosponsor of this resolution, and I urge my colleagues to join me in supporting it. In my judgment, the report of the Commission on Obscenity and Pornography has tended to aggravate the serious problem of smut peddling in this country, rather than lessening it.

This report is an utter disgrace and should go straight into the trashcan. In my opinion, a majority of the Commission was motivated only by a desire to embarrass the Nixon administration. I want to make it perfectly clear that the President has already disavowed any responsibility for the Commission, which was set up by President Johnson.

I hope the Senate will overwhelmingly adopt the resolution repudiating the Commission's report.

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

The PRESIDING OFFICER (Mr. EAGLETON). One minute remains to the Senator from Arkansas.

Mr. McCLELLAN. I thank the Chair.

Mr. President, let me make this one observation. There are 50 cosponsors of the resolution. A number of Senators are away campaigning, or absent on official business, and have had no opportunity to cosponsor the resolution. I am confident that, had they been present, many more Senators would have cosponsored it.

Mr. President, I hope the vote will be unanimous.

Mr. MONDALE. Mr. President, I ask unanimous consent to proceed for 5 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. MONDALE. Mr. President, just a moment ago, I was advised of the pending matter which is, of course, extremely critical of the recent report of the Presidential Commission on Pornography under the chairmanship of the distinguished dean of the Minnesota Law School, William B. Lockhart.

I am not in a position, in this limited time, to debate the merits or even to feel in a position to know precisely the merits of all the recommendations of the Commission. I regret, in fact that the Senate has been forced to vote on a very serious resolution of condemnation of an exceedingly complex and controversial report of many pages without benefit of Committee study or hearings.

However, I do want to say that one of the most remarkable men in America today is the Chairman of that Commission, Dean William Lockhart. He is one of the Nation's most gifted attorneys. He is a balanced, responsible, and measured man, whose career has been one of prudence and responsibility and which stands for the highest standards of public service and commitment. As a citizen, he is an elder of the First Christian Church of Minneapolis and a teacher in their adult Sunday school program.

More than that, few men in this country have spent as many years as he has studying the explosive issue of obscenity and pornography in American life. He has written one of the basic case books on this issue. He has written and lectured widely on the subject. He has studied it deeply.

He is not an advocate of pornography. His acceptance of the great responsibility as Chairman of this Commission, I am sure, was motivated by an effort to grapple with an issue that perhaps cannot be grappled with in the light of the current temperament of this country.

Mr. President, I could not let this issue come to a vote without saying how deeply I believe in the Chairman's capacity, commitment, and responsibility.

I regret there was not more time for me to study the report and analyze the recommendations so that I could be in a better position to respond to all of its details. I do know that to characterize this report as sanctioning the full flow of pornography is grossly inaccurate. The summary recommendations call for strong legislative prohibitions against the sale of sexually oriented materials to young people, as well as legislation protecting any adult against sexual materials being thrust upon him through the mails or through open public displays.

It may well be that additional prohibitions are needed. This, of course, is the kind of determination that careful, reasoned deliberation could have decided.

But I do not believe that this movement should pass without some of us making clear the high quality, commitment, and understanding which the Chairman and, I would suspect, the members of the Commission have brought to this most troublesome, difficult, and explosive problem.

Mr. President, as an attorney general, and in the Senate, I have frequently tried to be with those forces seeking to limit the scourge of pornography and obscenity to the fullest extent that it could be. I want no doubt raised about that whatsoever. But, I do think there is an implication, probably not intended, in this effort which is, I think, unduly critical of the high quality of the Chairman, of the Commission, and of its membership.

I believe it would make a valuable addition to this RECORD at this point to include a recent editorial from the Minneapolis Tribune and a two-part analysis

of the report from the Minneapolis Star. I ask unanimous consent that they be printed at this point in the RECORD.

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

REASONABLE APPROACH ON PORNOGRAPHY

The report of the President's Commission on Obscenity and Pornography drew presidential disassociation and congressional displeasure even before it was officially released. Such high-level expressions were expected in the face of present citizen concern over proliferating sex in movies and print. But after reviewing the commission's final report, released Wednesday, we cannot help but wonder what caused all the alarm.

The commission, after all, does not propose to remove controls and permit wide-open exhibition and sale of pornography, as has been done, for example, in Denmark. Rather, the commission proposes to prohibit sale of sexual material to young people, to outlaw the public display of such material and to prevent the mailing of the materials to unwilling recipients. What the commission does propose is to allow the distribution of sexually explicit materials to consenting adults.

The fact is that this approach is pretty much the practice today in many communities, including Minneapolis, under state and local laws, law-enforcement policy and a 1967 U.S. Supreme Court ruling. A recent analysis by The Tribune's Bob Lundegaard noted that the high court seemed to be saying in its Redrup decision that as long as the pornography was not made available to children, distastefully advertised or foisted on an unwilling public, the high court would not examine its contents to determine if it should be banned. The advantage of this approach, followed the other day by a federal judge in Minneapolis, is that it keeps pornography from becoming a public nuisance—or a threat, as some might consider unlimited distribution—while it avoids many of the difficult determinations of obscenity and maintains constitutional freedoms.

Actually, the commission probably has received more criticism for its research finding on the effects of pornography than on its recommendations. The commission said that it found no evidence that pornography played a significant role in causing sex crimes or emotional disturbances. Much as this may go against public opinion, the commission would have been remiss if it had failed to report the research results. Those results certainly are subject to challenge, but they were so overwhelming, said chairman William Lockhart, dean of the University of Minnesota Law School, that they caused him to change his previous position in support of controls over distribution of pornography to consenting adults.

The divided public opinion on those findings and on the commission recommendations reflects public ambiguity on the whole issue of pornography. The Gallup Poll found last year that three-fourths of the people want stricter censorship of pornography. But a commission survey also found that a majority feels that adults should legally be able to read or see explicit sex materials if they wish to do so. It's no wonder that local officials and the courts have so much trouble with the issue. The commission, it seems to us, has offered a reasonable course of action.

THE PORNOGRAPHY REPORT: MORAL ARGUMENTS VERSUS THE LAW

(By Austin C. Wehrwein)

The report of the Commission on Obscenity and Pornography came out at a time when the administration in power is making political capital of puritanical fervor.

It was therefore no surprise that administration figures disavowed the commission, created by Congress in the Johnson administration, and its recommendation that all laws prohibiting the sale, exhibition or distribution of "sexual materials" to consenting adults be repealed.

This recommendation is not as drastic, in light of Supreme Court decisions or the historical development of obscenity law, as it might seem.

In the English law, from which our law derives, the first case involving published obscenity was brought against a printer-publisher named Curl for his book, "Venus in the Cloister or the Nun in Her Smock."

The common law had not recognized published obscenity as a crime, but in 1727 Curl was convicted for "obscene libel," the House of Lords declaring that the judiciary was the "custosmorum," or moral guardian, of the king's subjects. This concept lies at the heart of the argument for protecting "public morals" to this day. But the case, as the book's title suggests, involved both sex and religion. The offense was as much against a religious body as against contemporary community standards.

For nearly a century thereafter, English cases were limited to materials that were a mix of sex and anti-religious views. Hard core materials as such were ignored by the courts.

The relationship between religion and opposition to explicit sexual materials is still much alive, though in a somewhat different context: now it is the assertion that religious values, especially the more fundamentalist views, are the antithesis of "smut." It was no accident that two of the three dissenting commission members are clergymen.

The third, Charles H. Keating, a Cincinnati lawyer and President Nixon's only appointee, said that for those who believe in God, "no argument against pornography should be necessary."

Postmaster General Winton M. Blount, joining the administration chorus, quoted Genesis to illustrate his view that pornography violates the "sanctity of the human spirit." But this is now a moral argument for the law, not the law itself. Courts do not enforce religious tenets as such in this country.

There is some irony in the fact that the commission chairman, Dean William B. Lockhart of the University of Minnesota Law School, is an elder of the First Christian Church of Minneapolis and an adult Sunday school teacher.

In any event, while the first anti-obscenity statute was passed in England in 1824, the first judicial definition of "obscene" came in the Hicklins case in 1868. This was the rule that obscenity tended to "deprave and corrupt." In effect it meant that if material was bad for children it was bad for everybody.

Meanwhile, in our colonial period, only Massachusetts enacted on obscenity law (in 1711) and there were no recorded prosecutions under it until 1821, when "Fanny Hill" was banned. Interestingly enough, this book made liberalized Supreme Court law in 1966, with its "redeeming social value."

The first of the state statutes that later blanketed the nation was Vermont's in 1821, and the first federal statute (an importation ban) came in 1842. The big push arrived in 1868 with Anthony Comstock's "Suppression of Vice" crusade, in which he enlisted the Protestant clergy and the YMCA. He was especially concerned with the "impure thoughts" that references to sex could implant in the minds of the young. This is again the crux of the Hicklins case, or, in a far different context, the idea that Aldous Huxley offered in "Eyeless in Gaza": "A filthy mind is a perpetual feast."

In 1957, the Supreme Court unanimously rejected the "bad for minors, bad for adults" Hicklins test and the same year said (in the Roth case) that sex and obscenity were not synonymous. While the Roth case upheld a federal statute, it gave "obscenity" a narrow definition, and in subsequent cases it held, in effect, that only hard core pornography is beyond First Amendment protection. What is "hard core"? Justice Potter Stewart said all he could say was, "I know it when I see it."

The divided court's formula remains vague, but the limit can be assumed to be pictures of actual penetration, orthodox or oral. Then last year, in Stanley versus Georgia (a stag film case), the court held that even if the material is obscene an individual has the constitutional right to possess it in his own home: He has the right "to read or observe what he pleases—the right to satisfy his intellectual and emotional needs in the privacy of his home."

At the same time the court has recognized Dean Lockhart's "variable" concept that the law can protect juveniles specifically, and that adults who object have a privacy right not to have obscenity "thrust" upon them, for example in unsolicited junk mail.

Whether the Burger court will extend the Stanley rule to cover the right to obtain as well as possess, for example by going to a theater, is open to debate.

But the commission infers from the Stanley case that government may not constitutionally deny consenting adults the right to read or view pornography in an attempt to control their morality, to prevent crime or anti-social behavior, at least in the absence of "a solid empirical foundation."

There is the root of the commission majority's theory. It found no solid empirical basis for law denying pornography to adults who want it, and, indeed, found evidence that it can be educational and entertaining, or both.

REPORT THAT CANNOT BE IGNORED

(By Austin C. Wehrwein)

The Commission on Obscenity and Pornography, headed by Dean William B. Lockhart of the University of Minnesota Law School, was created by Congress in 1967 on the premise that "traffic in obscenity and pornography is a matter of national concern."

On its face the mandate implied a desire for more, or at least more effective, control. All politicians, as the saying goes, are against sin, and the congressional eruption when the report was issued indicates little inclination to follow its suggestions . . . to put it mildly.

The normal political stance is to agree with the three dissenters on the 18-member body. They discern a moral imperative for public control. They rejected the research underlying the conclusions as "fraudulent," although from their position research is largely irrelevant.

Yet the research can't be ignored, and it needs no elaborate demonstration to assert that attitudes toward sex are in dizzying flux. The report is therefore a landmark, whatever its immediate impact on law, and the more so because it didn't deal with the typical question about where to draw the line but suggests new assessment of deeply ingrained but often vague and shifting taboos.

The majority, for example, found that neither individual morality nor "the moral climate in America as a whole" would be harmed by the lawful distribution of erotica to adults. That means "explicit sexual materials," including "hard core," that depicts actual sex acts.

Indeed, it not only rejected the common belief that there is a "significant" link between erotica and crime and delinquency, but said that "on the positive side" it can be entertaining, instructive and helpful in improving relationships.

In sum, the majority found legal control a failure and "unwise," and the already open availability of erotica an effect, not a cause of the "current flux in sexual values." The key recommendation was repeal of all laws attempting to prevent adults from access to erotica. (It did not, however, discuss "live"

pornography, such as nudity and sex acts on the stage.)

However, the majority's call for a "massive sex education effort" to promote "healthy attitudes" towards sex implies that there are "unhealthy" ones. It can't escape entirely the idea that there is a "moral climate."

Moreover, while at one point the majority said exposure to erotica plays no significant role in adult or juvenile crime, it added later that the evidence on children is "insufficient" and accepts the view of a "large majority" that laws should protect children from "certain sexual materials" if their parents don't want them to have it. Yet, the majority also found that present laws generally don't work and much of the material passes hand to hand rather than being purchased.

One difficulty in judging the report dispassionately is that while it is written in antiseptic sociological jargon, the subject is usually discussed with words like "smut, dirt, filth and immorality." But when the question is asked, "Should society restrict what adults read and view?" The Star's Metro-Poll found 64 percent saying, "No."

The commission's own national poll came out 60 percent "no" on the same question. Another commission national poll found half think anti-obscenity laws impossible to enforce. And it found that people assume others are more restrictive in their attitude than they are.

And while Vice-President Agnew (typically of those taking a restrictive view) has stated the national "need to restrain bad taste and outright vulgarity," the commission could find no censensus on what was merely sexually stimulating and that which was "offensive" and "pornographic."

It is noteworthy that Lockhart's view, prior to the research that changed his mind, was that pornography appeals only to the sexually abnormal or immature person whereas the normal person may be curious about it but the effect on him is not erotic stimulation; rather, he is repelled by it.

The majority also proposed a form of aesthetic zoning, a prohibition by law of blatant display (for example in a store window) on the ground that this would cause "offense" and "unwanted intrusion." Lockhart distinguishes between the view that pornography causes harm and "offense." The majority also endorsed control at the option of the receiver of unsolicited erotica in the mail.

All this, of course, must be assessed against not only what we all see (if not necessarily practice) in the changing society around us. The Supreme Court, at least prior to Chief Justice Burger, had opened the door to virtually all forms of explicit sexual materials, and the question posed by the report is whether repeal of anti-obscenity laws for adults would make much difference.

That is something the commission majority couldn't really answer, and the minority doesn't want to find out.

Mr. GRIFFIN. Mr. President, I ask unanimous consent to have printed in the RECORD a statement prepared by the Senator from Nebraska (Mr. HRUSKA).

There being no objection, Mr. HRUSKA's statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR HRUSKA

Mr. President, today the Senator from Arkansas (Mr. MCCLELLAN) joined by many of his colleagues in the Senate has introduced a resolution declaring that the Senate reject the findings and recommendations of the Commission on Obscenity and Pornography I am very happy to join my distinguished friend from Arkansas as a co-sponsor of this resolution.

In 1967 Congress became concerned with the traffic in this nation in obscene and pornographic materials and created a Presidential Commission to make an in-depth study of this problem and report its conclusions and recommendations back to Congress. For almost three years the Commission members labored over their research and report and on September 30 announced their findings. From this Senator's reading of the 875 page report of the Commission, I would say that the conclusions are not supported by the evidence contained in the Report and that the recommendations are not acceptable to Congress or the American people.

These statements, harsh as they may be, are based primarily on two statements made in the Commission report which I find naive and intolerable, a view which I firmly believe is shared by a majority of my fellow citizens.

First, the Commission "recommends that federal, state, and local legislation prohibiting the sale, exhibition, or distribution of sexual materials to consenting adults should be repealed." This statement is based on a number of findings including the alleged fact that there is no evidence that "exposure to explicit sexual materials plays a significant role in the causation of delinquent or criminal behavior among youth or adults."

Second, the Commission reports that "public opinion in America does not support the imposition of legal prohibitions upon the right of adults to read or see explicit sexual materials."

The Commission report is voluminous in its scope but my reading indicates that much evidence supporting the concept that there is a direct and substantial link between exposure to obscene material and resulting criminal or other antisocial behavior was overlooked or ignored. The persuasive minority report appended to the majority's findings indicates this very strongly. In order to reach the conclusion that they did, I think the majority members of the Commission took a very circumscribed view of much of the testimony they heard and evidence they evaluated. To this Senator, it appears that some on the Commission may have had predetermined views on the subject of obscenity and may have used this bias toward permissiveness to shape the final conclusions of the majority. If this is the case, I think this attitude substantially undercuts the objectivity and therefore the usefulness of the report.

It is my earnest hope that Congress and the various State legislatures will think long and hard before adopting the major recommendation of the Commission: that all laws dealing with distribution of obscene material to adults be repealed. This Senator will never cast his vote for the abolition of Federal regulation in this field. Rather I am proud to be the co-sponsor of two bills in the 91st Congress designed to further control the trade in this type of material: S. 2073, which would prohibit the use of interstate facilities, including the mails, for the distribution of matter harmful to minors, or advertisements for such matter, to anyone under the age of 18; and S. 2074, which would prohibit the use of the mails for transportation of advertising designed to appeal to a prurient interest in sex. The Judiciary Committee has not had an opportunity to consider these bills this year, but I am hopeful that early hearings can be scheduled for 1971.

If the mail that I receive from Nebraskans and the comments that I hear as I tour my home state are any indication of the feelings of Americans on this subject, and I believe they are, then the Commission has badly misjudged the temper of the nation. Far from refusing to "support the imposition of legal prohibitions upon the rights of adults to read or see explicit sexual materials", as the Commission suggests is the popular sentiment in this nation, every indication that I have is that just the opposite is true. As I travel throughout Nebraska this fall, I hear from every quarter a plea for stronger laws to crack down on the peddlers of smut and obscenity. I hear a revulsion against the exhibitionism and permissiveness that is sweeping some parts of this nation with regard to pornographic material. My mail is running very heavily along this same theme.

It is for these reasons that I joined with 33 other Republican Senators last week in sending a letter to President Nixon expressing "our strong disagreement with some of the recommendations" of the Commission and asking the President to "disavow" the Report. Since this Administration had no hand in the creation nor selection of the Commission or its members, he would be free to do so. I am pleased to join today in the bi-partisan sponsorship of this resolution declaring that the Senate rejects the findings and recommendations of the Commission.

Just as it did in 1967, Congress knows today that the increasing volume of traffic in obscene and pornographic material is a matter of "national concern". Three years ago we thought that we might find some answers to this problem through the creation of a Commission to study this field. That Report is now in, and it is disappointing and unsatisfactory. Answers to this dilemma do not lie in following the recommendations of the Commission majority. I co-sponsor this resolution in the hope that it will make clear the intention of Congress not to abdicate responsibility in this field.

Mr. President, I ask unanimous consent to have printed at this point in the Record an editorial from the Omaha World-Herald of October 3, 1970, dealing with this subject.

Mr. RUSSELL. Mr. President, may we have order?

The PRESIDING OFFICER (Mr. NELSON). The Senate will be in order. Will the Members please take their seats.

Mr. WILLIAMS of New Jersey subsequently said: Mr. President, I rise to support the resolution offered by the distinguished senior Senator from Arkansas (Mr. MCCLELLAN). I regret that a delayed flight arrival in Washington prevented my being on the Senate floor when the vote on this resolution was recorded.

The Commission has come forth with certain findings and recommendations that I find it impossible to support. In establishing this Commission through passage of Public Law 90–100 in 1967, the Congress handed a most important mandate to this Commission. I believe that the evidence that they considered does not justify the findings and recommendations dealing with the influence of pornography on delinquency and crime, or on the moral character of our youth. The continued exposure of our children to obscene and pornographic materials cannot be permitted. While the Commission rejects permitting our youth to have unrestricted access to this material, their other recommendations make it inevitable. Mr. President, it is with reluctance that I must conclude the Commission has not carried out the mandate Congress gave them in 1967.

CONGRESS AND CONTROL OF PORNOGRAPHY

Mr. MATHIAS. Mr. President, the problem of commercial trafficking in pornography has reached epidemic proportions. The number of outraged Marylanders who write me upon receiving such unsolicited material bears witness to this dismaying development.

On September 23, 1970, the Senate took a strong step to remedy this situation. I was pleased to support that measure, which would insure that postal patrons throughout the country can

open their daily mail with confidence that their sensibilities will not be shocked by the contents of unsolicited, innocent-looking envelopes. The bill would require all sexually-oriented advertising to be labeled as such and would allow any such unrequested advertisement to be returned to the sender at no cost to the addressee. The sender would have to pay a minimum service charge of 50 cents per item returned and would be liable for substantial penalties for violation of the bill's provisions.

In October 1967, Congress, in Public Law 90–100, declared traffic in obscenity "a matter of national concern." It deemed the Federal Government to have a "responsibility to investigate the gravity of this situation and to determine whether such materials are harmful to the public, and particularly to minors, and whether more effective methods should be devised to control the transmission of such materials." The Congress therefore established an advisory commission to make a study of the problem to recommend "advisable, appropriate, effective, and constitutional means" to deal with it.

Just recently, the Commission on Obscenity and Pornography issued its report, an 874-page document with a 171-page minority report. The Commission's internal procedures and policies have become nearly as controversial as some of the recommendations in the report. Based on my preliminary examination of the report and on hearings before the Juvenile Delinquency Subcommittee, I recently joined a number of my colleagues in the following letter to the President:

OCTOBER 7, 1970.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: We, the undersigned, impelled by due respect for common decency and good morals, are moved to express our strong disagreement with some of the recommendations contained in the Report of the Commission on Obscenity and Pornography appointed in January 1968.

We especially deplore the recommendations to repeal all laws prohibiting the distribution of explicit sexual material to consenting adults.

We respectfully request that you disavow this Report, for we believe strongly that a vast majority of Americans will reject completely the findings and recommendations of the Commission.

Today, the Senate is considering Senate Resolution 477, which states that, first, the Commission report is "based on unscientific testing, inadequate review of such testing, and an attempted denial of the rights of the minority members of the Commission," second, the Commission's "findings indicate that its recommendations are not based upon adequate research and information," and third, the Commission has "failed to carry out the mandate of Congress."

The resolution goes on to specifically reject five findings and recommendations of the Commission.

I have great doubts, based upon available information, about the fairness of the procedures followed by the Commission. Substantial evidence that elementary due process notions were violated in a number of ways has been adduced. One wonders whether the entire Commission effort was an openminded search for truth or a closed-track railroad to a predetermined conclusion. As a Member of the Congress which created the Commission, I have substantial doubts that it has fully complied with its mandate.

It seems to me, however, that we must not react to this apparent steamroller effort by steamrollering off in the opposite direction. The Congress initially created the Commission to conduct a thorough, scholarly, objective study and to return with recommendations reflecting the results of such a study.

That the Commission may have failed to adequately and fairly complete its assigned task may require the Congress to reject the Commission's performance. But it does not require us to automatically adopt as policy the precise opposite of any statement the Commission may have made. Any of those statements which are patently false will be revealed as such by a proper study. It is my belief that the floor of Congress is no more appropriate for such a study than it was in 1967.

The Congress and the American people will grant to the report such weight as it deserves and no more. An improper study can only leave unanswered the same crucial questions Congress perceived in 1967. Those questions remain and deserve to be answered in an atmosphere of fairness and due process which the Commission has apparently not generated. Rather than taking upon ourselves the task originally assigned the Commission, I believe the Congress should redelegate this investigatory job to a body which can devote to it the intensive time and study which it requires and deserves, at the very least to the normal committee procedures of the Senate. I accordingly shall reluctantly vote against Senate Resolution 477.

Mr. CASE subsequently said: I cannot vote, in good conscience, for the resolution offered by the senior Senator from Arkansas.

Just a few days ago the report of the President's Commission on Obscenity and Pornography was made available to the Congress. The report is a voluminous document of nearly 1,000 pages and is the product of 2 years of work by the Commission. With the press of business being handled in the Senate during the last 2 weeks, I have not yet had an opportunity to read the complete report, nor, I suspect, have most other Members of this body.

Yet, we are being asked in this resolution to reject the entire report out of hand. To vote on such a resolution is an ill-considered, hasty action which does an injustice to the Commission members and to the public.

The traffic in obscenity and pornography is a very serious matter and should not be dealt with by castigating a presidential Commission, some of whose members have views differing from those of Members of the Senate.

During the last few years, we have received a number of reports of presidential Commissions on such important and controversial issues as the draft, welfare reform, civil disturbances, and crime in the streets. For the most part, Congress has dealt with them responsibly and deliberately, with appropriate consideration being given to their findings and recommendations in the legislative committees. The action we are being asked to take may well deter responsible citizens from serving on such groups in the future.

It is highly regrettable, therefore, that this most recent presidential Commission report is being given such short shrift, particularly when there are recommendations that deserve some attention. I refer, for example, to the Commission's proposal that States and local governments adopt legislation to protect young people from pornographic material, its recommendation to prohibit public displays of offensive material and its emphasis on the need for cooperation between the family, church, school, and other segments of society in dealing with this problem.

As a parent and grandparent, I share fully the concern of every mother and father over the filthy traffic in obscene material. That is why in the 87th, the 88th, and the 89th, and 90th Congresses I joined Senator MUNDT in cosponsoring legislation to establish a broadly representative Commission to look into all aspects of pornography.

That is why I have consistently supported efforts in the Senate during the past several years to crack down on smut peddlers and why I voted last June for Senator GOLDWATER'S amendment providing greater protection for individuals and families against purveyors of filth.

That is also why I voted 3 weeks ago for Senator MANSFIELD'S bill to further protect an individual's privacy and to place greater restrictions on sexually oriented advertising.

While I may strongly disagree with some of the findings of the presidential Commission report we have just received, I believe just as strongly that it deserves a fairer hearing than it is getting today.

The PRESIDING OFFICER. The question is on agreeing to the resolution. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MATHIAS (after having voted in the negative). On this vote I have a pair with the Senator from Nebraska (Mr. HRUSKA). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. BAYH), the Senator from North Dakota (Mr. BURDICK), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Connecticut (Mr. DODD), the Senator from Tennessee (Mr. GORE), the Senator from Alaska (Mr. GRAVEL), the Senator from Michigan (Mr. HART), the Senator from Indiana (Mr. HARTKE), the Senator from Iowa (Mr. HUGHES), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Wyoming (Mr. MCGEE), the Senator from New

Mexico (Mr. MONTOYA), the Senator from Utah (Mr. Moss), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PASTORE), the Senator from Rhode Island (Mr. PELL), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Missouri (Mr. SYMINGTON), the Senator from Maryland (Mr. TYDINGS), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that, if present and voting, the Senator from Nevada (Mr. CANNON), the Senator from Rhode Island (Mr. PASTORE), the Senator from Missouri (Mr. SYMINGTON), the Senator from North Dakota (Mr. BURDICK), and the Senator from New Mexico (Mr. MONTOYA) would each vote "yea."

Mr. GRIFFIN. I announce that the Senators from Vermont (Mr. AIKEN and Mr. PROUTY), the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. GOODELL), the Senator from Nebraska (Mr. HRUSKA), the Senator from California (Mr. MURPHY), the Senator from Illinois (Mr. SMITH), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Oregon (Mr. PACKWOOD) is detained on official business.

If present and voting, the Senator from South Dakota (Mr. MUNDT), the Senator from California (Mr. MURPHY), the Senator from Illinois (Mr. SMITH), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The pair of the Senator from Nebraska (Mr. HRUSKA) has been previously announced.

The result was announced—yeas 60, nays 5, as follows:

[No. 376 Leg.]

YEAS—60

Allen	Ervin	Miller
Allott	Fannin	Nelson
Anderson	Fulbright	Pearson
Baker	Griffin	Percy
Bellmon	Gurney	Proxmire
Bennett	Hansen	Randolph
Bible	Harris	Russell
Boggs	Hatfield	Saxbe
Brooke	Holland	Schweiker
Byrd, Va.	Hollings	Scott
Byrd, W. Va.	Inouye	Smith, Maine
Cook	Jackson	Sparkman
Cooper	Jordan, N.C.	Spong
Cotton	Jordan, Idaho	Stennis
Curtis	Long	Stevens
Dole	Magnuson	Talmadge
Dominick	Mansfield	Thurmond
Eagleton	McClellan	Williams, Del.
Eastland	McIntyre	Yarborough
Ellender	Metcalf	Young, N. Dak.

NAYS—5

Case	McGovern	Young, Ohio
Javits	Mondale	

PRESENT AND GIVING A LIVE PAIR AS PREVIOUSLY RECORDED—1

Mathias, against.

NOT VOTING—34

Aiken	Hart	Packwood
Bayh	Hartke	Pastore
Burdick	Hruska	Pell
Cannon	Hughes	Prouty
Church	Kennedy	Ribicoff
Cranston	McCarthy	Smith, Ill.
Dodd	McGee	Symington
Fong	Montoya	Tower
Goldwater	Moss	Tydings
Goodell	Mundt	Williams, N.J.
Gore	Murphy	
Gravel	Muskie	

So the resolution (S. Res. 477) was agreed to.

Mr. McCLELLAN. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BYRD of West Virginia. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The preamble was agreed to.

MESSAGES FROM THE PRESIDENT

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

REPORT ON U.S. PARTICIPATION IN THE UNITED NATIONS—MESSAGE FROM THE PRESIDENT

The PRESIDING OFFICER (Mr. NELSON) laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Foreign Relations:

To the Congress of the United States:

In accordance with the provisions of the United Nations Participation Act of 1945, I hereby transmit to the Congress the Annual Report on United States participation in the United Nations. This report covers the events of the calendar year 1969, the first year of my Administration.

In my address to the 24th General Assembly on September 18, 1969, and in my Foreign Policy Report to the Congress on February 18, 1970, I reaffirmed America's enduring commitment to the support and strengthening of the United Nations Organization. In addition, I took note of some of the steps taken by the United States in 1969 to demonstrate and carry out this commitment. This report covers these matters in greater detail.

The United States strove in 1969, and will strive in the future, to contribute to the success of the United Nations in the fields of diplomacy and peacekeeping and in the promotion of arms control, international law, economic progress, and human rights.

It is gratifying to me, as we celebrate the 25th anniversary of the founding of the United Nations, to add this volume to the record of United States participation.

RICHARD NIXON.

THE WHITE HOUSE, *October 13, 1970.*

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer (Mr. NELSON) 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.)

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had agreed to the amendments of the Senate to the bill (H.R. 18260) to authorize the U.S. Secretary of Health, Education, and Welfare to establish educational programs to encourage understanding of policies and support of activities designed to preserve and enhance environmental quality and maintain ecological balance, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had agreed to the following concurrent resolutions, in which it requested the concurrence of the Senate:

H. Con. Res. 774. Concurrent resolution providing for an adjournment of the two Houses from October 14, 1970, to November 16, 1970;

H. Con. Res. 775. Concurrent resolution authorizing the Speaker of the House and the President of the Senate to sign enrolled bills and joint resolutions notwithstanding the adjournment of Congress from October 14, to November 16, 1970; and

H. Con. Res. 778. Concurrent resolution directing the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 17654.

EQUAL RIGHTS FOR MEN AND WOMEN

Mr. BYRD of West Virginia. Mr. President, what is the pending business?

The PRESIDING OFFICER. The Senate will now resume the consideration of the unfinished business, which the clerk will state.

The assistant legislative clerk read 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.

AMENDMENT NO. 1048

Mr. BAKER. Mr. President, I call up my amendment No. 1048 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is 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 articles 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, 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 —

"'Nothing contained in this Constitution shall abridge the right of persons lawfully

assembled, in any public building which is supported in whole or in part through the expenditure of public funds, to participate in nondenominational prayer.' "

Mr. BAKER. Mr. President, this amendment is almost identical to the resolution introduced by the late Senator Dirksen, and it is almost identical to the measure introduced earlier this year by the Senator from Pennsylvania (Mr. SCOTT).

Mr. President, I ask unanimous consent that the names of the following Senators be added as cosponsors of the amendment: Senator SCHWEIKER, Senator HOLLAND, Senator FANNIN, Senator COTTON, Senator JORDAN of North Carolina, Senator BELLMON, Senator STEVENS, Senator ALLOTT, and Senator THURMOND.

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

Mr. BAKER. Mr. President, at this time I am willing to state that I am perfectly agreeable to a limitation of time on this amendment. It will not take me very long to make my presentation. If the leadership has any suggestion in that respect, or if anyone else has any suggestion, I would be glad to hear it.

Mr. ERVIN. Mr. President, I will not agree to a time limitation at this time. I opposed the adoption of this amendment when offered by my late and beloved friend, the Senator from Illinois, and I wish to speak in opposition to it. I would not want to be restricted or confined within any kind of time limitation.

The PRESIDING OFFICER. The Senator from Tennessee has not requested a time limitation.

Mr. BAKER. Mr. President, under the circumstances, having great respect and familiarity with the position of his colleague, the Senator from North Carolina, the Senator from Tennessee will not ask for a unanimous-consent limitation of time. I understood the Senator to indicate he will have considerable comment on the subject, and I take it it will be in opposition to the amendment.

With that in mind, at this time I will not ask for a unanimous-consent agreement on a limitation of time. I will proceed to a presentation of some points I believe support the adoption of the amendment at this time, and then I shall await with expectation remarks of those who will follow.

Mr. President, as I stated earlier, this is an amendment to the pending business which, in effect, attempts to attach the Dirksen prayer amendment, and the amendment offered by the Senator from Pennsylvania (Mr. SCOTT) at the beginning of this session, to the pending business.

The operative portion of the amendment reads:

> Nothing contained in this Constitution shall abridge the right of persons lawfully assembled, in any public building which is supported in whole or in part through the expenditure of public funds, to participate in nondenominational prayer.

Mr. President, I ask unanimous consent that the name of the distinguished senior Senator from Delaware (Mr. WILLIAMS) may be added as a cosponsor of the amendment.

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

Mr. BAKER. Mr. President, hearings were held on the so-called Dirksen prayer amendment in the Senate on August 1, 2, 3, 4, 5, and 8, 1966. The printed record is a Senate document consisting of 834 pages. It contains the testimony of many distinguished witnesses, the comments of many of our colleagues who were members of the subcommittee and the Committee on the Judiciary, including one particular statement by one of our distinguished former colleagues which I would like to read in part. On page 13 of the hearing record is the statement by Senator Dirksen replying to certain testimony by witnesses adverse to the so-called prayer amendment.

Senator Dirksen stated in part:

> I have just got one observation to make, Mr. Chairman. This is a very sophisticated argument that Dean Drinan makes. He alludes to the hearings in the 88th Congress in the House of Representatives. I have the whole set here.
>
> Among those who testified were archbishops, church administrators, priests, ministers, rabbis, professors, lawyers, the American School for Democratic Action, church foundations, church councils, veterans' organizations, and the Civil Liberties Union, the American Farm Bureau Federation, professors of theology, labor leaders, divinity schools, religious institutes.

Continuing from his statement in that respect, Senator Dirksen characterized the testimony of the several witnesses in opposition to the so-called prayer amendment as follows:

> As I went through that, it occurred to me that somehow we had had every sophisticated argument except an argument from the common man of this country, who was defined as one who works and prays and pays his bills and goes to church, rears a family in decency as law-abiding children. Strange, in all this, we have not heard from any of those, and we are beginning to hear from him by the millions, and he is going to have his say.
>
> What is said here about the ambiguity of this amendment is just tortured interpretation, in my judgment. What is said about secularization is just going around Robin Hood's barn. I am interested in the people who own this country.

Then he continued to say:

> I see in one section of the country they are going to start fooling with the pledge of allegiance to the flag since the Congress itself authorized the inclusion of the words "under God."
>
> I am going—I hope I live to see just what the people of this country have to say.

Mr. President, I do not read this for any maudlin reason, but obviously Senator Dirksen did not live long enough to see what the people were going to do about that. The Dirksen prayer amendment was offered repeatedly in successive sessions of the Congress. It was not brought to a final determination on the floor of the Senate. I think it eminently appropriate that this statement be offered at this time for floor action by the Senate now at this point, which is near the last opportunity we will have to take substantive action on the amendment sponsored and fought for in the last session of the Congress in which he served.

That obviously is not reason enough to amend the Constitution. That obviously is not an argument on the merits of the proposal. But it is obviously a matter of some importance to me. I think that the remarks made by Senator Dirksen on page 14 of the hearing record before the Committee on the Judiciary are especially appropriate to our consideration of it at this time.

There is another document that appears in the hearing transcript which I think sets forth the argument in favor of an amendment to the Constitution to circumvent the present interpretation of the Constitution by the present Supreme Court more eloquently than I have ever read before, and that is the dissenting opinion of Mr Justice Stewart, filed on June 25, 1962, in the case of Steven Engle, et al., against others; and with the indulgence of my colleagues, I intend to read certain portions of that decision as well.

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

Mr. BAKER. I yield to the Senator from Alaska.

Mr. STEVENS. Mr. President, I thank my colleague from Tennessee. As I understand the action that has already been taken today in adopting the previous amendment, the measure before us will have to go at least to the House, and probably to a conference. The adoption of the amendment of the Senator from Tennessee, then, would not delay the equal rights amendment that many of us have sponsored.

Does the Senator think his amendment—the Dirksen amendment—would strengthen the urgency for getting the amendment out of the conference this year?

Mr. BAKER. I am glad the Senator from Alaska makes those points.

Number 1, he is entirely right. After the adoption of the Ervin amendment, which the Senate just agreed to, it is clear that the so-called equal rights amendment will be returned to the House and to the committee of conference. Therefore, I think the argument that the prayer amendment will complicate the passage of the equal rights amendment is no longer available.

In reference to his second point, I also agree that since the matter is going to conference anyway, the passage of an amendment which has what I believe to be the overwhelming support of the people of this country, and which is strongly supported by so many Members of both bodies of Congress, I believe, would substantially improve chances for something to come out of the committee of conference to be submitted to the several States.

Mr. STEVENS. Mr. President, I wish to commend the Senator from Tennessee for offering his amendment.

Those of us who had the privilege, even for a short time, of serving with our former leader, the Senator from Illinois, know how much this amendment, which the Senator from Tennessee has offered, meant to him.

While I would have opposed the amendment before the adoption of the Ervin amendment, I am very pleased to be a cosponsor and to assist him in getting this amendment adopted now as an amendment to the equal rights amendment.

Mr. BAKER. I thank the Senator from Alaska.

Mr. STENNIS. Mr. President, will the Senator yield briefly?

Mr. BAKER. I yield.

Mr. STENNIS. I commend the Senator for his efforts and for offering this amendment. Ordinarily, I would not favor voting on a constitutional amendment without the utmost consideration and discussion of it, but I think this one has been so considered. The idea has been here for several years, and it has been publicly discussed and understood. I shall warmly support the Senator in his amendment. I hope we can get a satisfactory vote.

Mr. BAKER. I thank the Senator from Mississippi. I deeply appreciate his support and help and assistance in this matter.

It is important that, in considering a matter of this gravity and importance, we not be unduly swayed by the emotionalism of the issue. Godliness is not at issue in this debate. The question really is whether or not the Constitution or the several amendments to it, prohibit the utterance of nondenominational prayers on a voluntary basis in public buildings, including our schools and other public buildings.

The Supreme Court, in its landmark decision of Engel, decided in the October term in 1961, held that it did. I believe it does not. But, being a part of the legislative department of Government, instead of the judicial part of Government, it is not within my province to interpret the Constitution in this respect. That is the purview and the responsibility of the Supreme Court.

Fortunately, it is within the authority of the legislative department to formulate proposed amendments to the Constitution which would have the effect of nullifying the decisions of the Court, and that decision of the Court.

Such is the purpose of this amendment; it cannot and ought not be clad in any other language. But, once again, I am not dealing in the emotionalism of the subject. I hope I am not arguing against separation of church and state. I am not arguing against the so-called wall of separation between religious influence and secular activities in governmental affairs. I am arguing against what Senator Dirksen characterized—and I agree with what he said—the tortured interpretation of the Court in this respect.

I am happy to say that one Justice of the Supreme Court shares that view, I believe. In his dissenting, opinion, Mr. Justice Stewart had some very relevant observations about the opinion of the majority in the Engel case. With the indulgence of my colleagues, I intend to read a part of the dissenting opinion of Mr. Justice Potter Stewart.

He said:

The Court does not hold, nor could it, that New York has interfered with the free exercise of anybody's religion. For the state courts have made clear that those who object to reciting the prayer must be entirely free of any compulsion to do so, including any "embarrassments and pressures." But the Court says that in permitting school children to say this simple prayer, the New York authorities have established "an official religion."

With all respect, I think the Court has misapplied a great constitutional principle. I cannot see how an "official religion" is established by letting those who want to say a prayer say it. On the contrary, I think that to deny the wish of these school children to join in reciting this prayer is to deny them the opportunity of sharing in the spiritual heritage of our Nation.

Justice Stewart continues:

The Court's historical review of the quarrels over the Book of Common Prayer in England throws no light for me on the issue before us in this case. England had then and has now an established church. Equally unenlightening, I think, is the history of the early establishment and later rejection of an official church in our own States. For we deal here not with the establishment of a state church, which would, of course, be constitutionally impermissible, but with whether school children who want to begin their day by joining in prayer must be prohibited from doing so. Moreover, I think that the Court's task, in this as in all areas of constitutional adjudication, is not responsibly aided by the uncritical invocation of metaphors like the "wall of separation," a phrase nowhere to be found in the Constitution. What is relevant to the issue here is not the history of an established church in sixteenth century England or in eighteenth century America, but the history of the religious traditions of our people, reflected in countless practices of the institutions and officials of our government.

At the opening of each day's Session of this Court we stand, while one of our officials invokes the protection of God. Since the days of John Marshall our Crier has said, "God save the United States and this Honorable Court." Both the Senate and the House of Representatives open their daily Sessions with prayer. Each of our Presidents, from George Washington to John F. Kennedy, has upon assuming his Office asked the protection and help of God.

Quoting further from Justice Stewart's opinion:

The Court today says that the state and federal governments are without constitutional power to prescribe any particular form of words to be recited by any group of the American people on any subject touching religion. The third stanza of "The Star-Spangled Banner," made our National Anthem by Act of Congress in 1931, contains these verses:

"Blest with victory and peace, may the heav'n rescued land
Praise the Pow'r that hath made and preserved us a nation!
Then conquer we must, when our cause it is just,
And this be our motto 'In God is our Trust.'"

In 1954 Congress added a phrase to the Pledge of Allegiance to the Flag so that it now contains the words "one Nation *under God,* indivisible, with liberty and justice for all." In 1952 Congress enacted legislation calling upon the President each year to proclaim a National Day of Prayer. Since 1865 the words "IN GOD WE TRUST" have been impressed on our coins.

Countless similar examples could be listed, but there is no need to belabor the obvious. It was all summed up by this Court just ten years ago in a single sentence: "We are a religious people whose institutions presuppose a Supreme Being." *Zorach* v. *Clauson,* 343 U.S. 306, 313.

I do not believe that this Court, or the Congress, or the President has by the actions and practices I have mentioned established an "official religion" in violation of the Constitution. And I do not believe the State of New York has done so in this case. What each has done has been to recognize and to follow the deeply entrenched and highly cherished spiritual traditions of our Nation—traditions which come down to us from those who almost two hundred years ago avowed their "firm reliance on the Protection of Divine Providence" when they proclaimed the freedom and independence of this brave new world.

Mr. President, what I have read, being the major portion of the dissenting opinion from Justice Stewart, has an appeal to me that I believe is almost uniformly appealing to the people of the United States, who are a God-fearing people. It also appeals in its clean logic and its straightforward reasoning. But unfortunately, Mr. President, the opinion that I have read is not the opinion of the Supreme Court of the United States by a majority of its members. The dissent that I have read in part was only a dissent, and is not the law of the land.

Mr. President, there are only two ways that that situation can be changed peacefully, and according to the framework of our lawful system of Government.

One is for the court to reconsider its decision in the Engel case, and to decide that the view expressed in the dissent of Justice Stewart is the correct view, and therefore issue a majority opinion which would make that the law of the land.

We have waited now since 1961, and I begin to despair that such a decision by the Supreme Court of the United States will be forthcoming in the near future.

The second way, Mr. President, is the way we are attempting to pursue here, and that is by amendment to the Constitution, the basic document of our Republic, upon which the Supreme Court must base its judgments when interpreting the several facts, and after which the court would be required to reconsider circumstances such as described and presented in the Engel case in the light of the new amendment.

Some may say that this is not the appropriate manner to consider a matter as important as a prayer amendment, or any amendment to the Constitution of the United States, because there have not been hearings in this session, or because it is being offered as an amendment to another resolution instead of as a separate amendment, by itself.

I must say, Mr. President, that I am not impressed with the procedural technicality that these arguments might presuppose. To begin with, there is no greater dignity to offering a resolution by itself rather than by an amendment to a resolution. In the second place, there have been hearings, both in the House of Representatives in the 88th Congress and in the Senate as late as August of 1966. The hearing record is more than 800 pages long. There were numerous witnesses. There were a great number of submissions of points of view by people throughout the country in the academic community, in the legal profession, in the courts, and otherwise. A compilation of those statements extends, in index form, single-spaced, for six pages.

Mr. President, I believe this is the time to adopt this amendment to the pending

resolution, and, hopefully, to agree to the resolution itself, so that the resolution, with the prayer amendment attached, may be submitted to the several States for their ratification or their decision not to ratify.

It is my firm judgment and opinion that the Supreme Court of the United States was in error, but that is not my jurisdictional responsibility to decide. I agree with the dissent of Justice Potter Stewart, but there is nothing I can do about it under the scope of our system of government except what I am doing now, and that is to offer to the Senate an amendment to the Constitution which is calculated to produce a different judicial result. That is what I propose at this time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

VETO MESSAGE ON S. 3637

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the veto message on S. 3637, ordered held at the desk temporarily, be considered as having been read and be printed as a Senate Document.

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

ORDER FOR THE RECOGNITION OF SENATOR MATHIAS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, on tomorrow, immediately after disposition of the Journal and any unobjected to items on the legislative calendar, the distinguished Senator from Maryland (Mr. MATHIAS) be recognized for not to exceed 30 minutes.

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

ORDER FOR THE RECOGNITION OF SENATOR GURNEY TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, following the remarks of the able Senator from Maryland (Mr. MATHIAS) on tomorrow, the distinguished Senator from Florida (Mr. GURNEY) be recognized for not to exceed 30 minutes.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, following the special orders for the recognition of Senators on tomorrow, there be a period for the transaction of routine morning business with statements therein limited to ? minutes.

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

AUTHORIZATION FOR CHIEF COUNSEL OF INTERNAL SECURITY SUBCOMMITTEE TO RESPOND TO NOTICE OF DEPOSITION

Mr. BYRD of West Virginia. Mr. President, at the request of the distinguished chairman of the Committee on the Judiciary, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution No. 478, which he submitted earlier today. It is my understanding that this has been cleared on the other side of the aisle.

The PRESIDING OFFICER (Mr. NELSON). The resolution will be stated.

The resolution and its preamble were read, as follows:

Whereas the case of the *United States Servicemen's Fund, et al.*, v. *James O. Eastland, et al.*, civil action numbered No. 1474–70 is pending in the U.S. District Court for the District of Columbia; and

Whereas the Internal Security Subcommittee of the Committee on the Judiciary has in its possession by virtue of Senate Resolution 366 of the 81st Congress, 2nd Session, and Senate Resolution 341 of the 91st Congress, 2d Session, certain information and evidence relating to an investigation dealing with The United States Servicemen's Fund and other organizations and persons; and

Whereas the aforementioned Civil Action No. 1474–70 was filed in the United States District Court for the District of Columbia on June 1, 1970, at which time the plaintiffs, moved for a Temporary Order restraining the Subcommittee from enforcing a subpoena duces tecum issued by the Chairman of the Subcommittee and duly served upon the Chemical Bank of New York which motion for a temporary restraining order was heard and denied by the said court; and

Whereas the plaintiffs, thereupon appealed to the United States Court of Appeals for the District of Columbia, which court on June 4, 1970, stayed compliance with and enforcement of the said subpoena until such time, as the District Court shall have had an opportunity to consider, and act on the matter with the kind of consideration and deliberation that would be provided by the procedure of a hearing on an application for injunction as contrasted with a mere temporary restraining order; and ordered that consideration of the case be expedited by the District Court;

Whereas plaintiff's motion for a preliminary injunction was denied by the said United States District Court on June 30, 1970; and an appeal from this decision to the United States Court of Appeals is now pending; and

Whereas defendant's motion to dismiss was denied by the said United States District Court on June 3, 1970; and

Whereas the Chief Counsel of the Internal Security Subcommittee of the Committee on the Judiciary, Julien G. Sourwine, has received notice of deposition calling for his testimony regarding activities of the Subcommittee, and calling also for production of certain records and other papers of the Subcommittee; and

Whereas, a United States court has thus seen fit to stay the Subcommittee from enforcing a subpoena duly and properly served; and

Whereas, the order of the court represents an unwarranted abridgement of one of the basic principles of our governmental system, the separation of powers among the three branches of the Federal Government; and

Whereas, the right of the Congress to investigate for legislative purposes and to compel witnesses to appear and testify has always been upheld by the nation's courts; and

Whereas, by the privilege of the Senate and by Rule XXX of the Standing Rules of the Senate, information secured by staff employees of the Senate pursuant to their official duties as employees may not be revealed without the consent of the Senate; and

Whereas, by the privilege of the Senate of the United States, no document under the control and in the possession of the Senate of the United States can, by the mandate or process of the ordinary courts of justice, be taken from such control or possession but by its permission; and

Whereas, by the privilege of the Senate and by rule XXX of the Standing Rules of the Senate, no document shall be withdrawn from its files except by the order of the Senate: Therefore be it

Resolved, That when it appears by the order of the court or of the judge thereof, or of any legal officer charged with the administration of the orders of such court or judge, that documentary evidence in the possession and under the control of the Senate is needful for use in any court of justice or before any judge or such legal officer for the promotion of justice, the Senate will take such order thereon as will promote the ends of justice consistently with the privileges and rights of the Senate; and be it further

Resolved, That the Chief Counsel, Julien G. Sourwine, of the Senate Internal Security Subcommittee of the Committee on the Judiciary, is authorized to comply with an appropriate notice of deposition in the case aforesaid, but shall not testify respecting matters of which he obtained knowledge by virtue of his position or activities as Chief Counsel of the Subcommittee, which are not matters of public record and shall not without further action by the Senate surrender any papers or documents on file in his office or under his control or in his possession as Chief Counsel of the Senate Internal Security Subcommittee of the Committee on the Judiciary; and be it further

Resolved, That neither the Chairman of the Internal Security Subcommittee, nor any of the Subcommittee's members, nor the Subcommittee's Chief Counsel, nor any of its staff employees are to testify to or otherwise disclose in the aforementioned civil action any specific materials or information which may be in their possession which are not matters of public record; and be it further

Resolved, That neither the said Chairman, the said members, the said Chief Counsel, nor any staff employees are to testify to or otherwise disclose any documents, records, correspondence, memoranda, or other written or verbal information in the possession of said individuals or of the Subcommittee which are not matters of public record; and be it further

Resolved, That it is the sense of the Senate that the power of inquiry with process to enforce it is an essential and appropriate auxiliary to the legislative function, and that action by the courts which anticipatorily infringes upon or impedes the right of Congress to require the appearance of witnesses pursuant to its legislative powers, and thus contemplated Congressional action to be taken pursuant to its investigative processes violates the doctrine of separation of powers and would be an illegal and unwarranted infringement by the judicial branch upon the powers, responsibilities and duties of the legislative branch.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the resolution was considered and agreed to.

The preamble was agreed to.

ORDER OF BUSINESS

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

The PRESIDING OFFICER (Mr. HUGHES). 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. HUGHES). 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. ERVIN. Mr. President, in September 1966 the Senate of the United States considered at some length the amendment then offered by our late, lamented friend, Senator Dirksen of Illinois, and now offered by the able and distinguished Senator from Tennessee (Mr. BAKER).

In September 1966 I opposed the adoption of the Dirksen amendment on the ground that I believed it unwise in that it represented an attempt to abolish, in substance, part of what I considered to be one of the most basic principles of our Government—namely, the separation of church and State.

At that time I made an extended speech on the subject which set forth in detail my reasons for opposing the amendment. Since that time I have given much consideration to the question of amending the Constitution of the United States in the manner suggested by the Dirksen amendment as reintroduced by the distinguished Senator from Tennessee.

Mr. President, I find that my views in respect to this matter are still the same as I expressed on the floor of the Senate on September 20, 1966.

The amendment arises out of what we call the school prayer cases. I think that it has been exceedingly unfortunate for the country that the Supreme Court ever took jurisdiction in those cases. The children of the plaintiffs in those cases were not required to participate in the prayers or in the religious services which were involved in those cases. As a consequence, it seems to me that the Supreme Court ought to have exercised judicial restraint and refused to have taken jurisdiction in those cases on the well-established legal principle that the plaintiffs in those cases did not have any legal standing to bring the suits they brought. However, the Warren court exhibited in those cases a habit which it exhibited in far too many cases.

Prior to the advent of the Warren court, the Supreme Court of the United States took the position that it would not pass upon any constitutional question unless it found that the decision of the constitutional question was necessary to a decision in the case and that it would not permit persons to test constitutional principles if they had no legal standing to bring such suits. The Court required that the plaintiff be suffering some legal injury, and further that the decision could not be rendered without reaching the constitutional issues.

Nevertheless, the Warren court threw these sound practices of judicial restraint onto the judicial scrap heap and took jurisdiction in the school prayer cases, as it did in so many other cases raising constitutional questions, even though there was no legal need for them to do so.

Mr. President, I gave serious consideration to this question back in 1966. I had had a great interest in it for some time because I saw the Congress of the United States passing laws susceptible of the interpretation that it authorized the use of tax-raised Federal funds to support and establish institutions which are engaged in the teaching of religion.

I thought that such action on the part of Congress was not only unconstitutional and a flat violation of the first amendment, but also it was extremely unwise as a matter of policy.

Prior to the proposal of the Dirksen amendment in 1966, I had made a thorough—I think I am justified in so describing it—a thorough study of the reasons for the writing of the first amendment into the Constitution. On some five occasions, either by way of amendments to education acts or by way of Senate-passed bills, I supported efforts to make it certain that Federal courts should have jurisdiction in cases involving the constitutionality under the first amendment of grants or loans to religious institutions. The first time I offered such a measure by way of an amendment to an education bill we had an extremely hot floor fight in the Senate and the amendment was adopted by a narrow margin as an amendment to the House-passed education bill. However, it was thrown out in conference.

On another occasion I was able to have the amendment inserted in a House passed education bill by a very substantial majority, and that proposal for judicial review of these cases was likewise rejected in conference. As I recall, three times I secured the passage of a measure which was cosponsored by one of the ablest and most dedicated Members of the Senate, the distinguished Senator from Kentucky (Mr. COOPER). Those three bills passed the Senate on separate occasions by a substantial majority; and as I recall, on the last two occasions without any opposition, but when they reached the House they were quietly put to sleep in the House Committee on the Judiciary.

Some time later I was asked to file an amicus curiae brief in a Supreme Court case from New York State entitled Flast against Cohen, which squarely put in issue the question of the jurisdiction of Federal courts to entertain suits challenging the constitutionality under the first amendment of grants or loans of tax raised Federal moneys to religious institutions. The jurisdiction of the Federal courts in that respect has been put in doubt by a decision made by the Supreme Court in 1923 in the case of Frothingham against Mellon.

The attorney for the original parties in the Flast case, Leo Pfeffer, who is undoubtedly the most knowledgeable lawyer in this field of law in America, kindly consented to give me a portion of his time to make an oral argument before the Supreme Court as an amicus curiae for the Virginia State Baptist Association, and a school association in New York State.

I am delighted to say the Supreme Court handed down a decision which sustained the position taken by Mr. Pfeffer and myself in behalf of our clients. The Court agreed that the Federal courts do have jurisdiction to entertain suits challenging the constitutionality under the first amendment of grants or loans of Federal tax-raised money for religious activities. The court distinguished the case of Frothingham versus Mellon. It held that that case did not bar suits of this nature in respect to challenges of the disbursement by the Federal Government to religious institutions of tax-raised moneys.

This settled the problem of judicial review. As a result of the great amount of study I had put into this subject, both from a historical standpoint and from a legal standpoint, I was convinced that the amendment now proposed by the Senator from Tennessee and then proposed by the distinguished Senator from Illinois (Mr. Dirksen) ought to be defeated.

I recognize that one who interposes an objection of this kind puts himself in a position to be greatly misunderstood. The same thing applies to the position I have been taking with respect to the women's equal rights amendment. In that case I have been assailed as an enemy of women, notwithstanding the fact I know they do not have a better friend in Congress than the senior Senator from North Carolina. In opposing the women's equal rights amendment I was trying to keep the very fine women who advocate that amendment from doing what Justice Susie Sharp of the North Carolina Supreme Court said they were doing to themselves, and that is ambushing themselves. I was trying to make it certain that in their zeal they should not be robbed of the rights and the protections which they have won through many years of effort under the fifth and 14th amendments to the Constitution.

The same grounds for misunderstanding as exist in the case of the women's rights amendment existed in the case of those who had the temerity to oppose the adoption of the present amendment when it was offered by our late, lamented friend, Senator Dirksen, back in 1966.

I recognized the danger of being misunderstood in opposing such an amendment, and I would have to say that I prayed very fervently at that time that the Dirksen amendment go away off somewhere and not come back to bother me. While the Senator from North Carolina has had to fight on many occasions in this body, the Senator from North Carolina is a peace-loving man, and he would like to be spared all controversy; but, somehow or other, controversy comes. And notwithstanding my prayers

back in 1966 that the Dirksen amendment would go away off somewhere and not come back to haunt me, the Dirksen amendment did come back to haunt me. I had to face that issue, nothwithstanding the fact that I would like to have avoided it.

As a result of the fact that the amendment did come back to confront me, and to confront the Senate, I have had to put a somewhat derogatory interpretation upon the application of certain words of Scripture to myself. The Bible says, if I recall correctly, that the fervent prayers of a righteous man availeth much. My prayers that the Dirksen amendment go off somewhere and not bother me were not answered. I know those prayers were fervent but, since they availed me not, I had to conclude that I was not a righteous man.

The difficulty of opposing the Dirksen amendment is that people think the opposer does not have the proper conception of the importance of religion in the lives of the people of our Nation. To be against the prayer amendment is equated with being against prayer itself. I still believe, with all my heart and mind, what I said on September 20, 1966; namely, it is impossible to overmagnify the importance of faith in God. It is, in my judgment, the most potent force in the universe. Faith in God gives men and women the strength to face the storms of life and their consequences with a peace which passes understanding. In times of the greatest stress faith in God has a miraculous power to lift ordinary men and women to greatness.

In closing that speech, I made some observations concerning my attitude toward the subject of religion. In so doing, I quoted the remark attributed by the great English poet, Alfred Tennyson, to his immortal character, Ulysses. I quoted this phrase:

I am a part of all that I have met.

That statement, of course, is a recognition of the fact that each man is, in part at least, a product of his environment. I believe that each man is also, in part at least, a product of heredity. Hence we can say, and must say, that in addition to being a part of all that we have met, we are also a part of all that our ancestors have met. And in closing my speech on that occasion in opposition to the Dirksen amendment I made that very point.

Mr. President, I mentioned that the Supreme Court of the United States might well have avoided handing down the decisions in the school prayer cases because the plaintiffs lacked legal standing to sue. A serious consideration of those cases led me to conclude, however, that assuming the Supreme Court ought to have exercised jurisdiction, the Court made the only decision possible, and that was that the first amendment prohibited public schools from establishing religion and that the required saying of prayers constituted an establishment of religion within a constitutional sense.

I think the present amendment is wholly unnecessary, because there is nothing in the school prayer cases which holds that the first amendment outlaws voluntary prayers in the schools; and therefore we are attempting to circumvent a decision of the Supreme Court which has never been rendered.

The proposed amendment ostensibly permits persons gathered in a public building to participate in nondenominational prayers. There is no Supreme Court case and I venture to guess, no case in any American court—which bans prayer in public buildings. Indeed, the right to pray in a public building is not conditioned on the prayer being nondenominational. I find it hard to imagine a case in which the issue would arise, but I would suggest that were the Government to bar prayer in public buildings the Supreme Court would hold that to be a violation of the first amendment. And I would also suggest that this proposal, if passed as a statute, would itself violate the first amendment because Congress may not limit prayer in public buildings to nondenominational prayer alone.

Although I am reluctant to say this, I believe that the drafters of this amendment misconceive the import of the school prayer cases. These cases were based on the conviction that religious exercises as practiced in these cases were presented by the State, the prayers were written by the State, and so the State was practicing, or "establishing" religion. The cases do not bar prayers in public buildings. They only bar State-written, State-directed, State-sponsored prayer.

I do not care to repeat everything I said on September 20, 1966, in opposition to the Dirksen amendment, and for that reason I ask unanimous consent that my entire speech on that occasion be inserted at this point in the RECORD.

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

PRAYER IN PUBLIC SCHOOLS

Mr. ERVIN. Mr. President, I rise to oppose both the Dirksen amendment and the Bayh resolution.

I confess that it saddens me not to be in agreement with my good friend the Senator from Illinois [Mr. DIRKSEN] on the matter now pending before the Senate. The Senator from Illinois stood as firm as the rock of Gibraltar against the two most controversial measures to be considered by this Congress; namely, the proposal to repeal section 14(b) of the Taft-Hartley Act, and the proposal to enact a Federal forced housing law.

I stood shoulder to shoulder with him in both of these fights. I believe that he and I battled together on these two measures because we share a common devotion to local self-government and individual freedom.

Strange as it may seem, I believe that the motive which prompts him to offer his amendment and the motive which impels me to oppose it are identical. Each of us, I think, takes his respective position because of the realization of the importance of faith in God to our Nation.

It is impossible to overmagnify the importance of faith in God. It is, in my judgment, the most potent force in the universe. Faith in God gives men and women the strength to face the storms of life and their consequences with the peace which passes understanding. In times of greatest stress, faith in God has the miraculous power to lift ordinary men and women to greatness.

I oppose the Bayh resolution for a very simple reason. While each Senator or Representative may interpret Supreme Court opinions, Congress does not have authority as a collective body to do so.

The issues now before the Senate are concerned with the first amendment.

If we are to understand the first amendment, we must recur to history. This is so because we cannot understand the institutions and laws of today unless we understand the historical events out of which they arise.

As we recur to history, we will do well to remember that a nation which ignores the lessons history teaches is doomed to repeat the tragic mistakes of the past. Let us pray that America may not do this in respect to church and state relationships.

The most heart-rending story of history is that of man's struggle against civil and ecclesiastical tyranny for the simple right to bow his own knees before his own God in his own way.

As one of America's wisest jurists of all time, the late Chief Justice Walter P. Stacy, of the Supreme Court of North Carolina, declared in the opinion he wrote in *State* v. *Beal* (199 N.C. 278):

"For some reason, too deep to fathom, men contend more furiously over the road to heaven, which they cannot see, than over their visible walks on earth [and] It would be almost unbelievable, if history did not record the tragic fact, that men have gone to war and cut each other's throats because they could not agree as to what was to become of them after their throats were cut."

The Founding Fathers who wrote the Constitution of the United States were acutely aware of these truths.

They saw with the eyes of history the cruelties of the Spanish Inquisition, the massacre of the Huguenots of France, the slaughter of the Waldensians in the Alpine Valleys of Italy, the hanging and jailing of English and Irish Catholics by Protestant England, the hunting down of the Covenanters upon the crags and moors of Scotland, the branding, hanging, and whipping of Quakers, and the banishing of Baptists by Puritan Massachusetts, and the hundreds of other atrocities committed in the name of religion.

The Founding Fathers knew, moreover, that even during their own lifetimes those who did not conform to the doctrines and practices of the churches established by law in the places where they lived, such as Scotch-Irish Presbyterians in the Ulster, Catholics in England and Ireland, and dissenters in various American colonies, had been barred from civil and military offices because of their faiths, had been compelled to pay tithes for the propagation of religious opinions they disbelieved, and had had their marriages annulled and their children adjudged illegitimate for daring to speak their marriage vows before ministers of their own faiths, rather than before clergymen of the established churches.

The Founding Fathers were determined that none of these tragic historical events should be repeated in the nation they were creating.

To this end they inserted two provisions in the Constitution of the United States.

The first of these provisions appears in article VI and declares that "no religious test shall ever be required as a qualification to any office or public trust in the United States."

The second appears in the first amendment, and states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

What did the Founding Fathers intend to do when they embodied these words in the first amendment? The answer to this question becomes clear when we consider the events which preceded the writing of the first amendment.

At the time of the settlement of the Thirteen Original Colonies, virtually every nation in Western Europe and the British Isles had what were known as established churches. Those churches were established by law, and the law compelled all persons, including those who dissented from their religious beliefs, to

attend their services. The law furthermore required all persons to pay taxes for the construction of church buildings and the support of the clergy of the established churches.

An overwhelming number of the colonists who came from Europe to America came primarily to secure religious liberty and freedom from taxation for the support of established churches. Unfortunately, when those people came to America, they found that in many of the colonies predominant groups had set up established churches here, and that in consequence they were compelled, in such colonies, to pay taxes for the support of churches whose religious doctrines they disbelieved.

There is more than a modicum of historical truth in the statement of Artemus Ward to the effect that:

"The Puritans nobly fled from a land of despotism to a land of freedom, where they could not only enjoy their own religion, but could prevent everybody else from enjoying his."

The colonies of Virginia, North Carolina, South Carolina, Georgia, and Maryland had established churches, and the Anglican Church was the favorite under their laws.

In the colonies of Massachusetts, Connecticut, and New Hampshire, the Congregational Church was established by law.

In the colony of New York, the Dutch Reformed and Anglican Churches, in turn, were established by law.

The people who lived in those colonies were compelled to pay taxes for the support of religious institutions whose doctrines they disbelieved. Moreover, they were compelled to frequent the services of such religious institutions. They rebelled against those practices. They said, in the first place, that it was tyrannical for a government to attempt to regulate the relationship of worship between the individual man and his God. Then, as they pondered the words found in the 22d chapter of Matthew, verses 15 to 22, which declare that we are enjoined to "Render, therefore, unto Caesar the things which are Caesar's; and unto God the things that are God's" they also came to the conclusion that in addition to being tyrannical, the regulation of worship by government was also sinful. So they began to fight to separate church from state and to disestablish all churches. Their demand for the disestablishment of churches comprised two things: First, an end to the financial-legal connection between state and church; and second, a recognition of the rights of all persons to exercise freely their own modes of worship.

The process by which church and state became separated in the original States is an interesting story, and I wish time sufficed for me to detail it. However, the story has been told in a most accurate and most illuminating manner by R. Freeman Butts, in chapter 3, at pages 39–45, of his work entitled "The American Tradition in Religion and Education."

I ask unanimous consent that an excerpt from his book, in which he pictures how the people of the various original States secured the separation of church and state prior to the writing of the first amendment, be printed at this point in the body of the RECORD.

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

The historical meaning of separation of church and state cannot be determined by a narrow analysis of any specific event in any one place at any one time. It must be seen as a developing principle and practice that had its roots in the past and that took form on an uneven front throughout the new Nation that was struggling to come into existence during the Revolutionary and early national periods. It was a principle that emerged more rapidly in some States and more slowly in others. But the trend was unmistakable.

In some States where establishment had never gained a foothold and the practice of religious freedom was strong, there was little or no problem of separation as in Rhode Island, Pennsylvania, and Delaware. In other States where the establishment was strong, where the religious population was highly homogeneous, and where the tradition of religious freedom was weak, the principle of separation was slower in formulation and in practice, as in Massachusetts, Connecticut, and New Hampshire. In still other States where the establishment was strong but where the religious population was rapidly becoming heterogeneous, the process of separation and the formulation of the principle of separation was relatively rapid, notably in Virginia. Thus it took Virginia scarcely 10 years from 1776 to 1786 to complete the process by legal enactment, whereas it took Massachusetts more than 50 years from 1776 to 1833 to arrive at virtually the same stage in its constitutional development.

It was in the midst of this unmistakable historical process that the first amendment was debated in Congress in 1789 and finally ratified in 1791. The meaning of the first amendment cannot be discovered by a narrow examination of the meaning of its specific words at a specific time, but those words must receive their meaning from the more inclusive process in which they were formulated, debated, and approved. Any sound historical interpretation of the meaning of the first amendment should be derived from the larger cultural setting in which it was developed. No narrow historicism will suffice. The indisputable fact, as we shall see in the next few pages, is that the American people were moving from establishment to separation in the Revolutionary and early national periods; they were moving in different States at different rates and it is fair to say from different motives, but they were moving.

The first amendment was an integral part of this movement. It was sponsored by and fought for by persons who had been through the process in their own States or who otherwise clearly saw the direction of the trend as did the followers of the enlightenment. The framers of the first amendment were in the vanguard of the movement. The first amendment thus reflected the most advanced thinking on the subject of separation at the time of its adoption, and it in turn not only showed the way but speeded up the process in the laggard States.

In general, the process of separation from the pre-Revolutionary to the early national periods, went through three identifiable stages:

1. Toleration by the single establishments: Dissenting groups and the leaders who believed in religious freedom continued and speeded up the fight against the established churches in the effort to win the right to the free exercise of public religious worship. This right they wrung from the conservative groups in State after State in the form of concessions and the granting of privileges of free worship. Something of this process has been described in chapter 2.

2. Multiple establishments: The liberal groups believing in religious freedom discovered, however, that they were still in an underprivileged position because the legal support of taxes and property rights was still assigned by the state to the established churches. They discovered that free exercise was still a shadowy grant of toleration so long as the established churches had the support of tithes and so they renewed the fight to disestablish more completely the favored churches. The established churches, on their part, tried to compromise by persuading the legislatures to open up the tax privileges to the dissenting groups one by one. This meant that gradually more and more churches were admitted into the establishment and given the legal rights of taxation for their own public worship.

Thus, establishment came to be applied, not just to one church, but to any or all churches that had legal and financial connections with the state. This extended meaning of establishment was widely recognized at the time of the passing of the first amendment. Any cooperation between the state and any or all churches was considered to the establishment. In some States this compromise was agreed upon and was maintained for a relatively long time, as in Massachusetts, Connecticut, and New Hampshire; in other States the compromise lasted for only a short time, as in Maryland and South Carolina. In still other States the effort to achieve this compromise was defeated, notably in Virginia. It was this expanded meaning of multiple establishment that the first amendment was designed to prevent on the national level as well as to prevent the narrow establishment of a single church.

At the time of the formulation and ratification of the first amendment in the period 1789–91 all States that still had some form of establishment in effect had moved into the form of multiple establishment. As described in chapter 2, Massachusetts, Connecticut, and New Hampshire all provided for their distinctive town form of multiple establishment, and Maryland and South Carolina had provided for their respective State forms of multiple establishment. These were the only States in which establishment was still recognized in the basic laws of the several States, when the debates over the first amendment began in 1789. South Carolina quickly dropped its elaborate provisions for multiple establishment from its constitution of 1790, whereas Maryland did not amend its constitution until 1810.

Thus, in 1789 five of the original States still had authorized establishments. They were all multiple establishments. Before the first amendment was ratified in 1791, South Carolina had eliminated its constitutional provisions for multiple establishment. After the adoption of the first amendment in 1791 there were only four States whose basic laws embodied the principle of establishment. The Massachusetts constitution of 1780 and the Connecticut codified laws of 1784 made multiple establishment compulsory; Maryland's constitution of 1776 and New Hampshire's constitutions of 1784 and 1791 permitted multiple establishments at the discretion of the legislatures.

It is this meaning of multiple establishment which has been forgotten, conveniently overlooked, or never understood by the various groups today who urge that cooperation between church and state is admissible so long as the state treats all religious groups equally and fairly. That was exactly the purpose of the several colonial provisions for multiple establishment as described in chapter 2, and it was exactly the purpose of the attempts made in Virginia to achieve multiple establishment, as will be described in the following pages. Of course, they would have ruled out some sects which the dominant churches did not consider to be "safe" or legitimate religious groups, but the principle of multiple establishment is the same whether few, many, or all religious groups are taken into it. The state would always have to decide what was and what was not a religious group if it set out to "cooperate" with them all.

3. Separation: It was soon discovered that the compromise of establishing all recognized churches even on an equal or impartial basis was not sufficient. It might be possible to reconcile this kind of establishment with the outward forms of free exercise of public worship, but it was soon clearly seen that it could not be reconciled with genuinely equal rights of conscience. So long as the state was in the position of determining which churches should have legal and financial privileges of support,

there could be no real equality of religious conscience. It was still a grant of privilege by the state to a religious doctrine. Such a principle could not square with the growing belief fostered by the enlightenment that equal rights of conscience were natural and inalienable rights which the state could not infringe and which the state must protect.

Therefore, the struggle went on to sever all legal connections and to prohibit all financial support for any and all religious beliefs. It was recognized that if the state could grant a privilege, it could define which religious beliefs were entitled to that privilege. So the final stage in separation came when all forms of establishment were abolished. Thus, complete disestablishment of financial and legal support for religion by the state was necessary to achieve a genuinely free exercise of religion resting upon the solid grounds of equal rights of conscience.

This final step was clearly in the minds of those who proposed and struggled for the adoption of the first amendment of the Constitution. The first amendment was clearly an integral part of the larger definition of civil rights as contained in the other amendments which made up the American Bill of Rights.

The whole story of this historical process in the course of which the principle of separation of church and state emerged should be told in detail State by State, but the necessities of space limit us to presenting only one example of a State which had a strong establishment. This example, Virginia, shows the completion of the process before the first amendment was formulated, and is important because the leaders in Congress from Virginia were the ones who gave the primary form to the first amendment as it went through the various stages of debate and adoption.

Other examples among the original States could be given to show that the process of separation was well underway in a majority of States before the adoption of the first amendment. Separation had already been achieved in eight of the original States. This was accomplished in the constitutions of 1776 of New Jersey, Pennsylvania, Delaware, and North Carolina; in the constitutions of 1777 of New York and Georgia; by statute in 1786 in Virginia; and by original charter in Rhode Island.

"The fact that some States did not complete the process of separation until after the first amendment simply means that they were somewhat later in a process of which the first amendment was at once a reflection and also a formative influence. The first amendment was the application on the national level of the same principle that was developing in the States."

Mr. ERVIN. Mr. President, I shall not undertake to add to this story further details of the movements in the various original States to obtain religious freedom and freedom from taxation to support religious institutions. Suffice it to say that by the time the first amendment was written, the original States of Virginia, North Carolina, Georgia, New York, Rhode Island, Pennsylvania, Delaware, and New Jersey disestablished religion, and did so under constitutions and laws which forbade the establishment of any religion and the levying of taxation for the support of any religion.

So, Mr. President, at the time when the first amendment was drafted, the only States in which any establishment of religion was still in existence were Massachusetts—which continued such establishment until 1833; Connecticut—which continued such establishment until 1818; Maryland—which continued such establishment until 1810; New Hampshire—which continued such establishment until 1819; and South Carolina—which abolished such establishment in 1790. But in those five States there was no single established church at that time. There was an establishment of all of the churches which the people who dominated those States deemed to be respectable churches. They provided for an impartial use of taxes for the support of all of the churches which, in their view, were respectable.

However, it is interesting to consider the specific events in the State of Virginia which preceded the writing and the ratification of the first amendment. This is true because those most responsible for the writing into our Constitution of the first amendment were two Virginians—Thomas Jefferson and James Madison. By referring to the events in the State of Virginia which preceded the writing of the first amendment, we can find exactly what was meant, we can find exactly what was meant by the Founding Fathers when, in the first amendment, they provided that "Congress shall make no law respecting an establishment of religion."

This is true because the events in Virginia show exactly what James Madison meant when he insisted on writing into the first amendment the words "an establishment of religions."

In 1776, Virginia, as an independent Commonwealth, adopted a new constitution; James Madison was a member of the constitutional convention which drafted it. He succeeded in writing into the constitution of that great Commonwealth the proposition that all men are equally entitled to the free exercise of religion according to the dictates of conscience. After the adoption of that constitution, the Virginia Legislature met, and there ensued a great conflict between those who wanted religious freedom and freedom from taxation and those who wanted to retain an establishment of religion in that great Commonwealth. In the legislature of 1776, where the contest between those two groups began, Madison was able to persuade the legislature to provide that no dissenters should be compelled to pay any taxes to the established church of Virginia—the Church of England, which had been established there in 1629.

He also secured at that session the passage of a law which suspended for the time being the requirement that even members of the Church of England should pay taxes for its support. But the legislature of 1776 expressly reserved the most crucial question; namely, whether general taxes should be levied for the support of all of the denominations which the controlling element in the Virginia Legislature deemed to be respectable denominations. This question was reserved for subsequent legislatures.

In the Virginia Legislature of 1779 there occurred another great fight which centered around two bills. One was introduced by James Henry. It undertook to establish, by law, virtually all of the Christian churches as the established churches of Virginia, and to lay taxes for the support of all of them on an impartial basis. It is significant that in this bill references to an establishment of religion appear at a number of points, in contexts which clearly show that James Henry and the others of his day understood the term "an establishment of religion" to mean an official connection between the State and one or more churches, whereby the State recognized such church or churches and provided for taxation for its or their support.

In the same legislature, James Madison introduced Thomas Jefferson's bill for religious freedom in Virginia. It is one of the great documents which preceded the writing of the Constitution. It laid down two propositions: First, the proposition that there should be no religious qualification as a test for holding office; and second, the proposition that it is sinful and tyrannical to tax a man for the propagation of religious doctrine which he disbelieves. This document is of so much importance that it should be made available to all Members of the Senate before they vote on the amendment and the resolution. For this reason, I ask unanimous consent to have printed at this point in the body of the RECORD, as part of my remarks, Thomas Jefferson's bill for religious freedom in Virginia.

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

THOMAS JEFFERSON'S BILL FOR RELIGIOUS FREEDOM

I

Whereas Almighty God hath created the mind free * * * to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness * * * therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which in common with his fellow citizens he has a natural right; that it tends only to corrupt the principles of that religion it is meant to encourage, by bribing with a monopoly of worldly honors and emoluments, those who will externally profess and conform to it * * * to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil governments, for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them:

II

Be it enacted by the general assembly, That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

III

The rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present, or to narrow its operation, such act will be an infringement of natural right.

Mr. ERVIN. Mr. President, the opposing forces in the Virginia Legislature of 1779 were so nearly equal in power that it was impossible to secure the enactment of either of those bills. So the contest, which had been renewed there, was renewed a third time in the legislature of 1784.

In that legislative body was introduced not only Jefferson's bill for religious freedom in Virginia, but also a new bill which was sponsored by Patrick Henry. That bill was entitled "A Bill Establishing a Provision for Teachers of the Christian Religion." It undertook to give official recognition to virtually all Christian churches and to provide taxes for their support. In order that we might

understand what Madison meant when he used the term "an establishment of religion," it is necessary that the bill to which I have referred should be called to the attention of Senators. I ask unanimous consent that the bill may be printed at this point in the RECORD as a part of my remarks.

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

A BILL ESTABLISHING A PROVISION FOR TEACHERS OF THE CHRISTIAN RELIGION

Whereas the general diffusion of Christian knowledge hath a natural tendency to correct the morals of men, restrain their vices, and preserve the peace of society; which cannot be effected without a competent provision for learned teachers, who may be thereby enabled to devote their time and attention to the duty of instructing such citizens, as from their circumstances and want of education, cannot otherwise attain such knowledge; and it is judged that such provision may be made by the legislature, without counteracting the liberal principle heretofore adopted and intended to be preserved by abolishing all distinctions of preeminence amongst the different societies or communities of Christians;

Be it therefore enacted by the general assembly, That for the support of Christian teachers—per centum on the amount, or—in the pound on the sum payable for tax on the property within this Commonwealth, is hereby assessed, and shall be paid by every person chargeable with the said tax at the time the same shall become due; and the sheriffs of the several counties shall have power to levy and collect the same in the same manner and under the like restrictions and limitations, as are or may be prescribed by the laws for raising the revenues of this State; and be it

Enacted, That for every sum so paid, the sheriff or collector shall give a receipt, expressing therein to what society of Christians the person from whom he may receive the same shall direct the money to be paid, keeping a distinct account thereof in his books. The sheriff of every county, shall on or before the —— day of ——— in every year, return to the court, upon oath, two alphabetical lists of the payments to him made, distinguishing in columns opposite to the names of the persons who shall have paid the same, the society to which the money so paid was by them appropriated; and one column for the names where no appropriation shall be made. One of which lists, after being recorded in a book to be kept for that purpose, shall be filed by the clerk in his office; the other shall by the sheriff be fixed up in the courthouse, there to remain for the inspection of all concerned. And the sheriff, after deducting 5 per centum for the collection shall forthwith pay to such person or persons as shall be appointed to receive the same by the vestry, elders or directors, however denominated of each such society, the sum so stated to be due to that society; or in default thereof, upon the motion of such person or persons to the next or any succeeding court, execution shall be awarded for the same against the sheriff and his security, his and their executors or administrators; provided that 10 days previous notice be given of such motion. And upon every such execution, the officer serving the same shall proceed to immediate sale of the estate taken, and shall not accept of security for payment at the end of 3 months, nor to have the goods forthcoming at the day of sale; for his better direction wherein, the clerk shall endorse upon every such execution that no security of any kind shall be taken; and be it

Further enacted, That the money to be raised by virtue of this act, shall be by the vestries, elders, or directors of each religious society, appropriated to a provision for a minister or teacher of the gospel of their denomination, or the providing places of divine worship, and to none other use whatsoever; except in the denominations of Quakers and Menonists, who may receive what is collected from their members, and place it in their general funds, to be disposed of in a manner which they shall think best calculated to promote their particular mode of worship; and be it

Enacted, That all sums which at the time of payment to the sheriff or collector may not be appropriated by the person paying the same, shall be accounted for with the court in manner as by this act is directed; and after deducting for his collection, the sheriff shall pay the amount thereof (upon account certified by the courts to the auditors of public accounts, and by them to the treasurer) into the public treasury, to be disposed of under the direction of the general assembly, for the encouragement of seminaries of learning within the counties whence such sums shall arise, and to no other use or purpose whatsoever.

This act shall commence, and be in force, from and after the —— day of —— in the year ——.

Mr. ERVIN. The importance of the bill sponsored in 1784 by Patrick Henry becomes apparent when we recall that it provoked one of the greatest documents vindicating the cause of religious freedom ever penned on the face of the earth. There was a bitter contest in the Virginia Legislature of 1784. The legislature was on the verge of passing the bill sponsored by Patrick Henry, which would have recognized the legal interest of the State in virtually all the Christian churches then functioning in Virginia, and which would have imposed taxes on all Virginians for the support of such churches. But Madison, at the last moment, was able to persuade the Legislature of Virginia to put off the final vote on the bill sponsored by Patrick Henry until the next session of the legislature, which was scheduled for November 1785. Between that time and the time when the legislature next met James Madison made one of the greatest of all appeals for religious freedom. It was called "The Memorial and Remonstrance Against Religious Assessments." The memorial of James Madison is crucial in determining what the Founding Fathers meant when they yielded to the insistence of James Madison and wrote into the first amendment the provision that Congress shall make no law respecting an establishment of religion.

On a number of occasions in his remonstrance, which was a protest against the bill sponsored by Patrick Henry during the preceding legislature to levy taxes for the support of virtually all Christian churches in Virginia, James Madison used the word "establishment" at least five times in contexts which showed that in the mind of James Madison "an establishment of religion" meant an official relationship between the State and one church or many or all churches and the imposition of taxation for the support of one church or many churches or all churches.

Mr. President, I ask unanimous consent that the memorial and remonstrance of James Madison against religious assessments be printed at this point in the RECORD as a part of my remarks.

(There being no objection, the memorial and remonstance were ordered to be printed in the RECORD, as follows:)

MEMORIAL AND REMONSTRANCE AGAINST RELIGIOUS ASSESSMENTS TO THE HONORABLE THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF VIRGINIA

We, the subscribers, citizens of the said commonwealth, having taken into serious consideration, a bill printed by order of the last session of general assembly, entitled "A Bill Establishing a Provision for Teachers of the Christian Religion," and conceiving that the same, if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound as faithful members of a free State, to remonstrate against it, and to declare the reasons by which we are determined. We remonstrate against the said bill:

1. Because we hold it for a fundamental and undeniable truth, "that religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence." The religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable; because the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men: It is unalienable also; because what is here a right toward men, is a duty toward the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent both in order of time and degree of obligation, to the claims of civil society. Before any man can be considered as a member of civil society, he must be considered as a subject of the Governor of the Universe: And if a member of civil society, who enters into any subordinate association, must always do it with a reservation of his duty to the general authority; much more must every man who becomes a member of any particular civil society, do it with a saving of his allegiance to the Universal Sovereign. We maintain therefore that in matters of religion, no man's right is abridged by the institution of civil society, and that religion is wholly exempt from the cognizance. True it is, that no other rule exists, by which any question which may divide a society, can be ultimately determined, but the will of the majority; but it is also true, that the majority may trespass on the rights of the minority.

2. Because if religion be exempt from the authority of the society at large, still less can it be subject to that of the legislative body. The latter are but the creatures and vice gerents of the former. Their jurisdiction is both derivative and limited: it is limited with regard to the coordinator departments, more necessarily is it limited with regard to the constituents. The preservation of a free government requires not merely, that the metes and bounds which separate each department of power may be invariably maintained; but more especially, that neither of them be suffered to overleap the great barrier which defends the rights of the people. The rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are tyrants. The people who submit to it are governed by laws made neither by themselves, nor by an authority derived from them, and are slaves.

3. Because, it is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of [the] noblest characteristics of the late revolution. The freemen of America did not wait until usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much, soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other religions, may establish with the same ease any particular sect of Christians, in exclusion of all other sects? That the same authority which can force a citizen to contribute 3 pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

4. Because, the bill violates that equality which ought to be the basis of every law, and which is more indispensable, in proportion as the validity or expediency of any law is more liable to be impeached. If "all men are by nature equally free and independent," all men are to be considered as entering into society on equal conditions; as relinquishing no more, and therefore retaining no less, one than another, of their natural rights. Above all are they to be considered as retaining an "equal title to the free exercise of religion according to the dictates of conscience." Whilst we assert for ourselves a freedom to embrace, to profess, and to observe the religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offense against God, not against man: To God, therefore, not to men, must an account of it be rendered. As the bill violates equality by subjecting some to peculiar burdens; so it violates the same principle, by granting to others peculiar exemptions. Are the Quakers and Menonists the only sects who think a compulsive support of their religions unnecessary and unwarrantable? Can their piety alone be intrusted with the care of public worship? Ought their religions to be endowed above all others, with extraordinary privileges, by which proselytes may be enticed from all others? We think too favorably of the justice and good sense of these denominations, to believe that they either covet preeminencies over their fellow citizens, or that they will be seduced by them, from the common opposition to the measure.

5. Because the bill implies either that the civil magistrate is a competent judge or religious truth; or that he may employ religion as an engine of civil policy. The first is an arrogant pretension falsified by the contradictory opinions of rulers in all ages and throughout the world; the second an unhallowed perversion of the means of salvation.

6. Because the establishment proposed by the bill is not requisite for the support of the Christian religion. To say that it is, is a contradiction to the Christian religion itself; for every page of it disavows a dependence on the powers of this world: it is a contradiction of fact; for it is known that this religion both existed and flourished, not only without the support of human laws, but in spite of every opposition from them; and not only during the period of miraculous aid, but long after it had been left to its own evidence, and the ordinary care of providence. Nay, it is a contradiction in terms; for a religion not invented by human policy, must have preexisted and been supported, before it was established by human policy. It is moreover to weaken in those who profess this religion a pious confidence in its innate excellence, and the patronage of its author; and to foster in those who still reject it, a suspicion that its friends are too conscious of its fallacies, to trust it to its own merits.

7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of religion, have had a contrary operation. During almost 15 centuries, has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the clergy; ignorance and servility in the laity; in both, superstition, bigotry, and persecution. Inquire of the teachers of Christianity for the ages in which it appeared in its greatest luster; those of every sect point to the ages prior to its incorporation with civil policy. Propose a restoration of this primitive state in which its teachers depended on the voluntary rewards of their flocks; many of them predict its downfall. On which side ought their testimony to have greatest weight, when for or when against their interest?

8. Because the establishment in question is not necessary for the support of civil government. If it be urged as necessary for the support of civil government only as it is a means of supporting religion, and it be not necessary for the latter purpose, it cannot be necessary for the former. If religion be not within [the] cognizance of civil government, how can its legal establishment be said to be necessary to civil government? What influence in fact have ecclesiastical establishments had on civil society? In some instances they have been seen to erect a spiritual tyranny on the ruins of civil authority; in many instances they have been seen upholding the thrones of political tyranny; in no instance have they been seen the guardians of the liberties of the people. Rulers who wished to subvert the public liberty, may have found an established clergy convenient auxiliaries. A just government, instituted to secure and perpetuate it, needs them not. Such a government will be best supported by protecting every citizen in the enjoyment of his religion with the same equal hand which protects his person and his property; by neither invading the equal rights of any sect, nor suffering any sect to invade those of another.

9. Because the proposed establishment is a departure from that generous policy, which, offering an asylum to the persecuted and oppressed of every nation and religion, promised a luster to our country, and an accession to the number of its citizens. What a melancholy mark is the bill of sudden degeneracy? Instead of holding forth an asylum to the persecuted, it is itself a signal of persecution. It degrades from the equal rank of citizens all those whose opinions in religion do not bend to those of the legislative authority. Distant as it may be, in its present form, from the inquisition it differs from it only in degree. The one is the first step, the other the last in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign regions, must view the bill as a beacon on our coast, warning him to seek some other haven, where liberty and philanthropy in their due extent may offer a more certain repose from his troubles.

10. Because, it will have a like tendency to banish our citizens. The allurements presented by other situations are every day thinning their number. To superadd a fresh motive to emigration, by revoking the liberty which they now enjoy, would be the same species of folly which has dishonored and depopulated flourishing kingdoms.

11. Because, it will destroy that moderation and harmony which the forbearance of our laws to intermeddle with religion, has produced amongst its several sects. Torrents of blood have been spilt in the Old World, by vain attempts of the secular arm to extinguish religious discord, by proscribing all difference in religious opinions. Time has at length revealed the true remedy. Every relaxation of narrow and rigorous policy, wherever it has been tried, has been found to assuage the disease. The American theater has exhibited proofs, that equal and complete liberty, if it does not wholly eradicate it, sufficiently destroys its malignant influence on the health and prosperity of the State. If with the salutary effects of this system under our own eyes, we begin to contract the bonds of religious freedom, we know no name that will too severely reproach our folly. At least let warning be taken at the first fruits of the threatened innovation. The very appearance of the bill has transformed that "Christian forbearance, love and charity," which of late mutually prevailed, into animosities and jealousies, which may not soon be appeased. What mischiefs may not be dreaded should this enemy to the public quiet be armed with the force of a law?

12. Because, the policy of the bill is adverse to the diffusion of the light of Christianity. The first wish of those who enjoy this precious gift, ought to be that it may be imparted to the whole race of mankind. Compare the number of those who have as yet received it with the number still remaining under the dominion of false religions; and how small is the former. Does the policy of the bill tend to lessen the disproportion? No; it at once discourages those who are strangers to the light of (revelation) from coming into the region of it; and countenances, by example the nations who continue in darkness, in shutting out those who might convey it to them. Instead of leveling as far as possible, every obstacle to the victorious progress of truth, the bill with an ignoble and unchristian timidity would circumscribe it, with a wall of defense, against the encroachments of error.

13. Because attempts to enforce by legal sanctions, acts obnoxious to so great a proportion of citizens, tend to enervate the laws in general, and to slacken the bands of society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case where it is deemed invalid and dangerous? and what may be the effect of so striking an example of impotency in the government, on its general authority.

14. Because a measure of such singular magnitude and delicacy ought not to be imposed, without the clearest evidence that it is called for by a majority of citizens; and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined, or its influence secured. "The people of the respective counties are indeed requested to signify their opinion respecting the adoption of the bill to the next session of assembly." But the representation must be made equal, before the voice either of the representatives or of the counties, will be that of the people. Our hope is that neither of the former will, after due consideration, espouse the dangerous principle of the bill. Should the event disappoint us, it will still leave us in full confidence, that a fair appeal to the latter will reverse the sentence against our liberties.

15. Because, finally, "the equal right of every citizen to the free exercise of his religion according to the dictates of conscience" is held by the same tenure with all our other rights. If we recur to its origin, it is equally the gift of nature; if we weigh its importance, it cannot be less dear to us; if we consult the declaration of those rights which pertain to the good people of Virginia, as the "basis and foundation of government," it is enumerated with equal solemnity, or rather studied emphasis. Either then, we must say, that the will of the legislature is the only measure of their authority; and that in the plenitude of this authority, they may sweep away all our fundamental rights; or, that they are bound to leave this particular right untouched and sacred; either we must say, that they may control the freedom of the press, may abolish the trial by jury, may swallow up the executive and judiciary powers of the State; nay that they may despoil us of our very right of suffrage, and erect themselves into an independent and hereditary assembly; or we must say, that they have no authority to enact into law the bill under consideration. We the subscribers say, that the general assembly of this Commonwealth have no such authority: And that no effort may be omitted on our part against so dangerous an usurpation, we oppose to it, this remonstrance; earnestly praying, as we are in duty bound, that the Supreme Lawgiver of the Universe, by illuminating those to whom it is addressed, may on the one hand, turn their councils from every act which would affront His holy prerogative, or violate the trust committed to them; and on the other, guide them into every measure which may be worthy of His [blessing, may re]dound to their own praise,

the prosperity, and the happiness of the Commonwealth.

Mr. ERVIN. I make the assertion without fear of successful contradiction that no man can read James Madison's Remonstrance without coming to the conclusion that what James Madison and the other men of his generation had in mind when they wrote the first amendment was that there should be no official relationship of any character between government and any church, or many churches, or all churches, and no levying of taxes for the support of any church, or many churches, or all churches or any institutions conducted by any of them.

Madison caused his remonstrance to be widely distributed throughout the State of Virginia. As a result of his remonstrance, when the members of the legislature which was scheduled to convene in November 1785 were elected, those who supported Madison in his fight for religious freedom were in an overwhelming majority. They enacted into law by a large majority Jefferson's bill for religious freedom. We cannot overmagnify the importance which Thomas Jefferson and James Madison attributed to Jefferson's Statute for Religious Freedom or their demand that people should not be compelled by law to support in an official manner or by taxes any religious institutions.

I believe the clearest proof of the transcendent importance which Thomas Jefferson attributed to that statute is shown by the epitaph on the gravestone which he is said to have written himself.

As one ascends the hill which leads to Jefferson's home at Monticello, he passes the burial ground of members of the Jefferson family. He passes the spot where the mortal remains of Thomas Jefferson rest in the tongueless silence of the dreamless dust. On the gravestone of Thomas Jefferson is the epitaph which speaks with as much eloquence as Jefferson used in writing the Declaration of Independence or the Statute of Virginia for Religious Freedom. The statement is as follows:

"Here was buried Thomas Jefferson, author of the Declaration of American Independence; of the Statute of Virginia for Religious Liberty; and father of the University of Virginia."

At the time that Jefferson decided that those were the words which he wished to have engraved on the stone which marks his last resting place, he had been a member of the Legislature of Virginia; he had been Governor of the State of Virginia; he had represented Virginia in the Continental Congress; he had served as American Minister to France; he had officiated as Secretary of State in George Washington's Cabinet; he had been Vice President of the United States under John Adams; and he had been twice elected to the highest office within the gift of the American people—the President itself.

Yet Thomas Jefferson was not concerned that he should be remembered for the high offices which he had filled, but he was concerned that he should be remembered as the author of the Virginia Statute for Religious Freedom, one of the greatest documents ever penned by man. It lays down the proposition that it is sinful and tyrannical to compel a man to make contributions of money for the propagation of opinions that he disbelieves.

After the drafting of the Constitution of the United States, many Americans were dissatisfied with it because it did not contain any bill of rights, and particularly because it did not contain any provision which would guarantee religious freedom beyond the provision which merely specified that no religious qualification should ever be required as a test for holding public office in our Nation. When New York, New Hampshire, and Virginia ratified the Constitution, they adopted resolutions which insisted that the Constitution should be amended by incorporating into it a guarantee of religious freedom and a guarantee of freedom from taxation for the support of religious institutions.

My own State of North Carolina and the State of Rhode Island both postponed ratifying the Constitution, and their conventions stated in substance that they would not ratify the Constitution unless it were amended so as to provide for a total disestablishment of religion.

As a result of the demands of these five States, and the demands of thousands of other Americans throughout the other original States, the Constitution was amended in this respect. It was amended at the instigation of James Madison, who was elected to serve in Congress from the State of Virginia in the First Congress which met under the Constitution. As soon as this Congress convened, he began his great fight to have the first amendment written into the Constitution.

I wish I had sufficient time to detail the fight which occurred in Congress on this point. There were some who wished to maintain some vestige of religious support by Government, and some who merely wished to put in the restriction that there should be no single established church. But Madison insisted at all times that the first amendment should embody in it the provision that Congress should pass no law respecting an establishment of religion or prohibiting the free exercise of religion.

James Madison triumphed after much fighting. On September 23, 1789, Madison made a report to the House of Representatives concerning the action of the conference committee of the Senate and House, which had been appointed to reconcile varying views as to the language of the first amendment. This conference committee agreed with Madison and recommended the words which now are incorporated in the first amendment.

So we can say that James Madison, whom historians call the father of the Constitution, was responsible for the phrasing of the first amendment. The meaning of the words of the first amendment that "Congress shall make no law respecting an establishment of religion" is crystal clear. By those words, James Madison and his contemporaries intended to prohibit the Government from establishing any official relation between Government and religion and to prevent the Government from using tax moneys to support or assist in the support of any religious institutions of any character whatsoever.

As Justice Black said in *Everson* v. *Board of Education*, 330 U.S. 1:

"The people there, as elsewhere, reached the conviction that individual religious liberty could be achieved best under a government which was stripped of all power to tax, to support, or otherwise to assist any or all religions, or to interfere with the beliefs of any religious individual or group."

I have attempted to set out as clearly as possible the conviction of James Madison and his contemporaries that there should be no establishment of religion, and the meaning which they attributed to the words, "establishment of religion." Those words clearly implied to them that there should be no official relationship between Government and any religious organization and no support of any religious organization by tax moneys.

It is interesting to note that the Supreme Court of the United States has consistenly adhered to this meaning of this term, "an establishment of religion," when it has dealt with cases involving the first amendment.

I wish to read some excerpts from opinions of the Supreme Court dealing with this question. Justice Jackson declared in the Everson case.

"This freedom (i.e., religious freedom) was first in the Bill of Rights because it was first in the forefathers' minds; it was set forth in absolute terms, and its strength is its rigidity. It was intended not only to keep the States' hands out of religion, but to keep religion's hands off the state, and above all, to keep bitter religious controversy out of public life by denying to every denomination any advantage from getting control of public policy or the public purse.

Justice Rutledge, declared in the Everson case:

"Not simply an established church, but any law respecting an establishment of religion is forbidden * * *. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion."

Justice Black, writing the majority opinion in *McCollum* v. *Board of Education*, 333 U.S. 203, said:

"For the first amendment rests upon the premise that both religion and Government can best work to achieve their lofty aims if each is left free from the other within its respective sphere. Or, as we said in the Everson case, the first amendment has erected a wall between church and state which must be kept high and impregnable."

Justice Frankfurter asserted this, in the McCollum case:

"The great American principle of eternal separation—Elihu Root's phrase bears repetition—is one of the vital reliances of our constitutional system for assuring unities among our people stronger than our diversities. It is the Court's duty to enforce this principle in its full integrity.

"We renew our conviction that "we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the State and best for religion."

Justice Douglas said in *Zorach* v. *Clauson*, 343 U.S. 306:

"There cannot be the slightest doubt that the first amendment reflects the philosophy that church and state should be separated. And so far as interference with the free exercise of religion and an establishment of religion are concerned, the separation must be complete and unequivocal. The first amendment within the scope of its coverage permits no exception; the prohibition is absolute."

So much for the statements of Justices of the Supreme Court of the United States in respect to the objective of the establishment clause of the first amendment. The greatest declaration as to the overall meaning of the provisions of the first amendment denying to Congress the power to make any laws respecting an establishment of religion, or prohibiting the free exercise thereof, is that contained in the majority opinion written by Justice Black in the Everson case. This is what he said:

"The establishment of religion clause of the first amendment means at least this: Neither a State nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a State nor the Federal Government can, openly, or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of

religion by law was intended to erect a wall of separation between church and state."

It was not until 1940 that the Supreme Court of the United States held, in the case of *Cantwell* v. *Connecticut*, 310 U.S. 296, that the 14th amendment made the 1st amendment applicable to the States.

On June 25, 1962, the Supreme Court handed down the first of the so-called school prayer cases, *Engel* v. *Vitale*, 370 U.S. 421.

On June 17, 1963, the Supreme Court handed down the second of the so-called school prayer cases, *Abington School District* v. *Schempp*, 374 U.S. 203.

When the press reported that the Supreme Court had handed down these decisions, a great deal of consternation was aroused throughout the country with respect to the nature and the scope of the decisions. I believe that this consternation was aroused in large measure by the supposed logic of the concurring opinion of Mr. Justice Douglas, in the Engel case.

I will have to confess that I was one of those persons who was much disturbed by the opinions and particularly by the supposed logic of the concurring opinion of Justice Douglas. I felt that this was an area in our national life in which the Supreme Court well might have given some weight to the concept embraced in the very homey adage, "Let sleeping dogs lie."

Since neither the plaintiffs in these cases nor their children were required to participate in the exercises which gave rise to the cases, I felt originally that the Supreme Court might well have avoided entertaining jurisdiction of these cases on the theory that the plaintiffs and the persons in whose behalf the cases were instituted did not have standing entitling them to sue.

I also felt that since the Court had seen fit to exercise jurisdiction in these cases, it should have adopted the practical interpretation placed upon the first amendment in the various areas of our country which are dominated by one or another of various religious groups; and that was that the mere recitation of prayers or the reading of holy writings by State authority in the public schools was not outlawed by the establishment-of-religion clause of the first amendment if participation in such prayers and reading were voluntary, and if they were nonsectarian, and no effort was made to proselyte any student toward any particular religious belief.

Since that time I have read and reread the decisions in the Engel and Schempp cases on many occasions. I have also found much consolation insofar as the supposed logic in the concurring opinion of Justice Douglas in the Engel case is concerned in the aphorism of the great jurist, Oliver Wendell Holmes, Jr., who told us that the life of the law has been experience and not logic.

As a result of reading and rereading the majority opinions in these cases and pondering Justice Holmes' aphorism I have altered my views in respect to the decisions.

I have scrutinized with great care both of the majority opinions which represent the decisions of the Court, and I am unable to find anything in either one of the majority opinions which holds that the establishment-of-religion clause of the first amendment prohibits voluntary prayers or voluntary study of holy writings.

I realize that these majority opinions are not readily available to all Americans, and for that reason, Mr. President, I ask unanimous consent that the majority opinion in the Engel case, which was written by Justice Black, and the majority opinion in the Schempp case, which was written by Justice Clark, be printed at this point in the RECORD as a part of my remarks.

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

SUPREME COURT OF THE UNITED STATES—STEVEN I. ENGEL ET AL., PETITIONERS, *v.* WILLIAM J. VITALE, JR., ET AL.—No. 468.—OCTOBER TERM, 1961

(On Writ of Certiorari to the Court of Appeals of New York)

[June 25, 1962]

Mr. JUSTICE BLACK delivered the opinion of the Court.

The respondent Board of Education of Union Free School District No. 9, New Hyde Park, New York, acting in its official capacity under state law, directed the School District's principal to cause the following prayer to be said aloud by each class in the presence of a teacher at the beginning of each school day:

"Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country."

This daily procedure was adopted on the recommendation of the State Board of Regents, a governmental agency created by the State Constitution to which the New York Legislature has granted broad supervisory, executive, and legislative powers over the State's public school system.[1] These state officials composed the prayer which they recommended and published as a part of their "Statement on Moral and Spiritual Training in the Schools," saying: "We believe that this Statement will be subscribed to by all men and women of good will, and we call upon all of them to aid in giving life to our program."

Shortly after the practice of reciting the Regents' prayer was adopted by the School District, the parents of ten pupils brought this action in a New York State Court insisting that use of this official prayer in the public schools was contrary to the beliefs, religions, or religious practices of both themselves and their children. Among other things, these parents challenged the constitutionality of both the state law authorizing the School District to direct the use of prayer in public schools and the School District's regulation ordering the recitation of this particular prayer on the ground that these actions of official governmental agencies violate that part of the First Amendment of the Federal Constitution which commands that "Congress shall make no law respecting an establishment of religion"—a command which was "made applicable to the State of New York by the Fourteenth Amendment of the said Constitution." The New York Court of Appeals, over the dissents of Judges Dye and Fuld, sustained an order of the lower state courts which had upheld the power of New York to use the Regents' prayer as a part of the daily procedures of its public schools so long as the schools did not compel any pupil to join in the prayer over his or his parents' objection.[2] We granted certiorari to review this important decision involving rights protected by the First and Fourteenth Amendments.[3]

We think that by using its public school system to encourage recitation of the Regents' prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause. There can, of course, be no doubt that New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer is a religious activity. It is a solemn avowal of divine faith and supplication for the blessings of the Almighty. The nature of such a prayer has always been religious, none of the respondents has denied this and the trial court expressly so found:

"The religious nature of prayers was recognized by Jefferson and has been concurred in by theological writers, the United States Supreme Court and State courts and administrative officials, including New York's Commissioner of Education. A committee of the New York Legislature has agreed.

"The Board of Regents as *amicus curiae*, the respondents and intervenors all concede the religious nature of prayer, but seek to distinguish this prayer because it is based on our spiritual heritage. . . ."[4]

The petitioners contend among other things that the state laws requiring or permitting use of the Regents' prayer must be struck down as a violation of the Establishment Clause because that prayer was composed by government officials as a part of a governmental program to further religious beliefs. For this reason, petitioners argue the State's use of the Regents' prayer in its public school system breaches the constitutional wall of separation between Church and State. We agree with that contention since we think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government.

It is a matter of history that this very practice of establishing governmentally composed prayers for religious services was one of the reasons which caused many of our early colonists to leave England and seek religious freedom in America. The Book of Common Prayer, which was created under governmental direction and which was approved by Acts of Parliament in 1548 and

---

[1] See New York Constitution, Art V, § 4; New York Education Law, §§ 101, 120 *et seq.*, 202, 214–219, 224, 245 *et seq.*, 704, and 801 *et seq.*

[2] 10 N.Y. 2d 174, 176 N.E. 2d 579. The trial court's opinion which is reported at 18 Misc. 2d 659, N.Y.S. 2d 453, had made it clear that the Board of Education must set up some sort of procedures to protect those who objected to reciting the prayer: "This is not to say that the rights accorded petitioners and their children under the 'free exercise' clause do not mandate safeguards against such embarrassments and pressures. It is enough on this score, however, that regulations, such as were adopted by New York City's Board of Education in connection with its released time program, be adopted, making clear that neither teachers nor any other school authority may comment on participation or nonparticipation in the exercise nor suggest or require that any posture or language be used or dress be worn or be not used or not worn. Nonparticipation may take the form either of remaining silent during the exercise, or if the parent or child so desires, of being excused entirely from the exercise. Such regulations must also make provision for those nonparticipants who are to be excused from the prayer exercise. The exact provision to be made is a matter for decision by the board, rather than the court, within the framework of constitutional requirements. Within that framework would fall a provision that prayer participants proceed to a common assembly while nonparticipants attend other rooms, or that nonparticipants be permitted to arrive at school a few minutes late or to attend separate opening exercises, or any other method which treats with equality both participants and nonparticipants." 18 Misc. 2d, at 696, 191 N.Y.S. 2d, at 492–493. See also the opinion of the Appellate Division affirming that of the trial court, reported at 11 App. Div. 2d 340, 206 N.Y.S. 2d 133.

[3] 368 U.S. 924.

[4] 18 Misc. 2d, at 671–672, 191 N.Y. S. 2d. at 468–469.

1549,[5] set out in minute detail the accepted form and content of prayer and other religious ceremonies to be used in the established, tax-supported Church of England.[6] The controversies over the Book and what should be its content repeatedly threatened to disrupt the peace of that country as the accepted forms of prayer in the established church changed with the views of the particular ruler that happended to be in control at the time.[7] Powerful groups representing some of the varying religious views of the people struggled among themselves to impress their particular views upon the Government and obtain amendments of the Book more suitable to their respective notions of how religious services should be conducted in order that official religious establishment would advance their particular religious beliefs.[8] Other groups, lacking the necessary political power to influence the Government on the matter, decided to leave England and its established church and seek freedom in America from England's governmentally ordained and supported religion.

It is an unfortunate fact of history that when some of the very groups which had most strenuously opposed the established Church of England found themselves sufficently in control of colonial governments in this country to write their own prayers into law, they passed laws making their own religion the official religion of their respective colonies.[9] Indeed, as late as the time of the Revolutionary War, there were established churches in at least eight of the thirteen former colonies and established religions in at least four of the other five.[10] But the successful Revolution against English political domination was shortly followed by intense opposition to the practice of establishing religion by law. The opposition crystallized rapidly into an effective political force in Virginia where the minority religious groups such as Presbyterians, Lutherans, Quakers and Baptists had gained such strength that the adherents to the established Episcopal Church were actually a minority themselves. In 1785–1786, those opposed to the established Church, led by James Madison and Thomas Jefferson, who, though themselves not members of any of these dissenting religious groups, opposed all religious establishments by law on grounds of principle, obtained the enactment of the famous "Virginia Bill for Religious Liberty" by which all religious groups were placed on an equal footing so far as the State was concerned.[11] Similar though less far-reaching legislation was being considered and passed in other States.[12]

By the time of the adoption of the Constitution, our history shows that there was a widespread awareness among many Americans of the dangers of a union of Church and State. These people knew, some of them from bitter personal experience, that one of the greatest dangers to the freedom of the individual to worship in his own way lay in the Government's placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services. They knew the anguish, hardship and bitter strife that could come when zealous religious groups struggled with one another to obtain the Government's stamp of approval from each King, Queen, or Protector that came to temporary power. The Constitution was intended to avert a part of this danger by leaving the government of this country in the hands of the people rather than in the hands of any monarch. But this safeguard was not enough. Our Founders were no more willing to let the content of their prayers and their privilege of praying whenever they pleased be influenced by the ballot box than they were to let these vital matters of personal conscience depend upon the succession of monarchs. The First Amendment was added to the Constitution to stand as a guarantee that neither the power nor the prestige of the Federal Government would be used to control, support or influence the kinds of prayer the American people can say—that the people's religions must not be subjected to the pressures of government for change each time a new political administration is elected to office. Under that Amendment's prohibition against governmental establishment of religion, as reinforced by the provisions of the Fourteenth Amendment, government in this country, be it state or federal, is without power to prescribe by law any particular form of prayer which is to be used as an official prayer in carrying on any program of governmentally sponsored religious activity.

There can be no doubt that New York's state prayer program officially establishes the religious beliefs embodied in the Regents' prayer. The respondents' argument to the contrary which is largely based upon the contention that the Regents' prayer is "nondenominational" and the fact that the program, as modified and approved by state courts, does not require all pupils to recite the prayer but permits those who wish to do so to remain silent or be excused from the room, ignores the essential nature of the program's constitutional defects. Neither the fact the prayer may be denominationally neutral, nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause, as it might from the Free Exercise Clause, of the First Amendment, both of which are operative against the States by virtue of the Fourteenth Amendment. Although these two clauses may in certain instances overlap, they forbid two quite different kinds of governmental encroachment upon religious freedom. The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not. This is not to say, of course, that laws officially prescribing a particular form of religious worship do not involve coercion of such individuals. When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. But the purposes underlying the Establishment Clause go much further than that. Its first and most immediate purpose rested on the belief that a union of government

---

[5] 2 & 3 Edward VI, c. 1. entitled "An Act for Uniformity of Service and Administration of the Sacraments throughout the Realm"; 3 & 4 Edward VI, c. 10, entitled "An Act for the abolishing and putting away of divers Books and Images."

[6] The provisions of the various versions of the Book of Common Prayer are set out in broad outline in the Encyclopedia Britannica Vol. 18 (1957 ed.), pp. 420–423. For a more complete description, see Pullan, The History of the Book of Common Prayer (1900).

[7] The first major revision of the Book of Common Prayer was made in 1552 during the reign of Edward VI, 5 & 6 Edward VI, c. 1. In 1553. Edward VI died and was succeeded by Mary who abolished the Book of Common Prayer entirely. 1 Mary, c. 2. But upon the accession of Elizabeth in 1558, the Book was restored with important alterations from the form it had been given by Edward VI. 1 Elizabeth, c. 2. The resentment to this amended form of the Book was kept firmly under control during the reign of Elizabeth but, upon her death in 1603, a petition signed by more than 1,000 Puritan ministers was presented to King James I asking for further alterations in the Book. Some alterations were made and the Book retained substantially this form until it was completely suppressed again in 1645 as a result of the successful Puritan Revolution. Shortly after the restoration in 1660 of Charles II, the Book was again reintroduced, 13 & 14 Charles II, c. 4, and again with alterations. Rather than accept this form of the Book some 2,000 Puritan ministers vacated their benefices. See generally Pullan, The History of the Book of Common Prayer (1900), pp. vii-xvi; Encyclopedia Britannica (1957 ed.), Vol. 18, pp. 421–422.

[8] For example, the Puritans twice attempted to modify the Book of Common Prayer and once attempted to destroy it. The story of their struggle to modify the Book in the reign of Charles I is vividly summarized in Pullan, History of the Book of Common Prayer, at p. xiii: "The King actively supported those members of the Church of England who were anxious to vindicate its Catholic character and maintain the ceremonial which Elizabeth had approved. Laud, Archbishop of Canterbury, was the leader of this school. Equally resolute in his opposition to the distinctive tenets of Rome and of Geneva, he enjoyed the hatred of both Jesuit and Calvinist. He helped the Scottish bishops, who had made large concessions to the uncouth habits of Presbyterian worship, to draw up a Book of Common Prayer for Scotland. It contained a Communion Office resembling that of the book of 1549. It came into use in 1637, and met with a bitter and barbarous opposition. The vigour of the Scottish Protestants strengthened the hands of their English sympathisers. Laud and Charles were executed, Episcopacy was abolished, the use of the Book of Common Prayer was prohibited."

[9] For a description of some of the laws enacted by early theocratic governments in New England, see Parrington, Main Currents in American Thought (1930), Vol. 1, pp. 5–50; Whipple, Our Ancient Liberties (1927), pp. 63–78; Wertenbaker, The Puritan Oligarchy (1947).

[10] The Church of England was the established church of at least five colonies: Maryland, Virginia, North Carolina, South Carolina and Georgia. There seems to be some controversy as to whether that church was officially established in New York and New Jersey but there is no doubt that it received substantial support from those states. See Cobb, The Rise of Religious Liberty in America (1902), pp. 338, 408. In Massachusetts, New Hampshire and Connecticut, the Congregationalist Church was officially established. In Pennsylvania and Delaware, all Christian sects were treated equally in most situations but Catholics were discriminated against in some respects. See generally Cobb, The Rise of Religious Liberty in America (1902). In Rhode Island all Protestants enjoyed equal privileges but it is not clear whether Catholics were allowed to vote. Compare Fiske, The Critical Period in American History (1899), p. 76 with Cobb, The Rise of Religious Liberty in America (1902), pp. 437–438.

[11] 12 Hening, Statutes of Virginia (1823), 84, entitled "An Act for establishing religious freedom." The story of the events surrounding the enactment of this law was reviewed in *Everson* v. *Board of Education*, 330 U.S. 1, both by the Court, at pp. 11–13, and in the dissenting opinion of Mr. Justice Rutledge, at pp. 33–42. See also Fiske, The Critical Period in American History (1899), pp. 78–82 James, The Struggle for Religious Liberty in Virginia (1900); Thom, The Struggle for Religious Freedom in Virginia: The Baptists (1900); Cobb, The Rise of Religious Liberty in America (1902), pp. 74–115, 482–499.

[12] See Cobb, The Rise of Religious Liberty in America (1902), pp. 482–509.

and religion tends to destroy government and degrade religion. The history of governmentally established religion, both in England and in this country, showed that whenever government had allied itself with one particular form of religion, the inevitable result had been that it had incurred the hatred, disrepect and even contempt of those who held contrary beliefs.[13] That same history showed that many people had lost their respect for any religion that had relied upon the support of government to spread its faith.[14] The Establishment Clause thus stands as an expression of principles on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy, to permit its "unhallowed perversion" by a civil magistrate.[15] Another purpose of the Establishment Clause rested upon an awareness of the historical fact that governmentally established religions and religious persecutions go hand in hand.[16] The Founders knew that only a few years after the Book of Common Prayer became the only accepted form of religious services in the established Church of England, an Act of Uniformity was passed to compel all Englishmen to attend those services and to make it a criminal offense to conduct or attend religious gatherings of any other kind[17]—a law which was consistently flouted by dissenting religious groups in England and which contributed to widespread persecutions of people like John Bunyan who persisted in holding "unlawful [religious] meetings . . . to the great disturbance and distraction of the good subjects of this kingdom. . . ."[18] And they knew that similiar persecutions had received the sanction of law in several of the colonies in this country soon after the establishment of official religions in those colonies.[19] It was in large part to get completely away from this sort of systematic religious persecution that the Founders brought into being our Nation, our Constitution, and our Bill of Rights with its prohibition against any governmental establishment of religion. The New York laws officially prescribing the Regents' prayer are inconsistent with both the purposes of the Establishment Clause and with the Establishment Clause itself.

It has been argued that to apply the Constitution in such a way as to prohibit state laws repecting an establishment of religious services in public schools is to indicate a hostility toward religion or toward prayer. Nothing, of course, could be more wrong. The history of man is inseparable from the history of religion. And perhaps it is not too much to say that since the beginning of that history many people have devoutly believed that "More things are wrought by prayer than this world dreams of." It was doubtless largely due to men who believed this that there grew up a sentiment that caused men to leave the cross-current of officially established state religions and religious persecution in Europe and come to this country filled with the hope that they could find a place in which they could pray when they pleased to the God of their faith in the language they chose.[20] And there were men of this same faith in the power of prayer who led the fight for adoption of our Constitution and also for our Bill of Rights with the very guarantees of religious freedom that forbid the sort of governmental activity which New York has attempted here. These men knew that the First Amendment, which tried to put an end to governmental control of religion and of prayer, was not written to destroy either. They knew rather that it was written to quiet well-justified fears which nearly all of them felt arising out of an awareness that governments of the past had shackled men's tongues to make them speak only the religious thoughts that government wanted them to speak and to pray only to the God that government wanted them to pray to. It is neither sacrilegious nor anti-religious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance.[21]

It is true that New York's establishment of its Regents' prayer as an officially approved religious doctrine of that State does not amount to a total establishment of one particular religious sect to the exclusion of all others—that, indeed, the governmental en-

---

[13] [A]ttempts to enforce by legal sanctions, acts obnoxious to so great a proportion of citizens, tend to enervate the laws in general, and to slacken the bands of Society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case where it is deemed invalid and dangerous? and what may be the effect of so striking an example of impotency in the Government, on its general authority." Memorial and Remonstrance against Religious Assessments, II Writings of Madison 183, 190.

[14] "It is moreover to weaken in those who profess this Religion a pious confidence in its innate excellence, and the patronage of its Author; and to foster in those who still reject it, a suspicion that its friends are too conscious of its fallacies, to trust it to its own merits. . . . [E]xperience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries, has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy; ignorance and servility in the laity; in both, superstition, bigotry and persecution. Enquire of the Teachers of Christianity for the ages in which it appeared in its greatest lustre; those of every sect, point to the ages prior to its incorporation with Civil policy." *Id.*, at 187.

[15] Memorial and Remonstrance against Religious Assessments, II Writings of Madison, at 187.

[16] [T]he proposed establishment is a departure from that generous policy, which, offering an asylum to the persecuted and oppressed of every Nation and Religion, promised a lustre to our country, and an accession to the number of its citizens. What a melancholy mark is the Bill of sudden degeneracy? Instead of holding forth an asylum to the persecuted, it is itself a signal of persecution. . . . Distant as it may be, in its present form, from the Inquisition it differs from it only in degree. The one is the first step, the other the last in the career of intolerance. The magnanimous suffered under this cruel scourge in foreign Regions, must view the Bill as a Beacon on our Coast, warning him to seek some other haven, where liberty and philanthropy in their due extent may offer a more certain repose from his troubles." *Id.*, at 188.

[17] 5 & 6 Edward VI, c. 1, entitled "An Act for the Uniformity of Service and Administration of Sacraments throughout the Realm. This Act was repealed during the reign of Mary but revived upon the accession of Elizabeth. See note 7, *supra*. The reasons which led to the enactment of this statute were set out in its preamble: "Where there hath been a very godly Order set forth by the Authority of Parliament, for Common Prayer and Administration of Sacraments to be used in the Mother Tongue within the Church of *England*, agreeable to the Word of God and the Primitive Church, very comfortable to all good People desiring to live in Christian Conversation, and most profitable to the Estate of this Realm, upon the which the Mercy, Favour and Blessing of Almighty God is in no wise so readily and plenteously poured as by Common Prayers, due using of the Sacraments, and often preaching of the Gospel, with the Devotion of the Hearers: (1) And yet this notwithstanding, a great Number of People in divers Parts of this Realm, following their own Sensuality, and living either without Knowledge or due Fear of God, do wilfully and damnably before Almighty God abstain and refuse to come to their Parish Churches and other Places where Common Prayer, Administration of the Sacraments, and Preaching of the Word of God, is used upon *Sundays* and other Days ordained to be Holydays."

[18] Bunyan's own account of his trial is set forth in A Relation of the Imprisonment of Mr. John Bunyan, reprinted in Grace Abounding and The Pilgrim's Progress (Brown ed. 1907), at 103–132.

[19] For a vivid account of some of these Persecutions, see Wertenbaker, The Puritan Oligarchy (1947).

[20] Perhaps the best example of the sort of men who came to this country for precisely that reason is Roger Williams, the founder of Rhode Island who has been described as "the truest Christian amongst many who sincerely desired to be Christian." Parrington, Main Currents of American Thought (1930), Vol. 1, at p. 74. Williams, who was one of the earliest exponents of the doctrine of separation of church and state, believed that separation was necessary in order to protect the church from the danger of destruction which he thought inevitably flowed from control by even the best-intentioned civil authorities: "The unknowing zeale of *Constantine* and other Emperours, did more hurt to *Christ Jesus* his Crowne and Kingdome, then the raging fury of the most bloody *Neroes*. In the *persecutions* of the later, *Christians* were sweet and fragrant, like spice pounded and beaten in morters: But those *good* Emperours, persecuting some erroneous persons, *Arrius, &c.* and advancing the professours of some Truths of Christ (for there was no small number of *Truths* lost in those times) and maintaining their *Religion* by the material Sword, I say by this meanes *Christianity* was *ecclipsed*, and the Professors of it fell asleep. . . ." Williams, The Bloudy Tenent of Persecution, for cause of Conscience, discussed, in A Conference betweene Truth and Peace (London, 1644), reprinted in Naragansett Club Publications, Vol. III, p. 184. To Williams, it was no part of the business or competence of a civil magistrate to interfere in religious matters: "[W]hat imprudence and *indiscretion* is it in the most common affaires of Life, to conceive that *Emperours, Kings* and *Rulers* of the earth must not only be qualified with *politicall* and *state abilities* to *make* and *execute* such *Civill Lawes* which may concerne the common *rights, peace* and *safety* (which is worke and businesse, load and burthen enough for the ablest shoulders in the Commonweal) but also furnished with such *Spirituall* and heavenly *abilities* to governe the *Spirituall* and *Christian Commonweale*. . . ." *Id.*, at 366. See also *id.*, at 136–137.

[21] There is of course nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems which include the composer's professions of faith in a Supreme Being, or with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercise that the State of New York has sponsored in this instance.

dorsement of that prayer seems relatively insignificant when compared to the governmental encroachments upon religion which were commonplace 200 years ago. To those who may subscribe to the view that because the Regents' official prayer is so brief and general there can be no danger to religious freedom in its governmental establishment, however, it may be appropriate to say in the words of James Madison, the author of the First Amendment:

"[I]t is proper to take alarm at the first experiment on our liberties. . . . Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?" [22]

The judgment of the Court of Appeals of New York is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.

Mr. JUSTICE FRANKFURTER took no part in the decision of this case.

Mr. JUSTICE WHITE took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES—NOS. 142 AND 119—OCTOBER TERM, 1962

SCHOOL DISTRICT OF ABINGTON TOWNSHIP, PENNSYLVANIA, ET AL., APPELLANTS, 142 *v.* EDWARD LEWIS SCHEMPP ET AL.

(On Appeal From the United States District Court for the Eastern District of Pennsylvania)

WILLIAM J. MURPHY III, ETC., ET AL., PETITIONERS, 119 *v.* JOHN N. CURLETT, PRESIDENT, ET AL., INDIVIDUALLY, AND CONSTITUTING THE BOARD OF SCHOOL COMMISSIONERS OF BALTIMORE CITY

(On Writ of Certiorari to the Court of Appeals of Maryland)

[June 17, 1963]

Mr. JUSTICE CLARK delivered the opinion of the Court.

Once again we are called upon to consider the scope of the provision of the First Amendment to the United States Constitution which declares that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. . . ." These companion cases present the issues in the context of state action requiring that schools begin each day with readings from the Bible. While raising the basic questions under slightly different factual situations, the cases permit of joint treatment. In light of the history of the First Amendment and of our cases interpreting and applying its requirements, we hold that the practices at issue and the laws requiring them are unconstitutional under the Establishment Clause, as applied to the states through the Fourteenth Amendment.

The Facts in Each Case: No. 142. The Commonwealth of Pennsylvania by law, 24 Pa. Stat. § 15–1516, as amended, Pub. Law 1928 (Supp. 1960) Dec. 17, 1959, requires that "At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parents or guardian." The Schempp family, husband and wife and two of their three children, brought suit to enjoin enforcement of the statute, contending that their rights under the Fourteenth Amendment to the Constitution of the United States are, have been, and will continue to be violated unless this statute be declared unconstitutional as violative of these provisions of the First Amendment. They sought to enjoin the appellant school district, wherein the Schempp children attend school, and its officers and the Superintendent of Public Instruction of the Commonwealth from continuing to conduct such readings and recitation of the Lord's Prayer in the public schools of the district pursuant to the statute. A three-judge statutory District Court for the Eastern District of Pennsylvania held that the statute is violative of the Establishment Clause of the First Amendment as applied to the States by the Due Process Clause of the Fourteenth Amendment and directed that appropriate injunctive relief issue. 201 F. Supp. 815.[1] On appeal by the District, its officials and the Superintendent, under 28 U.S.C. § 1253, we noted probable jurisdiction. 371 U.S. 807.

The appellees Edward Lewis Schempp, his wife Sidney, and their children, Roger and Donna, are of the Unitarian faith and are members of the Unitarian Church in Germantown, Philadelphia, Pennsylvania, where they, as well as another son, Ellory, regularly attend religious services. The latter was originally a party but having graduated from the school system *pendente lite* was voluntarily dismissed from the action. The other children attend the Abington Senior High School, which is a public school operated by appellant district.

On each school day at the Abington Senior High School between 8:15 and 8:30 a.m., while the pupils are attending their home rooms or advisory sections, opening exercises are conducted pursuant to the statute. The exercises are broadcast into each room in the school building through an intercommunications system and are conducted under the supervision of a teacher by students attending the school's radio and television workshop. Selected students from this course gather each morning in the school's workshop studio for the exercises, which include readings by one of the students of 10 verses of the Holy Bible, broadcast to each room in the building. This is followed by the recitation of the Lord's Prayer, likewise over the intercommunications system, but also by the students in the various classrooms, who are asked to stand and join in repeating the prayer in unison. The exercises are closed with the flag salute and such pertinent announcements as are of interest to the students. Participation in the opening exercises, as directed by the statute, is voluntary. The student reading the verses from the Bible may select the passages and read from any version he chooses, although the only copies furnished by the school are the King James version, copies of which were circulated to each teacher by the school district. During the period in which the exercises have been conducted the King James, the Douay and the Revised Standard versions of the Bible have been used, as well as the Jewish Holy Scriptures. There are no prefatory statements, no questions asked or solicited, no comments or explanations made and no interpretations given at or during the exercises. The students and parents are advised that the student may absent himself from the classroom or, should he elect to remain, not participate in the exercises.

It appears from the record that in schools not having an intercommunications system the Bible reading and the recitation of the Lord's Prayer were conducted by the homeroom teacher,[2] who chose the text of the verses and read them herself or had students read them in rotation or by volunteers. This was followed by a standing recitation of the Lord's Prayer, together with the Pledge of Allegiance to the flag by the class in unison and a closing announcement of routine school items of interest.

At the first trial Edward Schempp and the children testified as to specific religious doctrines purveyed by a literal reading of the Bible "which were contrary to the religious beliefs which they held and to their familial teaching." 177 F. Supp. 398, 400. The children testified that all of the doctrines to which they referred were read to them at various times as part of the exercises. Edward Schempp testified at the second trial that he had considered having Roger and Donna excused from attendance at the exercises but decided against it for several reasons, including his belief that the children's relationships with their teachers and classmates would be adversely affected.[3]

"Dr. Solomon Grayzel testified that there were marked differences between the Jewish Holy Scriptures and the Christian Holy Bible, the most obvious of which was the absence of the New Testament in the Jewish Holy Scriptures. Dr. Grayzel testified that portions of the New Testament were offensive to Jewish tradition and that, from the standpoint of Jewish faith, the concept of Jesus Christ as the Son of God was 'practically blasphemous.' He cited instances in the New Testament which, assertedly, were not only sectarian in nature but tended to bring the Jews into ridicule or scorn. Dr. Grayzel gave as his expert opinion that such material from the New Testament could be explained to Jewish children in such a way as to do no harm to them. But if portions of the New Testament were read without explanation,

---

[22] Memorial and Remonstrance against Religious Assessments, II Writings of Madison 183, at 185–186.

[1] The action was brought in 1958, prior to the 1959 amendment of § 15–1516 authorizing a child's nonattendance at the exercises upon parental request. The three-judge court held the statute and the practices complained of unconstitutional under both the Establishment Clause and the Free Exercise Clause. 177 F. Supp. 398. Pending appeal to this Court by the school district, the statute was so amended, and we vacated the judgment and remanded for further proceedings. 364 U.S. 298. The same three-judge court granted appellees' motion to amend the pleadings, 195 F. Supp. 518, held a hearing on the amended pleadings and rendered the judgment, 201 F. Supp. 815, from which appeal is now taken.

[2] The statute as amended imposes no penalty upon a teacher refusing to obey its mandate. However, it remains to be seen whether one refusing could have his contract of employment terminated for "wilful violation of the school laws." 24 Pa. Stat. (Supp. 1960) § 11–1122.

[3] The trial court summarized his testimony as follows:

"Edward Schempp, the children's father, testified that after careful consideration he had decided that he should not have Roger or Donna excused from attendance at these morning ceremonies. Among his reasons were the following. He said that he thought his children would be 'labeled as "odd balls" ' before their teachers and classmates every school day; that children, like Roger's and Donna's classmates, were liable 'to lump all particular religious difference[s] or religious objections [together] as "atheism" ' and that today the word 'atheism' is often connected with 'atheistic communism,' and has 'very bad' connotations, such as 'un-American' or 'anti-Red,' with overtones of possible immorality. Mr. Schempp pointed out that due to the events of the morning exercises following in rapid succession, the Bible reading, the Lord's Prayer, the Flag Salute, and the announcements, excusing his children from the Bible reading would mean that probably they would miss hearing the announcements so important to children. He testified also that if Roger and Donna were excused from Bible reading they would have to stand in the hall outside their 'homeroom' and that this carried with it the imputation of punishment for bad conduct." 201 F. Supp., at 818.

they could be, and in his specific experience with children Dr. Grayzel observed, had been, psychologically harmful to the child and had caused a divisive force within the social media of the school.

"Dr. Grayzel also testified that there was significant difference in attitude with regard to the respective Book of the Jewish and Christian Religions in that Judaism attaches no special significance to the reading of the Bible *per se* and that the Jewish Holy Scriptures are source materials to be studied. But Dr. Grayzel did state that many portions of the New as well as the Old Testament contained passages of great literary and moral value.

"Dr. Luther A. Weigle, an expert witness for the defense, testified in some detail as to the reasons for and the methods employed in developing the King James and the Revised Standard Versions of the Bible. On direct examination, Dr. Weigle stated that the Bible was non-sectarian. He later stated the the phrase 'non-sectarian' meant to him nonsectarian within the Christian faiths. Dr. Weigle stated that his definition of the Holy Bible would include the Jewish Holy Scriptures, but also stated that the 'Holy Bible' would not be complete without the New Testament. He stated that the New Testament 'conveyed the message of Christians.' In his opinion, reading of the Holy Scriptures to the exclusion of the New Testament would be a sectarian practice. Dr. Weigle stated that the Bible was of great moral, historical and literary value. This is conceded by all parties and is also the view of the court." 177 F. Supp. 398, 401–402.

The trial court, in striking down the practices and the statute requiring them, made specific findings of fact that the children's attendance at Abington Senior High School is compulsory and that the practice of reading 10 verses from the Bible is also compelled by law. It also found that:

"The reading of the verses, even without comment, possesses a devotional and religious character and constitutes in effect a religious observance. The devotional and religious nature of the morning exercises is made all the more apparent by the fact that the Bible reading is followed immediately by a recital in unison by the pupils of the Lord's Prayer. The fact that some pupils, or theoretically all pupils, might be excused from attendance at the exercises does not mitigate the obligatory nature of the ceremony for . . . Section 1516 . . . unequivocally requires the exercises to be held every school day in every school in the Commonwealth. The exercises are held in the school buildings and perforce are conducted by and under the authority of the local school authorities and during school sessions. Since the statute requires the reading of the 'Holy Bible,' the Christian document, the practice . . . prefers the Christian religion. The record demonstrates that it was the intention of . . . the Commonwealth . . . to introduce a religious ceremony into the public schools of the Commonwealth." 210 F. Supp., at 819.

No. 119. In 1905 the Board of School Commissioners of Baltimore City adopted a rule pursuant to Art. 77, § 202 of the Annotated Code of Maryland. The rule provided for the holding of opening exercises in the schools of the city consisting primarily of the "reading, without comment, of a chapter in the Holy Bible and/or the use of the Lord's Prayer." The petitioners, Mrs. Madalyn Murray and her son, William J. Murray, III, are both professed atheists. Following unsuccessful attempts to have the respondent school board rescind the rule this suit was filed for mandamus to compel its rescission and cancellation. It was alleged that William was a student in a pubic school of the city and Mrs. Murray, his mother, was a taxpayer therein; that it was the practice under the rule to have a reading on each school morning from the King James version of the Bible; that at petitioners' insistence the rule was amended [4] to permit children to be excused from the exercise on request of the parent and that William had been excused pursuant thereto; that nevertheless the rule as amended was in violation of the petitioners' rights "to freedom of religion under the First and Fourteenth Amendments" and in violation of "the principle of separation between church and state, contained therein. . . ." The petition particularized the petitioners' atheistic beliefs and stated that the rule, as practiced, violated their rights "in that it threatens their religious liberty by placing a premium on belief as against nonbelief and subjects their freedom of conscience to the rule of the majority; it pronounces belief in God as the source of all moral and spiritual values, equating these values with religious values, and thereby renders sinister, alien and suspect the beliefs and ideals of . . . Petitioners, promoting doubt and question of their morality, good citizenship and good faith."

The respondents demurred and the trial court, recognizing that the demurrer admitted all facts well pleaded, sustained it without leave to amend. The Maryland Court of Appeals affirmed, the majority of four justices holding the exercise not in violation of the First and Fourteenth Amendments, with three justices dissenting. 228 Md. 239, 179 A. 2d 298. We granted certiorari. 371 U.S. 809.

II

It is true that religion has been closely identified with our history and government. As we said in *Engel* v. *Vitale*, 370 U.S. 421, 434 (1962), "The history of man is inseparable from the history of religion. And . . . since the beginning of that history many people have devoutly believed that 'More things are wrought by prayer than this world dreams of.'" In *Zorach* v. *Clauson*, 343 U.S. 306, 313 (1952), we gave specific recognition to the proposition that "[w]e are a religious people whose institutions presuppose a Supreme Being." The fact that the Founding Fathers believed devotedly that there was a God and that the unalienable rights of man were rooted in Him is clearly evidenced in their writings, from the Mayflower Compact to the Constitution itself. This background is evidenced today in our public life through the continuance in our oaths of office from the Presidency to the Alderman of the final supplication, "So help me God." Likewise each House of the Congress provides through its Chaplain an opening prayer, and the sessions of this Court are declared open by the crier in a short ceremony, the final phrase of which invokes the grace of God. Again, there are such manifestations in our military forces, where those of our citizens who are under the restrictions of military service wish to engage in voluntary worship. Indeed, only last year an official survey of the country indicated that 64% of our people have church membership, Bureau of Census, U.S. Department of Commerce, Statistical Abstract of the United States, 48 (83d ed. 1962), while less than 3% profess no religion whatever, *Id.*, at p. 46. It can be truly said, therefore, that today, as in the beginning, our national life reflects a religious people who, in the words of Madison, are "earnestly praying, as . . . in duty bound, that the Supreme Lawgiver of the Universe . . . guide them into every measure which may be worthy of his . . . blessing. . . ." Memorial and Remonstrance Against Religion Assessments, quoted in *Everson* v. *Board of Education*, 330 U.S. 1, 71–72 (1947) (Appendix to dissenting opinion of Rutledge, J.).

This is not to say, however, that religion has been so identified with our history and government that religious freedom is not likewise as strongly imbedded in our public and private life. Nothing but the most telling of personal experience in religious persecution suffered by our forebears, see *Everson* v. *Board of Education, supra*, at 8–11, could have planted our belief in liberty of religious opinion any more deeply in our heritage. It is true that this liberty frequently was not realized by the colonists, but this is readily accountable to their close ties to the Mother Country.[5] However, the views of Madison and Jefferson, preceded by Roger Williams [6] came to be incorporated not only in the Federal Constitution but likewise in those of most of our States. This freedom to worship was indispensable in a country whose people came from the four quarters of the earth and brought with them a diversity of religious opinion. Today authorities list 83 separate religious bodies, each with memberships exceeding 50,000, existing among our people, as well as innumerable smaller groups. Bureau of Census, *op. cit., supra*, at 46–47.

III

Almost a hundred years ago in *Minor* v. *Board of Education of Cincinnati*,[7] Judge Alphonzo Taft, father of the revered Chief Justice, in an unpublished opinion stated the ideal of our people as to religious freedom as one of "absolute equality before the law of all religious opinions and sects. . . ."

"The government is neutral, and, while protecting all, it prefers none, and it disparages none."

Before examining this "neutral" position in which the Establishment and Free Exercise Clauses of the First Amendment place our government it is well that we discuss the reach of the Amendment under the cases of this Court.

First, this Court has decisively settled that the First Amendment's mandate that "Congress shall make no law respecting an establishment of religion, or prohibiting the free

---

[4] The rule as amended provides as follows:

"Opening Exercise. Each school either collectively or in classes, shall be opened by the reading, without comment, of a chapter in the Holy Bible and/or the use of the Lord's Prayer. The Douay version may be used by those pupils who prefer it. Appropriate patriotic exercises should be held as a part of the general opening exercise of the school or class. Any child shall be excused from participating in the opening exercises or from attending the opening exercises upon written request of his parent or guardian."

[5] There were established churches in at least eight of the original colonies, and various degrees of religious support in others as late as the Revolutionary War. See *Engel* v. *Vitale, supra*, at 423, n. 10.

[6] "There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe is common, and is a true picture of a commonwealth, or human combination, or society. It hath fallen out sometimes, that both Papists and Protestants, Jews and Turks, may be embarked in one ship; upon which supposal, I affirm that all the liberty of conscience I ever pleaded for, turns upon these two hinges, that none of the Papists, Protestants, Jews, or Turks be forced to come to the ship's prayers or worship, nor compelled from their own particular prayers or worship, if they practice any."

[7] Superior Court of Cincinnati, February 1870. The opinion is not reported but is published under the title. The Bible in the Common Schools (Cincinnati: Robert Clarke & Co. 1870). Judge Taft's views, expressed in dissent, prevailed on appeal. See *Board of Education of Cincinnati v. Minor*, 23 Ohio St. 211, 253 (1872), in which the Ohio Supreme Court held that:

"The great bulk of human affairs and human interests is left by any free government to individual enterprise and individual action. Religion is eminently one of these interests, lying outside the true and legitimate province of government."

exercise thereof" has been made wholly applicable to the states by the Fourteenth Amendment. Twenty-three years ago in *Cantwell* v. *Connecticut*, 310 U.S. 296, 303 (1940), this Court, through Mr. Justice Roberts, said:

"The fundamental concept of liberty embodied in that [Fourteenth] Amendment embraces the liberties guaranteed by the First Amendment. The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws. . . ."[8]

In a series of cases since *Cantwell* the Court has repeatedly reaffirmed that doctrine, and we do so now. *Murdock* v. *Pennsylvania*, 319 U.S. 105, 108 (1943); *Everson* v. *Board of Education, supra; Illinois ex rel. McCollum* v. *Board of Education*, 333 U.S. 203, 210–211 (1948); *Zorach* v. *Clauson, supra; McGowan* v. *Maryland*, 366 U.S. 420 (1961); *Torcaso* v. *Watkins*, 367 U.S. 488 (1961); and *Engel v. Vitale, supra.*

Second, this Court has rejected unequivocally the contention that the establishment clause forbids only governmental preference of one religion over another. Almost 20 years ago in *Everson, supra*, at 15, the Court said that "[n]either a state nor the Federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another." And Mr. Justice Jackson, dissenting, agreed:

"There is no answer to the proposition . . . that the effect of the religious freedom Amendment to our Constitution was to take every form of propagation of religion out of the realm of things which could be directly or indirectly be made public business and thereby be supported in whole or in part at taxpayers' expense . . . This freedom was first in the Bill of Rights because it was first in the forefathers' minds; it was set forth in absolute terms, and its strength is its rigidity." *Id.*, at 26.

Further, Mr. Justice Rutledge, joined by Justices Frankfurter, Jackson and Burton, declared:

"The [First] Amendment's purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the Colonies. Necessarily it was to uproot all such relationships. But the object was broader than separating church and state in this narrow sense. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion." *Id.*, at 31–32.

The same conclusion has been firmly maintained ever since that time, see *Illinois ex rel. McCollum, supra,* at pp. 210–211; *McGowan* v. *Maryland, supra,* at 442–443; *Torcaso* v. *Watkins, supra,* at 492–493, 495, and we reaffirm it.

While none of the parties to either of these cases has questioned these basic conclusions of the Court, both of which have been long established, recognized and consistently reaffirmed, others continue to question their history, logic and efficacy. Such contentions, in the light of the consistent interpretation in cases of this Court, seem entirely untenable and of value only as academic exercises.

IV

The interrelationship of the Establishment and the Free Exercise Clauses was first touched upon by Mr. Justice Roberts for the Court in *Cantwell* v. *Connecticut, supra*, at 303, where it was said that their "inhibition of legislation" had "a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be."

A half dozen years later in *Everson* v. *Board of Education, supra*, at 14–15, this Court, through Mr. Justice Black, stated that the "scope of the First Amendment . . . was designed forever to suppress" the establishment of religion or the prohibition of the free exercise thereof. In short, the Court held that the Amendment "requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them." *Id.*, at 18.

And Mr. Justice Jackson, in dissent, declared that public schools are organized "on the premise that secular education can be isolated from all religious teaching so that the school can inculcate all needed temporal knowledge and also maintain a strict and lofty neutrality as to religion. The assumption is that after the individual has been instructed in worldly wisdom he will be better fitted to choose his religion." *Id.*, at 23–24.

Moreover, all of the four dissenters, speaking through Mr. Justice Rutledge, agreed that

"Our constitutional policy . . . . [D]oes not deny the value or necessity for religious training, teaching or observance. Rather it secures their free exercise. But to that end it does deny that the state can undertake or sustain them in any form or degree. For this reason the sphere of religious activity, as distinguished from the secular intellectual liberties, has been given the two-fold protection and, as the state cannot forbid, neither can it perform or aid in performing the religious function. The dual prohibition makes that function altogether private." *Id.*, at 52.

Only one year later the Court was asked to reconsider and repudiate the doctrine of these cases in *McCollum* v. *Board of Education*. It was argued that "historically the First Amendment was intended to forbid only government preference of one religion over another . . . . In addition they ask that we distinguish or overrule our holding in the *Everson* case that the Fourteenth Amendment made the 'establishment of religion' clause of the First Amendment applicable as a prohibition against the States." 333 U.S. at 211. The Court, with Mr. Justice Reed alone dissenting, was unable to "accept either of these contentions." *Ibid.* Mr. Justice Frankfurter, joined by Justices Jackson, Rutledge and Burton, wrote a very comprehensive and scholarly concurrence in which he said that "[s]eparation is a requirement to abstain from fusing functions of government and of religious sects, not merely to treat them all equally." *Id.*, at 227. Continuing, he stated that:

"The Constitution . . . prohibited the government common to all from becoming embroiled, however innocently, in the destructive religious conflicts of which the history of even this country records some dark pages." *Id.*, at 228.

In 1952 in *Zorach* v. *Clauson, supra*, Mr. Justice Douglas for the Court reiterated:

"There cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated. And so far as interference with the 'free exercise' of religion and an 'establishment' of religion are concerned, the separation must be complete and unequivocal. The First Amendment within the scope of its coverage permits no exception; the prohibition is absolute. The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter." 343 U.S., at 312.

And then in 1961 in *McGowan* v. *Maryland* and in *Torcaso v. Watkins* each of these cases was discussed and approved. Chief Justice Warren in *McGowan*, for a unanimous Court on this point, said:

"But, the First Amendment, in its final form, did not simply bar a congressional enactment *establishing a church;* it forbade all laws *respecting an establishment of religion.* Thus this Court has given the Amendment a 'broad interpretation . . . in the light of its history and the evils it was designed forever to suppress. . . .'" 366 U.S., at 441–442.

And Mr. Justice Black for the Court in *Torcaso*, without dissent but with Justices Frankfurter and Harlan concurring in the result, used this language:

"We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person 'to profess a belief or disbelief in any religion.' Neither can constitutionally pass laws or impose requirements which aid all religions as against nonbelievers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs." 367 U.S., at 495.

Finally, in *Engel v. Vitale*, only last year, these principles were so universally recognized that the Court without the citation of a single case and over the sole dissent of Mr. Justice Stewart reaffirmed them. The Court found the 22-word prayer used in "New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer . . . [to be] a religious activity." 370 U.S., at 424. It held that "it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by the government." *Id.*, at 425. In discussing the reach of the Establishment and Free Exercise Clauses of the First Amendment the Court said:

"Although these two clauses may in certain instances overlap, they forbid two quite different kinds of governmental encroachment upon religious freedom. The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce non-observing individuals or not. This is not to say, of course, that laws officially prescribing a particular form of religious worship do not involve coercion of such individuals. When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain." *Id.*, at 430–431.

And in further elaboration the Court found that the "first and most immediate purpose [of the Establishment Clause] rested on a belief that a union of government and religion tends to destroy government and to degrade religion." *Id.*, at 431.

[8] Application to the States of other clauses of the First Amendment obtained even before *Cantwell*. Almost 40 years ago in the opinion of the Court in *Gitlow* v. *New York*, 268 U.S. 652, 666 (1925), Mr. Justice Sanford said: "For present purposes we may and do assume that freedom of speech and of the press—which are protected by the First Amendment from abridgement by Congress—are among the fundamental personal rights and 'liberties' protected by the Due Process Clause of the Fourteenth Amendment from impairment by the States."

When government, the Court said, allies itself with one particular form of religion, the inevitable result is that it incurs "the hatred, disrespect and even contempt of those who held contrary beliefs." *Ibid.*

v

The wholesome "neutrality" of which this Court's cases speak thus stems from a recognition of the teachings of history that powerful sects or groups might bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end that official support of the State or Federal Government would be placed behind the tenets of one or of all orthodoxies. This the Establishment Clause prohibits. And a further reason for neutrality is found in the Free Exercise Clause, which recognizes the value of religious training, teaching and observance and, more particularly, the right of every person to freely choose his own course with reference thereto, free of any compulsion from the state. This the Free Exercise Clause guarantees. Thus, as we have seen, the two clauses may overlap. As we have indicated, the Establishment Clause has been directly considered by this Court eight times in the past score of years and, with only one Justice dissenting on the point, it has consistently held that the clause withdrew all legislative power respecting religious belief or the expression thereof. The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion. *Everson* v. *Board of Education, supra; McGowan* v. *Maryland, supra,* at 442. The Free Exercise Clause, likewise considered many times here, withdraws from legislative power, state and federal, the exertion of any restraint on the free exercise of religion. Its purpose is to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority. Hence it is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion. The distinction between the two clauses is apparent—a violation of the Free Exercise Clause is predicated on coercion while the Establishment Clause violation need not be so attended.

Applying the Establishment Clause principles to the cases at bar we find that the States are requiring the selection and reading at the opening of the school day of verses from the Holy Bible and the recitation of the Lord's Prayer by the students in unison. These exercises are prescribed as part of the curricular activities of students who are required by law to attend school. They are held in the school buildings under the supervision and with the participation of teachers employed in those schools. None of these factors, other than compulsory school attendance, was present in the program upheld in *Zorach* v. *Clauson.* The trial court in No. 142 has found that such an opening exercise is a religious ceremony and was intended by the State to be so. We agree with the trial court's findings as to the religious character of the exercises. Given that finding the exercises and the law requiring them are in violation of the Establishment Clause.

There is no such specific finding as to the religious character of the exercises in No. 119, and the State contends (as does the State in No. 142) that the program is an effort to extend its benefits to all public school children without regard to their religious belief. Included within its secular purposes, it says, are the promotion of moral values, the contradiction to the materialistic trends of our times, the perpetuation of our institutions and the teaching of literature. The case came up on demurrer, of course, to a petition which alleged that the uniform practice under the rule had been to read from the King James version of the Bible and that the exercise was sectarian. The short answer, therefore, is that the religious character of the exercise was admitted by the State. But even if its purpose is not strictly religious, it is sought to be accomplished through readings, without comment, from the Bible. Surely the place of the Bible as an instrument of religion cannot be gainsaid, and the State's recognition of the pervading religious character of the ceremony is evident from the rule's specific permission of the alternative use of the Catholic Douay version as well as the recent amendment permitting nonattendance at the exercises. None of these factors is consistent with the contention that the Bible is here used either as an instrument for nonreligious moral inspiration or as a reference for the teaching of secular subjects.

The conclusion follows that in both cases the laws require religious exercises and such exercises are being conducted in direct violation of the rights of the appellees and petitioners.[9] Nor are these required exercises mitigated by the fact that individual students may absent themselves upon parental request, for that fact furnishes no defense to a claim of unconstitutionality under the Establishment Clause. See *Engel* v. *Vitale, supra,* at 430. Further, it is no defense to urge that the religious practices here may be relatively minor encroachments on the First Amendment. The breach of neutrality that is today a trickling stream may all too soon become a raging torrent and, in the words of Madison, "It is proper to take alarm at the first experiment on our liberties." Memorial and Remonstrance Against Religious Assessments, quoted in *Elverson, supra,* at 65.

It is insisted that unless these religious exercises are permitted a "religion of secularism" is established in the schools. We agree of course that the State may not establish a "religion of secularism" in the sense of affirmatively opposing or showing hostility to religion, thus "preferring those who believe in no religion over those who do believe." *Zorach* v. *Clauson, supra,* at 314. We do not agree, however, that this decision in any sense has that effect. In addition, it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or religion, when presented objectively as part of a secular program of education, may not be effected consistent with the First Amendment. But the exercises here do not fall into those categories. They are religious exercises, required by the States in violation of the command of the First Amendment that the Government maintain strict neutrality, neither aiding nor opposing religion.

Finally, we cannot accept that the concept of neutrality, which does not permit a State to require a religious exercise even with the consent of the majority of those affected, collides with the majority's right to free exercise of religion.[10] While the Free Exercise Clause clearly prohibits the use of state action to deny the rights of free exercise to *anyone,* it has never meant that a majority could use the machinery of the State to practice its beliefs. Such a contention was effectively answered by Mr. Justice Jackson for the Court in *West Virginia Board of Education* v. *Barnette,* 319 U.S. 624, 638 (1943):

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to . . . freedom of worship . . . and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality. Though the application of that rule requires interpretation of a delicate sort, the rule itself is clearly and concisely stated in the words of the First Amendment. Applying that rule to the facts of these cases, we affirm the judgment in No. 142. In No. 119, the judgment is reversed and the cause remanded to the Maryland Court of Appeals for further proceedings consistent with this opinion.

It is so ordered.

Mr. ERVIN. Mr. President, I take much consolation from the fact that my considered interpretation of the majority opinion in the Engle case, and the majority opinion in the Schempp case are shared by others.

One of the ablest constitutional lawyers in the United States is Phillip B. Kurland, who is professor of law at the Law school of the University of Chicago. I have followed the legal writings of Professor Kurland for some years, and I have found them to be sound, and I have such a high respect for them that I repose great confidence in any opinion which he expresses in respect to any constitutional question.

Professor Kurland has this to say about the majority decisions in these two cases.

"This, and only this, is certainly to be derived from the Engel and Schempp cases. The States may not prescribe the conduct of religious ceremonies in their public schools."

The correctness of my interpretation of the Engel case, and the correctness of the interpretation placed upon it by Professor Kurland is made manifest by reading these words in the majority opinion.

---

[9] It goes without saying that the laws and practices involved here can be challenged only by persons having standing to complain. But the requirements for standing to challenge state action under the Establishment Clause, unlike those relating to the Free Exercise Clause, do not include proof that particular religious freedoms are infringed. *McGowan* v. *Maryland, supra,* at 429–430. The parties here are school children and their parents, who are directly affected by the laws and practices against which their complaints are directed. These interests surely suffice to give the parties standing to complain. See *Engle* v. *Vitale, supra.* Cf. *McCollum* v. *Board of Education, supra; Everson* v. *Board of Education, supra.* Compare *Doremus* v. *Board of Education,* 342 U.S. 429 (1952), which involved the same substantive issues presented here. The appeal was there dismissed upon the graduation of the school child involved and because of the appellants' failure to establish standing as taxpayers.

[10] We are not of course presented with and therefore do not pass upon a situation such as military service, where the Government regulates the temporal and geographic environment of individuals to a point that, unless it permits voluntary religious services to be conducted with the use of government facilities, military personnel would be unable to engage in the practice of their faiths.

"We agree with the contention since we think that the total prohibition against laws respecting the establishment of religion must at least mean that in this country it is no part of the business for any group of the American people to recite as a part of a religious program carried on by the government."

When all is said that is what was held by the majority and all that was held by the majority in the Engel case.

A like observation may be made in reference to the Schempp case. All that was held in this case by a majority of the Court was that the State could not require the recitation of prayers and the reading of a religious book as a part of a religious exercise carried on under the auspices of the State itself.

Mr. President, when I was privileged to be an Associate Justice of the Supreme Court of North Carolina, I worked very closely with the clerk of that court, Adrian Newton, who is an excellent lawyer as well as a devoutly religious man.

When I was a young lawyer practicing law in my hometown of Morgantown, N.C. I came to know a young Baptist minister, W. Perry Crouch, who was the minister of a local church. He has since risen to high rank among the ministers of my State. Adrian Newton and Perry Crouch joined a learned citizen of North Carolina, Dr. E. W. Price, in a statement concerning the Dickens prayer amendment, which was inserted on page 644 of the hearings on the amendment.

They placed upon the Engle case and the Schempp case exactly the same and interpretation which Professor Kurland and myself have placed upon them.

Here is what they said in part:

"The court has declared that Government agencies should not impose, regulate, or organize religious exercise in the schools. With this decision, our Baptist people are in full agreement."

Mr. President, I ask unanimous consent to have the complete statement of Adrian Newton, Dr. Price, and Perry Crouch printed in the RECORD.

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

CONCERNING THE DIRKSEN PRAYER AMENDMENT

This statement is signed by Mr. Adrian Newton, an attorney of Raleigh, North Carolina and chairman of the Committee on Public Affairs of the North Carolina Baptist State Convention; Dr. E. W. Price, President of the General Board of our Baptist State Convention; W. Perry Crouch, Executive Secretary-Treasurer of the North Carolina Baptist State Convention.

Our Baptist State Convention is composed of 3,443 churches, with a membership of approximately one million people. We work very closely with our people and know something of their convictions and beliefs. Apparently there is little or no interest, or concern, for the Dirksen Prayer Amendment. We do not believe the Supreme Court has ever acted on any case involving the "free exercise of religion" in the public schools. The court has declared that government agencies should not impose, regulate, or organize religious exercise in the schools. With this decision, our Baptist people are in full agreement.

We have checked with our state office of Public Education, and have been told that no changes have been made in regard to religious activities in the schools of North Carolina as a result of the Supreme Court's decision concerning prescribed prayer.

It is our firm conviction that the majority of our Baptist people in North Carolina believe that the first amendment offers full and ample protection for our religious liberty, and that any amendments will only weaken its structure and lead to false interpretations and questionable practices. This belief of our Baptist people in North Carolina is in agreement with our nearly eleven million Baptists from 50 other states, as indicated by resolutions passed by various Baptist State Conventions and twice passed by the Southern Baptist Convention in annual session; first in 1964 and second in 1966.

We do not believe it is within the power of any government agency to "allow" or "not to allow" prayer. The first amendment guarantees religious freedom. We strongly believe that we have all of the guarantee we need in the first amendment and the Bill of Rights. We reaffirm our faith in these documents, and in the great American Principle of Religious Freedom and Separation of Church and State.

ADRIAN NEWTON,
Attorney, Raleigh, North Carolina, Chairman Committee on Public Affairs, Baptist State Convention of North Carolina.
President General Board, North Carolina Baptist State Convention.
W. PERRY CROUCH,
Executive Secretary-Treasurer, North Carolina Baptist State Convention.

(At this point Mr. CANNON took the chair as Presiding Officer.)

Mr. ERVIN. Mr. President, I wish to cite at this point another interpretation placed upon these decisions by a very profound commentator on the passing scene—James J. Kilpatrick. In so doing, I refer to an article written by him entitled "Ramifications of Proposed 'Prayer Amendment'," published in the Washington Evening Star for August 7, 1966:

Mr. Kilpatrick had this to say:

"The thing is, that given the facts in these particular cases, the court could not possibly have decided them any other way."

Mr. President, I ask unanimous consent to have the entire article written by Mr. Kilpatrick printed in the RECORD.

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

[From the Washington (D.C.) Star, Aug. 7, 1966]

RAMIFICATION OF PROPOSED "PRAYER AMENDMENT"

(By James J. Kilpatrick)

More than 130 years ago, John Randolph of Roanoke laid down a rule that many persons earnestly wish Senator DIRKSEN would take to heart today.

"A great cardinal principle that should govern all wise statesmen," said Randolph, "is never without the strongest necessity to disturb a thing at rest."

For the past several days, a Senate subcommittee has been holding hearings on DIRKSEN's proposed "prayer amendment" to the Constitution. The Senator has promised that regardless of the sub-committee's action, willy-nilly he will compel a vote on the floor. In violation of the Randolph precept, he is thus disturbing an issue that has been at rest for the past three years. There is no necessity for disturbing it; and nothing good will come of the fight.

The amendment sponsored by DIRKSEN (and 48 others) is intended to nullify two opinions of the U.S. Supreme Court prohibiting the States from providing for religious exercise in public schools. The first of these, rendered on June 25, 1962, knocked out the non-denominational "regents' prayer" that had been authorized for use in the schools of New York. The second, handed down a year later, killed the Bible reading statutes of Pennsylvania and Maryland. The court found it immaterial that participation in these exercises was theoretically voluntary. The practices were "wholly inconsistent" with the First Amendment, which prohibits the Federal government—and by extension, the States—from providing any establishment of religion, voluntary or otherwise.

The Dirksen resolution would prohibit public officials from prescribing "the form or content of any prayer," but it would leave State and local administrators free to "provide for or permit the voluntary participation by students or others in prayer."

To call up this proposal for floor debate will serve only to precipitate the very clash of unreason and emotion that the high court nervously foresaw in its two judgments. As Mr. Justice Brennan remarked in a concurring opinion, few constitutional issues are "more intricate or more demanding than that of the relationship between religion and the public schools." Fixing the permissible line between government and religion, Mr. Justice Goldberg added, "is a most difficult and sensitive task, calling for the careful exercise of both judicial and public judgment and restraint."

All this will go by the boards once the moment approaches when the clerk calls the roll. In the eyes of several million devout church-goers, it will be as if God were running for office in an August primary; you are for Him or against Him, and the Senator who publicly opposes the Dirksen amendment will be risking the kind of fundamentalist, Bible-quoting mail that makes a politician turn positively pale.

If the amendment should win a two-thirds majority in the Senate, a tremendous head of steam would be generated for immediate action in the House. If the resolution emerged from the House Judiciary Committee, a divisive floor fight would be precipitated there. Multiply these congressional conflicts by the debates of 50 state legislatures, and one winds up in a religious civil war that neither side could win.

But both freedom and religion would lose. The thing is, that given the facts in these particular cases, the court could not possibly have decided them any other way. In each of the three jurisdictions, the state actually was involving itself affirmatively in providing for a religious exercise. The involvement was limited: a 22-word prayer in New York, 10 Bible verses daily in Pennsylvania, a chapter from Scripture in Maryland. Yet if the involvement was small, the principle was large; for the power to decree the "voluntary" recital of an innocuous prayer is the power to decree the "voluntary" recital of prayers that are not so innocuous. It is a road that must lead to a weakening of free government, as school officials are subjected to the passions of competing religionists; and it is a road that must lead equally to a weakening of the church, as it becomes more and more dependent upon assistance from the state.

The high court acted with great wisdom in blocking the road at the first opportunity. In seeking to remove the barrier, Senator DIRKSEN and his well-intentioned colleagues are inviting new and wider controversy, for "school prayer" is only the beginning. What of tax exemption for churches? What of the words "under God" in the pledge of allegiance? What of the employment of legislative chaplains? What of the very motto on our coins? Do any of these serve either to advance or to inhibit religion? If so, then "the enactment exceeds the scope of legislative power as circumscribed by the Constitution."

The Dirksen amendment settles none of these peripheral questions—questions which the court itself sought to dampen with judicial rhetoric. They are controversies that surely will be aggravated if this amendment is pressed. There are times when Senators, even Senators as distinguished as DIRKSEN, should follow the rule of Randolph and leave well enough alone. This is one of them.

Mr. ERVIN. Mr. President, unfortunately, the exact holdings of the Supreme Court in the Engel and Schempp cases have not been widely understood in this country.

Some have said that the opinions are destructive of religious life in this country, and that the opinions prevent school children from engaging in voluntary prayers and

voluntary readings from holy books. Others say that unless we have religious exercise required by the States in the public schools, we will have a religion of secularism.

I quote on this point from observations made by Supreme Court Justice Clark in the majority opinion in the Schempp case:

"It is insisted that unless these religious exercises are permitted a 'religion of secularism' is established in the schools. We agree of course that the State may not establish a 'religion of secularism' in the sense of affirmatively opposing or showing hostility to religion, thus "preferring those who believe in no religion over those who do believe." *Zorach* v. *Clauson, supra,* at 314. We do not agree, however, that this decision in any sense has that effect. In addition, it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistent with the First Amendment. But the exercises here do not fall into those categories. They are religious exercises, required by the States in violation of the command of the First Amendment that the Government maintain strict neutrality, neither aiding nor opposing religion."

The question of the relationship between the public schools and religion under the first amendment was considered by the Supreme Court in a case which antedated the Engel and Schempp decisions by more than a decade.

I refer to the case of *Zorach* v. *Clauson,* 343 United States 306. The holding in that case is accurately reflected in the headnotes, which I read:

"Under § 3210 of the New York Education Law and the regulations thereunder, New York City permits its public schools to release students during school hours, on written requests of their parents, so that they may leave the school buildings and grounds and go to religious centers for religious instruction or devotional exercises. The same section makes school attendance compulsory; students not released stay in the classrooms; and the churches report to the schools the names of children released from public schools who fail to report for religious instruction. The program involves neither religious instruction in public schools nor the expenditure of public funds. Held: This program does not violate the First Amendment, made applicable to the States by the Fourteenth Amendment . . .

"By this system, New York has neither prohibited the 'free exercise' of religion nor made a law 'respecting an establishment of religion' within the meaning of the First Amendment."

Mr. President, I ask unanimous consent that the majority opinion of the Zorach case be printed at this point in the body of the RECORD.

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

SYLLABUS

ZORACH ET AL. *v.* CLAUSON ET AL., CONSTITUTING THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, ET AL.—APPEAL FROM THE COURT OF APPEALS OF NEW YORK—No. 431

(Argued Jan. 31–Feb. 1, 1952 decided Apr. 28, 1952)

Under § 3210 of the New York Education Law and the regulations thereunder, New York City permits its public schools to release students during school hours, on written requests of their parents, so that they may leave the school buildings and grounds and go to religious centers for religious instruction or devotional exercises. The same section makes school attendance compulsory; students not released stay in the classrooms; and the churches report to the schools the names of children released from public schools who fail to report for religious instruction. The program involves neither religious instruction in public schools nor the expenditure of public funds. *Held*: This program does not violate the First Amendment, made applicable to the States by the Fourteenth Amendment. *McCollum* v. *Board of Education,* 333 U.S. 203, distinguished. Pp. 308—315.

(a) By this system, New York has neither prohibited the "free exercise" of religion nor made a law "respecting an establishment of religion" within the meaning of the First Amendment. Pp. 310–315.

(b) There is no evidence in the record in this case to support a conclusion that the system involves the use of coercion to get public school students into religious classrooms. Pp. 311–312. 303 N.Y. 161, 100 N.E. 2d 463, affirmed.

The New York Court of Appeals sustained N.Y. Education Law § 3210 and the regulations thereunder permitting absence of students from the public schools for religious observance and education, against the claim that the program thereunder violated the Federal Constitution. 303 N.Y. 161, 100 N.E. 2d 463. On appeal to this Court, *affirmed,* p. 315.

COUNSEL FOR PARTIES

Kenneth W. Greenawalt argued the cause for appellants. With him on the brief were *Leo Pfeffer* and *Edwin J. Lukas.*

Wendell P. Brown, Solicitor General, argued the cause for the Commissioner of Education of the State of New York, appellee. With him on the brief were *Nathaniel L. Goldstein,* Attorney General, and *Ruth Kessler Toch* and *John P. Powers,* Assistant Attorneys General.

Michael A. Castaldi argued the cause for the Board of Education of the City of New York, appellee. With him on the brief were *Denis M. Hurley, Seymour B. Quel, Daniel T. Scannell* and *Arthur H. Kahn.*

Charles H. Tuttle argued the cause for the Greater New York Coordinating Committee on Released Time of Jews, Protestants and Roman Catholics, appellee. With him on the brief was *Porter R. Chandler.*

Briefs of *amici curiae* supporting appellees were filed on behalf of the States of California, by *Edmund G. Brown,* Attorney General, *William V. O'Connor,* Chief Deputy Attorney General, and *Howard S. Goldin,* Deputy Attorney General; Indiana, by *J. Emmett McManamon,* Attorney General; Kentucky, by *J. D. Buckman, Jr.,* Attorney General and *M. B. Holifield,* Assistant Attorney General; Maine, by *Alexander A. LaFleur,* Attorney General; Massachusetts, by *Francis E. Kelly,* Attorney General, *Charles H. Walters,* Assistant Attorney General, and *William F. Marcella;* Oregon, By *George Neuner,* Attorney General, *Robert F. Maguire* and *William E. Dougherty;* Pennsylvania, by *Robert E. Woodside,* Attorney General, and *Harry F. Stambaugh;* and West Virginia, by *William C. Marland,* Attorney General, and *Thomas J. Gillooly, T. D. Kauffelt* and *Eston B. Stephenson,* Assistant Attorneys General.

OPINION OF THE COURT

Mr. JUSTICE DOUGLAS delivered the opinion of the Court.

New York City has a program which permits its public schools to release students during the school day so that they may leave the school buildings and school grounds and go to religious centers for religious instruction or devotional exercises. A student is released on written request of his parents. Those not released stay in the classrooms. The churches make weekly reports to the schools, sending a list of children who have been released from public school but who have not reported for religious instruction.[1]

This "released time" program involves neither religious instruction in public school classrooms nor the expenditure of public funds. All costs, including the application blanks, are paid by the religious organizations. The case is therefore unlike *McCollum* v. *Board of Education,* 333 U.S. 203, which involved a "released time" program from Illinois. In that case the classrooms were turned over to religious instructors. We accordingly held that the program violated the First Amendment[2] which (by reason of the Fourteenth Amendment)[3] prohibits the states from establishing religion or prohibiting its free exercise.

Appellants, who are taxpayers and residents of New York City and whose children attend its public schools,[4] challenge the present law, contending it is in essence not different from the one involved in the *McCollum* case. Their argument, stated elaborately in various ways, reduces itself to this: the weight and influence of the school is put behind a program for religious instruction; public school teachers police it, keeping tab on students who are released; the classroom activities come to a halt while the students who are released for religious instruction are on leave; the school is a crutch on which the churches are leaning for support in their

[1] The New York City released time program is embodied in the following provisions:

(a) N.Y. Education Law, § 3210, subdiv. 1(b), which provides that "Absence for religious observance and education shall be permitted under rules that the commissioner shall establish."

(b) Regulations of the Commissioner of Education of the State of New York, Art. 17 § 154 (1 N.Y. Official Code Comp. 683), which provide for absence during school hours for religious observance and education outside the school grounds [par. 1], where conducted by or under the control of a duly constituted religious body [par. 2]. Students must obtain written requests from their parents or guardians to be excused for such training [par. 1], and must register for the training and have a copy of their registration filed with the public school authorities [par. 3]. Weekly reports of their attendance at such religious schools must be filed with their principal or teacher [par. 4]. Only one hour a week is to be allowed for such training, at the end of a class session [par. 5], and where more than one religious school is conducted, the hour of release shall be the same for all religious schools [par. 6].

(c) Regulations of the Board of Education of the City of New York, which provide similar rules supplementing the State Commissioner's regulations, with the following significant amplifications: No announcement of any kind will be made in the public schools relative to the program [rule 1]. The religious organizations and parents will assume full responsibility for attendance at the religious schools and will explain any failures to attend on the weekly attendance reports [rule 3]. Students who are released will be dismissed from school in the usual way [rule 5]. There shall be no comment by any principal or teacher on attendance or nonattendance of any pupil upon religious instruction [rule 6].

[2] The First Amendment reads in relevant part, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

[3] See *Stromberg* v. *California,* 283 U.S. 359; *Cantwell* v. *Connecticut,* 310 U.S. 296; *Murdock* v. *Pennsylvania,* 319 U.S. 105.

[4] No problem of this Court's jurisdiction is posed in this case since, unlike the appellants in *Doremus* v. *Board of Education,* 342 U.S. 429, appellants here are parents of children currently attending schools subject to the released time program.

religious training; without the cooperation of the schools this "released time" program, like the one in the *McCollum* case, would be futile and ineffective. The New York Court of Appeals sustained the law against this claim of unconstitutionality. 303 N.Y. 161, 100 N.E. 2d 463. The case is here on appeal. 28 U.S.C. § 1257(2).

The briefs and arguments are replete with data bearing on the merits of this type of "released time" program. Views pro and con are expressed, based on practical experience with these programs and with their implications.[5] We do not stop to summarize these materials nor to burden the opinion with an analysis of them. For they involve considerations not germane to the narrow constitutional issue presented. They largely concern the wisdom of the system, its efficiency from an educational point of view, and the political considerations which have motivated its adoption or rejection in some communities. Those matters are of no concern here, since our problem reduces itself to whether New York by this system has either prohibited the "free exercise" of religion or has made a law "respecting an establishment of religion" within the meaning of the First Amendment.

It takes obtuse reasoning to inject any issue of the "free exercise" of religion into the present case. No one is forced to go to the religious classroom and no religious exercise or instruction is brought to the classrooms of the public schools. A student need not take religious instruction. He is left to his own desires as to the manner or time of his religious devotions, if any.

There is a suggestion that the system involves the use of coercion to get public school students into religious classrooms. There is no evidence in the record before us that supports that conclusion.[6] The present record indeed tells us that the school authorities are neutral in this regard and do no more than release students whose parents so request. If in fact coercion were used, if it were established that any one or more teachers were using their office to persuade or force students to take the religious instruction, a wholly different case would be presented.[7] Hence we put aside that claim of coercion both as respects the "free exercise" of religion and "an establishment of religion" within the meaning of the First Amendment.

Moreover, apart from that claim of coercion, we do not see how New York by this type of "released time" program has made a law respecting an establishment of religion within the meaning of the First Amendment. There is much talk of the separation of Church and State in the history of the Bill of Rights and in the decisions clustering around the First Amendment. See *Everson* v. *Board of Education*, 330 U.S. 1; *McCollum* v. *Board of Education, supra*. There cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated. And so far as interference with the "free exercise" of religion and an "establishment" of religion are concerned, the separation must be complete and unequivocal. The First Amendment within the scope of its coverage permits no exception; the prohibition is absolute. The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter. Otherwise the state and religion would be aliens to each other—hostile, suspicious, and even unfriendly. Churches could not be required to pay even property taxes. Municipalities would not be permitted to render police or fire protection to religious groups. Policemen who helped parishioners into their places of worship would violate the Constitution. Prayers in our legislative halls; the appeals to the Almighty in the messages of the Chief Executive; the proclamation making Thanksgiving Day a holiday; "so help me God" in our courtroom oaths—these and all other references to the Almighty that run through our laws, our public rituals, our ceremonies would be flouting the First Amendment. A fastidious atheist or agnostic could even object to the supplication with which the Court opens each session: "God save the United States and this Honorable Court."

We would have to press the concept of separation of Church and State to these extremes to condemn the present law on constitutional grounds. The nullification of this law would have wide and profound effects. A Catholic student applies to his teacher for permission to leave the school during hours on a Holy Day of Obligation to attend a mass. A Jewish student asks his teacher for permission to be excused for Yom Kippur. A Protestant wants the afternoon off for a family baptismal ceremony. In each case the teacher requires parental consent in writing. In each case the teacher, in order to make sure the student is not a truant, goes further and requires a report from the priest, the rabbi, or the minister. The teacher in other words cooperates in a religious program to the extent of making it possible for her students to participate in it. Whether she does it occasionally for a few students, regularly for one, or pursuant to a systemized program designed to further the religious needs of all the students does not alter the character of the act.

We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma. When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe. Government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian education nor use secular institutions to force one or some religion on any person. But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence. The government must be neutral when it comes to competition between sects. It may not thrust any sect on any person. It may not make a religious observance compulsory. It may not coerce anyone to attend church, to serve a religious holiday, or to take religious instruction. But it can close its doors or suspend its operations as to those who want to repair to their religious sanctuary for worship or instruction. No more than that is undertaken here.

This program may be unwise and improvident from an educational or a community viewpoint. That appeal is made to us on a theory, previously advanced, that each case must be decided on the basis of "our own prepossessions." See *McCollum* v. *Board of Education, supra*, p. 238. Our individual preferences, however, are not the constitutional standard. The constitutional standard is the separation of Church and State. The problem, like many problems in constitutional law, is one of degree. See *McCollum* v. *Board of Education, supra*, p. 231.

In the *McCollum* case the classrooms were used for religious instruction and the force of the public school was used to promote that instruction. Here, as we have said, the public schools do no more than accommodate their schedules to a program of outside religious instruction. We follow the *McCollum* case.[8] But we cannot expand it to cover

---

[5] See, *e. g.*, Beckes, Weekday Religious Education (National Conference of Christians and Jews, Human Relations Pamphlet No. 6); Butts, American Tradition in Religion and Education, pp. 188, 199; Moehlman, The Walls of Separation between Church and State, pp. 123, 155 ff.; Moehlman, The Church as Educator, pp. 103 ff.; Moral and Spiritual Values in the Public Schools (Educational Policies Commission, 1951); Newman, The Sectarian Invasion of Our Public Schools; Public School Time for Religious Education, 12 Jewish Education 130 (January, 1941); Religious Instruction on School Time, 7 Frontiers of Democracy 72 (1940); Released Time for Religious Education in New York City's Schools (Public Education Association, June 30, 1943); Released Time for Religious Education in New York City's Schools (public Education Association, June 30, 1945); Released Time for Religious Education in New York City Schools (Public Education Association, 1949); 2 Stokes, Church and State in the United States, pp. 523–548; The Status of Religious Education In The Public Schools (National Education Association).

[6] Nor is there any indication that the public schools enforce attendance at religious schools by punishing absentees from the released time programs for truancy.

[7] Appellants contend that they should have been allowed to prove that the system is in fact administered in a coercive manner. The New York Court of Appeals declined to grant a trial on this issue, noting, *inter alia*, that appellants had not properly raised their claim in the manner required by state practice. 303 N.Y. 161, 174, 100 N. E. 2d 463, 469. This independent state ground for decision precludes appellants from raising the issue of maladministration in this proceeding. See *Louisville & Nashville R. Co.* v. *Woodford*, 234 U.S. 46, 51; *Atlantic Coast Line R. Co.* v. *Mims*, 242 U.S. 532, 535; *American Surety Co.* v. *Baldwin*, 287 U.S. 156, 169.

The only allegation in the complaint that bears on the issue is that the operation of the program "has resulted and inevitably results in the exercise of pressure and coercion upon parents and children to secure attendance by the children for religious instruction." But this charge does not even implicate the school authorities. The New York Court of Appeals was therefore generous in labeling it a "conclusory" allegation. 303 N.Y., at 174, 100 N. E. 2d, at 469. Since the allegation did not implicate the school authorities in the use of coercion, there is no basis for holding that the New York Court of Appeals under the guise of local practice defeated a federal right in the manner condemned by *Brown* v. *Western R. of Alabama*, 338 U.S. 294, and related cases.

[8] Three of us—THE CHIEF JUSTICE, MR. JUSTICE DOUGLAS and MR. JUSTICE BURTON—who join this opinion agreed that the "released time" program involved in the *McCollum* case was unconstitutional. It was our view at the time that the present type of "released time" program was not prejudged by the *McCollum* case, a conclusion emphasized by the reservation of the question in the separate opinion by MR. JUSTICE FRANKFURTER in which MR. JUSTICE BURTON joined. See 333 U.S., at 225 where it was said, "Of course, 'released time' as a generalized conception, undefined by differentiating particularities, is not an issue for Constitutional adjudication. Local programs differ from each other in many and crucial respects. . . . It

the present released time program unless separation of Church and State means that public institutions can make no adjustments of their schedules to accommodate the religious needs of the people. We cannot read into the Bill of Rights such a philosophy of hostility to religion.

Affirmed.

Mr. ERVIN. Mr. President, the Zorach case points out how the parents of schoolchildren can provide for religious instruction of their children in accordance with their religious beliefs without offending the provisions of the first amendment.

Since the school prayer cases, there has been a decision in the U.S. District Court for the Western District of Michigan, *Reed v. Van Hoven*, 237 Fed. Sup. 48, which points out another way in which schoolchildren can receive the benefits of religious instructions without offending the provisions of the first amendment.

For the sake of time, I shall read the analysis of this opinion, made by the publisher of the volume of the Federal supplement in which it appears. This analysis correctly reflects the ruling of the court. I read the analysis:

"Parents of public school children brought suit against superintendent of schools and members of board of education to enjoin religious exercises in the public schools. The District Court, Fox, J., held that public school students who wish to say prayer or read scripture according to their choice in morning before school day begins and after school day ends, should be permitted to do so, provided that they meet in room other than regular home room, and complete their exercise at least five minutes before regularly scheduled class day or do not begin until at least five minutes after completion of regular school class day, and no bell should signify start of prayer exercise, and if prayer is to be said during lunch period, it should be a silent prayer during moments of silence set aside for private meditation at start of that period."

Mr. President, I ask unanimous consent that the opinion in the case of Reed against Van Hoven be printed at this point in the body of the RECORD.

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

CHARLES E. REED, JOYCE REED, VERDA GOUDZWAARD, RUTH DYKSTRA, LORRAINE DYKHOUSE, TINO J. CAVIGGIOLA, JOAN CAVIGGIOLA AND ROBERT L. HULSEBUS, PLAINTIFFS *v.* JACK VAN HOVEN, JACK E. KALEE, CORNELIUS DODD, GRANT W. SILER, PAUL R. STEIMLE, GLENN NYKERK, AND JENISON PUBLIC SCHOOL DISTRICT NO. 30, DEFENDANTS

(Civ. A. No. 4787—U.S. District Court, W. D. Michigan, S.D., Jan. 8, 1965)

Parents of public school children brought suit against superintendent of schools and members of board of education to enjoin religious exercises in the public schools. The District Court, Fox, J., held that public school students who wish to say prayer or read scriptures according to their choice in morning before school day begins and after school day ends, should be permitted to do so, provided that they meet in room other than regular home room, and complete their exercises at least five minutes before regularly scheduled class day or do not begin until at least five minutes after completion of regular school class day, and no bell should signify start of prayer exercise, and if prayer is to be said during lunch period, it should be a silent prayer during moments of silence set aside for private meditation at start of that period.

Injunction denied.

1. Constitutional Law—84

The First Amendment to the Federal Constitution insures to parents the security that children attending public elementary schools are not officially taught tenets of religion other than that of parents, and such insurance is protection to both majority and minority, and it is essential safeguard to protection and free exercise of religion. U.S.C.A. Const. Amend. 1.

2. Schools and School Districts—165

When time of public grade schools is given over to religious practices, there is interference with fundamental right of parents to see to education of their children, or continued observances, being repetitive, when joined with authority of local school, can easily constitute a teaching of particular practices and beliefs involved. U.S.C.A. Const. Amend. 1.

3. Constitutional Law—84

When religion is included in regular program in public schools in such way as to become connected with learning process, other than within framework of general, objective course on religion as religion, parents have every right to object on constitutional grounds, for espousal of particular religious doctrine is not function of public grade schools. U.S.C.A. Const. Amend. 1.

4. Constitutional Law—84

School authorities in public grade schools and those accommodated must not violate rights of free exercise of religion of those not in accord with practices of the accommodated. U.S.C.A. Const. Amend. 1.

5. Constitutional Law—84

Every individual in society has right to free exercise of his religion according to dictates of his own conscience, and there is corresponding duty on public authority as well as other individuals to recognize and respect that right in such way that individual is free from coercion of any kind. U.S.C.A. Const. Amend. 1.

6. Constitutional Law—84

There need be no coercion on minorities in order for there to be a violation of provision of Constitution that Congress shall make no law respecting establishment of religion, and it is only necessary that practice or enactment have net effect of placing official support of local or national government behind particular denomination or belief. U.S.C.A. Const. Amend. 1.

7. Constitutional Law—84

If state or federal government espouses particular philosophy or secularism, or secularism in general, there is violation of provision of Constitution that Congress shall make no law respecting establishment of religion. U.S.A. Const. Amend. 1.

8. Schools and School Districts—165

As between theistic and humanistic religions, public schools must carefully avoid any program of indoctrination in ultimate values. U.S.C.A. Const. Amend. 1.

9. Schools and School Districts—165

Public school students who wish to say prayer or read scriptures according to their choice in morning before school day begins and after school day ends, should be permitted to do so, provided that they meet in room other than regular home room, and complete their exercise at least five minutes before regularly scheduled class day or do not begin until at least five minutes after completion of regular school class day, and no bell should signify start of prayer exercise, and if prayer is to be said during lunch period, it should be a silent prayer during moments of silence set aside for private meditation at start of that period. U.S.C.A. Const. Amend. 1.

10. Schools and School Districts—165

During regular school day at public schools, there should be no reading from Bible, no Bible stories, and no assignment of themes on such topics as why student believes or disbelieves in religious devotions, U.S.C.A. Const. Amend. 1.

11. Schools and School Districts—164

Pledge of allegiance and patriotic songs or readings are permissible in public schools at any time, provided that they are voluntary. U.S.C.A. Const. Amend. 1.

12. Schools and School Districts—165

Role of teacher at preschool or postschool religious sessions is strictly that of one charged with responsibility of maintaining order, and no teacher shall be called on to select prayer which should be said, or to select readings which may be used, and students should determine what should be done. U.S.C.A. Const. Amend. 1.

Warner, Norcross & Judd, Grand Rapids, Mich., Harold S. Sawyer and Thomas J. McNamara, Grand Rapids, Mich., of counsel, for plaintiffs.

Varnum, Riddering, Wierengo & Christenson, Grand Rapids, Mich., Laurent K. Varnum, Grand Rapids, Mich., and Jon F. DeWitt, of counsel, for defendants.

Fox, District Judge.

Plaintiffs are parents of children currently enrolled in the public schools of the Jenison School District, Ottawa County, Michigan. Defendant Nykerk is the Superintendent of Schools for the Jenison Public Schools; the other defendants are members of the Board of Education of the Jenison Public Schools.

Plaintiffs instituted suit under the First and Fourteenth Amendments to the Constitution of the United States, claiming that certain practices in the Jenison Public Schools violate both the free exercise and establishment clauses of the First Amendment.

Subsequent to the filing of this suit, a new policy with respect to the religious practices was adopted and put into operation in the Jenison Public Schools. Defendants claimed that the controversy was ended by that policy, and moved for a summary judgment.

Plaintiffs have requested an injunction to prevent any exercises of a religious nature from being conducted.

At a hearing, this court denied the defendants' motion for a summary judgment, and did not grant plaintiffs' request for an injunction, suggesting to the parties a substitute policy which laid out the broad outlines of a program allowing an accommodation to those children who wished to pray, provided such exercises were conducted and completed outside the hours of the regular school day.

After a short period of time, the plaintiffs again appeared before the court, objecting to the substitute policy as implemented by the school board.

The board, in attempting to apply the policy, was faced with a school bus problem in allowing the exercises to take place in the morning, before school began.

The buses serving the Jenison School District also serve the neighboring school districts, and therefore, the bus schedules were rigid, and children attending the Jenison Schools continued to arrive at the same time as they had before the attempt to carry out the court-suggested policy.

Consequently, in order to provide for a working accommodation, the School Board changed "the bell and beginning of school timing" as illustrated by the procedure inaugurated in the Sandy Hill School; at 8:40 A.M. a warning bell sounds, followed by another bell at 8:45 A.M. to indicate that the

---

is only when challenge is made to the share that the public schools have in the execution of a particular 'released time' program that close judicial scrutiny is demanded of the exact relation between the religious instruction and the public educational system in the specific situation before the Court."

home rooms are open for the use of those children desiring to pray. At 8:50 A.M. a third bell rings, signifying the end of the voluntary prayer period and additionally, that school is about to begin. At 9:00 A.M. a bell signifying the actual start of the class day is rung.

Plaintiffs object to these practices, claiming that they raise problems of excusal and segregation which are constitutionally prohibited.

By this opinion, the court will attempt to clarify its suggestion for an interim procedure.

The policy initially proposed by defendants purported to establish a position of neutrality on the part of the Board of Education with respect to religion.[1]

The Supreme Court of the United States, in the cases of Engel v. Vitale, 370 U.S. 421, 82 S. Ct. 1261, 8 L. Ed. 2d 601, and Abington School District v. Schempp, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844, has been called to rule upon the constitutionality of prayers and Bible reading in the public schools.

In the Engel case the court ruled that the recitation of a prayer composed by the New York State Board of Regents, at the direction of the local Board of Education, violated the establishment clause of the First Amendment.

In the Schempp case, the court held that a requirement that the school day open with a reading, without comment, of verses from the Holy Bible and the recitation of the Lord's Prayer by the students in unison, was also a violation of the establishment clause. This was so even though attendance at the exercises was not compulsory.

The establishment clause of the First Amendment has two important characteristics. First, the relationship between government and religion; by that relationship the First Amendment, by its position of neutrality, protects both religion and government. Secondly, the establishment limitation serves as an instrument to the second provision of the First Amendment, namely, the free exercise clause. It is designed in this respect to insure to all the free exercise of their religion, free from the influential interference of government.

Nothing in the Engel or Schempp decisions inhibits in the slightest way an individual in the free exercise of religion in his home, in his church, or in any assembly with the particular denomination to which he belongs, either in the practice or the teaching of that religion.

[1] On the other hand, the First Amendment insures to parents the security that children attending public elementary schools are not officially taught the tenets of a religion other than that of the parents. This insurance is a protection to both the majority and the minority, and it is an essential safeguard to the protection and free exercise of religion. In the fast-changing circumstances of our day, today's majority may be tomorrow's minority.

The natural right of the parents to educate their children was recognized by Mr. Justice McReynolds in Pierce v. Society of Sisters, 268 U.S. 510, 45 S. Ct. 571, 69 L. Ed. 1070.

"The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from the public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to prepare him for additional obligations." Id. at 535, 45 S. Ct. at 573.

[2] When the time of the public grade schools is given over to religious practices, there is an interference with this fundamental right of parents to see to the education of their children, for continued observances, being repetitive, when joined with the authority of the local school, could easily constitute a teaching of the particular practices and beliefs involved.[2]

[3] By sending their children to the public schools, parents tacitly approve of the education which the children will receive there. However, when religion is included in the regular program in such a way as to become connected with the learning process, other than within the framework of a general, objective course on religion as religion, the parents have every right to object on constitutional grounds, for espousal of a particular religious doctrine is not the function of the public grade schools in our society.

[4] Children attending public grade schools are effectively captives. Thus, in seeking an accommodation, school authorities, and those accommodated, must not violate the rights of free exercise of those not in accord with the practices of the accommodated.

[5] Each individual in society has the right to free exercise of his religion according to the dictates of his own conscience. There is a corresponding duty upon public authority as well as other individuals to recognize and respect that right in such a way that the individual is free from coercion of any kind.[3]

Mr. Justice Clark, in the majority opinion in the Schempp case, succinctly stated the basis for the belief in separation of government from any one form of religion when he quoted from the Engel case, supra: "* * * the 'first and most immediate purpose (of the Establishment Clause) rested on the belief that a union of government and religion tends to destroy government and to degrade religion.' (Citation omitted.) When government, the Court said, allies itself with one particular form of religion, the inevitable result is that it incurs 'the hatred, disrespect and even contempt of those who held contrary beliefs.' Ibid." (Abington School District v. Schempp, supra, 374 U.S. at 221, 83 S.Ct. at 1571.)

In Schempp, it was contended that to require the elimination of religious exercises in public schools was an interference with the religious liberty of those children who wished to participate. In this respect, Justice Clark said:

"Finally, we cannot accept that the concept of neutrality, which does not permit a State to require a religious exercise even with the consent of the majority affected, collides with the majority's right to free exercise of religion. While the Free Exercise Clause clearly prohibits the use of state action to deny the rights of free exercise to *anyone* it has never meant that a majority could use the machinery of the State to practice its beliefs. Such a contention was effectively answered by Mr. Justice Jackson for the Court in West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628:

" 'The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to * * * freedom of worship * * * and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.'

"The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality. Though the application of that rule requires interpretation of a delicate sort, the rule itself is clearly and concisely stated in the words of the First Amendment." (Abington School District v. Schempp, supra, 374 U.S. at 225–226, 83 S. Ct. at 1573–1574.)

[6] An examination of the establishment clause in light of the Schempp and Engel cases, supra reveals that there need be no coercion upon minorities in order for a violation of the establishment clause to exist. *It is only necessary that the practice or enactment have the net effect of placing the official support of the local or national government behind a particular denomination or belief.* Abington School District v. Schempp, supra, 374 U.S. at 222, 83 S. Ct. 1560. See also Engel v. Vitale, supra, 370 U.S. at 430–436, 82 S. Ct. 1261.

[7] Similarly, were state or federal government to espouse a particular philosophy of secularism, or secularism in general, the

---

[1] Upon the request of any student or parent of a student in any particular class that the individual be allowed prayer and/or Bible reading as a regular religious exercise at the opening of school, the teacher must devise reasonable rules and regulations controlling such exercise.

2. The rules and regulations devised to implement the requested exercises may vary, depending on the number of children or parents so requesting, from allowing a moment of reverent silence to allowing prayers in unison, aloud. In the event the teacher finds that divergent, requests preclude reasonable control, the teacher may always allow as a satisfactory substitute, a moment of reverent silence.

3. Depending upon the form of requested exercise permitted in the discretion of the teacher, those who object shall remain in the class, or be excused from the requested exercise, or may arrive at class late, as the teacher feels will best serve classroom procedures and minimize embarrassment. (Jenison Public Schools District No. 30, Statement of Policy, pp. 1–2.)

[2] See: Prayer, Public Schools and the Supreme Court, Kauper, Michigan Law Review, April 1963, Vol. 61, Page 1031, at Page 1065:

"Viewed with respect to the precise problem before the Court, the decision in Engel is not a disturing one, when evaluated in terms of underlying policy considerations. Prayer, religious faith, and the freedom of religion are not damaged by the Court's holding. On the contrary, the decision maintains the dignity and religious significance of prayer by keeping it free from state compulsion and interference, and, by the same token, it preserves the freedom of both the believer and the non-believer in respect to prayer. Nor should it be of consequence that the prayer was 'nonsectarian.' Even such a prayer can be productive of religious divisiveness, not only because it is objectionable to non-believers or non-theistic religionists, but also because theistic believers may find it an offense to conscience to engage in prayer except in accordance with the tenets of their own religion. Moreover, religionists can have little enthusiasm for an officially sanctioned nonsectarian expression of religious belief which at most reflects a vague and generalized religiosity. Any usefulness of a prayer practice in public schools as symbolic of the religious tradition in our national life, of the values of religion to our society, and of religious ideas shares in common, must be weighed against the peril that the official promotion of common-denominator religious practices, conspicuous by their vagueness and syncretistic character will contribute to the furtherance and establishment of an official folk or culture religion which many competent observers regard as a serious threat to the vitality and distinctive witness of the historic faiths."

[3] Brown, Observer in Rome, Appendix B, p. 261.

establishment clause would be violated. Zorach v. Clauson, 343 U.S. 306, 314, 72 S. Ct. 679, 96 L. Ed. 954, Abington School District v. Schempp, supra, 374 U.S. at 225, 83 S. Ct. 1560.

However, there do exist areas in which the interplay between government and religion does not constitute an establishment of religion. This is the field of accommodation, first expressed in the Zorach case, and explored at great length by Mr. Justice Brennan in a concurring opinion in Schempp. Abington School District v. Schempp, 374 U.S. 203, 230, 83 S. Ct. 1560, 10 L. Ed. 2d 844, 862. It has also been noted in articles by leading commentators.[4]

As set forth in Zorach v. Clauson supra, the principle was stated:

"When the state encourages religious instructions or cooperates with religious authorities by adjusting the schedules of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs." Id. 343, U.S. at 314, 72 S. Ct. at 684, 96 L. Ed. at 962.

[8] It may well be that this court will be called upon to decide ultimately whether or not the actual operation of a particular practice is a permissible form of accommodation. However, for the present, it seems clear that, in light of the decided cases, the public schools, as between atheistic and humanistic religions, must carefully avoid any program of indoctrination in ultimate values.

The touchstone in both Engel v. Vitale, supra, and Abington School District v. Schempp, supra, was the support given to the practices by the local school authorities. In both cases, the exercises were directed to be held at the opening of the school day. Students who chose not to participate were required to absent themselves at the start of the school period or remain and silently endure a ceremony which violated their constitutional rights.[5]

[9] Now, it is this court's proposal that the students who wish to say a prayer or read scriptures according to their choice in the morning before the school day begins and after the school day ends, be permitted to do so; provided, however, that they meet in a room other than their regular home room, and complete their exercise at least five minutes before the regularly scheduled class day, or at least five minutes after the completion of the regular school class day.

Furthermore, no bell signifying the start of a prayer exercise should be rung. This exercise is voluntary, and those wishing to avail themselves of the opportunity provided should learn the time when it is offered to them and appear at the designated location without the aid of a school bell. The first bell should signal that school is about to begin.

This plan is an attempted accommodation, and since it is an accommodation, it must in no way affect those who do not wish an accommodation. For this reason, the practices which are observed must be free of any possible elements of coercion. Those who do take the opportunity to participate in the program must be separated from the official activity of the school, as of course must be the program itself. This is the reason for the directed time gap between the end of the practices and the official start of school, and between the end of the school day and the beginning of the practices after the close of the school day.

Furthermore, to fully insure that separation, this court will require that at the completion of the morning exercises there be a general commingling of the entire student body on the way to class, just as there would be were there no exercises whatsoever. That is, all rooms will be empty before the bell rings for the start of the school day. Thus, home rooms, or whatever room students use to commence the official school day will be filled in the usual way, and no student will enter a room containing a group which has previously congregated there for the purpose of prayer—all students will enter simultaneously upon the signal for the start of the school day.

For example, those children wishing to pray before school begins, and who would ordinarily begin the class day in home room A, might meet for prayer in home room B; and, in like manner, those students from home room B who desire to pray might meet in home room A. Thus, when the first bell sounded, all students would proceed to their regular classrooms.

If a prayer is to be said during the lunch period, it shall be a silent prayer, during a few moments of silence set aside for private meditation at the start of that period.

If any reading is to be done, let it be a selection from one of our historical documents, such as the Declaration of Independence, or the Northwest Ordinance; or, for example, speeches of our martyred Presidents, such as Lincoln's Gettysburg Address, or John F. Kennedy's inaugural address; or any one of the Thanksgiving proclamations of any President, or of any Governor.[6]

These writings would be lessons in the impact of religion upon the men who were leaders of our nation, and in turn, through them, upon the nation's affairs and history. The annals of our nation are replete with indications of the essentially religious character of this country[7]—belief in a Supreme Being,[8] belief that the rights of man are not the creation of government[9]—and

---

[4] See, for example, Religion and the Public Order, pp. 17–23 (edited by Giannela, 1963); Prayer, Public Schools and the Supreme Court, Kauper, Michigan Law Review, April 1963, Vol. 61, Page 1031, at pp. 1066–1068.

[5] See: Prayer, Public Schools and the Supreme Court, Kauper, Michigan Law Review, April 1963, Vol. 61, Page 1031, at page 1066:

"The issue raised in Engel is symptomatic of the problem we face in a religiously pluralistic society * * *

"Religionists have ground for complaint if the public schools by studied indifference teach that belief in God is irrelevant to life. The Engel decision does not require such indifference. Consistent with it the schools may follow practices and teaching programs that help to create awareness, appreciation and understanding of the religious factor in the life of the nation and its citizens. They may create respect for the moral values which reflect the community consensus and which illuminate the purposes and processes of our democratic society. But it is not their responsibility or function to cultivate an official faith or ideology, whether religious or humanistic in character, or to indoctrinate students in any system of beliefs and values that rests on a claim of insight into ultimate truth with respect to the meaning and purpose of life. Parents who desire religious instruction for their children as part of a school program have the option of sending them to parochial schools. One effect of the school prayer decision is to highlight the importance of private schools and of the parents' freedom of choice in our free and pluralistic society that does not recognize governmental monopoly of the educational process. But the majority of Americans who are concerned with the relevancy of religious teaching to the total educational program do not see the parochial school as the answer to the problem. Their interest may lie in the further development of dismissed- or released-time programs in connection with the operation of the public school systems. Moreover, in view of the present impasse with respect to the parochial school situation, it may well be that the shared-time plan offers the greatest promise for reconciling the felt needs for religious instruction with the secular limitations placed on the public school systems. All proposals of this kind deserve careful study. Needless to say, any constructive solution to the problem will require a generous measure of sympathetic understanding, good will and tolerance on the part of all concerned elements of the community.

"Whatever the merits of plans for accommodating the educational system to programs of formal religious instruction, they should not serve to obscure the fundamental consideration that the cultivation of religious faith is the responsibility of home and church. If secularism triumphs as the dominant American ideology, it will not be because of the Constitution or the Supreme Court or because the public schools have failed in their limited tasks, but because meaningful and vital religious faith has lost its place in the hearts and lives of the people. The Engel decision is a forceful reminder to parents and the churches that theirs is the task and responsibility of making prayer, worship and religious instruction rich and meaningful in the lives of their children."

[6] For an example of some of the past presidential speeches which would be acceptable for this purpose, see Footnote 3 to Mr. Justice Stewart's dissenting opinion in Engel v. Vitale, 370 U.S. 421, 446–448, 82 S. Ct. 1261, 8 L. Ed. 2d, 601, 617–618.

[7] See, for example, Abington School District v. Schempp, 374 U.S. 203, 213, 83 S. Ct. 1560, 1566, 10 L. Ed. 2d 844, 853: "It can be truly said, therefore, that today, as in the beginning, our national life reflects a religious people * * *" See, likewise, President Lincoln's Inaugural Address of March 4, 1865: "* * * Fondly do we hope, fervently do we pray, that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled by the bondsman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said 'the judgments of the Lord are true and righteous altogether.'

"With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations."

And from the Inaugural Address of President Kennedy, January 20, 1961: "With a good conscience our only sure reward, with history the final judge of our deeds, let us go forth to lead the land we love, asking His blessing and His help, but knowing that here on earth God's work must truly be our own."

[8] "We are a religious people whose institutions presuppose a Supreme Being." Zorach v. Clausen, 343 U.S. 306, at 313, 72 S.Ct. 679, at 684, 96 L.Ed. 954, at 962.

See also, Joint Congressional Resolution of July 30, 1956, 70 Stat. 732, declaring the national motto to be "In God We Trust."

[9] See, for example, the Declaration of Independence: "When in the Course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, * * *."

the pronouncements of the Supreme Court of the United States demonstrate that the nation is not hostile, nor are any of its governmental units hostile to religion as such.[10]

Those children who may themselves dissent, or whose parents may dissent from their participating in the exercises, would be required only to report for school at the regular opening time of school and would be permitted to leave school at the regular closing time.

Certainly the period of silent prayer before lunch affords the students an opportunity to say their own denominational prayer, and all would be privileged to say any prayer which their own denomination may have taught them. Those who do not share the prayer would be free to contemplate anything which they desired.

[10] During the regular school day, there will be no reading from the Bible, nor Bible stories, and no themes will be assigned on such topics as "Why I believe or disbelieve in religious devotions."

[11] Additionally, the pledge of allegiance and patriotic songs or readings are permissible at any time, provided they are voluntary.

[12] The role of the teacher at these pre- or post-school sessions is strictly that of one charged with the responsibility of maintaining order. No teacher shall be called upon to select the prayer which should be said, or to select the readings which may be given. The students would determine, by means of their own choosing, what should be done in this respect. The burden would not be cast upon the teacher to make the decision, nor to stand up and be counted.

This approach is by no means a final judgment of the court, nor should it be taken as a preliminary indication of a final judgment. In suggesting this plan, the court is merely trying to arrive at an interim accommodation, having foremost in mind the natural, God-given rights of each parent to determine the course of religious education for his child, but also considering the fact that the present proposal of the school board does relate to a serious effort to reconcile divergent opinions in an area where rigid, dogmatic positions too often abound, with the effect that a problem of continuing importance results in increased misunderstanding and bitterness, a situation which must certainly be regretted by all, regardless of religious affiliation, or lack of it.

The Engel and Schempp cases, supra, were decided on the basis of the establishment clause of the First Amendment. The accommodation suggested in this opinion is an attempt to avoid the nexus between official authority and religion which constitutes a violation of the establishment clause.

However, even should the program successfully escape the prohibitions of the Establishment Clause, as administered it may possibly result in abridgment of rights of free exercise, and for this reason testimony may be required to determine precisely the effect which such a program has.[11]

I direct that provision be made for the keeping of a record of the happenings during the interim period, as an aid to the court, in reaching a final judgment on the merits in this case.

There is available a vast store of examples of our national leaders lifting up their minds and hearts for worship, guidance, supplication, and thanksgiving—all of which would be permissible. But a program incorporating such examples into the school day does require conscientious effort on the part of teachers and students. It will have its own reward, in enhancing a knowledge of our history, informing sound moral tenets, and providing a true regard for man's individual relationship to God.[12]

See also, the Inaugural Address of President Kennedy, January 20, 1961: "* * * the same revolutionary beliefs for which our forebears fought are still at issue around the globe—the belief that the rights of man come not from the generosity of the state but from the hand of God."

And, also, from the address of President Kennedy delivered in Dallas, Texas, November 22, 1963: "We in this country, in this generation, are, by destiny rather than choice, the watchmen on the walls of world freedom. We ask, therefore, that we may be worthy of our power and responsibility, that we may exercise our strength and wisdom with restraint, and that we may achieve in our time and for all time the ancient vision of 'peace on earth, good will toward men.' That must always be our goal—and the righteousness of our cause must always underlie our strength. For as was written long ago: 'Except the Lord keep the city, the watchman waketh but in vain.'"

[10] "But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence." Zorach v. Clauson, supra, 343 U.S. at 314, 72 S.Ct. at 684.

"It has been argued that to apply the Constitution in such a way as to prohibit state laws respecting an establishment of religious services in public schools is to indicate a hostility toward religion or toward prayer. Nothing, of course could be more wrong. The history of man is inseparable from the history of religion." Engel v. Vitale, supra, 370 U.S. at 433–434, 82 S.Ct. at 1268.

"We agree of course that the State may not establish a 'religion of secularism' in the sense of affirmatively opposing or showing hostility to religion, thus 'preferring those who believe in no religion over those who do believe.'

* * * * *

"Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment." Abington School District v. Schempp, supra, 374 U.S. at 225, 83 S.Ct. at 1573.

"The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home the church and the inviolable citadel of the individual heart and mind." Id. at 226, 83 S.Ct. at 1574.

[11] "Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause, as it might from the Free Exercise Clause. * * *" Engel v. Vitale, 370 U.S. 421, at 430, 82 S.Ct. 1261, at 1266, 8 L. Ed. 2d 601. "Hence it is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion." Abington School District v. Schempp, 374 U.S. 203, at 223, 83 S.Ct. 1560, 10 L.Ed. 2d 844.

[12] For a lucid comment on the problem generally, see Ramsey, "Teaching 'Virtue' in the Public Schools"—Religion and the Public Order, pp 37–8 (edited by Giannela, 1963).

"Voluntary or prescribed readings may be edifying without being devotional and no less educational than instruction about the history of religion.

"From Plato and Aristotle to our own time, one question that may never have been answered conclusively is: Can virtue be taught? Our achievement is no longer to ask the question, but to proceed upon the unexamined assumption that the way to teach virtue is to inform and discipline what we mistakenly called the 'intellect.'

"In response to the Court's prayer and Bible-reading decision, should there not be numerous and radically new experiments in public education on how to teach anybody to become someone? It is incidental that in the course of this the pupils might glimpse for the first time the meaning in the fact that one who has borne the human contenance became someone by first becoming and being religious. They might learn, in an entirely free, unimposed, and unembarrassing way, what religion is all about. Then the public schools could remain entirely secular. without secularizing."

In this sensitive area of constitutional law, our jurisprudence must be prudential. If there be a solution, it may be found only at the end of a period of patient trial, success, error experience. Ultimate results may be worth the ironic effort.

I am not granting the injunction requested in this case. I am setting forth this policy during the pendency of this suit, and I expect it will be followed. If it is not followed, I will then consider the granting of an injunction.

Mr. ERVIN. Mr. President, I am firmly of the opinion that the diversity of religions in America makes it imperative that we retain religious freedom for all men as a way of life. This can only be done in the manner pointed out by the first amendment, which declares, in effect, that the state must not undertake to control religion and religion must not undertake to control the state.

The history of man's struggle for political and religious freedom makes this clear. Political freedom cannot exist in any land where religion controls the state, and religious freedom cannot exist in any land where the state controls religion.

Justice Clark alluded to the reason why I say that the diversity of religions in America makes it imperative that we retain the separation of church and state decreed by the first amendment.

I refer to his opinion in the Schempp case, and I quote these words from it:

This freedom to worship was indispensable in a country whose people came from the four quarters of the earth and brought with them a diversity of religious opinion. Today authorities list eighty-three separate religious bodies, each with memberships exceeding 50,000, existing among our people, as well as innumerable smaller groups.

We have today in America three major religious groups. One may be designated as Protestants, another may be designated as Catholics, and the third may be designated as Jewish.

Our country can derive great strength from our diversity of religious beliefs, if we maintain the principle that all men of all faiths are to enjoy freedom of religion without let or hindrance from government. On the other hand, the diversity of our religious groups may operate as a divisive force if, under our system of government, each of these groups may strive to control a State or a school board for the purpose of imposing its particular religious beliefs upon the school children attending public schools.

The decisions of the majority in the Engel case and the Schempp case remove this temptation from our three major religious groups and from all other religious groups by saying that the state must keep its hands off religion, and religion must keep its hands off the state.

When James Madison wrote his great "Memorial and Remonstrance Against Religious Assessments," he had something to say on this point. I quote these words of James Madison from his "Memorial and Remonstrance Against Religious Assessments":

"[I]t is proper to take alarm at the first experiment on our liberties. . . . Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to con-

tribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?"

The great English poet, Alfred Tennyson, has his immortal character, Ulysses, say this:

"I am a part of all that I have met."

That statement, of course, is a recognition of the fact that each man is, in part at least, a product of his environment. I believe that each man is also, in part at least, a product of heredity. Hence we can say, and must say, that in addition to beinig a part of all that we have met, we are also a part of all that our ancestors have met.

Some of my ancestors were among the Scottish Covenanters who were run down and murdered upon the crags and moors of Scotland because they dissented from the doctrines of the established church in that land. Others of them were Scotch-Irish Presbyterians, who were denied political and religious liberty in Ulster. Some of them were among the Huguenots, who were massacred in France merely because they worshipped Almighty God according to the dictates of their own consciences instead of the dictates of the ecclesiastical and political rulers of France. Some of them were English Pilgrims, who were driven from their native England by way of Leyden, Holland, to Plymouth, because they did not want to use the prayers which the Church of England had inserted in the prayer book established by the act of Parliament. Some of them were Quakers, who were despised because of the simplicity of their religion and way of life.

All of them came to America to obtain the simple right to bend their own knees and raise their own voices to their own God in their own way. I believe their experiences had some relation to the creation of my abiding conviction that religious liberty is the most precious of all freedoms.

I think that the greatest book, from a literary as well as from a religious standpoint, ever made available to mankind, is the King James version of the Bible. As soon as my forebears obtained the King James version of the Bible, they adopted it as a guide for their religious faith, and they recorded within its covers their marriages, their births, and their deaths. They found something within that old Book which revealed to them the promises of God, and something which made them fear God and nothing else. I think that perhaps they found there what Annie Johnson Flint has described for us in her little poem entitled "What God Hath Promised":

God hath not promised
Skies always blue,
Flower-strewn pathways
All our lives through;
God hath not promised
Sun without rain,
Joy without sorrow,
Peace without pain.

But God hath promised
Strength for the day,
Rest for the labor,
Light for the way,
Grace for the trials,
Help from above,
Unfailing sympathy,
Undying love.

I covet freedom of religion for all men. Let them study their holy writings and meditate upon their teachings without let or hindrance from government. I cherish this freedom for myself as well as for others.

I find these words of the ancient Hebrew Psalmist in the King James version of the Bible:

"The heavens declare the glory of God; and the firmament showeth his handywork."

I look at the universe and behold with wonder the lifegiving sun, which rises in the east at morn, travels across the sky by day, and sets in the west at even-tide; the galaxies of stars, which twinkle in the infinite heavens; the clouds, which bring the soil-refreshing rain; the majestic mountains with hills at their knees; the rivers, which water pleasant valleys and fertile plains and run endlessly to the sea; the tall trees, which lift leafy arms heavenward to pry; the arbutus and dogwood, which brighten springtime, and the marigolds and roses, which ornament summer; the glory of the leaves and ripened crops of autumn; the crystal snowflakes, which descend so gently in winter; and the other beautiful things past numbering, which adorn the earth.

I note with awe the order and regularity of the processes of life and nature as the tide ebbs and flows, as the harvest succeeds the seedtime, and as the heavenly bodies move in their orbits without mishap in conformity with natural laws. I observe with reverence that, despite the feet of clay on which he makes his earthly rounds, man is endowed with the capacity to obey conscience, exercise reason, study holy writings, and aspire to righteous conduct in obedience to spiritual laws.

On the basis of these things, I affirm with complete conviction that the universe and man are not the haphazard products of blind atoms wandering aimlessly about in chaos, but, on the contrary, are the creations of God, the Maker of the universe and man.

Religion adds hope to man's desire for immortality. This desire is not to be attributed simply to the egotism of men, or their fear of the unknown beyond the grave, or their repugnance to the thought of their nothingness after death.

The pessimistic philosopher Schopenhauer was sadly in error in his caustic comment that "to desire immortality is to desire the eternal perpetuation of a great mistake." The longing for immortality is prompted by most meritorious motives.

Life on earth at best is all too short and unfinished. Man entertains high hopes for an abundant life with his loved ones and undertakes worthwhile things for them and his generation. His high hopes vanish as he is robbed of those he loves by death, and his hands drop the working tools of life while his undertakings are incomplete.

As a consequence of these things, our hearts cry out that there must be some place after life's fitful fever is over where tears never flow and rainbows never fade, where high hopes are realized and worthy tasks are accomplished, and where those we "have loved long since and lost awhile" stay with us forever.

I revere religion. I revere religion because it gives us these promises and this hope. I would protect and preserve the right of freedom of religion for all men.

In closing, I ask these questions: Why did the Founding Fathers incorporate freedom of religion in the first amendment? What purpose did the Founding Fathers have in view when they did this?

The answer to these questions, it seems to me, appears with great clarity in the opinion of the late Justice Jackson in *West Virginia Board of Education* v. *Barnette*, 319 U.S. 624, 638.

I read what he has to say on this point:

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to * * * freedom of worship * * * and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

Let us keep it that way. Let us preserve for all Americans of all generations the right to bow their knees and lift their voices to their own God in their own way.

We can do this by standing by the first amendment as it has been written and interpreted.

I close with a prayer that the Senate will do exactly this and no more.

Mr. ERVIN. I would like to say a few words, however, to show my attitude toward religion, to show why I am such a strong advocate of the separation of church and state, and why I am such a strong supporter of the first amendment, which prohibits the Government either to establish religion or to prohibit its free exercise. For I believe that the surest protection for religion lies in adherence to the precepts of the amendment. To tamper with the amendment is to weaken religion not to strengthen it.

I mentioned a while ago that I believe we are not only a part of everything we have met, but also a part of all that our ancestors have met.

Some of my ancestors were among the Scottish Covenanters who were run down and murdered upon the crags and moors of Scotland because they dissented from the doctrines of the established church in that land. Others of them were Scotch-Irish Presbyterians, who were denied political and religious liberty in Ulster. Some of them were among the Huguenots, who were massacred in France merely because they worshipped Almighty God according to the dictates of their own consciences instead of the dictates of the ecclesiastical and political rulers of France. Some of them were English Pilgrims, who were driven from their native England by way of Leyden, Holland, to Plymouth, because they did not want to use the prayers which the Church of England had inserted in the prayer book established by the act of Parliament. Some of them were Quakers, who were despised because of the simplicity of their religion and way of life.

All of them came to America to obtain the simple right to bend their own knees and raise their own voices to their own God in their own way. I believe their experiences had some relation to the creation of my abiding conviction that religious liberty is the most precious of all freedoms.

I think that the greatest book, from a literary as well as from a religious standpoint, ever made available to mankind, is the King James version of the Bible. As soon as my forebears obtained the King James version of the Bible, they adopted it as a guide for their religious faith, and they recorded within its covers their marriages, their births, and their deaths. They found something within that old Book which revealed to them the promises of God, and something which made them fear God and nothing else. I think that perhaps they found there what Annie Johnson Flint has described for us in her little poem entitled "What God Hath Promised":

God hath not promised
Skies always blue,
Flower-strewn pathways
All our lives through;
God hath not promised
Sun without rain,
Joy without sorrow,
Peace without pain.

But God hath promised
Strength for the day,
Rest for the labor,
Light for the way,
Grace for the trials,
Help from above,
Unfailing sympathy,
Undying love.

I covet freedom of religion for all men. Let them study their holy writings and meditate upon their teachings without let or hindrance from government. I cherish this freedom for myself as well as for others.

I find these words of the ancient Hebrew Psalmist in the King James version of the Bible:

The heavens declare the glory of God; and the firmament showeth His handywork.

I look at the universe and behold with wonder the lifegiving sun, which rises in the east at morn, travels across the sky by day, and sets in the west at eventide; the galaxies of stars, which twinkle in the infinite heavens; the clouds, which bring the soil-refreshing rain; the majestic mountains with hills at their knees; the rivers, which water pleasant valleys and fertile plains and run endlessly to the sea; the tall trees, which lift leafy arms heavenward to pray; the arbutus and dogwood, which brighten springtime, and the marigolds and roses, which ornament summer; the glory of the leaves and ripened crops of autumn; the crystal snowflakes, which descend so gently in winter; and the other beautiful things past numbering, which adorn the earth.

I note with awe the order and regularity of the processes of life and nature as the tide ebbs and flows, as the harvest succeeds the seedtime, and as the heavenly bodies move in their orbits without mishap in conformity with natural laws. I observe with reverence that, despite the feet of clay on which he makes his earthly rounds, man is endowed with the capacity to obey conscience, exercise reason, study holy writings, and aspire to righteous conduct in obedience to spiritual laws.

On the basis of these things, I affirm with complete conviction that the universe and man are not the haphazard products of blind atoms wandering aimlessly about in chaos, but, on the contrary, are the creations of God, the Maker of the universe and man.

Religion adds hope to man's desire for immortality. This desire is not to be attributed simply to the egotism of men, or their fear of the unknown beyond the grave, or their repugnance to the thought of their nothingness after death.

The pessimistic philosopher Schopenhauer was sadly in error in his caustic comment that "to desire immortality is to desire the eternal perpetuation of a great mistake." The longing for immortality is prompted by most meritorious motives.

Life on earth at best is all too short and unfinished. Man entertains high hopes for an abundant life with his loved ones, and undertakes worthwhile things for them and his generation. His high hopes vanish as he is robbed of those he loves by death, and his hands drop the working tools of life while his undertakings are incomplete.

As a consequence of these things, our hearts cry out that there must be some place after life's fitful fever is over where tears never flow and rainbows never fade, where high hopes are realized and worthy tasks are accomplished, and where those we "have loved long since and lost awhile" stay with us forever.

I revere religion. I revere religion because it gives us these promises and this hope. I would protect and preserve the right of freedom of religion for all men.

In closing, I ask these questions: Why did the Founding Fathers incorporate freedom of religion in the first amendment? What purpose did the Founding Fathers have in view when they did this?

The answer to these questions, it seems to me, appears with great clarity in the opinion of the late Justice Jackson in *West Virginia Board of Education* v. *Barnette,* 319 U.S. 624, 638.

I read what he has to say on this point:

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to * * * freedom of worship * * * and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

Let us keep it that way. Let us preserve for all Americans of all generations the right to bow their knees and lift their voices to their own God in their own way.

We can do this by standing by the first amendment as it has been written and interpreted.

I close with a prayer that the Senate will do exactly this and no more.

I yield the floor.

Mr. YARBOROUGH subsequently said: Mr. President, I vigorously oppose the amendment offered by the junior Senator from Tennessee (Mr. BAKER) which would permit nondenominational prayer in public buildings because there is presently no such law which would prohibit prayer in public buildings and also because this amendment poses a major threat to religious freedom in America.

The adoption of this amendment would seemingly limit prayers in public buildings to "nondenominational prayers." What is "nondenominational prayer" and who would prescribe it? The very wording shows that a governmental authority would prescribe the form of prayer and whether or not it was denominational. Then this amendment would put the Government in the religious activity in determining what was a proper prayer in a public building.

This is the type of governmental regulation of religion the first amendment of the Constituiton prohibits. The first amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

The present proposed amendment, the so-called Baker amendment, modifies and weakens the first article of the Bill of Rights. It gives the Government power to rule on what is and what is not a "nondenominational prayer." It chips away at the cornerstone of constitutional separation of church and state. This Baker amendment would abridge and limit the broad religious freedom of the Bill of Rights; it limits the words "or prohibiting the free exercise of religion." When the Congress establishes a "nondenominational prayer"—that prayer becomes a congressional or governmental prayer, not a religious prayer.

Is a nondenominational prayer a Catholic or a Protestant prayer, a Jewish or Gentile prayer, a Quaker prayer or a Mormon prayer, a Christian Scientist prayer or a Unitarian prayer?

As the Constitution now stands, each of these and all other religious churches, faiths, beliefs or groups are free to pray to God in their own way. The adoption of this Baker amendment would limit that freedom once a prayer was offered in "any public building which is supported in whole or in part through the expenditure of public funds."

These buildings include every public school building in America, every city hall, every tax-supported town hall community or civic center, public hospital or mental health center built with or supported by the expenditure of public funds. Ministers and priests and rabbis and other religious leaders of all denominations are now free to enter those hospitals and pray with and for ill persons. It would be a tragic day in America if these religious leaders, on entering a public hospital to visit an ill parishioner, were limited in prayer to a nondenominational or governmental or congressional prayer.

The Baker amendment breaks down what Thomas Jefferson called "the wall of separation between church and state." I favor retention of that wall, and the religious liberty and freedom of the American people.

I oppose these governmental limitations on prayer in public buildings, as proposed in the Baker amendment.

I urge all my colleagues to cast their vote against this amendment which would endanger our sacred tradition of freedom of religion.

Mr. THURMOND. Mr. President, the Supreme Court has, in recent years, struck ruthlessly at the hearts of many of the customs and traditions most Americans hold dear; but in my opinion, the Court could have done no greater disservice to our people than to interfere with their education. Not only has the Supreme Court thrown our educational system into turmoil and confusion through unreasonable court orders which have placed the operation and control of our schools under Federal control, but they have blatantly interfered with our citizens' natural interest for a balanced education for their children. I am referring, Mr. President, to an education which would develop their souls and spirits as well as their minds.

The Supreme Court, in the consideration of the first amendment, took the language found there and interpreted it to mean that our school children 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 a meaningful prosecution cannot be brought against many smut peddlers whose por-

nographic wares fall into the hands of these same children.

Mr. President, we have an opportunity today to correct this injustice which has been forced upon the American people. The time has come to clear the air. The millions of children in the public schools should have an opportunity to pray if they wish. The passage of this amendment will assure them of that right.

Concerned parents of this country want their children to realize that recognition of and respect for a Supreme Being are matters of such transcending importance that they are not to be relegated to only one day of the week. They want their children to see that people pause to consider their faith as they go about their work during the week, not just to church. In fact, the Senate of the United States has a chaplain who opens each day's session with a prayer. This is just not a "ceremonial occasion," but a routine procedure. Congress, moreover, has by law specified the oath of office to be taken by Federal judges. The prescribed words of this oath end: "So help me God."

Mr. President, in my judgment, the Congress of the United States cannot afford nor should it have the right to deny our school children the opportunity to receive spiritual guidance. I urge the Senate to approve this amendment which will allow non-denominational prayer in our public schools.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BAKER. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. BAKER. Mr. President, I am ready to vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Tennessee. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SAXBE (after having voted in the negative). On this vote I have a pair with the junior Senator from Illinois (Mr. SMITH). If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." I therefore withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. BAYH), the Senator from North Dakota (Mr. BURDICK), the Senator from Nevada (Mr. CANNON), the Senator from Connecticut (Mr. DODD), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Tennessee (Mr. GORE), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Wyoming (Mr. MCGEE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PASTORE), the Senator from Missouri (Mr. SYMINGTON), the Senator from Maryland (Mr. TYDINGS), the Senator from Ohio (Mr. YOUNG), and the Senator from California (Mr. CRANSTON) are necessarily absent.

I further announce that, if present and voting, the Senator from Indiana (Mr. BAYH) and the Senator from Ohio (Mr. YOUNG) would each vote "nay."

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE), the Senator from New Mexico (Mr. MONTOYA), and the Senator from Missouri (Mr. SYMINGTON) would each vote "yea."

Mr. GRIFFIN. I announce that the Senators from Vermont (Mr. AIKEN and Mr. PROUTY), the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. GOODELL), the Senator from Nebraska (Mr. HRUSKA), the Senator from California (Mr. MURPHY), the Senator from Illinois (Mr. SMITH) and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from South Dakota (Mr. MUNDT), the Senator from California (Mr. MURPHY), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The pair of the Senator from Illinois (Mr. SMITH) has been previously announced.

The result was announced—yeas 50, nays 20, as follows:

[No. 377 Leg.]

YEAS—50

Allen	Eastland	Pearson
Allott	Fannin	Percy
Baker	Griffin	Randolph
Bellmon	Gurney	Russell
Bennett	Hansen	Schweiker
Bible	Holland	Scott
Boggs	Hollings	Smith, Maine
Byrd, Va.	Jackson	Sparkman
Byrd, W. Va.	Jordan, N.C.	Spong
Church	Jordan, Idaho	Stennis
Cook	Long	Stevens
Cooper	Magnuson	Talmadge
Cotton	Mansfield	Thurmond
Curtis	McClellan	Williams, N.J.
Dole	McIntyre	Williams, Del.
Dominick	Miller	Young, N. Dak.
Eagleton	Packwood	

NAYS—20

Anderson	Hatfield	Mondale
Brooke	Hughes	Nelson
Case	Inouye	Pell
Ellender	Javits	Proxmire
Ervin	Mathias	Ribicoff
Harris	McGovern	Yarborough
Hart	Metcalf	

PRESENT AND GIVING A LIVE PAIR AS PREVIOUSLY RECORDED—1

Saxbe, against.

NOT VOTING—29

Aiken	Gore	Murphy
Bayh	Gravel	Muskie
Burdick	Hartke	Pastore
Cannon	Hruska	Prouty
Cranston	Kennedy	Smith, Ill.
Dodd	McCarthy	Symington
Fong	McGee	Tower
Fulbright	Montoya	Tydings
Goldwater	Moss	Young, Ohio
Goodell	Mundt	

So Mr. BAKER's amendment was agreed to.

Mr. BAKER. Mr. President, I move that the vote by which the amendment was agreed to be reconsidered.

Mr. THURMOND. Mr. President, I move that the motion to reconsider be laid on the table.

The motion to lay on the table was agreed to.

Mr. SCOTT subsequently said: I am delighted that the Senate has taken favorable action on a constitutional amendment to permit voluntary prayer in public schools and public buildings.

We all know of the long and hard battle that the late Senator Dirksen led on this vital matter. I was proud to carry on that battle by introducing the Scott school prayer amendment. My amendment was patterned after the Dirksen amendment but contained two strengthening provisions. First, it mentions specifically "schools" as among those public buildings in which voluntary prayer would be permitted. Second, my resolution permitted "meditation" as a substitute for voluntary, nondenominational prayer. By so doing, my resolution addressed itself to the basic issue in a manner which still permits the greatest possible flexibility for a divergence of religious belief. Individual or group prayer or meditation on a voluntary basis need not be formalized or institutionalized, but at the same time, such activities should not be penalized.

Twenty-five Senators joined me in my effort and cosponsored the Scott constitutional prayer amendment. On the basis of this overwhelming groundswell of support, I had requested hearings before the Senate Judiciary Subcommittee on Constitutional Amendments because I believed that this issue's importance merited the subcommittee's attention. Regretfully, these important hearings were not scheduled and the Senate faced again the prospect of not taking up this pressing legislation in spite of the strong and favorable sentiment that existed.

Therefore, in view of the reluctance to schedule hearings, it became essential to bring this issue to the Senate floor directly and promptly rather than risk further—and undoubtedly fatal—delay. Thus we decided to bring up the school prayer constitutional amendment as an amendment to the pending equal rights resolution. Today's favorable vote indicates the overwhelming support for the school prayer amendment.

The people of my Commonwealth of Pennsylvania have been especially outspoken on this issue. They have petitioned the courts for years, and despite setbacks there, have in some communities recently reinstituted voluntary prayer. In at least one school, the exercise centers on the daily prayer from the CONGRESSIONAL RECORD, a reminder of the fact that we, as national leaders in Congress, begin each daily session with the opportunity for prayer. It is this same opportunity for prayer that our vote today would make available to others, and particularly to the Nation's schoolchildren who otherwise are denied a privilege we in Congress take for granted.

I believe in the separation of church and state. I do not believe in the separation of children from the opportunity for prayer or meditation.

The Senate can truly be proud of the action we have just taken.

ADJOURNMENT OF CONGRESS FROM OCTOBER 14, 1970, TO NOVEMBER 16, 1970

Mr. BYRD of West Virginia. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on House Concurrent Resolution 774.

The PRESIDING OFFICER (Mr. HUGHES). The Chair lays before the Senate House Concurrent Resolution 774, which will be read.

The legislative clerk read the concurrent resolution as follows:

Resolved by the House of Representatives (the Senate concurring), That when the two Houses adjourn on Wednesday, October 14, 1970, they stand adjourned until 12 o'clock meridian on Monday, November 16, 1970.

Mr. BYRD of West Virginia. I ask unanimous consent that the Senate proceed to the consideration of the concurrent resolution.

The PRESIDING OFFICER. Is there objection?

There being no objection, the resolution (S. Con. Res. 774) was considered and agreed to.

AUTHORIZATION FOR THE SIGNING OF ENROLLED MEASURES DURING ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on House Concurrent Resolution 775.

The PRESIDING OFFICER. The Chair lays before the Senate a message from the House on House Concurrent Resolution 775, which will be read.

The legislative clerk read the concurrent resolution, as follows:

Resolved by the House of Representatives (the Senate concurring), That notwithstanding any adjournment of the House until November 16, 1970, the Speaker of the House of Representatives and the President of the Senate be, and they are hereby, authorized to sign enrolled bills and joint resolutions duly passed by the two Houses and found truly enrolled.

Mr. BYRD of West Virginia. I ask unanimous consent that the Senate proceed to the consideration of the resolution.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. BYRD of West Virginia. Mr. President, I offer an amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read the amendment, as follows:

In line 4, after the word "Senate", insert a comma and "the President pro tempore, or Acting President pro tempore".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution, as amended.

The concurrent resolution (H. Con. Res. 775) as amended was agreed to.

CORRECTIONS IN ENROLLMENT OF H.R. 17654

Mr. BYRD of West Virginia. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on House Concurrent Resolution 778.

The PRESIDING OFFICER. The Chair lays before the Senate House Concurrent Resolution 778, which will be stated.

The legislative clerk read the House concurrent resolution by title.

The PRESIDING OFFICER. Is there objection to the present consideration of the concurrent resolution?

There being no objection, the concurrent resolution (H. Con. Res. 778) was considered and agreed to, as follows:

H. CON. RES. 778

Resolved by the House of Representatives (the Senate concurring), That in the enrollment of the bill (H.R. 17654) to improve the operation of the legislative branch of the Federal Government, and for other purposes, the Clerk of the House of Representatives is authorized and directed—

(1) in paragraph (6)(c) of Rule XXV of the Senate, as amended by section 132(d) of the bill, to strike out "subparagraph (a)" each place it appears and insert "subparagraph (b)"; and

(2) in section 601(1) of the bill, to insert ", and section 105(e) and (f) of the Legislative Branch Appropriation Act, 1968, as amended by section 305 of this Act" after "section 321 of this Act" rather than after "title IV, of this Act" as directed by Senate amendment numbered 52.

ENVIRONMENTAL QUALITY EDUCATION ACT

Mr. BYRD of West Virginia. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 18260.

The PRESIDING OFFICER (Mr. HUGHES) laid before the Senate the amendment of the House of Representatives to the amendments of the Senate to the bill (H.R. 18260) to authorize the U.S. Secretary of Health, Education, and Welfare to establish educational programs to encourage understanding of policies and support of activities designed to preserve and enhance environmental quality and maintain ecological balance which was in lieu of the matter inserted by the Senate amendment, insert the following:

That this Act may be cited as the "Environment Education Act".

STATEMENT OF FINDINGS AND PURPOSE

SEC. 2. (a) The Congress of the United States finds that the deterioration of the quality of the Nation's environment and of its ecological balance poses a serious threat to the strength and vitality of the people of the Nation and is in part due to poor understanding of the Nation's environment and of the need for ecological balance; that presently there do not exist adequate resources for educating and informing citizens in these areas, and that concerted efforts in educating citizens about environmental quality and ecological balance are therefore necessary.

(b) It is the purpose of this Act to encourage and support the development of new and improved curricula to encourage understanding of policies, and support of activities designed to enhance environmental quality and maintain ecological balance; to demonstrate the use of such curricula in model educational programs and to evaluate the effectiveness thereof; to provide support for the initiation and maintenance of programs in environmental education at the elementary and secondary levels; to disseminate curricular materials and other information for use in educational programs throughout the Nation; to provide training programs for teachers, other educational personnel, public service personnel, and community, labor, and industrial and business leaders and employees, and government employees at State, Federal, and local levels; to provide for the planning of outdoor ecological study centers; to provide for community education programs on preserving and enhancing environmental quality and maintaining ecological balance; and to provide for the preparation and distribution of materials by mass media in dealing with the environment and ecology.

ENVIRONMENTAL EDUCATION

SEC. 3. (a)(1) There is established, within the Office of Education, an office of environmental education (referred to in this section as the "office") which, under the supervision of the Commissioner, through regulations promulgated by the Secretary, shall be responsible for (A) the administration of the program authorized by subsection (b) and (B) the coordination of activities of the Office of Education which are related to environmental education. The office shall be headed by a Director who shall be compensated at a rate not to exceed that prescribed for grade GS–17 in section 5332 of title 5, United States Code.

(2) For the purposes of this Act, the term "environmental education" means the educational process dealing with man's relationship with his natural and manmade surroundings, and includes the relation of population, pollution, resource allocation and depletion, conservation, transportation, technology, and urban and rural planning to the total human environment.

(b)(1) The Commissioner shall carry out a program of making grants to, and contracts with, institutions of higher education, State and local educational agencies, regional educational research organizations, and other public and private agencies, organizations, and institutions (including libraries and museums) to support research, demonstration, and pilot projects designed to educate the public on the problems of environmental quality and ecological balance, except that no grant may be made other than to a nonprofit agency, organization, or institution.

(2) Funds appropriated for grants and contracts under this section shall be available for such activities as—

(A) the development of curricula (including interdisciplinary curricula) in the preservation and enhancement of environmental quality and ecological balance;

(B) dissemination of information relating to such curricula and to environmental education, generally;

(C) in the case of grants to State and local educational agencies, for the support of environmental education programs at the elementary and secondary education levels;

(D) preservice and inservice training programs and projects (including fellowship programs, institutes, workshops, symposiums, and seminars) for educational personnel to prepare them to teach in subject matter areas associated with environmental quality and ecology, and for public service personnel, government employees, and business, labor, and industrial leaders and employees;

(E) planning of outdoor ecological study centers;

(F) community education programs on environmental quality, including special programs for adults; and

(G) preparation and distribution of materials suitable for use by the mass media

in dealing with the environment and ecology. In addition to the activities specified in the first sentence of this paragraph, such funds may be used for projects designed to demonstrate, test, and evaluate the effectiveness of any such activities, whether or not assisted under this section.

(3) (A) Financial assistance under this subsection may be made available only upon application to the Commissioner. Applications under this subsection shall be submitted at such time, in such form, and containing such information as the Secretary shall prescribe by regulation and shall be approved only if it—

(i) provides that the activities and services for which assistance is sought will be administered by, or under the supervision of, the applicant;

(ii) describes a program for carrying out one or more of the purposes set forth in the first sentence of paragraph (2) which holds promise of making a substantial contribution toward attaining the purposes of this section;

(iii) sets forth such policies and procedures as will insure adequate evaluation of the activities intended to be carried out under the application;

(iv) sets forth policies and procedures which assure that Federal funds made available under this Act for any fiscal year will be so used as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the purposes described in section 3, and in no case supplant such funds.

(v) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this title; and

(vi) provides for making an annual report and such other reports, in such form and containing such information, as the Commissioner may reasonably required and for keeping such records, and for affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports.

(B) Applications from local educational agencies for financial assistance under this Act may be approved by the Commissioner only if the State educational agency has been notified of the application and been given the opportunity to offer recommendations.

(C) Amendments of applications shall, except as the Secretary may otherwise provide by or pursuant to regulation, be subject to approval in the same manner as original applications.

(4) Federal assistance to any program or project under this section, other than those involving curriculum development, dissemination of curricular materials, and evaluation, shall not exceed 80 per centum of the cost of such program for the first fiscal year of its operation, including costs of administration, unless the Commissioner determines, pursuant to regulations adopted and promulgated by the Secretary establishing objective criteria for such determinations, that assistance in excess of such percentages is required in furtherance of the purposes of this section. The Federal share for the second year shall not exceed 60 per centum, and for the third year 40 per centum. Non-Federal contributions may be in cash or kind, fairly evaluated, including but not limited to plant, equipment, and services.

(c) (1) There is hereby established an Advisory Council on Environmental Education consisting of twenty-one members appointed by the Secretary. The Secretary shall appoint one member as Chairman. The Council shall consist of persons appointed from the public and private sector with due regard to their fitness, knowledge, and experience in matters of, but not limited to, academic, scientific, medical, legal resource conservation and production, urban and regional planning, and information media activities as they relate to our society and affect our environment, and shall give due consideration to geographical representation in the appointment of such members: *Provided, however,* That the Committee shall consist of not less than three ecologists and three students.

(2) The Council shall—

(A) advise the Commissioner and the office concerning the administration of, preparation of general regulations for, and operation of programs assisted under this section;

(B) make recommendations to the office with respect to allocation of funds appropriated pursuant to subsection (d) among the purposes set forth in paragraph (2) of subsection (b) and the criteria to be used in approving applications, which criteria shall insure an appropriate geographical distribution of approved programs and projects throughout the Nation;

(C) develop criteria for the review of applications and their disposition; and

(D) evaluate programs and projects assisted under this section and disseminate the results thereof.

TECHNICAL ASSISTANCE

SEC. 4. The Secretary of Health, Education, and Welfare, in cooperation with the heads of other agencies with relevant jurisdiction, shall, insofar as practicable upon request, render technical assistance to local educational agencies, public and private nonprofit organizations, institutions of higher education, agencies of local, State, and Federal governments and other agencies deemed by the Secretary to play a role in preserving and enhancing environmental quality and maintaining ecological balance. The technical assistance shall be designed to enable the recipient agency to carry on education programs which are related to environmental quality and ecological balance.

SMALL GRANTS

SEC. 5. (a) In addition to the grants authorized under section 3, the Commissioner, from the sums appropriated, shall have the authority to make grants, in sums not to exceed $10,000 annually, to nonprofit organizations such as citizens groups, volunteer organizations working in the environmental field, and other public and private nonprofit agencies, institutions, or organizations for conducting courses, workshops, seminars, symposiums, institutes, and conferences, especially for adults and community groups (other than the group funded).

(b) Priority shall be given to those proposals demonstrating innovative approaches to environmental education.

(c) For the purposes of this section, the Commissioner shall require evidence that the interested organization or group shall have been in existence one year prior to the submission of a proposal for Federal funds and that it shall submit an annual report on Federal funds expended.

(d) Proposals submitted by organizations and groups under this section shall be limited to the essential information required to evaluate them, unless the organization or group shall volunteer additional information.

ADMINISTRATION

SEC. 6. In administering the provisions of this Act, the Commissioner is authorized to utilize the services and facilities of any agency of the Federal Government and of any other public or private agency or institution in accordance with appropriate agreements, and to pay for such services either in advance or by way of reimbursement, as may be agreed upon. The Commissioner shall publish annually a list and description of projects supported under this Act and shall distribute such list and description to interested educational institutions, citizens' groups, conservation organizations, and other organizations and individuals involved in enhancing environmental quality and maintaining ecological balance.

AUTHORIZATION

SEC. 7. There is authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1971, $15,000,000 for the fiscal year ending June 30, 1972, and $25,000,000 for the fiscal year ending June 30, 1973, for carrying out the purposes of this Act.

Mr. BYRD of West Virginia. Mr. President, I move that the Senate concur in the amendment of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

Mr. NELSON. Mr. President, the Environmental Education Act which passed the Congress today is a landmark piece of legislation. It is a timely demonstration that the Congress and the executive branch are determined that the current tremendous public concern for preserving our fragile and threatened life support systems will not become the first fad of the 1970's.

I have recently introduced a sense of the Senate resolution which will declare the third week of April Earth Week and the National Governors Conference passed a resolution urging the designation the third week in April as an annual observance of Earth Week. When I first introduced the Environmental Education Act last November, I said that one of the aims of this bill would be to make every day a Teach-In Day by helping assist our nearly 3 million teachers to introduce environmental-ecological concepts into the curriculum.

There is no better assurance that short- and long-range corrective measures will be taken to improve our endangered environment, than by introducing environmental studies into the curriculum from preschool to continuing education.

This act would give the Office of Education a firm mandate to support broad and imaginative programs in environmental education.

The Environmental Education Act marks the beginning of the new and critical effort to provide American citizens with the knowledge and understanding necessary for the well-being of the Nation.

The bill states that the office shall be "under the supervision of the Commission."

The intent is that this office should be located within the immediate Office of the Commissioner. This was the intent of the Senate Subcommittee on Education and the full Committee on Labor and Public Welfare as evidenced in the report on the Senate bill. This bill passed the Senate unanimously 64 to 0 and, therefore, one could only conclude that the intent of the Senate was identical to the intent of the committee report.

In that report, on page 4, it is stated:

The field of environmental education is so new that the committee believes that its development will be, to a great extent, influenced by the persons charged with administrative responsibility for the program authorized by the bill; therefore the program

ought not be dispersed throughout the Office of Education, not administered by bureaus which are also responsible for other programs involving greater amounts of grant money.

The Committee believes that the environment education program should have viability and that its Director should have sufficient stature as to have direct access to the Commissioner. Moreover, the administrative unit charged with responsibility for the program ought to be staffed with a sufficient number of specialists. If the environmental education program is placed in one of the present bureaus, its Director would be at least three degrees removed from the office of the Commissioner and would have to compete with other programs for personnel, at a time when adequate staffing and proper administrative direction are difficult problems for the Office of Education.

It is for these reasons that the committee recommends the establishment of the Office of Environmental Education by law. Further, the committee recommends, in section 3(d), language which permits appropriations to be used for the administration of the program.

The intent of Congress to establish an independent office in the Office of the Commissioner is unequivocably clear.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the pending business be temporarily laid aside and that the Senate turn to the consideration of Calendar No. 1300, S. 2193, and that it be made the pending business.

Several Senators addressed the Chair.

Mr. RUSSELL. Mr. President, may we please have order?

The PRESIDING OFFICER. The Senate will be in order. The bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. A bill (S. 2193) to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes.

Mr. MANSFIELD. Mr. President, if I may, in moving that the pending business be laid aside temporarily, I ask that it remain in that status until the conclusion of the morning business tomorrow.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

Mr. DOMINICK. Mr. President, I would like to make sure what the situation is. Do I understand that the Senator is asking for unanimous consent on this request?

Mr. MANSFIELD. The Senator is correct.

Mr. DOMINICK. I object.

Mr. MANSFIELD. Mr. President, I move that the Senate turn to the consideration of Calendar No. 1300, S. 2193, that it be laid before the Senate and made the pending business.

The PRESIDING OFFICER. The bill will be reported.

The assistant legislative clerk read as follows:

A bill (S. 2193) to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health; and for other purposes.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed to the consideration of the bill.

The Senator from New York is recognized.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Mr. President, am I correct in assuming that the motion is debatable?

The PRESIDING OFFICER. The motion is debatable.

Mr. JAVITS. Mr. President, I would like to be recognized, if I may, for a moment. Will the Senator from Montana yield to me?

Mr. MANSFIELD. I yield the floor.

The PRESIDING OFFICER. The Senate will be in order. Senators and staff members will take their seats.

Mr. JAVITS. Mr. President, I am the ranking minority member of the committee. I have labored long and hard with the Senator from New Jersey (Mr. WILLIAMS), the Senator from Colorado (Mr. DOMINICK), the Senator from Ohio (Mr. SAXBE), the Senator from Pennsylvania (Mr. SCHWEIKER), and many other Senators on this bill.

Mr. President, I have been very deeply interested in the bill. It is an extremely important measure. It covers almost all the workmen of the country. It is a landmark piece of legislation; it contains many fine provisions. Undoubtedly it will become law, whatever may happen to it today.

There has been a very unfortunate connotation placed upon the matter of whether the bill should be brought up at this time so that it could be considered before tomorrow night. It has been alleged that some Senators are trying to stall it off.

I do not think that is fair. There is a difference between the labor and management point of view. Management seems to feel very strongly that the procedure outlined by the administration—and I authored the administration's original bill; so I ought to know about it—to wit, a procedure for a Board to set standards and a Commission to deal with enforcement is the more intelligent way to proceed. On the other hand, the point of view of organized labor is that the Secretary of Labor should perform both functions.

Mr. President, in the dispute which has arisen over certain provisions of this bill there has been a complete failure to recognize the potentiality of the bill and the fact that it is generally an excellent bill and contains some very important safeguards. However, there is a great deal of difference of opinion on certain matters. Although I have my views—and I tried to work them out on the committee—I think there is some substance to the disagreement. But the fundamental point is that the bill is extremely important and extremely desirable for all the workers.

I doubt very much that the bill could be finished in the 24 or 36 hours we have remaining. The Senator from Colorado (Mr. DOMINICK)—whether he does so by a substitute or by amendment—he has some 19 amendments, I understand. Every one of them is substantive and is not a facade or an effort to delay the matter.

However, Mr. President, I hope the Senate will proceed to the consideration of the bill. At the very least, if we cannot finish it by tomorrow night, it will be the pending business when we return.

We can pass the bill, and it should be passed. It is a critically important piece of legislation.

I hope that Senators will not be confused and believe that the amendments represent management-labor differences. In all honesty, most of them do not.

The bill should be passed.

Mr. President, I think it is important and fair to rebut any idea that any Senators have sought to stall the bill and not come to grips with it. The idea that this should be challenged and debated and that it should have the deliberate consideration of the Senate is only fair.

Mr. President, the bill has not been acted on in the other body. It obviously will not be. So, there is no prejudice to the American workingman if it is considered by the Senate after the recess.

Efforts will be made to amend the bill. I will oppose most of them.

I hope very much that the Senate will vote to consider the bill.

The PRESIDING OFFICER (Mr. CASE). The question is on agreeing to the motion of the Senator from Montana.

Mr. DOMINICK. Mr. President, I have listened with great interest to the comments made by the distinguished Senator from New York. We are really being asked to consider an extremely important bill, important to the unions, to the working men, and also to the country as a whole, because it affects every business in the country. We are being asked to do this in the closing days of this session before recess when we have before us not only this bill, but also the military construction authorization conference report, an agricultural bill, and very likely other bills, all of which are of enormous importance to the country.

We have, as far as this bill is concerned, a number of amendments which will be offered by different members of the committee, which will require votes. We have a substitute which I have introduced, but not authored, which takes a different approach to the problem and which I think is a far more equitable approach than the approach of the committee reported bill.

It seems to me, with all these really important factors, consideration of the bill at this time will be a pretty bad mistake.

I know that there are Members on our side and on the other side of the aisle that feel the same way. That was why objection was made to the unanimous-consent request that had been propounded on two other occasions.

I certainly do not want to be in a position where we are being held up to the world as though we are against occupational health and safety. That would be a pretty dumb position to take. I do not think that any of us are that dumb.

We are trying to deal with an enormous problem in our country.

The bill covers every business affecting commerce in the entire United States, ranging anywhere from a big steel company to a shoeshine shop.

I think it would be a mistake on such an important bill, affecting commerce as it does, to try to bring it up no more than 24 hours before we adjourn to go home for the recess, when we know that the House is not going to act on it at all before the recess.

I suppose that the motion having been made the leadership probably is not going to want to withdraw it, but I feel we are not approaching this in a proper way or with the proper opportunity to consider the bill. The report on the bill has been out about 1 week. I wish to ask the Senator from New Jersey if that is correct.

Mr. WILLIAMS of New Jersey. The Senator is correct.

Mr. DOMINICK. We have also been engaged in an enormous amount of other business in the meantime so that the concentration of Senators has not been on this matter up to this point.

I am not going to take a negative position on bringing it up if the leadership insists it should be done. Obviously it is for them to determine what is before the Senate. It is not for me to say, but rather it is for the leadership to say.

I think in presenting these arguments we have many amendments and an entire substitute for the bill. There is no doubt in my mind that if anyone wanted to follow that course, this matter could go over until after the recess, probably without ever coming to a vote. I have indicated from time to time that I am willing to vote on a substitute, but I have been told there will be many clarifying amendments to the original bill and many clarifying amendments to the substitute, and the chances of getting unanimous consent to have a vote on the substitute on an up and down basis is not likely.

Under those circumstances it seems to me we are kind of exercising a lot of lung power without getting anywhere, when we could put this over until after the recess when Senators will have had a chance to read the bill and study it in the interests of the working man and the rest of the country.

Mr. WILLIAMS of New Jersey. Mr. President, it should be pointed out that the Occupational Health and Safety Act has been introduced and has been before the Senate for well over a year. The urgency of considering this vital measure has certainly been highlighted by the President. This legislation is on the list that is considered to contain matters of greatest importance to the administration.

Of course, there are differences among some of us as to one detail—and many details have been worked out in long committee sessions—in that we have not worked out accommodation with the administration. The President indicated in his last message, which was about 5 weeks ago, that this bill, this entire legislative package dealing with occupational health and safety in an area where accidents are mounting and disease is mounting, is vital to the country. As the President said, we are three generations overdue in enacting this measure.

Rather than coming to us in haste, this measure has been before us a long time. The committee has labored long and productively in bringing this bill to the floor of the Senate today, with this motion to take up the matter.

Mr. JAVITS. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. WILLIAMS of New Jersey. I yield.

PRIVILEGE OF THE FLOOR

Mr. JAVITS. Mr. President, I ask unanimous consent that the minority counsel of the committee, Eugene Mittelman, be admitted to the Chamber.

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

Mr. WILLIAMS of New Jersey. Mr. President, I yield to the Senator from Minnesota.

Mr. MONDALE. Mr. President, I do not wish to delay the Senate but I strongly endorse the observation made by the distinguished Senator from New Jersey in support of the motion of the majority leader to take up the occupational health and safety bill. I know of no other measure which has been more carefully analyzed by the Committee on Labor and Public Welfare and the subcommittee, than this measure. We have understood the serious and profound necessity of having reforms in the field of occupational health and safety.

I remind Senators that it is estimated that 55 workers die every day because of the failure to have adequate occupational health and safety legislation; that 14,000 Americans lose their lives every year because of the failure to have the kind of legislation we should take up today; and that 2.5 million workers suffer serious and permanent disability because of the failure to have this kind of legislation.

We have worked long and hard on this matter. I do not think there is any measure before this body that is anywhere near as important or which rates a higher priority than this legislation. I believe the Senate has a duty after these months of efforts, exhaustive hearings, and long and fully exploratory executive sessions, and after this measure has been pending before the full Senate for several days, to bring up this matter, act on it, and do justice to American workers.

We can act on this measure and we should. To delay would be regarded as failure by this body to deal with one of the most heartbreaking and compelling issues of our times.

I cannot too strongly speak in support of the majority leader's motion.

ORDER OF BUSINESS

Mr. LONG. Mr. President, will the Senator yield to me briefly?

Mr. WILLIAMS of New Jersey. I yield.

COMMITTEE MEETING DURING SENATE SESSION

Mr. LONG. Mr. President, I ask unanimous consent that the Committee on Finance may meet during the session of the Senate this afternoon.

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

ORDER OF BUSINESS

Mr. SPARKMAN. Mr. President, will the Senator yield to me briefly?

Mr. WILLIAMS of New Jersey. I yield.

VISIT TO THE SENATE BY A DELEGATION FROM THE PARLIAMENT OF INDIA

Mr. SPARKMAN. Mr. President, I have asked for this time in order that I might have the privilege of presenting to the Senate a very distinguished group of parliamentarians who are visiting us at this time. I refer to five members of the legislative bodies of India, led by the Honorable Gurdial Singh Dhillon, the Speaker of the Lok Sabha, or what we would call the Speaker of the House, and four of his colleagues.

A year ago the Interparliamentary Union met in New Delhi. Many of us had the opportunity to know these gentlemen. Speaker Dhillon presided over the session of that Interparliamentary Union Conference while we were there. These gentlemen are really paying us a return visit. They arrived just last night. They plan to be in this country about 3 weeks and to visit many parts of the United States.

Mr. President, it is a genuine pleasure to have these representatives of that great country here today. I ask unanimous consent that I may have printed in the RECORD a short sketch regarding each of our distinguished visitors.

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

INDIA: GURDIAL SINGH DHILLON, SPEAKER OF THE LOK SABHA

Sardar Gurdial Singh Dhillon, former lawyer, journalist and army officer, was unanimously elected Speaker of the Lok Sabha (lower house of Parliament) on August 8, 1969. Since 1967 he has been a member of the Lok Sabha and has served as chairman of its Public Undertakings Committee. A member of the Congress Party since 1937, Dhillon resigned from the Party on his election as Speaker in order to act impartially at parliamentary sessions.

Dhillon, the son of an aristocratic Sikh family of the Punjab, was born on August 6, 1915 in the village of Panjwar. In 1935 he received a B.A. degree from Government College in Lahore and in 1937 ad LL.B. degree from the University Law College in Lahore. In about 1936 he was commissioned in the army and also became active in the independence movement. Because of his activities, the British expelled him from the Dehra Dun Military Academy. During 1937–47 he intermittently practiced law in the Armitsar area. It is not known whether he still retains his commission but in 1953 was listed as a colonel in the Indian Army.

Dhillon joined the Congress Party in 1937 and until 1952 was active in local Armitsar politics and in the freedom movement. He was twice imprisoned for anti-British activities, one time during 1946–47 in Lahore for leading an independence protest. He served

as president of the Congress Election Tribunal during 1945–46 and as president of the Armitsar District Congress Committee during 1949–52.

In the years following independence in 1947, Dhillon was involved in journalistic work in the Punjab. He was chief editor of the Urdu daily *Shere-bharat* during 1947–54 and the Punjabi daily, *Vartman,* during 1947–52. He also served as managing editor of the National Sikhs Newspapers Limited, member of the State Press Advisory Committee, and president of the Armitsar Working Journalists Union.

Dhillon began his government career in 1952 with his election to the Punjab Legislative Assembly. He served as Deputy Speaker (1952–54) and Speaker (1954–62) of the Assembly. He was chairman of the Non-Agricultural Land Taxation Committee in 1964 and chief whip and general secretary of the Congress Party in the legislature during 1965–66. Dhillon served in the Punjab Legislative Assembly until his election to the Lok Sabha.

Throughout his career Dhillon has traveled widely. He has visited the United Kingdom, the USSR, France, East Germany, Australia, Japan, the Philippines, Rhodesia, Kenya and Ghana. In 1961 he was an International Visitors Program Grantee in the United States. During September-October 1969 he again visited the United States, attended the Conference of Commonwealth Presiding Officers in Ottawa, and headed the Indian delegation to the Commonwealth Parliamentary Conference in Trinidad. In January 1970 he visited Nepal.

A man of integrity, Dhillon is soft-spoken unassuming and friendly. In 1953 he married the former Shrimati Ranbir Kaur. He is the author of many pamphlets and has written a book, *Dhani Ram Chatrik,* on the life of the Punjabi poet. In October 1969 he served as president of the Interparliamentary Union meeting in New Delhi.

Dhillon has been associated with various clubs and organizations. He is a past president of Rotary International. He is vice president of the Indian Recreation Association and a member of the Punjab University Senate. He is interested in flying and serves as president of the Chandigarh Gliding and Aviation Club.

INDIA: KOTHA RAGHURAMAIAH, MINISTER OF SHIPPING AND TRANSPORT; MINISTER OF PARLIAMENTARY AFFAIRS

On June 26, 1970 lawyer and career civil servant Kotha Raghuramaiah became Minister of Shipping and Transport and Minister of Parliamentary Affairs. Since February 1969 he had served as Minister of State for Shipping and Transport and for Parliamentary Affairs. Raghuramaiah has been a member of the Congress Party since 1951 and a member of the Lok Sabha (lower house of Parliament) since 1952.

Kotha Raghuramaiah was born on August 6, 1912 in Sangamjagarlamudi, Andhra Pradesh (formerly part of Madras State). He is a member of the Kamma caste (a low Hindu caste predominantly found in Andhra). He received his early education at Andhra Christian College in Guntur. He holds M.A. and LL.B. degrees from Lucknow University. Admitted to the Bar from the Middle Temple in 1937, Raghuramaiah practiced law at the Madras High Court during 1937–41.

In the early 1940's Raghuramaiah became active in the labor union movement and was the founder and later vice president of the Madras Corporation Labor Union. In 1954 he was a member of the Railway Corruption Enquiry Committee and president of the Andhra Pradesh Post and Telegraph Workers Union. During 1955 he was a member of the Andhra Life Insurance Salaried Workers Association and the All-India Postal Employees Union in Andhra.

In 1941 Raghuramaiah joined the (Madras) Provincial Judicial Service and during 1941–46 was assistant secretary in the Madras Legal Department. In 1946 he was temporarily assigned to the national government and served as assistant director of employment in the Resettlement Directorate of the Ministry of Labor and as assistant solicitor in the Ministry of Law. During 1947–51 Raghuramaiah was deputy secretary and joint secretary in the Madras Legal Department and legal secretary to the Madras Government.

In 1951 Raghuramaiah resigned from the Provincial Judicial Service and began his national government career with his election to the Lok Sabha in 1952 on the Congress Party ticket. During 1952–57 he served as convenor of the External Affairs Standing Committee in Parliament and as a member (1954) and secretary (1955) of the Executive Committee of the Congress Party in Parliament. During 1955–59 he was a member of the All-India Congress Committee and of its legal advisory committee in 1956.

Concurrently with his parliamentary career, Raghuramaiah held various subcabinet level positions during 1957–69, including: Deputy Minister of Defense (May 1957–April 1962), Minister of State for Defense (April 1962–June 1964) in charge of production (November 1962–June 1964); Minister of State for Labor and Employment (June 1964–January 1966); Minister of Supply and Technical Development in the Ministry of Industry and Supply (June 1964–March 1967); Minister of State for Petroleum and Chemicals and for Social Welfare (March 1967–February 1969); and Minister of State for Planning (March–September 1967). During August–November 1968 Raghuramaiah served as Acting Minister of Petroleum and Chemicals after the resignation of Asoka Mehta.

During the 1950's Raghuramaiah traveled to the Far East, Europe and the Middle East. In 1954 he headed a trade delegation to Thailand, Hong Kong, Malaysia, Japan and Communist China for negotiating tobacco contracts. He attended the UN General Assembly in 1956 and 1957 and represented India on the Trusteeship Committee and the Committee on Information from Non-Self-Governing Territories in 1956. Raghuramaiah accompanied the late Prime Minister Jawaharlal Nehru on a state visit to Saudi Arabia in 1956 and attended meetings of the Inter-Parliamentary Union in Yugoslavia (1956) and France (1957). Raghuramaiah was a member of the Law of the Sea Conference in Geneva in 1960 and during July–August 1965 toured Czechoslovakia, the United Kingdom and West Germany.

Raghuramaiah is influential with the tobacco growers and merchants in Andhra Pradesh. He was a member (1953–57) and vice president (1955–56) of the Indian Central Tobacco Committee.

Raghuramaiah's wife, Laxmi, is an author and is very active in social welfare work. She has written three novels and numerous articles for Telugu journals and has founded seven institutions concerned with children's and women's welfare. She has a B.A. degree in philosophy from Madras University. She is general secretary of the All-India Women's Conference. Mrs. Raghuramaiah speaks English and Telugu and reads and writes Tamil, Kannada, Hindi and French. The Raghuramaiahs have been married since 1937 and have one daughter.

Raghuramaiah speaks English well.

INDIA: BHAURAO DEWAJI KHOBRAGADE, DEPUTY CHAIRMAN, RAJYA SABHA

Bhaurao D. Khobragade was elected Deputy Chairman of the Rajya Sabha (upper house of Parliament) on December 17, 1969. A seasoned parliamentarian with a firm grasp of procedures, Khobragade was first elected to the Rajya Sabha in 1958 and re-elected in 1966. The first Harijan (Untouchable) to be elected to this office, Khobragade is a non-controversial, liberal politician with a long record of service to the people. He was a founding member of the Republican Party which has since split into a number of factions.

A Buddhist, B. D. Khobragade was born on September 25, 1925 in Chanda in Maharashtra State. He attended Morris College, graduating in 1945, and then traveled to the United Kingdom where he was called to the Bar from Lincoln's Inn.

Khobragade first became interested in politics in 1943 when he joined the Scheduled Castes Federation. Since that time he has been a leading figure in the anti-untouchability movement and the Scheduled Caste Federation. He became secretary general of the All-India Scheduled Caste Federation in 1955 and was its president from 1956 to 1957.

Khobragade is interested in reading, collecting books, music, the cinema and drama. He has visited the United Kingdom, Ireland, France, Switzerland and Italy. He speaks Marathi, Hindi and excellent English.

INDIA: DHARANIDHAR BASUMATARI, MEMBER, LOK SABHA

Dharanidhar Basumatari has been a member of the Lok Sabha (lower house of Parliament) since 1957. Basumatari, a member of the ruling Congress Party, is especially interested in uplifting tribal and rural communities, social welfare, education and development activities. He serves as chairman of the parliamentary committee on welfare of the scheduled castes and tribes.

Dharanidhar Basumatari was born in the village of Dalaigaon in the Goalpara District of Assam in 1914. He was educated at Cotton College and Gauhati and Rongpur College. Basumatari was arrested for his participation in the 1942 anti-British movement. He has held numerous positions in Assam including: member, Gauhati Local Board; member, Legislative Assembly (1945–57), also whip of Congress Party; member, Constituent Assembly (1946–50); member, Advisory Committee for Community Development Project (1952–57); secretary, Congress Party in the Legislative Assembly (1953–55); member, Working Committee, Assam Pradesh Congress Committee. He also worked for the establishment of Panchayat Schools, dispensaries and cooperative societies in the tribal communities.

In 1959 Basumatari was elected one of the whips of the Congress Party in Parliament and served until 1961. His other national career includes: member, Executive Committee, Congress Party in Parliament (1960–61 and 1965); member, Advisory Council for Tribal Welfare (1957–62); member, Central Scholarship Board for the Castes and Scheduled Tribes (1957); member, Nomadic Tribal Enquiry Committee (1959); member, Scheduled Areas and Scheduled Tribes Commission 1960.

Basumatari traveled to West Germany as a member of a seven-man parliamentary delegation in May 1964. He has also traveled to Bahrain, Egypt, Burma, Pakistan, Ghana, Nigeria and the Sudan.

Basumatari's hobbies are riding, reading and sight-seeing. He enjoys playing badminton and tennis and likes indoor games.

INDIA: ERA SEZHIYAN, MEMBER, RAJYA SABHA

An intelligent and able politician, Era Sezhiyan, 47, has been a member of the Lok Sabha (lower house of Parliament) since 1962. He is a member of the Dravida Munnetra Kazhagam (DMK), a regional political party of Tamil Nadu (formerly Madras) State. Sezhiyan is one of the key men in formulating the DMK's policy in Parliament, and has considerable influence in Tamil Nadu state politics.

Era Sezhiyan was born in Thanjavur District, Tamil Nadu. He was an outstanding student at Annamalai University. He is an editor of Namnadu, the official daily of the DMK. In 1943, Sezhiyan was a founding member of the Dravidian Students' Federation. He also is president of the South Zone Insurance Employees' Federation.

Sezhiyan is typically Madrasi in the intonation of his speech. He champions any cause that will advance the interests of the southern states in general and Tamil Nadu in particular. He enjoys movies, soccer, basketball, traveling and reading Tamil classics. Sezhiyan is a writer of some note and has written several books of short stories, one-act plays and dramas and articles on political and economic subjects. He married his wife, Prema, in 1959. He is a vegetarian and a teetotaller. His brother, V. R. Nedunchezhian, is the DMK ideologue and Tamil Nadu Minister of Education and Health. Sezhiyan has visited Malaysia, Singapore, Thailand, Cambodia, Honk Kong and Japan.

INDIA: RAJENDRA PRATAP SINHA, MEMBER OF THE RAJYA SABHA

Rajendra Pratap Sinha has been a member of the Rajya Sabha (upper house of Parliament) since 1952. Originally an Independent, Sinha joined the Praja Socialist Party (PSP) in 1953 and the Congress Party in 1964. He was parliamentary secretary of the Congress Party from 1968 to 1969.

R. P. Sinha was born on August 15, 1915 in Arrah. After attending Allahabad University he became involved in business and agriculture. Before he entered politics Sinha spent most of his time in rural uplift, village reconstruction and adult education.

Sinha has held numerous posts since he joined the Rajya Sabha. He was joint secretary of the PSP (1956–58), treasurer of the PSP, and a member of the Executive Committee of the Congress Party (1965–67). He also has been a member of the Direct Taxes Administration Enquiry Committee, the Coffee Board and Marketing Committee, the Central Silk Board and the Committee on Public Undertakings of Parliament.

Interested in politics and economics, R. P. Sinha spends much of his spare time in social work. He enjoys music and movies. Sinha married his wife, Sharda, in 1946 and has two sons and two daughters. A member of the 1966 UN General Assembly delegation, and an International Visitor to the United States in 1967, Sinha also has visited Scotland, Hungary and East Germany. He was secretary general of the Indo-United Arab Friendship Association in 1958.

INDIA: BHABENDRA NATH BANERJEE, SECRETARY RAJYA SABHA

A career civil servant, Bhabendra Nath Banerjee has been secretary to the Rajya Sabha (upper house of Parliament) since 1963. He was deputy secretary and joint secretary of the Rajya Sabha Secretariat from 1956 to 1963.

B. N. Banerjee was born on January 8, 1916. He attended University Law College, Calcutta, and the London School of Economics. He was called to the Bar from the Inner Temple. Banerjee visited the USSR and Hungary in 1968 as a member of a parliamentary delegation.

Banerjee began his career when he joined the Bengal Judicial Service in 1942. He also was assistant solicitor in the Ministry of Law (1950–52), legal adviser to the Indian High Commissioner in London (1952–55) and deputy secretary in the Law Ministry (1956).

Mr. YARBOROUGH. Mr. President, will the Senator from Alabama yield to me?

Mr. SPARKMAN. I yield.

Mr. YARBOROUGH. Mr. President, I think it is worthy of note that the chairman of this distinguished delegation is the Speaker of the Lok Sabha, which is their House. He will be joined tonight by the Honorable B. D. Khobragade, Deputy Chairman of the Rajya Sabha, who would be the President pro tempore of their Senate.

This is a distinguished group. I was in New Delhi last fall with the delegation headed by the distinguished Senator from Alabama. At that time we enjoyed the hospitality of the Indian Government, a government which we think played the part of a great host in handling the interparliamentary delegation.

I also think it is worth mentioning that the leader of the delegation, the Honorable Gurdial Singh Dhillon, who, as I said, was the Speaker of their House, was a friend of the former Speaker of our House of Representatives, Sam Rayburn.

Mr. SPARKMAN. Mr. President, I ask unanimous consent that the Senate stand in recess for 3 minutes so that Senators may greet our visitors.

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

RECESS

Thereupon, at 2 o'clock and 30 minutes p.m., the Senate took a recess until 2:33 p.m. During the recess, members of the delegation from the Parliament of India were greeted by Members of the Senate.

On expiration of the recess, the Senate reassembled and was called to order by the Senator from New Jersey (Mr. CASE).

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

The PRESIDING OFFICER. The question is on agreeing to the motion of the majority leader.

Is there further discussion?

Mr. SAXBE. Mr. President, I am not in support of the motion to take this measure up at this time. I am in sympathy with the purposes of the bill, and I know that the administration is interested in getting a health and safety bill.

I personally, at the beginning, questioned whether we were not taking the States a little bit fast in moving into this area. But I have been convinced that it is necessary that we move into this area and give the States a relief valve so that they can move back into it if they will set up a comprehensive health and safety program.

I do not suppose there is a Member of this body who has visited more industrial plants than I have, and I am quite aware that there is a serious health and safety problem. I am also quite aware that the breathing of dust, not only from coal but from asbestos, and breathing noxious fumes in many of our plants lead to a far greater number of incapacitated workers than we have ever reported or have believed in the past.

In this bill there is, for the first time, an effort to study the various and differing workmen's compensation laws of the several States, to see if they provide adequate benefits, because at the present time many States have very good benefits, and others have deplorable benefits, where an accident at work literally puts the family on relief or at least makes it a public charge at some time in the future.

Well, then, why question bringing it up at this time? I think the best answer is the last vote. We had 70 Members of the Senate here. I do not suppose there is one measure that has come before the Senate that has a greater effect upon the entire assembly of States than this bill. It is a very significant bill and a very far-reaching bill. It extends the Federal Government, through the Department of Labor, into every factory, every plant, every place of employment in the United States.

With 70 Senators here, I think we are avoiding the discussion that should evolve on the bill.

I am quick to point out areas where I question this bill. For one thing, at the present time the bill requires that the Secretary of Labor—with the advisory groups, that is true, but the Secretary of Labor has the prime responsibility—to set safety standards. These standards, once set, will be enforced by whom? The Secretary of Labor. If a violation is found in a plant and a complaint is made, to whom do they go? The Secretary of Labor. And if the plant needs to be closed, there is a provision for a court procedure, but there is also a relief valve providing that the Secretary of Labor can close the plant if it is an emergency.

A number of us feel a disinterested group should be set up to establish the standards that will operate under this bill; that the Secretary of Labor then take those standards and be the enforcing officer; that he hire the many inspectors involved—and I do not believe the difficulty of acquiring those inspectors, in the number needed, has been discussed—and that then there be a panel to hear alleged violations. Following that, if there is an emergency, the inspector, together with the regional supervisor or the Department of Labor, through the Secretary, immediately go into Federal court and seek injunctive relief.

We are prepared to offer amendments. I am quite familiar with the Steiger bill, which is the so-called compromise version of the Daniels' bill before it came out of committee. Something happened so that it did not come out. I know there is a suggestion that it be offered as a substitute bill.

I, for one, would rather see the individual amendments come up. Although I would vote, as a last resort, for a substitute bill, the so-called Steiger bill, which is available and will be submitted, I would prefer to go through this bill with the corrective amendments which I believe would make it a better bill, not only for the employees of this country, who are the real movers in this effort, but also, through these measures, to give the employer, the man who provides the working place, an opportunity to have his day in court. No one has talked about that.

Any bill of this nature must be a balanced bill. We cannot just have a bill set

up for the employee and not worry about the employer, because someone has to provide the job.

The biggest complaint that I have about this bill on its face is that it would make it appear that the employer is not interested in safety, that the employer is an exploiter who is squeezing the last dime out of this employee and this plant, and is not concerned about safety.

We all know that is not true. We know that the employer who has a poor safety record has more troubles than the one with a good safety record, and the bigger the employer, the more emphasis is put on safety. In fact, if there is any safety for employees today, it is with the larger corporation, where safety is given the prime attention.

For example, I know of one steel plant in my State where a safety meeting is held every morning at 8 o'clock by a committee of the union, the safety inspectors, and the management; and it is not just a man appointed for the job, it is rather the plant managers who attend this meeting. If a man has so much as a mashed thumb or a rash that could have arisen from some chemical with which he came in contact, or if there is any apparent source of injury, it is brought up, discussed, and dealt with immediately. Any small injury is taken up and covered in these safety meetings.

So I know that safety is given prime attention. But I am also aware that there are so-called alley shops, there are marginal shops—and I have been in them—where heavy, dangerous, and unguarded equipment is used. I know there are elevators and there are various cement plants and building materials plants where employees breathe air that is polluted by the dust or fumes of the operation, and I know such situations do need attention.

But I also submit that when safety is used as a tool to move in on an employer, or is set up in such a way that it could be used for harassment, then it should be identified for just what it is. I think there is a danger that this present bill could be utilized in that manner. I think it can easily be amended so that those dangers could be removed.

We have seen great industrial nations which have lost their ability to compete. By that I do not mean to indicate, in connection with this bill, that we have to have a dangerous operation or an unsafe operation to compete. But I do know that in the competitive world of business today, we should not attach to safety unnecessary or harassing measures that would, in effect, limit production in areas that are not necessarily going to increase safety.

Mr. YARBOROUGH. Mr. President, will the distinguished Senator yield to me for a unanimous-consent request, without losing his right to the floor?

Mr SAXBE. I yield.

Mr. YARBOROUGH. Mr. President, I ask unanimous consent that Mr. Robert Harris, who is the staff director of the Committee on Labor and Public Welfare and has worked extensively on this bill, be permitted to be present in the Chamber while the measure is under debate.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. SAXBE. I have talked with a Member of the Senate who was in business in England, for example. About 12 years ago, they adopted a number of safety bills that were very idealistic in their concept, but so restraining to the place of work and so restraining on the assignment of employees that they served not to make the plant safer and to increase production, but rather to make the business less competitive, and, as a result, it lost business to German manufacturers producing the same item.

This is something that we must be objective about. We want ideal and safe working conditions. At the same time, we must have one eye on this and the other eye on permitting the manufacturer to be competitive, not at the expense of the workmen, but rather in a cooperative effort.

In my State of Ohio, the most successful safety plans and the most successful plans for spreading safety-minded people throughout the plant have been where it has been done by cooperation. I hope that we will not destroy this attitude of cooperation. I think that by moving so vigorously into this area with this bill, we are going to surprise a lot of people.

If we act here on a Tuesday afternoon, when everyone knows that we are going to adjourn on Wednesday, and I daresay by tomorrow morning at 8 o'clock we will not have a quorum, I do not believe that people are going to be sufficiently aware of the intent of this attempt to pass this bill, to properly contact and talk to their Senators, and as a result, the matter is not going to get the full consideration that it should receive.

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

Mr. SAXBE. I yield.

Mr. DOMINICK. I have been listening to the Senator's discussion, and I think he has done an excellent job. I have also listened to the discussion of the Senator from Minnesota, which is why I asked if the Senator would yield while he is still present in the Chamber.

I do not think anyone ought to be under the impression, nor should the record imply, from the Senator's remarks or mine, or those of the Senator from New York (Mr. JAVITS), the conclusion that we are against an occupational health and safety bill.

This is the impression I more or less understood that the Senator from Minnesota would try to give when he made his comments, because he talked about the urgent need for this legislation, but he knows as well as I do that the House of Representatives is not going to take it up now, so nothing will happen until the end of November.

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

Mr. DOMINICK. The Senator from Ohio has the floor.

Mr. SAXBE. I yield to the Senator from Minnesota.

Mr. MONDALE. I do not underestimate the controversial nature of this proposal. It is a fundamental, basic attempt to deal with one of the Nation's greatest problems, occupational hazards, which annually cause some 14,000 deaths and some 2.5 million permanently injured Americans. All I am saying is that I think we ought to just take it up, go to work on it, and give it the debate and the consideration that it deserves, and we ought to be mindful—I am not saying any Senator is not, but we ought to be mindful of the fact that each day's delay will cost lives. I do not say anything more than that I wish this legislation had been adopted 30 years ago.

I am not saying any more than that, and I do not see why we cannot lay it before the Senate and take it up. I see it as a very important proposal. I do not recall any proposal this year in Congress, at least before the Senate Labor Committee, which was more thoroughly considered than was this one. It has been before the Senate now a week, which is not an inconsiderable period, as most legislation goes. We have had plenty of time to consider the record and the amendments. Most of the amendments that are going to be considered were thoroughly considered before the committee, and I feel very strongly that now is the time for the Senate to stand up and act on this matter, and that is all I intended to say.

Mr. SAXBE. I can only say this: I recognize that perhaps we should go ahead. But what I am saying is that if we do this, we are not going to get out of here tomorrow night. We have frittered away 4 months this summer on two bills, and here is one that has an impact on everybody in this country who employs anybody, and it is suggested that we bring it up on the last day, in the afternoon, and that we have to do it before we go home on Wednesday. The wheels came off some place, because this is not the concept.

I should like to read an editorial published in the Washington Post of October 3:

> You would not expect even the most callous doctors to fritter away time arguing over the best way to save a dying patient while the blood drains from his veins. Yet politicians and labor lobbies are doing just that in the case of the crucial job safety bill. Each year, by low estimate, 14,500 Americans are killed by work-related accidents; 2.2 million are disabled. No politician or labor leader would ever say that he favors death and injuries among the nation's 80 million workers. Yet the stalling and pettiness of a few of them say exactly that. Far from the scenes of gore that are loudly decried, it appears that the parties in the dispute are so deadlocked that the legislation may not pass at all.
>
> The position of the AFL–CIO, which does not even have an industrial safety department, is mulishly firm: unless the Secretary of Labor has final power to set and enforce safety standards, then no law should be passed. The House and Senate bills—proposed by Rep. Daniels and Sen. Harrison Williams—are largely agreeable to the AFL–CIO. But compromise legislation was devised to gain Republican support. It would empower an independent board to set and enforce standards, rather than the Labor Department. For the workers, the compromise meant a hope that the killing and maiming would be decreased. What does it matter if the standards are set and enforced by the Labor

Department or by a President-appointed board?

The AFL–CIO, always touchy when its power seems remotely threatened, knows it could more easily pressure the Labor Department than the board. To its credit, the Nixon administration has been flexible and fair in accepting compromises. The high hopes of Democrats and Republicans in getting out a bill, however, are now blocked by the AFL–CIO, the one group that should be most concerned about worker safety.

It is another story for another time as to why the AFL–CIO can tie up the United States Congress in this manner. Perhaps it is asking too much, but nothing would help more than for the involved Democrats to politely tell the AFL–CIO to stick to running the unions, not the Congress.

When we dig through the many reasons why this matter is hung up here, on who is going to be the rule-setting board and whether people are going to be covered by a National Occupational Health and Safety Board, I think this is the basic reason, and I deplore it.

How much has politics to do with this? Some Senators on both sides of the aisle are candidates and want to vote for it or against it. That is the only reason why we are here late in the afternoon, without proper time to consider this matter; and I do not think it is unreasonable to disclose that, as to why we are. Some want to vote; some would rather not. They think it is going to help their chances to vote.

I am not a candidate, but I do say that to take this matter up with less than 70 Senators in the Senate—because two have left, that I know of, since the last vote—this monumental job of moving into the industrial safety field, is not advisable, and I just will not go along with it.

If we want to start on the 20 amendments I am prepared to offer, I suppose we can get on with it. But I certainly am not going to join any unanimous-consent request for a shortcut on this bill.

PRIVILEGE OF THE FLOOR

Mr. YARBOROUGH. Mr. President, I ask unanimous consent that Boe Martin, counsel for the Committee on Labor and Public Welfare, may have the privilege of the floor during the discussion of this matter.

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

Mr. YARBOROUGH. Mr. President, this is no rush-through job. This is no eleventh hour speedup. The Occupational Health and Safety bill has been before Congress for at least 4 years. In the 90th Congress, I introduced the bill as chairman of the labor subcommittee. I introduced the health and safety bill that had the strong support of the Secretary of Labor, Willard Wirtz. We held hearings, but we had slowdowns. We have heard of labor slowdowns. Labor does not know how to slow down things compared with the slowdown performed on the health and safety bill to protect labor from the crushing rate of 7 million people injured in industry every year.

As the distinguished Senator from Minnesota has pointed out, 2,200,000 people are disabled for long periods of time. Seven million are injured and some 14,500 die.

We hear of strikes, and we have rushed through, in my years on the labor committee, bill after bill because it was said a strike was going to wreck the economy of this country. Ten times more man-days of work are lost in this country every year by industrial accidents and deaths than by all strikes, lockouts, and wildcat strikes combined.

We have no national safety standards in industry. This is a shocking thing. The greatest industrial Nation on earth is so callous that it has no safety standards in its industry. We have limited ones. We have a mine safety bill, we have a longshoremen's safety bill, and we have certain safety bills for products manufactured for use by the Federal Government; but generally in industry, where most of the accident occur—and they are heaviest in the building trades—there is no Federal safety legislation.

We passed a limited act this year for construction workers applicable to Federal or a federally related project. But that was miniscule. This bill is designed to be fair to all employers, to set an overall standard. Some employers want to put safety devices in their plants. But some who can get a few more production hours by not having a safety device on a machine are not doing it. Some have done it.

The National Safety Council has supported legislation such as this for years, and they have talked some employers—a few large companies in this country—into putting safety devices in their plants. Those few companies have saved enough money because of the decrease in injuries to keep their best trained workmen working and have saved enough on workmen's compensation premiums to pay for the safety devices.

Unfortunately, a vast number of employers in this country of 50 States, stretching so wide to the east and the west that the sun never sets on the United States, cannot come to that voluntarily. So it becomes necessary for the Government to set a uniform standard applicable alike to every employer in every State, making it fair and even. Of course, it will cost a little more per item to produce a washing machine. Those of us who use washing machines will pay for the increased cost, but it is worth it, to stop the terrible death and injury rate in this country.

While I was the principal author of this legislation in the 90th Congress as chairman of the labor subcommittee, when I became chairman of the full committee this year, the Senator from New Jersey (Mr. WILLIAMS) as my successor as chairman of the labor subcommittee has taken over and so ably handled the matter. He is the principal author and I am one of the six cosponsors with him. The full labor committee carefully considered this bill. There was executive session after executive session of the full Committee on Labor and Public Welfare.

Mr. President, there are many amendments to the bill offered and agreed to by Members of both parties. It is not a one-man bill or a six-man bill. It was entirely lined out there on the first 13 pages, and then the substitute was adopted, so that it runs twice as long as the first original copy because of the new amendments.

The Senator from New York (Mr. JAVITS) offered many amendments and I think many of them were good amendments. Many other amendments were adopted to clarify procedural points and to provide for notice of hearings, and so forth, so that we could be as fair as possible to all employers.

Mr. MONDALE. Mr. President, will the Senator from Texas yield?

Mr. YARBOROUGH. I yield.

Mr. MONDALE. The point was made earlier about how this was a one-minded, arbitrary, labor-dominated, bludgeoning bill; but I note in the Senate report, the views on pages 57, 58, and 59, there is pointed out in great detail many of the wonderful changes which have been wrought by amendments which were offered by the Senator from New York (Mr. JAVITS), which make this a fine bill, as well as by the Senator from Colorado (Mr. DOMINICK), and the Senator from Ohio (Mr. SAXBE). Amendment after amendment that was proposed by them was accepted by the committee in order to make this a better bill.

I have never attended an executive session of a committee where I recall more amendments were adopted than to this bill.

Mr. YARBOROUGH. Mr. President, whoever wrote that statement in the Washington Post referred to by the Senator from Ohio (Mr. SAXBE) just did not know what went on. It was an entirely inaccurate report. I am shocked to find such a great inaccuracy in a statement published in one of the great newspapers of this country.

This is certainly not a one-man bill. While I am proud to be a coauthor of it, many more Senators have contributed to it with more amendments and more language, Senators whose names are not on the bill. As the Senator from Minnesota has just pointed out, they have placed in the report their contributions and have bragged about it and I think they were good amendments and this is a better bill as a result of them. This is not a one-man or a one-party bill. The bill came out of committee, as I recall it, with only two dissenting votes. I may be in error on that and I shall check the record and if I am, I shall be glad to correct it. But it was an overwhelming vote. I shall not state who they were. But out of the 17 members of the committee, 15 voted for the bill. Thus, it was a bill that was brought out of committee with a majority of both parties and they are entitled to great credit for it.

The bill has waited for too many years. We have now come up with an end result which is good, after a great deal of work on it. But now that we get it off the ground, so to speak, because it is a big bill, it gets slowed down. But, there are 80 million American workers out there, many of whom are being killed and injured without the protection which this bill would give them.

Of course, many States have safety laws, and they are good ones, but the only way to be fair, as interstate as our commerce is in America, is that there must be equal protection of the law and

equal rights. We must have the same standards for all.

As has been pointed out, on page 57 of the report, the contributions are outlined there, especially by the Senator from New York (Mr. JAVITS) and others—more Members contributed amendments and modifications. All through here it is clear that this was an effort to write many good contributions into the bill by the 17 members of the committee.

This committee was a working committee. I am very proud that I have had the privilege of serving as chairman of the subcommittee, because it is a working committee. It is not a committee where two or three members write the legislation and then, after obtaining a quorum, vote it out. This was a working committee. All its members are workers. I am proud that the newer members also put in time and effort on it.

Mr. President, I shall not read the Washington Post editorial, for I do not wish to take up the further time of the Senate, but on page 18 of the Washington Post for Monday, October 12, 1970, the letter to the editor entitled "AFL–CIO Replies to 'Stalling on Job Safety'" so completely refutes the erroneous statements made not just by the Senator from Ohio as he merely read what the Washington Post said, but it refutes the errors that the Washington Post made.

The Washington Post was fair enough to print the letter to the editor in a three-column spread. It did not try to hide its error. At this point, since the Senate is only debating the motion to take up, I shall not not take up the time of the Senate further, but ask unanimous consent to have the letter printed in the RECORD.

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

AFL–CIO REPLIES TO "STALLING ON JOB SAFETY"

(By Jacob Clayman)

WASHINGTON.—Your editorial of Oct 3, "Stalling on Job Safety," does little credit to your fine newspaper. You mercilessly castigate the AFL–CIO for refusing to accept the administration's occupational safety and health proposals and darkly suggest that this is being done because unions feel their "power . . . threatened."

This is sheer dogmatic nonsense to which I would not normally respond except that you do incalculable, though I am sure unwittingly, harm to millions of workers in America's shops and factories who are victims of death, injury and disease on the job. Those industrial interests which have always fought against any modernization of state or federal legislation to protect life, limb and health of American workers will undoubtedly hail your editorial with unrestrained glee. They are not used to receiving such a bonanza from your paper.

What we have tried for years is to get the best possible bill to preserve life and health on the job. The administration has aimed for a *de minimus* bill, for the least common denominator with which they might get by politically, but with life and health of millions of workers at stake this is not enough.

Since some of your articles have cited Ralph Nader, I would like to quote to you what Mr. Nader had to say about the administration bill when he testified before the Senate Subcommittee on Labor on Dec. 15, 1969:

"I think it would be extremely facile to take the administration bill S. 2788, and break it down provision by provision and show what an utter fraud it is . . ."

Mr. Nader further said to that subcommittee:

"I would not want any bill like S. 2788 to pass. It would be worse than no legislation at all."

The so-called "compromise" legislation which you so heartily approve is a slight improvement over the administration bill but still no more than a warmed over version of the administration's proposals in S. 2788.

The employers and the administration are united in demanding that occupational safety and health codes shall be promulgated by an independent board and enforced by an independent panel. We have rejected this approach because all the experience in recent years with independent boards and commissions tells us that such boards are lacking in clear, quick and positive action; diffuse and confuse responsibility among multiplicity of board members, each hiding behind the anonymity of the others and smother sound administration in a mess of red tape and legalisms.

The Williams-Daniels bills call for placing clear-cut responsibility in the Secretary of Labor, relying on professional advice, to set safety and health standards and to effectively enforce the law. Here we have responsibility placed in the hands of a cabinet member specifically charged with the responsibility of handling labor-management problems.

This is not a mere difference in words or theory, but the real difference between effective, meaningful and practical fulfillment of the spirit of any sound occupational safety and health bill. To place the administration in an independent board and panel is to condemn the act, in its inception, to foot-dragging, evasion and indecision. This would be fatal.

Let me cite just one of the *many* serious differences between the Williams bill and the so-called "compromise" bill . . . the Williams bill proposes that a representative of the employees and the employer shall be permitted to accompany the government's safety inspector through the plant. This was written into the bill to eradicate the dismal but widespread practice in many states in which inspectors have not even consulted the affected workers pertaining to the hazards in the jobs. This is an unhappy fact which is common knowledge among all industrial safety and health experts. Not withstanding, the "compromise" bill *does not* provide this obvious safeguard. This single item, typical of many serious differences between the bills, should give you some of the flavor and essential direction of the "compromise" bill.

You charge that the AFL–CIO is "mulishly firm" in its position. Are you not aware that the Secretary of Labor has publicly taken the position that he would rather have no bill than the Williams-Daniels measure? Do you define this as sweet reasonableness or "mulishly firm?"

Finally, I do hope that you will reconsider your editorial stance on this issue. Maybe on careful afterthought you will discover that the AFL–CIO is making an honest and earnest effort to provide a meaningful federal presence in an area of grave humane concern; that we are fighting for the better not the lesser bill; that we are right in not being content with a pretty facade without substance, a sham, a hollow shell—for that is what the "compromise" bill adds up to.

I am sorry that this is a long letter but it hardly begins to sum up the gravity of the problem, and the need for truly sound legislation rather than phony political gestures.

Mr. YARBOROUGH. Mr. President, I congratulate the able Senator from New Jersey on a job well done, on a job fairly done and on a job where he patiently sat day after day getting the ideas of every Senator on both sides of the aisle in his effort in the subcommittee and in the full committee and not to steamroller the bill. That is why it is so late in this session coming up before the Senate, because the chairman was so fair about it.

Mr. President, I ask that the bill be laid before the Senate and given its full and proper consideration.

Mr. WILLIAMS of New Jersey. Mr. President, on that last point, the bill, as I indicated, has been before us for a long, long time.

On May 16, 1969, I introduced a bill, S. 2193, for myself, Senators YARBOROUGH, MONDALE, and KENNEDY. Then, on August 6 of last year, a bill designated as the administration bill was introduced by the Senator from New York (Mr. JAVITS).

Following the introductions and the referrals of those measures, we began hearings back in September of 1969. The first day of the hearings was on Tuesday, September 30, 1969. Periodically since then, hearings were held whenever it was indicated by individuals, or associations, that they wanted to be heard. The final hearing was held in May of this year.

Following that, we have had long, long sessions in the subcommittee and the full committee. There were periods of long deliberation. I have not logged the number of hours I sat as chairman of the subcommittee waiting for quorums so that we could do business, but it was many long hours in both the subcommittee and the full committee. The patience of the chairman of the full committee was needed, too. This is not stated as a matter of complaint but as a matter of fact, that this has been a long and deliberative process.

This is major legislation, as has been so clearly stated here already this afternoon. The question now is to take up the measure that is so high on the list of the priorities of this administration—yes, in the closing hours of adjournment here. The point was made that there were only 70 Members present for the last rollcall vote. The pundits who watch the Senate scene suggest, after adjournment and the elections, and we come back, that perhaps there will be even less than 70 Senators on hand in what they call a lameduck session.

This bill is a major matter. It calls for a major effort on the part of the Senate in its closing hours before adjournment.

Mr. DOMINICK. Mr. President, I do not intend to take very long but I do want to make one or two points.

I have listened to what my distinguished chairman has said with great interest, that there is a great need for an occupational health and safety bill and no one is denying that. As a matter of fact, the substitute that I offer will call for national safety standards. This is the point we are trying to make. The question is that it is tough enough to promulgate those standards and it is going to be hard to enforce them. How will we make sure it is not used as a harassing tactic by someone who may be disgruntled in a plant? My bill will obviate most of those problems. The committee bill will not.

I do not think that we ought to be carried away with rhetoric on the grounds that those who are against considering this measure at the present time are against health or motherhood or any of the other connotations that might be made from some of the comments that have been made.

A great number of Senators have referred to the urgent need for speed on this matter. We have to take it up in the last day of the session, in the last 24 hours, before we recess. The committee bill itself says that there will not even be any health and safety standards put into effect until 2 years after the bill has passed. Nor can we get the bill passed until November because the House is not going to work on it until November.

Why in the world are we spinning our wheels, if I might say so, here, when we have a lot of other matters to take up? This measure cannot become effective until November. It will be 2 years after that until we get any standards at all.

It seems to me that what we have been talking about may make some good emotional appeal. I am sure that it does. However, let us be realistic. I am as concerned about the health and safety of the people working all around the country as is anyone else. But when we propose to inject the Federal Government into every business in the United States, we had better do it with care. Otherwise, we might find the whole bill rejected out of sheer resentment when the bill gets implemented.

We were happy that we were able, as pointed out by the Senator from New Jersey, to include a few revisions and amendments in the bill. I am glad that the Senator from New York and his very able staff put those together and outlined them so that Senators could see what we were concerned about.

The bill when originally presented and considered in the committee would have covered every employee of the State and local governments in the entire country and would have required that the States, before they could administer any kind of State plan, must make sure that all employees of all local agencies abided by the standards that had been established.

The difficulty with that is that in many cases the States do not have jurisdiction of some of those local employees. We were able, I am happy to say, to get them exempted from the bill in cases where States do not have jurisdiction. They do not have to require this because they do not have the power.

It seems to me that those are pretty good proposals. There were a lot of others that those on the majority side were happy to accept, and they did accept. That was not by rollcall vote. It was only when the majority side was willing to accept them that the committee accepted them.

I am not naive enough to say that we can win in committee when the majority side is against us.

Let me repeat that here we are 24 hours, hopefully, before adjournment, and we have debated this now on the motion to proceed to consider the bill, I believe, for about an hour.

We debated the Church-Cooper amendment for 42 days. We debated the military procurement bill, as far as I can recall, for 29 days. We debated the direct vote ad infinitum, it seems to me. Three cloture motions were filed. Two votes were taken and we could not get cloture.

We have now been debating the equal rights for women amendment. We have adopted two amendments. We have been engaged in this for weeks.

Why, in a bill that is of this crucial importance, can we not have a little time to try to get everyone up to date on the provisions of a very intricate bill?

It is for that reason that I thought I ought to have this time in which to explain my feelings on the lack of wisdom on the part of the Senate in bringing up this bill at this time.

I am not dumb enough to say that I am going to vote against the whole thing. We will go ahead and debate it if that is the majority wish and the bill is brought up. But it seems to me to be an exercise in futility at this moment.

Mr. GRIFFIN. Mr. President, I want to indicate that when the pending motion of the majority leader to call up the occupational safety bill is presented, I shall support the majority leader. However, I must say that I share the views of the Senator from Colorado (Mr. DOMINICK) and the Senator from Ohio (Mr. SAXBE) that it is most unfortunate and untimely to place this complex and controversial 91-page bill before the Senate in the closing hours just before the recess when many Senators, some of whom are keenly interested in the measure, will be absent.

Of course, it is the prerogative of the majority leadership to determine the order of business of the Senate. Without doubt, if the majority leader presses his motion, he would have the votes. The leadership on this side will not oppose the majority leadership on this procedural matter if it is pressed.

I share the expressed doubt that the Senate could finish the debate and vote on this complex bill before we recess tomorrow.

That being the case, Mr. President, it is likely that we will have to start all over again on this measure when we do come back following the recess. In the meantime, if we proceed now to consider the occupational safety bill I assume that we will then be unable to act between now and tomorrow night on other matters, routine and otherwise, that could well have the attention and action of the Senate.

Mr. President, with those remarks, I state again that I shall support the motion of the majority leader if it is put to the Senate.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

Mr. COOPER. Mr. President, I recognize, as does every Senator, that the pending bill is one of the most important bills that will be before the Senate at this time or in the session when we reconvene in November.

It is a far-reaching bill. It affects the safety, as has been said, of every worker in this country, other than those now covered by the coal mine safety bill and, I believe, one other group of employees.

We know that the Labor and Public Welfare Committee has given this matter very thorough consideration. What committee members have said today indicates their thorough knowledge of the bill.

But, all of us must vote on the measure whether or not we serve on the committee. We, too, would like to know the provisions of the bill and their adequacy in providing safety for those who labor and their effect upon management.

I have been concerned about the hasty disposition of important measures by the Senate in the last 2 or 3 weeks.

First, we considered a constitutional amendment, the so-called direct election amendment, which would change the basic structure of our Government as far as the Federal principle is concerned. The debate went on at a time when 35 Members of the Senate are candidates and at times away from the Senate. I have not thought it best to take action upon a measure of this importance in the waning days of the session.

In the last few days, we have been engaged in debate on the constitutional amendment concerning equal rights for women.

I do not think the proposed amendment has been treated very well, whatever one's views may be. While it has been discussed seriously, it has also been made the butt of criticism and laughter.

I have some prior experience in connection with safety bills. As a member of the Committee on Labor and Public Welfare for 5 years, we considered these matters, and we reported several fine bills dealing with mine safety. I have had a particular interest in that legislation because Kentucky is the second largest producer of coal in the Nation, with thousands of miners. Time after time we tried to report bills which would be fair, protect the miners and yet not be punitive.

During the last year a bill was reported to the Senate and debated for 5 days. I voted for the bill, but since its passage, statements made during the debate by those of us who opposed certain provisions in the bill have been proven—unfortunately—accurate.

We argued, on the economic side, that to include in the so-called gassy mine category all the nongassy mines and require them to expend huge sums of money for equipment needed in gassy mines, would not advance the safety of the miners but would force the small operators to shut down. That has happened to some of the small mines in my State.

With the closing of the small nongassy underground mines we also predicted it would cause stripping of large areas of coal. That has happened, without providing any added protection to the men who work in the nongassy mines. Many were driven to seek employment in the gassy mines—mines proven to be the most dangerous.

The record for Kentucky will show that since this bill was passed last year that more persons have died in the mines than in the year before. As I recall, and

this is pertinent to the bill before us, in 16 years, in about 3,000 nongassy mines there were 52 ignitions or explosions and 27 deaths, and in the 400 gassy mines there were 381 ignitions and explosions and 374 killed. Yet the mine safety bill treats them alike, and is forcing the nongassy mines to close.

I made these statements during the debate. But the committee insisted that its bill be approved. There were 5 days of debate, but even so, it was difficult to debate, because it was highly technical. My predictions, and those of my colleague from Kentucky (Mr. COOK), and the Senator from Tennessee (Mr. BAKER) have come true. More people have been injured since that bill was passed.

Mr. President, I want to vote for a strict safety bill, but how can those of us who are not on the committee and who have had little chance to study it during the last few days since its report, vote with any real knowledge of its effect and consequences? This is the case, the problem when these very important bills are brought before the Senate, in its closing hours.

Yesterday, I was very much interested when the senior Senator from Arkansas brought up the crime bill, S. 30, which was passed by the Senate several months ago. We remember that in the debate at that time many questions were raised about certain provisions of the bill. The bill was termed by some as an instrument of oppression and many of us were doubtful about the constitutionality of certain provisions.

The House amended the bill last week. It was brought before the Senate yesterday, and with a few Members sitting in the Chamber the Senate passed it by unanimous agreement, including not only those provisions which were so vigorously argued against earlier this year but with provisions added by the House of doubtful constitutionality. In many respects the bill is excellent, but its consideration in approximately one-half hour illustrates the objection I make to considering the pending bill at this time.

Mr. President, I give these examples: the crime bill as passed yesterday, the mine safety bill, which at least had 5 days of debate, the debate on Senate Resolution 1, and the equal rights amendment, which illustrate, I believe, that there is no possibility that this bill can be considered now, as it should be—fairly and adequately.

Mr. DOMINICK. Mr. President, I really appreciate the comments of the Senator from Kentucky. I think this adds great weight to the comments made by the Senator from Ohio, the Senator from Michigan, and me.

PRIVILEGE OF THE FLOOR

Mr. President, I ask unanimous consent that during further proceedings on this bill a member of the minority staff, Richard Weiss, may remain in the Chamber.

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

Mr. COOK. Mr. President, I wish to join in the remarks of my senior colleague and say that on the coal mine safety bill, after 5 days of debate, it was impossible to get at some of the problems in that bill that have now caused one of the most serious crises in the country.

I might say that as a result of closing many mines in our State that did not fall within the category of the tests that had previously been laid down on what constituted gassy or nongassy mines, we in the Commonwealth of Kentucky now face a far greater problem, and I would like my senior colleague to back up this statement: we have now issued more licenses for strip mining in the period of time from the passage of the bill until now than we had at almost any other comparable time in the history of the industry in our State.

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

Mr. COOK. I yield.

Mr. COOPER. There have been four times as many permits issued in Kentucky since the bill became effective April 1 than were granted during the entire year of 1969. I am informed that over 100 permits for strip mining have been issued.

Mr. COOK. I thank the Senator. Mr. President, I might say there are those in the Chamber who not only talked at great length about how that bill should not have been changed, but who are also its greatest ecological advocates. We now face that provision but we provide for them in the East the means to turn on their lights and television.

Then, we come to this proposition. Will we take up one of the most major pieces of legislation in a 24-hour period? Between now and November 3 will we be able to brag about the fact that we wanted to take it up and somebody else wanted to stop it?

I agree with the distinguished Senator from Texas. He spent a great deal of time on the measure as did the Senator from Colorado, the Senator from New Jersey, and the Senator from Ohio.

But I am not on that committee and my senior colleague is no longer on that committee. We are not going to have a chance to study it. We are going to have a chance to sit here and listen to amendment after amendment; and then try to figure out what it looks like when we get all finished. We will be able to figure it out and we will wind up starting all over again next year so somebody can brag about it. Somehow, I do not feel that is what I came to the Senate for.

Contrary to those who will be criticized for trying to hold up this matter and taking it up at a reasonable time, I want to congratulate them because at least they can say to all their constituency, not just a part, "I tried to look at it on all fours and study it and make a good judgment to represent all the people, rather than just a particular part."

So for my part I want to thank the Senator from Ohio, the Senator from Colorado, the Senator from Michigan, and my senior colleague because they are the ones doing this country and the Senate a service.

Those who understand and realize that there is not a major piece of legislation in the history of this country that was worth its salt that was passed in 24 hours will understand that they have had a good colloquy and a good start on it and they will ask that it be made the pending order of business on the 16th of November. If they do not ask for it, then I can only say that if something goes on the statute books, then we will have many suits and we will debate it and we will have much discussion, and we will have no way of ascertaining exactly what was done, and we will go through the whole harangue and the whole discussion, and then someone in the bureaucratic system will come to the conclusion that he did not write the bill; all he was told to do was make the regulation; and there we will be.

I must say that in this hurry and in the last 3 or 4 weeks we have had witnesses before some of our committees, one of them the Judiciary Committee, and I will repeat what I said the other day. When he looked at the piece of legislation that was pending before the entire committee, this professor from Columbia University said it was the worst draft of legislation he had seen since the first draft of legislation for the Sherman Antitrust Act in 1889. If one wants to brag about that, it is in the record.

I want to say that if there are 20 amendments to a bill, and if 10 or 11 get in the bill, and then somebody tells me that as a result of getting them into the bill we will produce the kind of legislation this body ought to produce, that is not the way I learned the legislative process.

Again I say I do not want to stop debate on this matter, but I think we at least have a responsibility to give a tremendous piece of legislation an appropriate time for discussion on the floor of the U.S. Senate.

Mr. SAXBE. Mr. President, I thank the Senator from Kentucky for his kind remarks.

In regard to the remarks made by the chairman of the committee, the gentleman from New Jersey (Mr. WILLIAMS), it is true that the subcommittee did a thorough job of hearings on this matter, and it is also true that the subcommittee was interested in trying to get the views of the minority and of the majority who opposed some of the provisions. I believe the subcommittee accepted something like 17 amendments, which went to various contested parts of the bill, which indicated that they were interested in trying to clean up some of the points of discussion and eliminating them.

The chairman of the full committee (Mr. YARBOROUGH) was also open-minded, and accepted amendments by members of the full committee. There were substantial changes, or it would not be as good a bill as it is today.

However, on various points that we think are important in this area, absolutely no ground was given.

When it came to the question of who was going to establish the standards for safety, there was absolutely no interest in opening this question up; it had to be left in the Office of the Secretary of Labor.

When it came to a panel for hearing—and really we think it is like an NLRB—the answer was absolutely "No."

So to say that there was not time for an attempted understanding is not true. There was. But it brings us right back to the point that we are in conflict on several elements that we think destroys this bill as being useful to both the employee and the employer.

There has been considerable talk about to whom this bill will apply. I think there is some misconception about it. The bill will apply to everyone engaged in interstate commerce except those employees covered by certain other Federal laws, such as the Coal Mine Health and Safety Act. To review, if you will, some of the recent cases on interstate commerce, if one operates a restaurant and he serves a truck driver driving a rig from another State, there is the suggestion that he is engaged in interstate commerce. I well recall a case in Ohio in which a man of very limited means bought old automobiles, picked them up when the police or used car dealers sold them to him, and his main job was to take the tires and generators from these used cars and sell them. He worked with a man, on a part-time basis, stripping these cars. The Federal Government came along, after he had been doing that for a couple of years, and found that he was engaged in interstate commerce.

One might wonder by what stretch of the imagination a man who was handling one or two junked cars would be engaged in interstate commerce. He was said to be engaged in interstate commerce because the iron which he might sell—he had not sold any; it was piling up—would be sold as scrap that would go into steel, which would be in interstate commerce.

If we are ready to accept that interpretation and the one about the restaurant and the one about the bus stop, and if we are willing to accept that interpretation with regard to farm products which go into interstate commerce, then everything is covered with the exception of a household article that is sold to a neighbor.

So here is a safety bill which we think of applying to a General Motors plant with 10,000 employees, where they probably already have pretty good safety standards. But we do not think of the impact it is going to have on people that are not presently covered under the wages and hours standards because of the restrictions as to number of employees, or perhaps those who are not even covered by unemployment compensation. We do not think of the impact, perhaps, under the arbitrary power of the Secretary of Labor, who would set up the standards that would probably be very well geared to a General Motors plant, but which ought to be adjusted and fitted to the man who employs one part-time employee.

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

Mr. SAXBE. I yield.

Mr. DOMINICK. When I was serving in the State legislature in Colorado, one of our problems had to do with a boat safety act which had been passed by Congress and one of the committees insisted that it become a part of our laws. They defined a boat as anything that floated, which meant that a canoe or a life raft which floated on the Colorado River was covered by that bill. Standards were established that they had to have emergency lights, fog horns, and lifesaving boats, and everything else. How that equipment was supposed to fit on a one-man rubber life raft or a canoe, I was never able to comprehend.

This is the same kind of problem that arises when we try to employ massive safety requirements for people who work in a General Motors plant and also those operating bus stop restaurants—which I do not think makes sense.

Mr. SAXBE. Well, I think that that is going to come as quite a surprise to a great many of the people of this country who have not even heard of this bill that we propose to pass this last day, in the afternoon, here in the Senate. And probably there are other measures that demand a great deal more attention.

What disturbs me is the idea that we come down here to the last day, in the afternoon, with the assumption that we are going to let this bill go through, with 70 Senators present—that those of us who oppose it are somehow going to go home or go to sleep or do something, and that the bill is going to be passed.

I assure Senators, if they think they have had trouble on Senate Joint Resolution 1, they are going to have more trouble on this, and for the same reason: Because we are going to offer 20 amendments. We are not going to agree to any time limit, and we are going to stay here until next Sunday if we need to.

I want to review at this time some of the things that are in this committee-reported bill, S. 2193. As I said, it covers practically all employees engaged in business affecting interstate commerce.

The Senator from Colorado pointed out an interesting thing when we got into this question of covering of State, county, and local employees. Here was the Federal Government that was going to presume to move in on the sovereign States and their political subdivisions, and set standards of health and safety.

Now, granted, there may be operations at those levels that are unsafe and should be corrected. I think the Senator from Colorado will agree that the problem that immediately faces us is, how are they going to engage in interstate commerce, for example, running a mental institution? The problem of extending jurisdiction on a broad basis over all these political subdivisions was finally worked out by the committee by just doing away with it.

The question of exemptions and variances: Very obviously, there had to be relief and a safety valve in this procedure, and these variances could be granted if an employer provides working conditions just as safe as the Federal-standard conditions.

It has been suggested, and we will offer an amendment on this, that a board rather than the Secretary of Labor should be the entity that would grant such a variance. We think it is unseemly that the Secretary of Labor should be the only one that could grant a variance on a safety standard or a safety rule. It comes right back to the same board again on the overall standards.

The National Occupational Safety and Health Board would be separate and independent of other agencies. This, of course, can be determined, and we would have some various views on it; but we suggest that it could be five members. It could be seven or it could be nine, but the suggestion was that it be five members. They would have to be qualified by previous training and experience in the field of occupational safety and health. They would be appointed by and serve at the pleasure of the President.

We are well acquainted with another important element in labor problems: The National Labor Relations Board, a body that is appointed and serves for a term, but subject to approval by the Senate.

What kind of standards are we going to talk about? What types of standards would this board come up with? The committee bill says that the Secretary of Labor, properly advised, would come up with standards.

National consensus standards—that is, consensus on standards of health, in plants and out, that are readily acceptable all over. Then there are existing Federal standards in some fields, and standards promulgated prior to the date of enactment of this act by national organizations on a nonconsensus basis.

The first two types of standards must be issued by the Secretary as soon as practicable, within 2 years following the effective date, unless the Secretary determines that their promulgation will not result in improved safety or health for certain employees.

During the same period, the Secretary may also promulgate the nonconsensus standards.

The Secretary, under his authority to set permanent standards, is empowered to "promulgate, modify, or revoke."

In the substitute bill, it is made somewhat simpler by listing the national consensus standards and already existing Federal standards, as in the other one, but then it says they are to be issued by the board within 3 years following the effective date, unless the board determines that such standards will not assure safer and more healthful working conditions.

Here we are, talking about health standards 2 years away, or 3 years away, and yet, on Tuesday afternoon, we are supposed to be able to pass this bill, because we want to go on a recess over election.

I would agree to put this down as the first order of business on November 16. I intend to vote for this bill. I also believe that we should get these standards adopted by a board rather than by the Secretary of Labor, and this is what we intend to do.

What are the different types of standards? We have early standards, emergency temporary standards, and permanent standards.

The early standards are promulgated by the Secretary by rules, and the Administrative Procedure Act does not apply except in the case of nonconsensus standards, where informal Administra-

tive Procedure Act rulemaking procedures apply—that is, submission of written views with informal hearings on the Secretary's discretion.

I think that this, again, is a deviation that we should certainly discuss and look over in great depth, because we might want to require the formal procedures of the Administrative Procedure Act, to apply to the adoption of these standards. It would apply with a board if we did not specifically exempt it; and I do not think there is any inclination to do that.

In the committee reported bill, permanent standards are promulgated by the Secretary under informal rulemaking procedures of the Administrative Procedure Act, but a hearing is required, and I think this is proper, if an interested person objects to a proposed standard. And I am sure, with the wide latitude of this bill, that in time there will be those who object.

In the substitute, the permanent standards are set by the board, using formal rulemaking procedures of the Administrative Procedure Act. In other words, it operates within the formal procedures of the Administrative Procedure Act.

On permanent standards, under the bill as set up in the Senate committee, the Secretary is required to issue a standard within 60 days after the expiration of the period provided for the submission of views, as required by the Administrative Procedure Act, or within 60 days after the hearing, required where an objection is made, ends.

The board is required, under the substitute, to promulgate a standard 60 days after the formal hearing ends, if an advisory committee is utilized. The advisory committee is separate from the board, and if the advisory committee operates without the board, it has no power in itself. It only can advise, and it can be dismissed and operate only at the pleasure of the Secretary of Labor.

What are the tests for standards? In setting standards, the Secretary, under the Senate bill as reported, is required to set the ones which most adequately and feasibly assure that no employee will suffer any impairment of health or functional capacity or diminished life expectancy, even if such employee has regular exposure to the hazard dealt with by such standards for the period of his working life.

This part is in the bill as reported, and one of the reasons why I would prefer to amend the bill as reported rather than accept the substitute, although I would vote for the substitute, is that I believe this to be a good provision.

Mr. DOMINICK. Mr. President, will the Senator yield at that point?

Mr. SAXBE. I yield.

Mr. DOMINICK. In other words, if we tried to get an agreement under which we would have a time certain to vote on the substitute today, it is the Senator's feeling that this would not be advisable, because he would want clarifying amendments to the bill itself, as opposed to voting on the substitute. Is that correct?

Mr. SAXBE. That would be my attitude, because I would rather amend the reported bill than accept the so-called Steiger bill. I would vote for it because it generally contains the things in which I am interested. But the administration bill, as introduced by the Senator from New York (Mr. JAVITS), also contained many of the provisions that are now in the reported bill, and I like that. I also like the amendment which Senator JAVITS submitted in the committee, which has to do with an enforcement panel.

Mr. DOMINICK. The Senator recognizes that both the board and the panel are in the substitute bill.

Mr. SAXBE. They are in the substitute bill.

Mr. DOMINICK. I just wanted to make this certain, because there had been suggestions that perhaps we could reach an agreement whereby we would vote on the substitute some time tonight. I was not sure that I was going to reach agreement on the substitute but that does not seem to be a fruitful course of action because there would be so many clarifying amendments before the substitute would be considered.

Mr. SAXBE. In the provision which has to do with diminished life expectancy, it is pretty difficult to establish what is going to diminish one's life expectancy. Working itself is apt to diminish one's life expectancy. If one wants to stay home in bed, he probably will live longer than by standing at the plant and doing his job. It is a difficult thing to establish. I think that would have to be clarified.

There is no question in my mind that if one works as an insulation installer on steampipes or hot air pipes and is using asbestos in any shape or form, there is no way in which he can avoid a shortened life expectancy, under the present safety rules. It is a real question to me as to whether asbestos can be used at all, whether it can be handled.

When asbestos was first mined, it came in great sacks, like wool sacks, and little boys were used to tramp the asbestos down into the sack. Their life expectancy was approximately 2 years, and they were only 10 years old.

We have come to the point now that protective breathing apparatus is used, but the asbestos fiber is very fine, and it builds up in the lungs over a long period of time. Asbestos, unlike other dust or fibers, is never assimilated and it is never removed from the lungs. It stays there, and it can only become more difficult to breathe the longer one works with it.

As Senators know, last year in our committee we had extensive hearings as to the buildup of coal dust. Some evidence was presented that even though it is built up over a period of time, it did tend to diminish if one were removed from exposure, and there was some question as to whether it actually reduced life expectancy.

But in this paragraph, where we are talking about functional capacity or diminished life expectancy, any type of exposure is going to affect it. One example is working in a paint shop or working in an automobile line, a final assembly line, or on a paint line. A great deal of study has been made of these things. Yet, substantial skill is required to be an automobile painter, which means that the person who acquires this skill already has a substantial buildup of inhaled paint particles before he achieves the skill required to hold a steady job. This is true of many installers of asbestos and other fibers: By the time they reach the skill that is required, they already have an impaired life expectancy.

In the committee bill, with respect to labels and warnings and monitoring or measuring and medical tests, it provides that standards shall prescribe the use of labels, warnings, and, where appropriate, employer monitoring or measuring of employee exposure to hazards, plus types and frequency of medical examinations or other tests which shall be made available by the employer, at his cost.

Mr. President, I was speaking on the point, how are we going to control these things? Again I point out that one of the difficulties in trying to discuss this bill at length in such a short period of time is that the substitute bill, which is known as the Steiger bill, provides that standards must be prescribed for the posting of such labels or warnings as are necessary to apprise employees of the nature and extent of the hazard and of suggested methods of avoiding or ameliorating them, and that standards promulgated under this substitute may also provide for medical examination, monitoring, and the measuring of employee exposure to hazards.

What kind of measuring? Well, in the area of exposure to atomic nuclear equipment of any kind, standards have been attempted, but it has caused a great deal of confusion.

Exposure to nuclear material is measured in roentgens. The geiger counter can give the intensity at any one time, but the geiger counter does not give, over a long period of time, the cumulative effects of the exposure, which means that the safety experts had to devise a means to obtain a cumulative effect so that there could not be a fatal or serious buildup of roentgens within the human body.

The exposure to nuclear material does dissipate itself. Therefore, limited exposure, such as we got from X-ray equipment in hospitals or doctors' offices, is kept under control, and is not a serious danger.

But the difficulty has been, as we have brought this into more and more industrial use, that at the beginning they were not aware that the cumulative effect over a period of time carried the great danger it does. So, in the early days, there were numerous exposures that have appeared only in later years.

If we are going to do this in regard to nuclear exposures, we are going to have to do it to a great many other of the latent insecticides, pesticides, and fungicides that we now use so commonly. In other words, the cumulative buildup resulting when one of these materials has a long half-life, and stays in the tissues of the body or stays in the tissues of animals which we now use for food, or in the bodies of fish, is a development that we have been completely unaware of until recent years.

A few months ago, no one ever heard of the mercury problem resulting from the mercury buildup in fish.

Why did we not hear of that problem?

The primary reason was that mercury, being one of the heaviest elements, when it was released in waste from certain factories, was presumed immediately to sink to the bottom of whatever river or lake the drainage emptied into, and would never again be a problem. But we were very much surprised to find that when this same mercury was ingested in breathing or as a result of eating fish, there was the very unusual—strange, I might say—chemical reaction which made the mercury become available in the body of the man who ate the fish.

So, we had the great mercury scare last year.

The fish in Lake Saint Clair, which is between Lake Huron and Lake Erie, were declared to be inedible and, for awhile, they even closed off the fish in that body of water; and then the commercial fisheries on Lake Erie were closed, and on the rivers leading into western Lake Erie. Then it began to appear that this was in a great many other streams and rivers, not just in the Great Lakes region, that the mercury had built up everywhere.

This happens in the bodies of people exposed not just to mercury but to other forms of subtle poisons, of which we are completely unaware today.

There is a great deal of research still necessary in this health field, which is one of the reasons I was persuaded we needed a health and safety bill on a national scale, because of what can be done on a national scale as a result of this kind of legislation.

I was first of the opinion, and I think this is a natural reaction of those who have been involved in State governments, that this was a field where the States had done rather well. I know that, in my own State of Ohio, everyone is safety conscious in the bigger industries, and that safety is in the best interests of profit-making for any corporation. There is no corporation that will permit an unsafe operation because it is a money-losing proposition to do that. It is not a money-making proposition. Yet, I was reluctant to have the Federal Government usurp still yet another field which the States have occupied and, in many cases—I do not say this about all States—have done an admirable job in providing safety standards and safety enforcement.

Mr. DOMINICK. Mr. President, will the Senator from Ohio yield at that point?

Mr. SAXBE. I yield.

Mr. DOMINICK. I am extremely interested in this. I participated with the Senator from Kentucky on the Coal Mine Safety Act, serving both on the committee and on the floor here, trying to maintain a distinction between gassy and nongassy mines; but more important than that, so far as our State of Colorado was concerned, was the consideration of the Nonmetal or Metallic Mine Safety Act. In committee, I pointed out to the Senator from New Jersey and the other members that Colorado had standards under the act which were similar or superior to the Federal standards, and that if the Federal standards were in effect, Colorado's standards were going to be eliminated and had to come under the Federal program. I also pointed out that the Federal Government did not have the inspectors to be able to take care of the safety problems once they took it out of the hands of the State.

We had specific evidence of that. Testimony from the Bureau of Mines, as a matter of fact, elicited that it would take about 4 years to get a sufficient number of inspectors. Thus, I asked that there be included a provision in the bill as it came out of committee, that where a State had standards which were satisfactory, to the Department of the Interior or the Bureau of Mines, they would be permitted to continue their own inspection procedures. To my total amazement, the majority of the committee turned it down. As a matter of fact, I just made a brief speech on that this morning, during the morning hour. They turned it down, but the House insisted on it. We finally did get it through, but it has been 4 years since that bill was passed before we have gotten agreement with the Bureau of Mines that the State can do its own inspection in its own mines where their standards are higher than those of the Federal Government.

This again is one of the things involved. The Senator from Ohio brought this type of thing up in this particular case. What will happen where we have a conflict between State and Federal health laws? Will the Federal Government be able to take over?

I do not know whether there is any adequate provision in this bill. Does the Senator from Ohio know?

Mr. SAXBE. Mr. President, I do not know. However, I do feel that in the years that are permitted for the States to get back into this field, they can again take over their enforcement if and when they might or should establish standards.

Mr. DOMINICK. Standards which have not even been set as yet and will not be for 2 years.

Mr. SAXBE. It will be extremely difficult to establish standards that are going to be adaptable to the States when we have a 3-year delay before they are established and then an additional 3 years before they will have a chance to get back in.

What will these inspectors do at the State level in the meantime?

Mr. DOMINICK. Mr. President, I think that the Senator from New Jersey wants to answer that question.

Mr. WILLIAMS of New Jersey. Mr. President, I was going to ask a question and not going to answer the question raised by the Senator. We are talking about the relationship of Federal programs to State plans.

Mr. DOMINICK. Mr. President, I asked a question concerning wherever we have a State that has safety standards which are strict and effective in a particular industry at this time and the Federal Government has not promulgated any standards in that particular field, what happens and who has jurisdiction.

Mr. WILLIAMS of New Jersey. Mr. President, reading from the analysis of the committee report on the bill and the substitute bill, S. 4404, in this area on page 11—and it was filed by the Labor Department—it is their position that in this area, the committee report on the bill and the substitute bill are the same.

Mr. DOMINICK. Mr. President, that may be. But I do not know if that answers the question. What do we do about it?

Mr. WILLIAMS of New Jersey. Well, we could read what it says about the State plans. Where they desire to set their own standards, they may submit a plan to the Secretary of Labor. If approved by him, the State standards and their enforcement by the State control.

Mr. DOMINICK. Mr. President, I thank the Senator from New Jersey for pointing that out. I also see the other statement that says that where no standards exist, the State standards will apply and be enforced.

I am not clear about who enforces them or what happens when they are in the process of establishing standards and the State already has standards.

Mr. WILLIAMS of New Jersey. Mr. President, if there are no Federal standards and the State has standards, in the interim period the State would enforce its own standards.

Mr. DOMINICK. Mr. President, I appreciate the statement of the Senator from New Jersey.

Mr. SAXBE. Mr. President, one of the other areas that are somewhat similar concerns a standard appeals section whereby if these standards are promulgated by either the Secretary or a board, they have a right to relief if they believe that they, under the Constitution, do not comply with the due process standards or are confiscatory. They can go to court. In this area I would foresee that in many areas there would be enough substantial change—and I am talking now primarily in the high-hazard area—that there will be sufficient change if we have litigation, for the purpose of litigation, to keep these avenues open. How long this delay will be is another thing.

That raises a question concerning our haste at this time. I would foresee that Federal courts of appeals would grant stays or otherwise slow down action on this matter if any plaintiff can come in and show that the imposition of these standards are going to put them out of business or that they will seriously affect their rights to compete, or if they can show that such standards were adopted without provision for their day in court—that is, without due process.

It seems to me that we can avoid that point being raised by the Board which would have within itself, as a quasi-judicial body, the ability to hear appeals and, operating under the Administrative Procedures Act, it would avoid a great many of these future court cases in the court of appeals and the delay that will result from holding this up for a long period of time.

Judicial review, of course, is a necessary part of any act of this kind. We will have it whether we put it in here or not. But it seems to me that the Court of Appeals of the District of Columbia is the only forum and that it does make some sense and that the time period being reduced to 30 days will cut down the period of time that this litigation will be hung up in the court.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had passed, without amendment, the following bill and joint resolutions of the Senate:

S. 2695. 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;

S.J. Res. 165. Joint resolution 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; and

S.J. Res. 242. Joint resolution to provide for the temporary extension of the Federal Housing Administration's insurance authority.

The message also announced that the House had agreed to the amendment of the Senate numbered 1 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; and that the House had agreed to the amendment of the Senate to the amendment of the House to the amendment of the Senate numbered 2 to the bill.

The message further announced that the House had agreed to the amendments of the Senate to the bill (H.R. 12475) to revise and clarify the Federal Aid in Wildlife Restoration Act and the Federal Aid in Fish Restoration Act, and for other purposes.

The message also announced that the House had agreed to the amendments of the Senate to the bill (H.R. 18731) to increase from $20 to $40 per day the per diem allowance authorized in lieu of subsistence for members of the American Battle Monuments Commission when in a travel status.

The message further announced that the House had agreed to the amendment of the Senate to the bill (H.R. 16710) to amend chapter 37 of title 38, United States Code, to remove the time limitations on the use of entitlement to loan benefits, to authorize guaranteed and direct loans for the purchase of mobile homes, to authorize direct loans for certain disabled veterans, and for other purposes, with amendments, in which it requested the concurrence of the Senate.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 17604) to authorize certain construction at military installations, and for other purposes.

The message further announced that the House had disagreed to the amendment of the Senate to the bill (H.R. 17825) to amend the Omnibus Crime Control and Safe Streets Act of 1968, and for other purposes, agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. CELLER, Mr. RODINO, Mr. ROGERS of Colorado, Mr. MCCULLOCH, and Mr. POFF were appointed managers on the part of the House at the conference.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills and joint resolution, and they were signed by the President pro tempore:

H.R. 2175. An act 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;

H.R. 9164. An act to permit the use for any public purpose of certain real property in the State of Georgia;

H.R. 9634. 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;

H.R. 10317. An act to adjust the date of rank of commissioned officers of the Marine Corps;

H.R. 13307. An act 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;

H.R. 13601. An act to release and convey the reversionary interest of the United States in certain real property known as the McNary Dam Townsite, Umatilla County, Oregon;

H.R. 15405. An act 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;

H.R. 17146. An act supplemental to the Act of February 9, 1821, incorporating the Columbia College, now known as The George Washington University, in the District of Columbia and the Acts amendatory or supplemental thereof; and

H.J. Res. 1388. Joint Resolution making further continuing appropriations for the fiscal year 1971, and for other purposes.

ORDER FOR ADJOURNMENT UNTIL 9 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate adjourns tonight, it stand in adjournment until 9 o'clock tomorrow morning.

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 on the Executive Calendar which were reported earlier today.

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

The PRESIDING OFFICER (Mr. BELLMON). The nominations will be stated.

FEDERAL TRADE COMMISSION

The assistant legislative clerk read the nomination of David S. Dennison, Jr., of Ohio, to be a Federal Trade Commissioner.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The assistant legislative clerk read the nomination of David Ogden Maxwell, of Pennsylvania, to be General Counsel of the Department of Housing and Urban Development.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

U.S. DISTRICT COURTS

The assistant legislative clerk proceeded to read sundry nominations in the U.S. district courts.

The PRESIDING OFFICER. Without objection, the nominations are confirmed en bloc.

U.S. CIRCUIT COURT

The assistant legislative clerk read the nomination of Paul H. Roney, of Florida, to be a U.S. circuit judge, fifth circuit.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

U.S. MARSHAL

The assistant legislative clerk read the nomination of Benjamin F. Butler, of New York, to be U.S. marshal for the eastern district of New York.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

U.S. ATTORNEYS

The assistant legislative clerk read the nomination of George J. Long, Jr., of Kentucky, to be U.S. attorney for the western district of Kentucky; and the nomination of Lester Engler, of Arizona to be U.S. attorney for the district of the Canal Zone.

The PRESIDING OFFICER. Without objection, the nominations are confirmed en bloc.

SUBVERSIVE ACTIVITIES CONTROL BOARD

The assistant legislative clerk read the nomination of John William Mahan, of Montana, to be a member of the Subversive Activities Control Board.

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

LEGISLATIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I move that the Senate resume the consideration of legislative business.

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

OCCUPATIONAL SAFETY AND HEALTH ACT

Mr. SAXBE. Mr. President, I was pointing out that there is nothing we can do to limit appeals on the constitutionality of any act we do here. However, it seems to me that if a board were set up with quasi-judicial power to have hearings under the formal procedures of the Administrative Procedure Act, that would avoid some of the pitfalls we might come up against here.

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

Mr. SAXBE. I yield.

Mr. COOK. Mr. President, with relation to the matter of judicial review, let us assume that under section 18 of S. 4404 of the committee report, which would be section B, a State has a plan that had been accepted by the Secretary of Labor. As I understand this, the Secretary of Labor, notwithstanding the fact that he has approved a plan, can automatically take a position that it is not an approvable plan any longer. And that the only judicial review is to the U.S. court of appeals in the circuit in which the State is located; and then, the only plea of the State is that the actions of the Secretary of Labor are arbitrary and capricious. Forget about the constitutional question because they could always plead the constitutional question. But the only plea the State could make is that the actions of the Secretary of Labor have been arbitrary and capricious, and the burden is on them to prove it.

Mr. SAXBE. That is the way I see it. That is one of the problems.

Mr. COOK. Did not the Senator feel, when he was attorney general of the State of Ohio, that one of the hardest things to prove is that actions were arbitrary and capricious or that the actions of a governmental body or elected body were arbitrary and capricious, and is it not true that the Senator could count victories on that ground on one hand?

Mr. SAXBE. That is true. I also question the ability of a State to come in and successfully maintain an action against the Federal Government because, at least in the beginning, I do not see how a State can perfect a plan to equal a plan that they do not know will be the plan. In other words, they will lose their first round.

Mr. COOK. They not only have to establish that their plan is better in regard to a Federal plan that is not in existence, but also that the Secretary of Labor acted arbitrarily and capriciously.

Mr. SAXBE. That would appear to be true. I am taking the Senator at his word that he eliminates the constitutional provision.

Mr. COOK. Oh, yes.

Mr. SAXBE. This was subject to great discussion, and the Senator will find it in the minutes of the hearings. It has been the subject of great discussion since that time that some States are presently running good health and safety departments. Maybe they are not as broad as the Federal plan might be or as worked up by the Secretary or the board, but one that is doing a good job. As pointed out there is a great divergence in the State activities in this area. Some spend $2.75 for every worker and some spend less than $1.02 per worker.

But in this area of the "good State" they have a number of inspectors, safety examiners, that can go around and perform the various tests and also make regular visits to these plants. This would necessarily be interrupted. There is a probability where the State has a good system and intends to get back into it, that they will hang on to those people. For a period of time, anyway, they will have a dual system that we hope, in most instances, will be superseded by the State regaining control; that is, they will have equal or better.

The only disturbing thing is that history does not report this happens very often. Once the Federal Government goes into an area of safety or whatever it might be, it is with extreme reluctance it ever gets out. It is questionable in my mind, if the Federal Government is running and paying for this program, whether the hard up States will want to get back into it again because of the tremendous expense to revitalize the system which might not have been operating during establishment of the federal system.

I know Republican members on the committee, and all minority Members here to whom I have spoken, do not question that we need something in this area. I know that some Members of the majority spoke on this matter. We were reluctant in the beginning to acknowledge the fact that a great many States were doing a poor job.

Some of us come from industrial States where they are proud of the job they do. But we acknowledge there are areas, as the chairman of the committee, the Senator from Texas, pointed out, where the safety standards are used for competitive advantage. In other words, this is especially true as to hours of labor, where fatigue comes in, noxious fumes, dust, and lint—where it is to the economic advantage to neglect it. We gradually came around to the realization that the States, regardless of what they said to us in the committee, were not living up to their promises. In some States it was a political football. When the administration would change the inspectors would change. They were not always career people who were qualified. Many times they were local politicians who were offered a job without any real training in health and safety.

We discovered that sometimes when an inspector would be coming around to a plant they would know a week ahead of time when he was going to come. Employees testified that deficiencies at the plant or worksite were corrected for the visit of the inspector and afterwards were allowed to rapidly deteriorate.

It was pointed out that there are certain types of work incentives that contribute to unwise practices. I am thinking specifically of some of the work schedules where it was to the man's advantage to neutralize the safety device on his machine so that he could get a greater production. I have seen machines, and so has the Senator where there was involved some kind of metal fabrication, where there was a press and the operator would have to have one foot and both hands in a certain position to make that press operate. How easy it is for a man who is trying to speed up on his piecework rate to wire one of those switches down.

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

Mr. SAXBE. I yield.

Mr. COOK. Mr. President, I wish to thank the Senator for his explanation, particularly that part about review, because if we are limiting the States' authority to a cause of action based on the arbitrary and capricious attitude of the Federal Government or the Department of Labor, we should advise all 50 States, and their labor departments that it will be very, very strange if they can ever win a case.

I might say to the Senator that this really bothers me because the distinguished Senator from New Jersey handled a manpower training bill not too long ago that was passed by this body. The bill was handled on the floor of the Senate not too long ago. There was one section in that bill on the question of an employee and it provided that if anyone on the hearing panel or the staff of the hearing panel gave out any information on the case he would be subject to a serious fine and imprisonment. It provided in that measure that the decision of the panel was not appealable to any court. This just about shocked me right out of my shoes.

When we now come to a situation in which we are saying to the respective States, in regard to the regulatory action of the Secretary of Labor, or his administrators, that when the United States is in violation, the only course of action that State has is to go to the court of appeals in his circuit, and that the only plea can be that the action of the Secretary was arbitrary and capricious, we can just say to the respective States that they just are not going to win any lawsuits.

Mr. WILLIAMS of New Jersey. Mr. President, will the Senator yield?

Mr. SAXBE. I yield.

Mr. WILLIAMS of New Jersey. I observe that the provisions in the committee bill and the bill introduced by the Senator from Colorado are the same in this regard.

Mr. COOK. I am delighted that I am present to hear that. Otherwise I would not have known it. Certainly the Senator from Kentucky would offer an amendment to see that the latitude of the States was protected other than by a single plea of arbitrary and capricious action on the part of the Secretary.

Mr. SAXBE. I know this is old grist for the mill of the Senator, but the substitute bill—and this is why I do not warmly embrace the substitute bill—allows for appeals in the District of Columbia Court of Appeals.

Mr. WILLIAMS of New Jersey. I realize that the substitute bill does that, whereas the committee bill permits appeal to the circuit courts in the States.

Mr. SAXBE. That is correct. I invite the attention of the Senator to the fact that in the substitute bill—and again, if we adopt the substitute I hope this part will be amended—the States are limited to the Court of Appeals for the District of Columbia. If the case arose in California, those seeking relief would have to come to the Court of Appeals in the District of Columbia to assert their right.

Mr. COOK. I do not have any objection to that, because I do not think it is any problem for a State to come to the Court of Appeals in the District of Columbia, but I must confess that I think the trip is made just that much longer and lonelier if the only cause of action

when the person gets here is to plea that the Secretary of Labor acted arbitrarily and capriciously in regard to the denial of a plan. I think the latitude of the respective States, other than the constitutional rights under the act—which rights are always guaranteed—should be broader than that particular cause of action.

Mr. SAXBE. I think the Senator from Colorado (Mr. DOMINICK) will bear me out on this. If there were a board to set the standards, the board would operate, as I pointed out awhile ago, under the formal procedures of the Administrative Procedure Act. There would then be an opportunity to have a day in court there, with all the benefits under the Administrative Procedure Act, as to the setting of standards.

Mr. DOMINICK. The Senator is correct, and that is the major difference between the two bills—having the ability to use the formal procedures of the Administrative Procedure Act in setting standards as opposed to having a very informal procedure, and practically no Administrative Procedure Act—some, but not all, in setting of standards under the committee bill.

One of the things that bothered me—and I would like the Senator from Ohio to comment on this—is some of the language that appears on page 39 of the bill reported by the committee. We discussed it in committee when I was there, but not at great length, and I would like to get the Senator's viewpoint on it. It states on page 39:

> The Secretary, in promulgating standards under this subsection, shall set the standard which most adequately and feasibly assures, on the basis of the best available evidence, that no employee will suffer any impairment of health or functional capacity, or diminshed life expectancy even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

How in the world are we ever going to live up to that? What are we going to do about a place in Florida where mosquitoes are getting at the employee—perish the thought that there may be mosquitoes in Florida? But there are black flies in Minnesota and Wisconsin. Are we going to say that if employees get bitten by those for the rest of their lives they will not have been done any harm at all? Probably they will not be, but do we know?

Mr. SAXBE. I can only answer by referring to a case we had in Ohio which resulted in the biggest single verdict in a civil case that had ever been returned. This was 20 years ago. I am sure the size of the verdict has been greatly exceeded since that time.

I am reminded that if there is negligence, the employer is liable, just as he is today. But in this particular case a railroad brakeman working trains in an area where there was a slough filled with trash and water, was bitten by some mysterious creature which evidently had been hatched in and flew up out of the slough. As a result, the brakeman got an infection in his leg and he lost the leg.

He sued the railroad for a fantastic amount for the time, which I believe was $500,000, because the criminal railroad had permitted this swamp to fester and produce such abominable creatures as the one that had come out and bitten him—which they never identified, by the way.

When we come to saying that an employer must guarantee that such an employee is protected from any possible harm, I think it will be one of the most difficult areas we are going to have to ascertain. But I am willing to go down that road a way. I might add as an aside that it is going to be one of the greatest havens and mortgage lifters for lawyers for the next 20 years that has ever come about.

I believe the terms that we are passing back and forth are going to have to be identified.

I call attention to another one we talked about, which is "free from recognized hazards so as to provide safe and healthful working conditions." What, under the law, is a "recognized hazard?" I know there are labor laws written on what is a recognized hazard. It is not improved a great deal by the substitute.

Mr. DOMINICK. It is "readily apparent" in the substitute. We will not have a meat cleaver on the shelf with use of the term "readily apparent."

Mr. SAXBE. "Readily apparent" to whom? An experienced pipefitter can say that an arrangement of pipes is a dangerous condition, and to you and to me it looks like a bunch of spaghetti, but he is an expert, and he can say it is readily apparent that it is a dangerous thing. It could be or it could not be readily apparent to one, but to another person it would be readily apparent.

I think the definition "recognized hazard" comes nearer to identifying it as something that would be recognized by all people—not just readily apparent to an expert in that particular field.

A minute ago I wanted to mention something in regard to the recording of injuries and deaths. I believe there was mention of 14,500 deaths, and there were approximately 2.2 million time-loss injuries which resulted in some degree of permanent disability. These figures encompass everybody from the truckdriver who is involved in a road accident to a person who takes a guard off a machine and puts his hand in it.

There could be the best possible safety standards on a machine, or there could be the best possible air pollution controls in a plant, and perhaps economic pressure, or perhaps carelessness or indifference, would cause someone to take the guard off, leave the door open, or leave the filter off, which would permit the working condition over which he has control as an employee.

The employer has given him the facilities to make this place safe, but the employee has control over the area, and he permits it to deteriorate and to become an unsafe working area.

I do not know how we are ever going to stop this. It is a common practice; carelessness creeps into a job, and indifference to safety.

Mr. WILLIAMS of New Jersey. Mr. President, will the Senator yield there?

Mr. SAXBE. I yield.

Mr. WILLIAMS of New Jersey. Employees must also comply with the requirements of the act.

Mr. SAXBE. I know.

Mr. WILLIAMS of New Jersey. I wonder if this would be a convenient place for me to ask a question of the Senator.

Mr. SAXBE. Yes.

Mr. WILLIAMS of New Jersey. First, as I understand the parliamentary situation, a motion was made to take the bill up, and that is the motion before the Senate; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. WILLIAMS of New Jersey. I have been listening attentively and with great interest. It seems to me that we are now getting into the merits and demerits of the legislation. I wonder if it would not be better, I ask the Senator from Ohio, to deal with the motion, and have the bill before us, rather than getting into the merits of the bill in this fashion.

Mr. SAXBE. Yes; I recognize we are getting into the merits of the bill, but what I am doing by getting into the merits of the bill is calling attention, as the Senator from Kentucky said, to the many facets that are involved in this bill.

I do not think we should proceed, in the dying days of this part of the session, to take up a bill of the magnitude that we have here. I voted to get it out of committee; and I shall vote to pass the bill. I think it is a step in the right direction. The Senator and I are, there is no question about it, head on about the provision that he wishes to place under the Secretary of Labor, and I think it could best be handled under an independent board.

I compliment the Senator from New Jersey and the Senator from Texas (Mr. YARBOROUGH) on recognizing the merits of some of the amendments that they accepted in committee. The Senator recognized the merit of these amendments and accepted them.

Mr. WILLIAMS of New Jersey. Those are minor matters, though, put into the bill by committee action. Certainly the question of the National Institute of Occupational Health and Safety is a major matter.

Mr. SAXBE. Oh, yes.

Mr. WILLIAMS of New Jersey. And the whole study of workmen's compensation was very much aided by the senior Senator from New York (Mr. JAVITS), who has worked most assiduously and with great wisdom on this bill.

Mr. SAXBE. Yes; and his staff has done a tremendous job, of which I am well aware.

Mr. WILLIAMS of New Jersey. The Senator mentioned the Senator from New York and his staff. To do him credit, he chose a wise and able staff, and directs them with consonant wisdom.

Mr. SAXBE. That is quite true. My attitude is simply this: We had an opportunity last week to get to this bill. I was prepared to offer amendments and to talk on it. Instead, even after it was disclosed that there were not the necessary votes on the equal rights amendment, we have still spent this time on that.

I think now that we are down in the last minutes, that I want to tell, and I want it to be in the RECORD for people to read tomorrow morning, why I do not believe we should vote and make this important determination with 70 or fewer Senators in Washington. I also point out that the House of Representatives is not going to act, that nothing will be gained; that the temperament of the application of this bill is such that we have got 2- and 3-year gaps, and therefore the things I am talking about are background reasons why we should not undertake consideration of this bill at the present time.

I will agree and go along and insist on immediate consideration when we come back here on the 15th or the 16th, and I believe that we can get it passed and to the President, who, I am informed, is most eager to get this legislation, well before our final adjournment for the year.

So that is the attitude that I have on this matter at the present time. But I was speaking of the difficulty in accumulating statistics. We can come up with many different figures that point out that the industrial area is an extremely dangerous area, but at the same time the man who gets up and goes to work at the factory is often going into a safer environment than the housewife who stays home and does her housework. We know that there are hazards associated with all types of activities, and it has been pointed out repeatedly that the home is indeed a dangerous place.

However, we still have to make every effort to make the place of employment not only as safe as possible, but also a place where the effectiveness is not impaired, the work is not impaired, by fear of dangerous fumes or accidents; but, of course, the man who is the casualty of the automobile wreck, where he was observing all the standards and was driving with a company car, and was killed by a drunken hit-skip driver, is still a casualty that goes down as one of our great business and industrial casualties. So we have to temper all this.

One of the areas that has been suggested as an area of harassment is the part where any employee, when he believes that a dangerous situation exists, can serve notice and require the presence of an inspector. While this has been modified by later amendment in the committee, nevertheless there exists an area for harassment at a time of union difficulties or negotiation and one that has no place in health and safety practices within a place of employment.

We cannot be detracted by any other interest, of either the union or the employer, from our primary purpose of saving lives and preventing injury to employees.

If the employer would want to make conditions so unfavorable that his plant would be closed down and he would be saved from unemployment compensation, this has been taken care of in this bill. He would not benefit by such type of actions, and that part is very good. At the same time, I think we should fully discuss the position of the employee who wishes to take advantage of the opportunity to harass the employer by a series of complaints on safety standards that would affect the continued operation of the plant.

I should like to explain some of the nomenclature that is used in this measure at the present time and in my discussion today.

When I talk about "plant," when I talk about "factory," and when I talk about "mill," my remarks are also to apply to all the other businesses that are going to come under this measure. Many of them would be outside activities where there is limited amount of machinery but exposure to other safety hazards.

In my State, the risk factor for workmen's compensation is at its greatest in two areas—farming and quarrying. Farming, which one would think would be a relatively safe operation, is one of the most hazardous. Why? Because an individual is out there without an employer to tell him to put the guard on the machine, without an employer to tell him to keep away from the moving machine, without an employer to tell him to do all the things which the employer tells him to do makes him do in a plant. So farming is a very high risk in workmen's compensation.

In talking about plant, factory, and so forth, the place of employment could be the cab of a truck, the place of employment could be a private automobile, or the place of employment could be that of one who moves around from one place to another, such as an installer in a home or in a factory. All these are covered under this measure.

Mr. President (Mr. COOK), when we talk about the factory, we are not just limiting ourselves to thinking about a man who stands there and works on a great press or another piece of machinery, or who works in a kiln or in a part-producing factory.

If we first accept that the general duty of the employer is to provide a place that is safe and free from recognized hazards or, as in the substitute bill, readily apparent hazards, the next step, of course, is to define these rules. We come down to a point that is going to be of great moment and an issue we are finally going to have to decide: Who determines just what is a hazard and how to protect from it? This seems to me to go to the very depth of our individual and collective concern in government and its place in lives of people and the States in which they live.

If the Secretary of Labor, advised by panels, is going to be the one to do this, I think we have to recognize the advantages and recognize the shortcomings. The Secretary of Labor, as an individual, it is true, is going to be freer of the pressures, perhaps, that would come from a board that would be selected as most boards are somebody from the union, somebody from the employers, somebody as a public member, as it is called, although I never have been able to determine just exactly what that is.

But there will be people who are extremely liberal in regard to safety legislation and those who are extremely conservative. The use of those words is difficult, because "liberal" means one who wants very tight and very restrictive legislation; whereas, the more conservative person might say, "We don't need that tight a restriction."

In a panel, you are going to get people from both ends of the spectrum, and then you are supposed to get public members. If you have five, you would have two of employer, two of employee or union, and one public member. It would mean that you would have a great deal of pull and haul, and it would be difficult to work with and control, as all such boards are.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had agreed to the concurrent resolution (H. Con. Res. 779) to authorize the loan of the John C. King bust of John Quincy Adams to the National Portrait Gallery of the Smithsonian Institution, in which it requested the concurrence of the Senate.

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (H.R. 17654) to improve the operation of the legislative branch of the Federal Government, and for other purposes.

POLITICS FIRST

Mr. DOLE. Mr. President, I wish to announce to the Senate that a few minutes ago the House, by a vote of 190 to 146 with one Member voting "present," adopted the conference report on H.R. 18546, the Agricultural Act of 1970.

I wish to express my disapproval of the announced intentions by the majority leadership of the Senate to delay and possibly kill the conference report on H.R. 18546, the Agricultural Act of 1970.

For nearly 2 years, Congress has been considering this legislation. This bill passed the House in August by a vote of 212 to 171—the largest margin on a farm bill I can recall in the 10 years I have been a Member of Congress. It has the support of the administration.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from President Nixon to Representative BELCHER, dated October 8, 1970, in which the President indicates that the conference report is acceptable.

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

THE WHITE HOUSE,
Washington, October 8, 1970.

Hon. PAGE BELCHER,
House of Representatives,
Washington, D.C.

DEAR PAGE: I appreciate the fine work that you and your colleagues have done in bringing the farm bill through the Conference Committee.

As I indicated in my earlier letter to you, I considered the farm bill reported by the House Committee on Agriculture good legislation. I expressed the hope that it would be enacted promptly and with minimum change. Although the bill proposed by the Conference Committee does make a number

of changes, I believe it is the best compromise that could have been attained under the circumstances and one that this Administration can accept.

The scope and significance of this farm bill indicate that it is truly a team effort, and I congratulate you and the other conferees on the contributions you have made.

Sincerely,

RICHARD NIXON.

Mr. DOLE. The 212 House Members voting for the bill included the leaders of both parties, and of the 212, 126 were Democrats, 86 Republicans.

While the Senate has traditionally supported farm legislation, this action by the leadership now jeopardizes the whole farm program.

THE WINTER WHEAT PRODUCER NEEDS TO KNOW

Mr. President, I recognize that some segments of agriculture will not be immediately affected by the delay, but, the winter wheat producer will certainly suffer and bear the brunt of this political delay. In addition, the orderly planning and continuation of Public Law 480—the food for peace program—the National Wool Act and the special dairy programs for the armed services and veterans hospitals are all thrown into jeopardy.

Year after year, the winter wheat producer plants without knowing what the exact provisions of the program may be, or whether there will be a program at all. It is inconceivable to me that action on the already-delayed farm bill should be delayed even further. From a political standpoint, I can see no advantage to Democrats for holding up the bill. In fact, I am of the opinion that farmers recognize that Democrats control the Senate and that the Democrat leadership is certainly in a position to call up the conference report at any time after it is acted upon by the other body and when it reaches the Senate.

There has been no assurance given that the leadership intends to act even after the election recess, but in the meantime, the damage has been done, and the will of the majority of the Senate, as well as the will of the House and the administration, has been again frustrated.

Mr. CURTIS. Mr. President, will the Senator from Kansas yield?

Mr. DOLE. The Senator from Ohio has the floor.

Mr. CURTIS. Mr. President, I ask unanimous consent that the Senator from Kansas may yield to other Senators and that the Senator from Ohio (Mr. SAXBE) then continue to hold the floor at the end of that time.

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

Mr. DOLE. I yield to the Senator from Nebraska.

Mr. CURTIS. I thank the Senator from Kansas.

Mr. President, I want to commend the distinguished Senator from Kansas for speaking up on this subject.

I, to, hope that the majority leadership will change its mind and call up the conference report and do it tomorrow.

Agriculture always faces many hazards, the hazards of weather, the hazards of the marketplace, and the hazards of not knowing what the Government is going to do or whether the Government is going to act at all.

This goes far beyond mere disappointment and frustration, the fact that we do not know whether there will be any farm legislation.

Two weeks ago, the business manager of a college in my State came to see me. He said that the endowment fund of the college owned a farm in western Nebraska in the wheat country. They had the wheat sowed. The farmer had paid $2,000 down—earnest money. But he came back and surrendered his contract and waived his $2,000 because he said he could not find out whether Congress would enact a farm bill. That is not an isolated incident. While most farmers are not in the process of buying land, they are faced with the same decision of planting acreage allotments and making arrangements for next year and the like, as this gentleman found himself.

The time for planting winter wheat has gone by for several weeks now, but other plans are involved. No farm bill is ever a perfect bill. There is competition within agriculture. There is disagreement among individual farmers as to what should be done. There is also disagreement among farm organizations.

Thus, after all that process is gone through and we finally agree on a bill, the conferees agree, and the House accepts, to deny the Senate a prompt vote on it is not just a disservice to the administration or to the minority party, it is a disservice to the institution of agriculture itself and especially is it a disservice to the individual farmer.

Again I express the hope that the leadership will change its mind and before we go out of here tomorrow night that the conference report can be called up and acted upon.

I thank the distinguished Senator from Kansas for giving me this opportunity to make these comments.

Mr. DOLE. I thank the distinguished Senator from Nebraska.

Mr. HANSEN. Mr. President, will the Senator from Kansas yield?

Mr. DOLE. I yield.

Mr. HANSEN. Mr. President, I want to thank my distinguished colleague from Kansas for yielding.

I, too, rise to express my regret and dismay that, so far, the leadership has apprised us of its unwillingness to consider the conference report from the conferees on such an important piece of legislation as the farm bill.

Farming is the second greatest industry in Wyoming. The western part is characterized by grazing of livestock—both cattle and sheep. Other areas also are well known for their fine herds and flocks. The lower portions of the State are characterized by different kinds of row crops, including corn, sugar beets, and beans. A number of small grains are raised in Wyoming as well.

The choice that the farmer has today, as we all know, is not what amounts should be raised, or how to raise them, but it depends on what we in Congress do. Thus, it is with considerable dismay that I note the failure to take action on this important piece of legislation.

I am aware of the fact that we have spent much time on legislation that has taken us into the late fall, one of the exercises, seemingly futile, that engaged us for some 6 weeks being the debate on the Cooper-Church amendment. I am told now that the House conferees refused even to meet with the Senate conferees, further to discuss that amendment. So it would seem reasonable to assume that all the time we spent on that amendment, some 6 weeks, which we gave almost exclusively to debate on that issue, which some in this body felt was so important, has gone for naught; because if what I hear is true, there will be no further consideration by the House conferees on that piece of legislation.

When we talk about the farm bill, we are talking about something important not only to the second most productive industry in Wyoming, insofar as the financial return is concerned, but we are also speaking about something that involves very directly the working men and women of America.

There are any number of bills before this body—as it is equally true that there are many bills before the other body—which would make available greater amounts of money to retrain those who are out of jobs. There has been a great exodus, as the distinguished Presiding Officer, the Senator from Alabama (Mr. ALLEN), knows at this moment, from the rural areas of America—especially the South and the farmlands of America—to the cities. These people have few skills that are merchantable in the cities of America. These people from the farms and rural areas of America have contributed most importantly to the rising number of unemployed in the great cities of America. They add very decidedly to the increasingly burdensome weight of welfare.

How we can contemplate this seeming indifference, as currently expressed in our failure to consider now, timely and appropriately, the agricultural bill, amazes me.

I submit that we are making more difficult the providing of jobs in sufficient amounts and numbers to keep as many people as we possibly can in the rural areas of America. That can have only one effect: to add to the number of unemployed and to the burden of caring for people on the welfare rolls.

I hope most sincerely that before we adjourn by tomorrow evening, whenever we do adjourn, that we will have gotten around to the decision that we are going to act upon this report by the conferees on the agriculture bill. To do less would be a great disservice to America. It would be a great disservice to the people whom we are most concerned about, those who are unemployed and on welfare.

I thank the distinguished Senator for yielding.

Mr. DOLE. Mr. President, I thank the Senator. I was on the floor yesterday when the Senator from Wyoming raised the question about when the conference report would be considered. The Senator from Wyoming was informed by the Senator from West Virginia that the conference report would not be considered until after the election recess.

I share the hope of the Senator from Wyoming that perhaps before we adjourn tomorrow afternoon there will be

a change of plans and that consideration will be given to the conference report.

We are not only involved in delay of the conference report, but also the matter of delaying a wheat referendum. There has been delay in getting the conference report approved by Congress. However, in the event the report is not approved and we conduct a referendum, it could mean a loss of $870 million to the wheat farmers.

It is estimated that 80 percent of the winter wheat has already been planted. It is the same story the farmer faces every year. He never knows what the program will be or even if a program will be enacted.

There are plans that the farmer must make. It is essential that he have this information.

Mr. HANSEN. Mr. President, let me say that my State of Wyoming, of course, is a winter wheat operation, as the distinguished Senator knows. We have only half of our ground in actual wheat production in any one year. The other one-half is in summer fallow.

It is too bad that we have been denied this long the opportunity of knowing what the Government's program would be.

What the Senator from Kansas says is most appropriately applied to the State of Wyoming.

I thank the distinguished Senator from Kansas.

Mr. DOLE. Mr. President, I yield now to the Senator from Oklahoma.

Mr. BELLMON. Mr. President, I thank the distinguished Senator from Kansas for yielding. He is a fellow member of the Senate Committee on Agriculture and Forestry. I know the distinguished leadership which the junior Senator from Kansas has given in the development of farm legislation.

I join my colleagues in expressing hope that the leadership of the Senate will make it possible for the Senate to vote on the conference report before we adjourn.

Mr. President, I come from one of the principal winter-wheat-producing States. We are one of the Southern States. We are still in the process of planting wheat. Much of it has been planted. However, still many farmers do not know what the production might be. However, they can still modify their plans to fit the bill if it is enacted into law.

Mr. President, for the past 5 months winter wheat farmers throughout the midwest have been held in a state of suspended animation—awaiting action on the new farm program. For this large number of food producers, the information as to the number of acres of winter wheat which they are allowed to plant and the number of acres which they must set aside is a matter of great importance. It is information which they should have had no later than July 1, this year.

It may not be fully understood by some Members of the Senate that the crop year for winter wheat growers begins in June—almost a full year before the harvest. It is then that they must begin tillage operations leading up to planting which begins in September.

Mr. President, winter wheat growers deserved to know the laws under which they would be planting their crop for harvest in 1971 before they began preparation for planting in June, 1970. They needed this information so they would know how to plan their tillage and fertilizer operations and for the efficient management of their farms.

Unfortunately, action on the farm bill has been delayed and winter wheat farmers have had to proceed without knowing the rules in planting of their 1971 crop. However, action by both the House and Senate has now been taken, and the House has approved the conference committee report. It is unconscionable for the Senate to consider a 30-day recess without acting on the conference committee report, and in this way giving winter wheat growers the information on the farm program which they should have had 5 months ago.

Mr. President, in the new farm program, there was language in the Senate bill which would prevent dilemma for winter wheat growers in 1974, when the new farm program expires. Under those terms, the Secretary of Agriculture would have authority to extend the program for an additional year, in case the Congress again fails to take timely action.

Mr. President, America owes a tremendous debt to agriculture, and especially the winter wheat growers. These food producers have provided American consumers and our friends abroad with abundant food through war and peace. By constantly increasing efficiency, they have served to help fight inflation and to hold down the cost of living to the point that American workers are able to feed their families more economically than any other workers on earth. The Congress cannot, in good conscience, refuse to act upon this bill before it adjourns and subject winter wheat growers to further delay and to continued uncertainty. America's food producers deserve fairer treatment from the Senate.

Mr. President, I thank my friend, the Senator from Kansas for yielding. I congratulate him for calling to the attention of the Senate the importance and timeliness of this action.

I join in expressing the hope that the leadership of the Senate will make it possible for us to vote on this important measure before we adjourn.

Mr. DOLE. Mr. President, I thank the Senator from Oklahoma. He is a member of the Agriculture and Forestry Committee and perhaps knows more about winter wheat production than all of us combined as he is a producer of winter wheat in the great State of Oklahoma.

I realize that acting on the conference report at this time might be politically sensitive to some Members of the Senate who are seeking reelection. However, it appears to me that the first concern should be the American farmer and particularly, in this instance, those in the area of winter wheat production who, as has been indicated by the Senator from Oklahoma, should have had this information 4 or 5 months ago.

There is still no information available. We do not know what the final program will be. The Senate could reject the conference report. However, I hope not. There is no reason to further delay action on the conference report which passed the other body earlier today by a vote of 190 to 146.

I would hope that the Senate in its best tradition would act tomorrow so that the farmers would know even at this late date how they might plan for the future.

I yield now to the Senator from Arizona.

Mr. FANNIN. Mr. President, I thank the Senator from Kansas. I commend him and the other Senators who have entered into this colloquy on their comments regarding the holding up of the conference report.

Many States will suffer, but the Western States will probably suffer tremendously because of this delay. Their planting, their financing, and all of their planning has been left in jeopardy.

They have been patiently awaiting action by Congress. This disruption can be disastrous, for not only is the farmer at the mercy of the weather, but we are adding further to his troubles.

The consumer will pay the penalty, too, as a result of this irresponsible action if it continues.

We are asking the farmer to employ a greater number of people. But we are placing barriers in the paths of the farmers.

By the action being taken, we are exporting jobs to foreign countries that will be taking over the production of crops we have planned.

I trust that the Senate will act on the conference report before we adjourn on tomorrow.

Mr. DOLE. Mr. President, I thank the Senator from Arizona, and share the hope that the Senate will act tomorrow on the conference report. There is basic agreement as the conferees did resolve the major differences in the House and Senate versions.

Mr. President, I ask unanimous consent to have printed in the RECORD a brief summary of the conference report as set forth in the report of the conferees.

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

A BRIEF SUMMARY

There follows a brief summary of the principal provisions of the conference substitute:

TITLE I—PAYMENT LIMITATION

1. Establishes an annual ceiling of $55,000 per crop on payments to producers of upland cotton, wheat, and feed grains.

2. The limitation imposed considers all payments made for price support, set-aside, diversion, and public access, as well as marketing certificates.

3. The Secretary is authorized to adjust set-aside acreage and is directed to issue regulations necessary to insure fair and reasonable application of this title.

TITLE II—DAIRY

1. Amends and extends the authority for the Dairymen's Class I Base Plan in Federal milk market order areas and provides that any area covered by the program during the next three years could continue to have it in effect up to December 31, 1976.

2. Suspends the operation of the mandatory butterfat price support program for farm-separated cream and permits the Secretary to set lower support prices on butter.

3. Extends the Secretary's authority to donate dairy products owned by CCC to the Armed Services and Veterans Hospitals.

4. Provides authority to make indemnity payments to dairy farmers and dairy processors who, through no fault of their own, have their milk or dairy products contaminated by and condemned because of the presence of pesticides and residues.

TITLE III—WOOL

1. Extends the National Wool Act of 1954, as amended, through December 31, 1973.

2. Continues the present incentive price of 72 cents per pound for shorn wool and 80.2 cents per pound for mohair for each year of the extension.

TITLE IV—WHEAT

1. Suspends marketing quotas and acreage allotments for 1971, 1972, and 1973.

2. Provides domestic marketing certificates for farmers participating in the set-aside program in an amount equal to U.S. food consumption (not less than 535 million bushels annually).

3. Sets the face value of these domestic certificates at the difference between the wheat parity price (currently $2.85 per bushel) and the average price received by farmers during the first five months of the wheat marketing year (which starts on July 1).

4. Provides for a "preliminary" payment to participating farmers as soon as possible after July 1. This payment would be the amount estimated by the Secretary to be 75 percent of the value of the domestic certificate. The balance of the payment (if any) would be paid after December 1. If the Secretary's estimate were too high, no refunds by farmers would be required.

5. Continues the cost of certificates to wheat processors at 75 cents per bushel.

6. Authorizes the Secretary to set non-recourse loans to participating farmers from $1.25 per bushel to 100 percent of the parity price for wheat.

7. Establishes a set-aside program under which wheat farmers, in order to be eligible for loans, certificates, and payments under the program, must set aside or divert from the production of wheat and other crops an acreage determined by the Secretary. The 1971 set-aside would be 13.3 million acres. The 1972 and 1973 set-aside could not exceed 15 million acres.

8. Authorizes additional set-aside and public recreational access payments.

TITLE V—FEED GRAINS

1. Establishes a voluntary feed grain (i.e., corn, grain sorghum, and barley) program for 1971, 1972, and 1973.

2. Provides that price support payments to participating farmers on one-half of their feed grain base will be the difference between the higher of (a) $1.35 per bushel or (b) 70 percent of the parity price (for corn) and the average market price for the first five months of the marketing year (which starts on October 1 on corn and grain sorghum and July 1 on barley). In no event, however, would these payments be less than 32 cents per bushel for corn (with corresponding rates on grain sorghum and barley).

3. Authorizes the Secretary to set the non-recourse loan level for corn from $1.00 per bushel to 90 percent of parity.

4. Authorizes additional set-aside and public recreational access payments.

5. Establishes a set-aside program under which participating farmers would be required to set aside or divert feed grain or other cropland in order to become eligible for feed grain loans and payments.

6. Provides for a preliminary payment of 32 cents per bushel on corn to participating farmers as soon as possible after July 1. If the difference between the average market price and $1.35 were more than 32 cents during the first five months of the marketing year, an additional payment would be made. In no event would refunds by farmers be required.

TITLE VI—COTTON

1. Provides payments on the estimated production from 11.5 million acres for the 1971 crop, In 1972 and 1973 the base acreage allotment would be set by the Secretary, and total payments would be adjusted accordingly.

2. Provides participating cotton farmers with loans and payments. The loan would be 90 percent of the average world price for two previous years. The payment would be the difference between the higher of 65 percent of parity or 35 cents and the average market price for the first five months following the beginning of the marketing year (which begins August 1), but in no event less than 15 cents per pound. No refunds by farmers would be required. Small farms would be eligible for 30 percent bonus payments.

3. Authorizes payments to participating farmers on acreage made available to the public for recreational purposes or on additional voluntary set-aside acreage.

4. Provides for a set-aside of cropland (not to exceed 28 percent of the cotton allotment) as a condition of eligibility for benefits under the program.

5. Establishes a voluntary program under which marketing quotas, and penalties would be suspended for three years.

6. Requires participating farmers to plant cotton to receive payments, with two exceptions: (a) if unable to do so because of natural disaster or other condition beyond producers' control; (b) if not less than 90 percent of allotment is planted.

7. Provides for cotton research and promotion program.

8. Allows the sale of cotton allotments within a State, permits the lease of allotments within a State, and provides for the release and reapportionment of allotments during the 3-year life of this legislation.

9. Authorizes anniversary-type loan program under which the Secretary shall, after being presented with warehouse receipts reflecting accured storage charges of not more than 60 days, make non-recourse loans for a term of 10 months from the first day of the month the loan is made.

TITLE VII—PUBLIC LAW 480

1. Extends the provisions of P.L. 480 (the "Food for Peace" program) which authorizes donations and long-term dollar credit and foreign currency sales of U.S. farm commodities to underdeveloped nations.

TITLE VIII—GENERAL AND MISCELLANEOUS

1. Continues the "Cropland Conversion" and "Greenspan" (long-term land retirement programs) at an authorized appropriation level of $10 million annually for each program.

2. Extends permanently the exemption from marketing quotas for boiled peanuts.

3. Permits farmers or other land owners who do not desire to hold an allotment on any crop under a government program to voluntarily relinquish it. (This would be a permanent provision.)

4. Establishes an indemnity program to reimburse beekeepers for losses caused by pesticide residues.

5. Permit producers to plant, harvest, and bale hay grown on wheat, feed grain, and cotton set-aside or diverted acres and store such hay for future emergency periods declared by the Secretary. The Secretary could also make loans for baled hay storage facilities.

6. Amends the Consolidated Farmers Home Administration Act of 1961 to provide that funds appropriated for section 306 (association loans and grants) and for direct real estate loans to farmers and ranchers shall remain available until expended. Also provides that unused authorizations for appropriations shall carry over from year to year.

TITLE IX—RURAL DEVELOPMENT

1. Commits Congress to a sound rural-urban balance and provides for various reports on planning assistance, technical assistance, government services and utilities, and financial assistance. Also requires a Federal policy that new offices and facilities be located, insofar as practicable, in communities of lower population density.

Mr. DOLE. Mr. President, I yield now to the Senator from Colorado.

Mr. ALLOTT. Mr. President, I thank the Senator from Kansas.

Mr. President, the Senator from Kansas has rendered a very valuable service to the Senate in calling this matter to the attention of the Senate at this time.

Mr. President, I come from a farming country in western Colorado. This whole area, as everyone knows, is one of the great wheat producing areas in the country.

I do not know how many times in the last few weeks my phone has rung.

Some farmers I have known a long time have said, "Gordon, what in the world"—although they usually use stronger language than that—"shall I do with respect to my wheat plantings?"

Here we are at October 13. The wheat in the Great Plains area, and the Senator from Kansas and the Senator from Oklahoma are certainly included in that area, should have been planted at least in September, a month ago. Some of it was planted as late as October with the farmer just taking a chance. But for the best growing conditions in our area it should have been planted by September. Now, here we place these farmers in this situation.

Having gone through the dust bowl of the 1930's and the 1950's with these people, I have great sympathy and understanding for them because, in going through those two times, I think the farmers of this area exhibited as great a personal and collective courage as any group has even exerted in this country. It seems to me the farmers have increased the productiveness of their particular vocation beyond any other facet or phase of American life.

As was just said a few moments ago, as a result the American citizen today is devoting less of his earned income to food than he ever has in his life before, and yet year after year as we come to consider the agriculture program we meet them not on a long-term basis, although there is an attempt to do that in this bill, but rather on a short-term basis; and year after year when we have before us the consideration of the farm bill the phone starts ringing and people start asking, "Senator, what in the world are we going to do? More important, what is Congress going to do about the farm bill?"

Now, we have a farm bill. I have not seen the conference report as of this moment. I have not had time, having been in other meetings. But regardless of whether one decides to support the conference report, and at this moment I am inclined to do it, if it contains what I think it does, it is about time we quit using the agriculture people of this country as one of the whipping boys of our economy and also trading off their inter-

ests, particularly against the interests of the so-called consumer, because we are all consumers.

In the meantime, Congress has taken other steps which increase constantly the costs to the farmers. The cost of labor has gone up dramatically in the past 10 to 15 years; the cost of machinery has gone almost out of sight; it is impossible for anyone to even commence a farm operation now, at least, in our part of the country. With an investment in machinery of $50,000, it takes away the concept of the family farm, the farmer starting out in business himself which we have talked about for many years.

So now, the Agriculture committees of the respective Houses have met and reached an agreement upon a farm bill. It seems to me that the least we can do is to bring the conference report up for a vote now. If we wait until we return from this very unfortunate recess that we are having—a recess which, in my opinion, could have been avoided and should have been avoided—we are not going to decide this conference report, in my opinion, on November 16, but it is going to be a week or 2 weeks, 4 weeks, 5 weeks after that before it is finally decided.

So, then we foreclose any action by the farmers who might plant still a little winter wheat in a few places, and we leave them sitting out on the end of a limb which Congress is trying to saw off as fast as it can.

I think the Senator from Kansas has done an eminent job in calling this matter to the attention of the Senate today. I wanted to express my opinion about this matter because to me there seems to be a situation in this country where the farmer and the agriculture people of this country are the fall guys for all of our problems. They are not that. They have been the most productive and they have increased their production more than any group in this country while the expenses of that production have grown as dramatically as they have grown in any area of our economy.

For that reason I would hope the leadership of the Senate would see fit to call up this conference report either this afternoon or before the Senate adjourns tomorrow.

I thank my friend for yielding.

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

Mr. DOLE. Mr. President, the Senator from Iowa was a conferee. I would observe for Senators now in the Chamber that another conferee, the distinguished Senator from Florida, is present also. I am pleased they are both present because they performed monumental work in connection with the conference report and in bringing about a solution to many of the problems faced in conference.

I yield to the Senator from Iowa.

Mr. MILLER. Mr. President, I thank my colleague from Kansas for yielding. While most of those who have been speaking on this matter represent substantial wheat interests, there are other farmers in the Nation besides wheat farmers who have a great amount of concern about the conference report on the agriculture bill. My own feed grain people in Iowa and throughout the country, the dairy people, the woolgrowers, the cottongrowers all have a tremendous stake in this legislation.

As one of the 14 conferees—seven from the Senate and seven from the House—I spent the better part of 2 weeks every morning and every afternoon in very long, difficult, and sometimes tortuous sessions in an effort to resolve the differences between the House-passed bill and the Senate amendments. There were times when it appeared we might not get a bill, but finally as a result of the great leadership on the part of the Senator from Florida (Mr. HOLLAND) we did come to grips with some of the most difficult features of the bill and managed to get passed what I consider a reasonably sound farm bill.

The activities in the conference committee were completely and utterly bipartisan. I think the vote by which the House this afternoon adopted the conference report, with a vote of 190 to 146, demonstrates the bipartisanship displayed in the conference.

I would guess that overall in the Senate Chamber the attitudes toward the farm bill would be bipartisan. This has usually been the way it has been.

But I am advised that two of the Senators from the other side of the aisle who are involved in reelection campaigns have asked that this bill be held up. Now, if it is to be held up until tomorrow so that they might return to vote on the bill, that is one thing; but if the request to hold up the bill is to prevent the Senate from acting on this report before the latter part of November, that is another thing. No one knows the purpose, but we will know by tomorrow.

I deeply regret that the Senate leadership, the Democratic leadership which is in control of the Senate, has not seen fit yet to accept the conference report from the House.

I hope that the Democratic leadership will exercise its responsibility and direct the Senate Parliamentarian to notify the House that the Senate is ready to receive the report, along with the accompanying documents. I hope this will be done at once, and in any event not later than tomorrow morning, so the Senate may act on this most important conference report. As I said, this has been bipartisan legislation all the way through, on the House side, in the Senate Agriculture and Forestry Committee, in the conference committee, and in the House adoption of the conference report this afternoon. But the delay is very much partisan. If the Democratic leadership does not permit the Senate to vote on the report tomorrow, it will be nothing but partisan politicking at the expense of the Nation's farmers, and the Nation's farmers will know it, and I for one intend to see that they know it.

I think the delay so far is most unfortunate. It has given foundation to all kinds of rumors. It has put a great many farmers in a quandary. The farm organizations do not know what to tell their members. The Agriculture Department officials do not know what kind of orders to prepare. There are some unusual features in the program this time, such as the set-aside. It is going to take time to work that out in publications and to get them out to the various States and local communities so that the farmers and the USDA local officials will know exactly what these new programs mean.

To hold all of them up until the latter part of November would be, I think, most selfish and shortsighted. It cannot do anybody any good at all. It can only do harm.

As I said, with the exception of the inaction which I am sure has resulted from certain understandings by the leadership with the other body, we ought to have acted on this measure this afternoon. The House has taken prompt action on it. There is no reason why the Senate cannot. But if, because of certain absent Senators who will return tomorrow, it will be held up so that they can vote tomorrow, that is fine. The Senator from Iowa would have no objection to that. The only problem is, Why have not we been told this? Usually, when we are anxious to pass some legislation, we are told that perhaps two or three of our colleagues are absent, but they will be back tomorrow; will we please hold up action so that they can be recorded on a very important measure? As a matter of getting on with each other, usually most of us agree, "All right, we will delay until tomorrow." But we have not had that situation at all. All we have is silence, along with some rumors and reports.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. MILLER. I yield.

Mr. BYRD of West Virginia. The distinguished Senator has not just gotten silence. The able majority leader, on the floor this morning, indicated that he personally would like to see the conference report brought up. He stated that there are some Senators who have very important and significant positions in connection with the conference report, however, who ought to be here. He indicated that he hoped we could clear up the calendar as much as possible, and he also indicated that he would do everything he could possibly do to dispose of matters on the calendar and to dispose of as many conference reports as he could on tomorrow before the Senate adjourned until November 16.

So, the Senator from Iowa has not just gotten silence. The majority leader expressed his hopes earlier today. I am sure he did so in good faith. He will read the record of today, and I am confident that, if it is within his power to move the conference reports forward, and if Senators who hold important positions in connection with the Agriculture conference report are here, the majority leader will do just what he said—he will do everything he can to clear the calendar of all conference reports. So let not the record show that the Senator has just met with silence. The majority leader has spoken, and he means to keep his word.

Mr. MILLER. The Senator from Iowa will stand corrected on the "silence" matter, although I must say that the distinguished majority leader might just as well have remained silent as far as the meaningfulness of what he had to say with respect to acting on this measure tomorrow is concerned. The Senator from West Virginia well knows that day

after day in this body we have an understanding right down here at the well of the Senate Chamber between the leadership that we are going to take action tomorrow or next day on certain very important measures. We do not have that understanding at all. The Republican leadership is ready, willing, and able to work on this measure, but all we have received is an expression of hope from the majority leader.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. MILLER. I have tried to make clear that we have on record hold orders relating to two of our Members who are standing for reelection, and do not relate to any other Senator. I tried to make that distinction so that it would be made clear that I am not talking about others who have a vital leadership role in this legislation. But, if my eyes did not deceive me, those other Members of the Senate from that side of the aisle who have a leadership position with respect to this legislation were very much present this afternoon. My understanding is that they will be present tomorrow. I think it is just a matter of the leadership not expressing a hope, but taking decisive action to enable the Senate to act on this measure tomorrow.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. MILLER. I yield.

Mr. BYRD of West Virginia. The Senator will recall that the able majority leader spoke this morning, prior to the passage by the House of the conference report this afternoon, so when the majority leader spoke, he was not aware, of course, of developments which have since transpired in the House, and I assume all of that will be taken into consideration.

I wonder if the Senator would care to venture a guess as to whether or not we might be able to reach a unanimous-consent agreement in connection with not only the conference report on the farm bill but also the occupational health and safety bill, so the Senate can vote on both tomorrow.

Mr. MILLER. May I say the Senator from Iowa cannot speak for this side of the aisle with respect to a time limitation. As I understand it, there are serious reservations on both sides of the aisle with respect to some features of the health and safety measure. I would hope that the fact that there are serious reservations, which could cause some serious debates in connection with amendments, that that would not be a cause for any delay on the conference report, which I would guess, in view of the House action this afternoon, would be accepted by the Senate. I would hope we would not hold up action on the conference report because of some legislation that is pending. I would guess there would be no difficulty in obtaining a time limitation for discussing the conference report, but here again the Senator from Iowa is not in a position to do so, although he would certainly join with the Senator from West Virginia in a motion to have a time limitation on the conference report.

Mr. BYRD of West Virginia. Mr. President——

Mr. DOLE. Mr. President, I think the Senator from Kansas has the floor.

Mr. BYRD of West Virginia. Mr. President, will the Senator from Kansas yield, without losing his right to the floor?

Mr. DOLE. I yield to the Senator from West Virginia.

Mr. BYRD of West Virginia. I merely thought it might be a suggestion worthy of consideration overnight and that it might be possible to work out some agreement whereby action could be completed on both measures at a reasonable hour tomorrow.

Mr. DOLE. Mr. President, let me say that there are some 19 amendments to the Occupational Health and Safety Act. The action on the conference report would be a rejection or approval of the conference report, an up or down vote, without going through the amendment process. The farm bill is of great importance to my State and to all the wheat and feed grain producing States. I hope there is an interest in the leadership in expediting it, although the Senator from West Virginia indicated yesterday the conference report would not be considered until after the recess.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. DOLE. I yield.

Mr. BYRD of West Virginia. The Senator from West Virginia is not attempting in any way to negate anything the Senator from West Virginia has said. What the Senator from West Virginia said yesterday was prior to the action this afternoon by the House on the conference report, just as in the case of what the majority leader said this morning.

Mr. DOLE. The Senator from Kansas would not want to hold the farm bill hostage in connection with the safety bill, because it is of vital importance.

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

Mr. DOLE. I yield to the Senator who is perhaps more responsible than anyone else for having a conference report and for having the bill which passed the House today by a vote of 190 to 146.

I am happy to yield to the distinguished senior Senator from Florida.

Mr. HOLLAND. Mr. President, I thank the Senator.

I was one of those, with the Senator from Iowa and others from both sides of the aisle, who worked very hard to have a conference report, and we all played our parts in getting that report. I probably have a greater interest in having speedy action on it that anyone else, because, if Senators will look at the back page of the Calendar of business for today, they will find that the agricultural appropriations bill has been ready for conference since July 9, which was the date that the Senate passed that bill, and we cannot take up that conference. As a matter of fact conferees have not been appointed by the House of Representatives, and probably will not be appointed until this farm bill becomes law. Since I have some duties in connection with that particular conference, I am most eager to have this conference on the farm bill we are talking about gotten out of the way with the greatest possible speed.

However, I have been advised by the majority leader that there is strong objection on the part of perhaps two Senators, and I know perfectly well what the Senate rules are. I know perfectly well that determined opposition on the part of a couple of Senators can defeat all of our well-laid plans—well-laid at least as far as I am concerned—to wind up this preelection session tomorrow night.

I am sure that the majority leader would be very happy if there was to be no determined opposition, and I am sure he is working to that end. I just want Senators to realize that there are some of us who must be patient about this matter. I do not think anyone is more anxious for a successful conclusion of this farm conference report than I. I have been negotiating with various Senators and with the majority leader and others, and nobody can question the fact that the Senator from Florida does want to get this conference out of the way, because, by simply looking at the calendar, he could see that we have been having to wait since July 9 in order to take up the conference on the agriculture appropriation bill, waiting patiently on the passage of the farm bill.

So if Senators will be patient, and if we all work together, I hope we may get this out of the way before we go home for the election. If that is not possible, the Senator from Florida will seek to bring it up the first day we come back.

I am not going to bring it up without the approval of the majority leader, when the majority leader tells me that, under the present analysis of the situation, it would be a futile thing, and would simply tie us up all day tomorrow and get us away from here not only without the passage of the farm conference report, but without the passage of other matters which could possibly be passed tomorrow.

So I ask the Senator from Kansas to possess his soul with patience. I am endeavoring to do just that, and the Senator from Iowa, who played a very real part in getting the conference report, I am sure, knows what the situation is. We will all just have to remember the rules of the Senate and, having in mind the very small amount of time remaining between now and adjournment tomorrow night, operate accordingly.

Nothing could be clearer than the fact that this is not a partisan matter, because the Senator from Iowa, the Senator from Florida, the Senator from Vermont, and the Senator from Mississippi all worked together very hard to get this conference report out, and neither party can claim any partisan credit, nor does so. We are all anxious to get this perfectly nonpartisan matter, of great importance to hundreds of thousands of farmers, disposed of. No one is more anxious than I, and I hope my friend from Kansas will also be patient, because we are up against a situation that none of us can change unless, by persuasion, we can be sure that there will not be stubborn resistance to the conference report.

I thank the Senator for yielding.

Mr. DOLE. Mr. President, I thank the Senator from Florida. I have just been informed that a story attributed to the

distinguished chairman of our committee, the senior Senator from Louisiana, has announced that the conference report will not come up until after the adjournment, and he is quoted as saying that has been definitely decided.

If that is the case, the leadership will perhaps not make an effort to resolve this matter before the adjournment tomorrow.

But it is not a question of the patience of the Senator from Kansas, nor that of the Senator from Florida, nor any other Senator. I again commend the distinguished Senator from Florida for his efforts in resolving some of the difficult problems faced by the conferees in a period of 1 or 2 weeks. The question is the patience of the American farmer, who, year after year, is asked to wait on a Congress, whether it is a Democratic Congress, which it has been for many years, or perhaps a Republican Congress, or on a Democratic or a Republican President.

It is difficult, as the Senator from Colorado indicated a few moments ago, particularly for the winter wheat producer, to understand why, year after year, we cannot come to grips, in Congress, with a farm program, and complete action upon it before planting time.

I understand those who may be opposed to bringing it up before election are in a tight battle for reelection. I frankly do not understand how delaying action on the farm bill will inure to their benefit. Most farmers understand that the Senate is controlled by the Democrat Party. Most farmers understand that there are some who would rather wait to vote until after the election. But by and large, the American farmer supports the farm program, and supports this bipartisan bill. Perhaps not all the farm leaders favor the conference report, but the farmer by and large supports it.

Most farmers are realistic. Most farmers understand that we may be in an era of the last farm program in American history, because Congress is more and more dominated by urban Members, particularly in the other body, who have less and less interest in agriculture.

The question of payment limitations has been a very difficult one, and when this bill expires, if it should be enacted, in 3 years, then there will be a difficult question whether there will be another farm program, where there are payment incentives to producers of cotton, wheat, feed grains, and other commodities.

But the question now concerns the best interests of farmers. It is not a question of the patience of the Senator from Kansas, the Senator from Iowa, the Senator from Florida, or anyone else who has spoken. It is a question of the best interests of the American farmer, and I find nothing, political or otherwise, that would indicate it is in the best interests of the farmer to walk away tomorrow and wait 30 days or more, before acting on the conference report.

Mr. President, I should like to pose a parliamentary inquiry at this point.

The ACTING PRESIDENT pro tempore (Mr. ALLEN). The Senator will state his parliamentary inquiry.

Mr. DOLE. Has the conference report, acted upon by the other body, reached the Senate floor?

The ACTING PRESIDENT pro tempore. It has not.

Mr. DOLE. Can the Parliamentarian advise the junior Senator from Kansas whether it is in the process of coming to the Senate floor?

The ACTING PRESIDENT pro tempore. The Parliamentarian does not give Senators advice. It comes from the Chair.

Mr. DOLE. A further parliamentary inquiry. I am advised that the papers have left the other body.

The ACTING PRESIDENT pro tempore. The Chair is not advised of that fact.

Mr. DOLE. Assuming that that is correct, they would come then to the Senate? Is that correct? Or could they be detoured between here and the House?

The ACTING PRESIDENT pro tempore. When the messenger came to the door, the Chair would recognize him.

Mr. DOLE. The main Chamber door?

The ACTING PRESIDENT pro tempore. If no Senator had the floor and a messenger came to the door, and at a convenient point in the business of the Senate, as the Chair understands, he would be recognized.

Mr. DOLE. I yield to the Senator from Iowa.

Mr. MILLER. Mr. President, I should like to make a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. MILLER. If the conference report, as I am advised, has left the House by messenger and the messenger has arrived immediately outside the main Chamber door, do I correctly understand that at that point the Senate has not yet received the conference report?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. MILLER. Mr. President, a further parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. MILLER. In other words, it is not until the door opens and the messenger appears in the door when it is opened that the Chair recognizes that the conference has come over from the house?

The ACTING PRESIDENT pro tempore. The Senator from Iowa has seen on many occasions the messenger standing inside the door, and the Chair did not recognize him until he was able to do so, at a convenient lull in the proceedings.

Mr. MILLER. Did the Chair wish to elaborate on the ruling?

The ACTING PRESIDENT pro tempore. No.

Mr. MILLER. Mr. President, a further parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senate will state it.

Mr. MILLER. What is necessary to get the Chair to recognize the messenger as he is standing outside the door, so that he will come in and the Senate will receive the conference report?

The ACTING PRESIDENT pro tempore. The Chair does not believe that that is a proper parliamentary inquiry. The Chair will follow the rules of the Senate; and if the Chair saw fit to recognize someone, he would certainly have had to gain admittance to the Senate Chamber, and there would have had to be a lull in the proceedings so that he could be recognized.

Mr. MILLER. Mr. President, I yield to the Senator from Kansas.

Mr. BYRD of West Virginia. Mr. President——

Mr. DOLE. Mr. President, I have the floor.

The ACTING PRESIDENT pro tempore. Does the Senator from Kansas yield to the Senator from West Virginia?

Mr. DOLE. If I may inquire in advance, without losing my right to the floor, for what purpose does the Senator wish me to yield? Not for the purpose of adjourning the Senate.

The ACTING PRESIDENT pro tempore. Will the Senator from West Virginia state for what purpose he desires the floor?

Mr. BYRD of West Virginia. Not for the purpose of asking a question.

Mr. DOLE. Under those circumstances, I will discuss further how important this proposal is to the farmers of America. I respectfully decline to yield to the Senator from West Virginia at this time, because I have an impression he may attempt to adjourn the Senate.

I yield to the Senator from Oklahoma to discuss the wheat section of the bill, because winter wheat producers are particularly being damaged by further delay. Inasmuch as the junior Senator from Oklahoma is a bona fide wheat producer, it will be helpful to the Members of the Senate to know what the conference report means to the winter wheat producer.

I yield to the Senator from Oklahoma.

Mr. BYRD of West Virginia. Mr. President, I demand regular order.

The ACTING PRESIDENT pro tempore. The regular order has been demanded.

Mr. DOMINICK. Mr. President, who has the floor?

Mr. SAXBE. Mr. President, I believe I have the floor.

The ACTING PRESIDENT pro tempore. The Senator from Ohio has the floor.

OCCUPATIONAL SAFETY AND HEALTH ACT

Mr. SAXBE. Mr. President, I should like to return to the business that we were discussing, which concerns the question of whether we should proceed to hear the health and safety bill at this time.

AMENDMENTS NOS. 1053 THROUGH 1060

Mr. DOMINICK. Mr. President, will the Senator yield to me?

Mr. SAXBE. I yield.

Mr. DOMINICK. Mr. President, I should like to have the Senator yield, without losing his right to the floor, for the purpose of a unanimous-consent request.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Mr. DOMINICK. Mr. President, I have before me some eight amendments, together with a printed statement and a brief for each of those eight amendments,

with respect to the bill which is now pending before the Senate, or which has been moved to be pending before the Senate. I ask unanimous consent that the amendments be printed together with the explanatory text on each one of them.

The ACTING PRESIDENT pro tempore. The amendments will be received and printed and will lie on the table.

The explanations, presented by Mr. DOMINICK, are as follows:

AMENDMENT NO. 1053

Amendment No. 1053 would establish a separate, independent "Occupational Safety and Health Board" with responsibility for developing occupational safety and health standards. The Board would be a top-echelon body, composed of five members appointed by the President who would designate the Chairman from among the Board members. A background in the field of occupational safety and health would be required for all of the Board members.

The responsibility for developing occupational safety and health standards involves increasingly technical and complex problems requiring professional expertise and competence. An independent Board, whose members would be competent professional experts is, I believe, essential to the effective operation of an occupational safety and health program of the scope contemplated in the bill we are considering.

The separate Board, through its procedures will provide a wide range of judgment required for developing the diverse and varying standards to be applied for the first time on a national scale and on a multi-industry basis.

The job safety and health field is not only wide-ranging, but it involves several Departments of the Federal Government, two of these—HEW and Labor—extensively.

Health has always been centered in HEW: safety in the Labor Department.

I believe it is highly important to make sure no gaps exist between the safety and health areas of our Federal program; it is important to assure that a reasonably uniform level of effort is achieved with both, and important to keep policy consistent between the two. By joining the safety and health features of the program into a cohesive Federal focus, the Board will serve a useful and essential purpose.

Setting up a separate Board with standards-setting powers, with the Labor Department exercising administrative functions also provides for a balanced governmental structure.

The establishment of this Board, Mr. Chairman, is the keystone of this legislation, not only because it provides a nexus between the responsibilities of the Labor Department and HEW, but because it is the principal means of breaking up the undesirable monopoly of functions which some of the members of this body are seeking to create in the Labor Department. The Board would distribute functions, Mr. Chairman, by placing the standards-setting function in the new Board and the function of administering the Act in the Secretary of Labor.

Mr. President, the fact that this legislation is concerned with working men and women is not a valid reason for placing the standard-setting function under the Labor Department. The National Mediation Board, the Federal Mediation and Conciliation Service, and the National Labor Relations Board, for example, are completely concerned with matters pertaining to labor. Nevertheless, these agencies are entirely independent of the Labor Department. So. Mr. President, there is a great deal of precedent for this independent Board which my amendment would establish.

One more point, the members of the Board will not be appointed because they are Democrats or Republicans, pro-management or pro-labor. That sort of approach has unfortunately been too often followed in making appointments to Federal positions. The problems we seek to resolve in this legislation should be cast in political terms; they do not involve issues where there are deep policy differences. Quite the contrary, the problems are almost entirely technological and technical. The appointment of an independent Board whose members must be highly competent professionals in a field where the subject matter is wholly objective and lends itself to genuinely scientific and technical analysis, judgment, and decision, would create the utmost confidence in every segment of the American work community.

AMENDMENT NO. 1054

Amendment No. 1054 deletes the requirement in section 6(b)(5) that the Secretary will establish occupational safety and health standards which most adequately and feasibly assure to the extent possible that *no* employee will suffer *any* impairment of health or functional capacity, or diminished life expectancy even if the employee has regular exposure to the hazard dealt with by the standard for the period of his working life.

This requirement is inherently confusing and unrealistic. It could be read to require the Secretary to ban all occupations in which there remains *some* risk of injury, impaired health, or life expectancy. In the case of all occupations, it will be impossible to eliminate all risks to safety and health. Thus, the present criteria could, if literally applied, close every business in this nation. In addition, in many cases, the standard which might most "adequately" and "feasibly" assure the elimination of the danger would be the prohibition of the occupation itself.

If the provision is intended as no more than an admonition to the Secretary to do his duty, it seems unnecessary and could, if deemed advisable be included in the legislative history.

For similar reasons, the amendment deletes the words, "the highest degree of" on lines 12 and 13.

AMENDMENT NO. 1055

Reasons for Amendment No. 1055 to Section 8 to Eliminate Excessively Burdensome Employee Notification Requirements Relating to Exposure to Toxic or Harmful Agents:

Section 8(c)(3) now provides that each employer promptly notify any employee who has been or is being exposed to toxic materials or harmful agents in concentration or at levels in excess of those prescribed by an applicable standard. It further requires that the employer inform any such employee of the corrective action being taken. These requirements would apply regardless of the length of the exposure, the degree to which the concentration exceeded applicable standards, or how long ago the exposure occurred.

The proposed amendment would eliminate these employee notification requirements. They could place an impossible burden on the employer, since they would apparently apply to all those employees who had some exposure to excessive concentrations of these harmful agents in the indefinite past. Moreover, in the case of employees with limited exposure to these substances, there may be no countervailing employee interest justifying the imposition of the requirements.

Furthermore, this provision indirectly requires excessive employer monitoring of his entire operation to determine toxicity, and further, imposes upon him an unrealistic notice requirement. The Act anticipates enforcement by the Secretary of Labor. Let us rely upon that reasoned approach and not take the unrealistic step of trying to require an employer to be his own policeman, judge and jury.

AMENDMENT NO. 1056

Reason for Amendment to Subsection 8(e) Relating to Employer-Employee "Walk-Around":

This amendment deletes the requirement that the Secretary must give the employer and authorized employee representatives an opportunity to accompany him while conducting inspections. Where there is no authorized employee representative, the inspector must consult with a reasonable number of employees.

The proposed amendment would substitute the requirement that the inspector, in conducting inspections, must meet and consult with a reasonable number of affected employees and any authorized employee representatives. The consultation should be at such times as will not unduly interfere with the employees' work.

The amendment is intended to restore proper balance to the inspection procedure. In connection with inspections, the Secretary should have the full benefit of the views of affected employees. The amendment, through its consultation requirement, assures that these views will be available to the Secretary. At the same time, the bill's procedures should provide for minimum disruptions to the inspector in the performance of his work and no undue interference with the conduct of the employer's business.

The mandatory "walk-around" provisions now in the bill could, under some circumstances, lead to "collective bargaining" sessions during the course of the inspection and could therefore interfere both with the inspection and the employer's operations. Whether employers or employee representatives accompany the inspector should be left to the inspector, as is provided in the substitute amendment.

AMENDMENT NO. 1057

Reasons for Amendment No. 1057 to Eliminate Employee Right to Obtain a Hearing on the Reasonableness of the Abatement Period Fixed in the Citation.

The provision for a hearing demanded by an employee on the reasonableness of the abatement period for a violation is an administrative step in the procedures of the Act that is cumbersome, renders meaningless the judgment of the Secretary, and is, again, based upon the unwarranted notion that the Secretary will not carry out the mandates of this Act.

Employees are not prohibited from communicating with the Secretary concerning an alleged violation either before the citation is issued or thereafter.

In determining the reasonableness of an abatement period the Secretary would, of course, consider all aspects of the matter including the interests of the employee. To require a hearing places an unwarranted burden upon the Secretary, for he will be required to not only justify his position, but will tie-up resources needed elsewhere to effectively administer the Act.

It should also be pointed out that this issue could be raised at the hearing resulting from an employer's contesting the citation.

AMENDMENT NO. 1058

Reasons for amendment No. 1058 to section 18(a)(2). Re S/HEW's "tests" for establishing criteria to be used in promulgating standards.

Mr. President, my amendment would delete the requirement in section 18(a)(2) that the Secretary of HEW in developing criteria for the use in standard setting shall develop "such criteria which if applied will assure that no employee will suffer impaired health or functional capacities, or diminished life expectancy as a result of his work experience."

Such a requirement is simply unrealistic. This requirement is not qualified by the words *adequately* and *feasibly* as is a similar requirement for standards-setting in section 6(b)(5) of the Committee bill.

This requirement is not only unrealistic, it is confusing. What is meant by no impairment of Health or functional capacity? Simply being in a work environment where one is responsible for certain duties seems to me to produce in most people impaired health, and it certainly diminishes life expectancy to some extent.

These requirements are simply unrealistic and should be stricken.

The duty to set standards and produce criteria for standard-setting implies that the criteria and the standards will be as effective as possible; not that they will produce a perfect environment. No human effort can produce a perfect environment no matter how hard we try.

AMENDMENT NO. 1059

Reasons for Amendment No. 1059 to Section 18 to allow discretion to the Secretary of HEW in handling request for testing potentially toxic effects.

Section 18(a)(4) of S. 2193 requires studies and determinations by the Secretary of HEW concerning the toxicity of substances found in the workplace. As drafted, this paragraph contains provisions which would seriously interfere with the orderly conduct of these studies.

The paragraph requires the Secretary of Health, Education, and Welfare to publish and maintain a list of all substances used or found in the workplace and known to be potentially toxic, including the concentrations at which such toxicity is known to occur. The provision requires the Secretary of HEW to make a study of the toxicity of a substance when he is requested to do so by an employer or employee representative in writing and with reasonable particularity as to the grounds for the request. He must submit his determinations to employers and affected employees as soon as possible.

The provision requiring the Secretary to respond to all detailed written requests is unnecessary in view of the broad mandate given the Secretary under paragraph (4) to publish a list containing all known toxic substances. It is implicit in the duty to prepare such a list that if a request for a determination was received by the Secretary, and there was a reasonable basis for it, the Secretary would make every effort, consistent with his available resources and good administrative practice, to make such a determination.

In addition, this "command performance" provision, plus the requirement that the Secretary of HEW furnish all employers and affected employees with his determinations, would place an unreasonable administrative burden on the Department of HEW. The task of performing studies at the request of *any* employee or employee representative is obviously an overwhelming one. Moreover, the problem of identifying and notifying all employees who may be affected by each determination is a massive, if not impossible, task.

AMENDMENT NO. 1060

Reasons for amendment No. 1060 to make general duty requirement more specific.

We would be remiss in our duty, Mr. President, if any worker were killed or seriously injured on the job because he was unprotected under this bill owing to the fact that no *specific* safety or health standard covered the circumstances which caused his injury. Therefore, in addition to requiring employers to comply with the specific standards promulgated by the Board, the amendment I am offering would require each employer to furnish his employees employment and a place of employment *which are free from any hazards which are readily apparent and are causing or are likely to cause death or serious physical harm to his employees.*

The general duty embodied in this amendment, which applies only to dangerous situations *readily apparent* to an employer is vastly preferable to the more ambiguous mandate now in the Committee bill.

There are essentially two features which make the substitute's general duty requiremore clearly spelled out (and would thus be understandable to employers and inspectors) to include specifically those situations which "are causing or likely to cause death or serious physical harm to employees, the Committee bill places no similar limitation on the type of hazard contemplated;" and (2) the term "readily apparent" connotes that the hazard must be easily discoverable by a reasonably prudent man under similar circumstances; whereas the Committee bill uses the phrase "recognized hazards" which is rather ambiguous and open-ended, e.g. "recognized" by whom?—a concerned and prudent employer, a safety engineer, a trained doctor, a scientist, etc.?

In summary, Mr. President, the offensive feature of the Committee bill's present general requirement is that it is essentially unfair to employers to require compliance with a vague mandate applied to highly complex industrial circumstances. Under such a requirement, the employer will simply have no way of knowing whether he is complying with the law or not, nor will the inspector have any concrete criteria, either statutory or administrative, to guide him in finding a violation.

The major thrust of the Act contemplates the establishment of specific standards. The existence of a vague general requirement increases the risk that its enforcement will form the basis for the law's enforcement to the detriment of the setting of specified standards.

AMENDMENT NO. 1061

Mr. JAVITS. Mr. President, will the Senator yield to me for the same purpose?

Mr. SAXBE. I yield.

Mr. JAVITS. Mr. President, I send to the desk an amendment to the Occupational Health and Safety Act which deals with enforcement of the act. It is essentially the compromise that I offered in committee which was unhappily and unfortunately rejected and has brought us so much trouble, I think, because it was rejected. I think that we might find some way of composing our differences and producing a bill with the aid of this particular method of compromise.

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

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

AMENDMENT NO. 1061

On page 52, beginning on line 10 strike all down through line 11 on page 59 and insert in lieu thereof the following:

"PROCEDURES FOR ENFORCEMENT

"SEC. 10. (a) If, after an inspection or investigation, the Secretary issues a citation under section 9(a), he shall, within a reasonable time after the termination of such inspection or investigation, notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 14 and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty. If, within fifteen working days from the receipt of the notice issued by the Secretary the employer fails to notify the Secretary that he intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under subsection (c) within such time the citation and the assessment, as proposed, shall be deemed as final order of the Panel and not subject to review by any court or agency, except upon request of an employee or representative of employees pursuant to subsection (c).

"(b) If the Secretary has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the Panel in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties), or has failed to comply with an order issued under section 11(b), the Secretary shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under section 14 by reason of such failure, and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the Secretary's notification or the proposed assessment of penalty. If, within fifteen working days from the receipt of the notification issued by the Secretary, the employer fails to notify the Secretary that he intends to contest the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed a final order of the Panel and not subject to review by any court or agency.

"(c) If an employer notifies the Secretary that he intends to contest a citation issued under section 9(a) or notification issued under section 10 (a) or (b), or if, within fifteen working days of the issuance of a citation under section 9(a), any employee or representative of employees files a notice with the Secretary alleging that the period of time fixed in the citation for the abatment of the violation is unreasonable, the Secretary shall immediately advise the Panel of such notification or determination, and the Panel shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section). The Panel shall thereafter issue an order, based on findings of fact, affirming, modifying or vacating the Secretary's citation or proposed penalty, or directing other appropriate relief, and such order shall become final fifteen days after its issuance. The rules of procedure prescribed by the Panel shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection.

"(d) Any person adversely affected or aggrieved by an order of the Panel issued under subsection (c) or (f) may obtain a review of such order in any United States court of appeals for the circuit in which the violation is alleged to have occurred or where the employer has its principal office, or in the Court of Appeals for the District of Columbia Circuit, by filing in such court within sixty days following the issuance of such order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Panel and to the other parties, and thereupon the Panel shall file in the court the record in the proceeding as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the Panel and enforcing the same to the extent that such

order is affirmed or modified. The commencement of proceedings under this section shall not, unless ordered by the court, operate as a stay of the order of the Panel. No objection that has not been urged before the Panel shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Panel with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Panel, the court may order such additional evidence to be taken before the Panel and to be made a part of the record. The Panel may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

"(e) The Secretary may also obtain review or enforcement of any final order of the Panel by filing a petition for such relief in the court of appeals for the circuit in which the violation occurred or in which the employer has its principal office, and the provisions of subsection (d) shall govern such proceedings to the extent applicable. If no petition for review, as provided in subsection (d), is filed within sixty days after service of the Panel's order, the Panel's findings of fact and order shall be conclusive in connection with any petition for enforcement, which is filed by the Secretary after the expiration of such sixty-day period. In any such case, as well as in the case of a noncontested citation or notification by the Secretary which has become a final order of the Panel under subsection (a) or (b), the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the employer named in the petition. In any contempt proceeding brought to enforce a decree of a court of appeals entered pursuant to this subsection or subsection (d), the court of appeals may assess the penalties provided in section 14, in addition to invoking any other available remedies.

"(f) No person shall discharge or in any other way discriminate against an employee because of the exercise by such employee on behalf of himself or others of any right afforded by this Act, including action to determine the extent of employee exposure to hazardous substances, or for leaving a workplace upon the order of the Secretary or a district court issued pursuant to section 11. Any employee who believes that he had been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall so notify the Panel and the Panel shall afford an opportunity for a hearing as provided in subsection (c). If the Panel finds that such violation did occur, it shall order such affirmative action as may be appropriate, including, but not limited to, the rehiring or reinstatement of the employee to his former position with back pay.

"THE OCCUPATIONAL SAFETY AND HEALTH REVIEW PANEL

"SEC. 11. (a) The Occupational Safety and Health Review Panel is hereby established. The Panel shall be composed of three members who shall be appointed by the President by and with the advice and consent of the Senate, from among persons who by reason of training, education, or experience are qualified to carry out the functions of the Panel under this Act. The President shall designate one of the members of the Panel to serve as Chairman.

"(b) The terms of members of the Panel shall be five years except that (1) the members of the Panel first taking office shall serve, as designated by the President at the time of appointment, one for a term of three years, one for a term of four years, and one for a term of five years, and (2) a vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term. A member of the Panel may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

"(c) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"'(94) Members, Occupational Safety and Health Review Panel.'

"(d) The principal office of the Panel shall be in the District of Columbia. Whenever the Panel deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, it may hold hearings or conduct other proceedings at any other place.

"(e) The Chairman shall be responsible on behalf of the Panel for the administrative operations of the Panel and shall appoint such hearing examiners and other employees as he deems necessary to assist in the performance of the Panel's functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to the classification and General Schedule pay rates: *Provided*, That assignment, removal and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code.

"(f) For the purpose of carrying out its functions under this Act, two members of the Panel shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members.

"(g) Every official act of the Panel shall be entered of record, and its hearings and records shall be open to the public. The Panel is authorized to make such rules as are necessary for the orderly transaction of its proceedings, which shall provide for adequate notice of hearings to all parties.

"(h) The Panel may order testimony to be taken by deposition in any proceeding pending before it at any stage of such proceeding. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Panel. Witnesses whose depositions are taken under this subsection, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the United States.

"(i) For the purpose of any proceeding before the Panel, the provisions of section 11 of the National Labor Relations Act (29 U.S.C. 161) are hereby made applicable to the jurisdiction and powers of the Panel.

"(j) A hearing examiner appointed by the Panel shall hear, and make a determination upon, any proceeding instituted before the Panel and any motion in connection therewith, assigned to such hearing examiner by the Chairman of the Panel, and shall make a report of any such determination which constitutes his final disposition of the proceedings. The report of the hearing examiner shall become the final order of the Panel within thirty days after such report by the hearing examiner, unless within such period any Panel member has directed that such report shall be reviewed by the Panel."

On page 63, strike line 1 and insert in lieu thereof: "the date of the final order of the panel in the case of any review proceeding under section".

Mr. JAVITS. Mr. President, this amendment deals only with enforcement, not with standards, which are left in the hands of the Secretary of Labor. Under the amendment an independent panel of three members, appointed for staggered 5-year terms, with the advice and consent of the Senate, would be established to hear and determine enforcement cases under the act. The members of the panel would be appointed solely on the basis of their professional qualifications.

There are several reasons why enforcement through such a panel is to be preferred to enforcement by the Secretary, as provided in the original bill:

First, under the procedures established by the amendment, speed of enforcement would be greatly increased. In most contested cases, between 6 months and 2 years would be saved under the provisions which provide for true self-enforcing orders and discretionary review of trial examiner decisions.

Under the committee bill, no enforceable order to correct a violation would issue until the completion of all administrative and judicial review proceedings. This would involve, at a minimum in a contested case: First, hearings by a trial examiner; second, mandatory review of the decision by the Secretary or his designee; and third, review by a court of appeals. It is doubtful that this process could be completed in less than 18 months—2 years would be a more realistic estimate—in a seriously contested case.

Under my amendment, an enforceable order would issue at the end of the administrative review stage, rather than after judicial review—unless the court of appeals issued a stay. Furthermore, the months in many cases by making the administrative review stage itself would be shortened by 3 to 6 months in many cases by making review by the panel of trial examiners' decisions discretionary. If review were denied, the trial examiners' decision would automatically become the final order of the panel and enforceable as such.

Second, hearing and determination of enforcement cases by an independent panel more closely accords with traditional notions of due process than would hearing and determination by the Secretary. In the latter case the Secretary is essentially acting as prosecutor and judge. Any finding by the Secretary in favor of a respondent would be essentially a repudiation by the Secretary of his own Department's employees. While this type of enforcement has been used

in connection with other statutes, is contemplated by the Administrative Procedures Act, and is not jurisdictionally defective on due process grounds, the awkward mechanics it imposes upon heads of departments who wish to exercise their adjudicatory power personally in order to preserve due process has not generally been appreciated. What happens is that one official of the Department—such as the Deputy Solicitor—will take the position of prosecutor and another official—such as the Solicitor—will take the position of a neutral in order to advise the Secretary.

More important, because of the awkwardness of this procedure and the heavy burden of personally reviewing hundreds of enforcement cases, it is highly likely that the Secretary of Labor will not even exercise his power under the committee bill personally, but will delegate it to a panel of officials within the Department. That is precisely what the Secretary of Interior has done under the Coal Mine Health and Safety Act of 1969. The net result will be enforcement by a panel anyway, but not one which is independent, and without the benefit of the shortened procedures which my amendment would provide.

These considerations, it seems to me, outweigh any possible benefits which might be gained from the better "coordination which would allegedly occur if the adjudicatory power, as well as the prosecutorial and standards setting powers were given to the Secretary. Such coordination as is necessary would seem just as readily attainable with a panel as with the Secretary. It is the prosecutors upon whom this burden will primarily fall and under either approach they will be under the Secretary's control.

In short, the adjudicatory scheme of the committee bill can be made to work, and due process can be preserved under it, but the independent panel approach would do the same job faster, perserve due process more easily, and thereby instill much more confidence in the whole program in workers and businessmen alike.

The ACTING PRESIDENT pro tempore. The amendment will be received, printed, and will lie on the table.

Mr. JAVITS. Mr. President, if no other Senator wishes recognition, I have some business to transact.

Mr. SAXBE. Mr. President, I refuse to yield the floor at the present time.

The ACTING PRESIDENT pro tempore. The Senator from Ohio still has the floor.

Mr. SAXBE. Mr. President, I have been requested by the Senator from Rhode Island to yield specifically to speak upon the bill on a question of whether to take it under consideration. I ask unanimous consent to yield to him, at his request, solely for the purpose of speaking for approximately 2 minutes on this specific matter, without losing my right to the floor.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

TIME TO PROTECT WORKINGMAN

Mr. PELL. Mr. President, two issues have dominated the American political consciousness this past year—a never-ending war in Vietnam and the so-called unheeded voices of the silent majority, the blue-collar workers.

We have all deplored the deaths of over 50,000 Americans in Vietnam.

We have all stated that we now hear the voices of the silent majority.

Mr. President, I think if we could hear those voices today on the Senate floor, they would tell us to act now upon the measure we have before us. For it is a tragic irony that those supposed supporters of the Vietnam war have suffered more deaths in the factories than our young men have suffered in the jungles of Vietnam.

Former Secretary of Labor, George Shultz, has stated that an average of 14,500 workers die in industrial acidents each year.

I believe it has long past the time to end the needless killings in Vietnam and I also believe just as strongly that it has also long past the time to stop the needless deaths in our factories.

Mr. President, the Senate Labor and Public Welfare Committee has labored many long hours in the development of the occupational health and safety bill before the Senate today. I believe it represents a balanced consideration of the health interests of the Workers and the economic interests of the employers. I urge that we vote upon it without amendment forthwith.

I thank the Senator for yielding.

A UNANIMOUS-CONSENT REQUEST

Mr. JAVITS. Mr. President, I ask unanimous consent that the Senator may yield to me for a unanimous-consent request, without losing his right to the floor.

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

Mr. JAVITS. Mr. President, I ask unanimous consent that the Senate may temporarily lay aside the pending business to take up H.R. 18126, which is a bill that came over from the other body. It is a matter of the Judiciary Committee. It is a matter of agreement which I have come to with the Senator from Mississippi (Mr. EASTLAND), the chairman of the committee. I understand that there is no objection to it whatever. I ask unanimous consent that upon completion of the consideration of the bill, the floor again be restored to the Senator from Ohio, without any impairment of his position.

Mr. MILLER. Mr. President, reserving the right to object, I regretfully state that I am going to object. It seems to me that when it has been apparent to anyone who wants to open his eyes that the Clerk from the House was right in front of the Senate Chamber——

REGULAR ORDER

Mr. BYRD of West Virginia. I demand regular order.

The ACTING PRESIDENT pro tempore. Regular order is demanded.

Mr. MILLER. I object.

Mr. BYRD of West Virginia. The Senator can object all he wants. I demand the regular order.

The ACTING PRESIDENT pro tempore. Regular order has been called for. The Chair recognizes the Senator from Ohio.

Mr. SCOTT. Mr. President, will the Senator from Ohio yield to me for a question, without losing the right to the floor?

Mr. SAXBE. I am glad to yield, without losing my right to the floor.

Mr. SCOTT. I should like to inquire of the distinguished Senator from Ohio, first of all, if it is not his understanding that the pending business is, of course, the Occupational Health and Safety Act?

The ACTING PRESIDENT pro tempore (Mr. ALLEN). That is not correct.

Mr. SAXBE. The pending business is whether to consider the Occupational Health and Safety Act?

Mr. SCOTT. Whether to consider the Occupational Health and Safety Act, yes.

Mr. SAXBE. That is correct.

The ACTING PRESIDENT pro tempore. That is correct.

Mr. SCOTT. May I then ask the Senator if he would have any objection to yielding the floor during consideration of this point, provided his yielding the floor is upon the condition that the messenger who waits outside from a coequal body, the House of Representatives, to deliver the farm bill, which has been passed by the House on the day before adjournment, whether he would be willing to yield the floor with the understanding that the farm bill, a privileged matter, may be received by this body in good order, and may then be treated as a privileged matter on which the Senate is free to act? Would the Senator have any objection?

Mr. SAXBE. I would have no objection.

Mr. SCOTT. I am glad the Senator has no objection because this is an unprecedented situation, one where the majority has exercised its will with a kind of disregard for the farm bill, the farmers of America, and their right to have legislation at this time.

Mr. BYRD of West Virginia. Mr. President, I ask for the regular order.

The ACTING PRESIDENT pro tempore. The regular order has been called for.

Mr. SCOTT. I am addressing a question to the Senator from Ohio and I will hold the floor until I am told to sit down, as I am addressing a question to the Senator. My question to the Senator is: Does he not feel, if he could yield under the circumstances of putting an end to this unprecedented position which is frustrating the will of the people and the will of Congress, that he would, under those circumstances, be glad to yield the floor?

Mr. SAXBE. I would.

Mr. SCOTT. I thank the distinguished Senator from Ohio.

Mr. BYRD of West Virginia. Mr. President, will the Senator from Ohio yield to me?

Mr. SAXBE. I am happy to yield to the Senator from West Virginia without losing my right to the floor——

Mr. SCOTT. Yield to him for a question; do not yield otherwise.

Mr. SAXBE. Mr. President, I yield to the Senator from West Virginia for a question.

The ACTING PRESIDENT pro tempore. The Senator has the right to yield.

Mr. BYRD of West Virginia. I ask the Senator to yield to me for a series of unanimous-consent requests with the understanding that he will not lose his right to the floor.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and 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, on tomorrow morning, following the remarks of the able Senator from Maryland (Mr. MATHIAS), the able Senator from Ohio (Mr. YOUNG) be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. MILLER. Mr. President——

Mr. JAVITS. Mr. President, reserving the right to object——

Mr. MILLER. Mr. President, reserving the right to object, as I tried to make clear earlier, until the farm bill conference report is received by the Senate, it seems to me that no further business should be conducted here. I say that most reluctantly. All that would have to be done is for the farm bill conference report to be received by the Senate and the Senator from Iowa will remove his objection.

Mr. BYRD of West Virginia. I hope, in deference to Senators on both sides of the aisle who wish to be recognized under special orders, that the Senator would not object to this unanimous-consent request.

ORDER FOR RECOGNITION TOMORROW OF SENATORS YOUNG OF OHIO, CHURCH, AND GURNEY

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, upon completion of the remarks of the Senator from Maryland (Mr. MATHIAS) on tomorrow, the Senator from Ohio (Mr. YOUNG) be recognized for 15 minutes; that he be followed by the able Senator from Idaho (Mr. CHURCH) for not to exceed 30 minutes; and that he then be followed by the able Senator from Florida (Mr. GURNEY) for not to exceed 30 minutes.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. MILLER. Mr. President, reserving the right to object, if my very good friend from West Virginia, as the acting majority leader, will use his authority to see to it that the farm conference report is received by the Senate, the Senator from Iowa will not object, but until that happens, the Senator from Iowa feels compelled to object.

The ACTING PRESIDENT pro tempore. Objection is heard.

DISCHARGE OF COMMITTEE ON H.R. 15770 AND REREFERRAL TO COMMITTEE ON AGRICULTURE AND FORESTRY

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Committee on Commerce be discharged from the consideration of H.R. 15770, the water bank bill, and that the bill be rereferred to the Committee on Agriculture and Forestry which has under consideration an identical bill, S. 4192.

This request is made with the understanding that it should not be considered a precedent in determining the committee jurisdiction of the bills involving wild fowl or related matters.

Mr. JAVITS. Mr. President, reserving the right to object, I would like to ask the Senator from Iowa (Mr. MILLER) whether he would not let me first, as a matter of the routine business that it being gone through here, to handle a small Judiciary Committee bill at the same time.

Mr. MILLER. Well, Mr. President, if I may be permitted to answer that, the Senator from Iowa can see no particular reason for objecting to a referral from one committee to another, such as was indicated by the unanimous-consent request just made by the Senator from West Virginia. The Senator from Iowa does not want to see any further business carried on on the floor of the Senate, even though it may be a relatively small matter until the conference report which the House messenger is ready to bring into this Chamber is received by the Senate, which can happen "a instante" and the leadership permits it to be done.

Mr. JAVITS. Mr. President, I withdraw my reservation.

The ACTING PRESIDENT pro tempore. Hearing no objection, it is so ordered.

AUTHORIZATION FOR SECRETARY OF THE SENATE TO RECEIVE MESSAGES FROM THE HOUSE OF REPRESENTATIVES DURING ADJOURNMENT OF THE SENATE—OBJECTION

Mr. BYRD of West Virginia. Mr. President, if the Senator from Ohio will yield for a further unanimous-consent request, I ask unanimous consent that during the period of adjournment of the Senate from October 14, 1970, until 12 noon on November 16, 1970, the Secretary of the Senate be permitted to receive messages from the House of Representatives.

Mr. SCOTT. Mr. President, reserving the right to object for the moment, I regret the necessity for objecting. My amiability and affability I think are well known in this Chamber, but I am sorry, until we have some reservation of the farm bill, I am constrained to object, and I do object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. BYRD of West Virginia. Mr. President, I thank the Senator from Ohio for yielding.

The ACTING PRESIDENT pro tempore. The Chair now recognizes the Senator from Ohio (Mr. SAXBE).

FILING OF REPORT ON S. 939—THE U.S. FOREIGN SERVICE SCHOLARSHIP PROGRAM ACT

Mr. DOMINICK. Mr. President, will the Senator from Ohio yield to me for a brief statement and a unanimous-consent request, without his losing his right to the floor?

Mr. SAXBE. Mr. President, without losing my right to the floor, I yield to the Senator from Colorado.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Mr. DOMINICK. Mr. President, I should like to file a report on S. 939, the U.S. Foreign Service Scholarship Program Act, reported from the Committee on Labor and Public Welfare with an amendment in the nature of a substitute.

I ask unanimous consent that S. 939 be referred to the Committee on Foreign Relations for consideration and report thereon. I so request such referral pursuant to agreement between myself and the chairman of the Committee on Foreign Relations and with the full knowledge of the members of the Committee on Labor and Public Welfare.

Mr. President, I also do this without waiving my own reservation concerning the jurisdiction of the Committee on Foreign Relations.

The ACTING PRESIDENT pro tempore. Without objection, the bill, S. 939, will be referred to the Committee on Foreign Relations for consideration and report thereon.

OCCUPATIONAL SAFETY AND HEALTH ACT

Mr. SAXBE. Mr. President, before the rhubarb, the Senator from Rhode Island had raised some interesting points concerning whether we should consider the occupational health and safety bill at this time.

Some of his points are extremely well taken, but in his entire discussion he did not once mention our points of difference which I maintain are to such a degree that we cannot begin to handle it with the present time limitation and, I might say, the mood of the Senate.

The mood of the Senate is extremely important at such a time. One of our more senior Senators told me the other day that he had never seen the mood of the Senate worse for consideration of important legislation than now. He has been here 25 years.

Therefore, I oppose this on the ground that to proceed to this legislation with a minimum number of Senators here and with the limited knowledge that the Members have, the limited patience that they have, and the recognition by, I think, all of us that fatigue makes cowards of us all, we are not going to be able to turn out an occupational health and safety bill.

I am also forced to say at this time that the very thought that the Senate in its present mood would go to the mat and try to vote out this bill is just abhorrent to me. I do not think there is any way in which we could be objective or in which we could consider the great body of evidence we heard on this bill.

The Senator from New Jersey has pointed out the many hearings that were had on this matter. We started last fall and continued through the fall into the early spring. I think the first hearing was in September and the last one was in April.

During that period of time, we had people of diverse interests give numerous diverse recommendations. A lot of them we were able to reconcile. However, we were not able to reconcile this particular one. That is the one where we cannot decide, at least to our mutual satisfaction, whether we should have a board, whether we should have a Secretary of Labor with an advisory commission, or whether we should have a board and a panel.

This, it seems to me, is one of the deepest schisms that we have had on any bill that has come out of our committee.

Mr. SCOTT. Mr. President, will the Senator from Ohio yield for a question without losing his right to the floor?

Mr. SAXBE. I yield.

Mr. SCOTT. Mr. President, I ask the the Senator if he would be willing to yield the floor if the objective which is currently being sought by the National Grange could be achieved by his so consenting.

The National Grange did send a telegram for the information of the Senator so that he can answer this question.

The telegram reads:

The National Grange although not entirely satisfied with conference report on farm bill finds report acceptable. We are opposed to postponing action until after election as we feel this could endanger future of all farm programs by forcing Department of Agriculture to return to act of 1938 and by increasing possibility of a lower limitations on payments. We therefore urge that you be on the floor on Tuesday, October 13, to vote for conference report.

Mr. President, if this entirely praiseworthy effort of the National Grange on behalf of many thousands of the farmers of America could be achieved by virtue of the Senator's yielding the floor, would the Senator be willing to do that so that the messenger from the House who still lingers without—that is, without recognition and without instructions as to what to do next—is without a lot of things—could enter the Chamber. The only thing he is with is a message. Under those circumstances, would the Senator from Ohio yield the floor in order that that objective might be attained?

Mr. SAXBE. I would under those circumstances.

Mr. BYRD of West Virginia. Mr. President, would the Senator from Ohio yield to the Senator from West Virginia just to allow the Senator from West Virginia to ask a question of the Senator from Pennsylvania?

Mr. SAXBE. I would so yield.

Mr. BYRD of West Virginia. Mr. President, would the Senator from Pennsylvania come to the middle of the aisle and look through the door to see if the messenger is indeed outside the doors?

Mr. SCOTT. Well, if the messenger from the House has left during our participation in this dialog, it is because the messenger has been discouraged by someone whose purposes in chasing the messenger rather precipitately back to the other coequal body has motivations which totally escape me.

All I am trying to do is to help the farmers get a farm bill. The Members on this side are willing to cooperate.

While I looked out the door, I must assume that Sheridan is more than 20 miles away, but I am sure that he would return pronto and promptly if encouragement were given by the majority leadership.

I again urge that the majority reconsider that the mood of this Chamber is evidently not to let any other bill be acted on until it can consider the farm bill.

Mr. BYRD of West Virginia. Mr. President, the Senator has answered my question and the record has been made clear. The messenger from the House does not stand outside the door.

Mr. MILLER. Mr. President, would the Senator from Ohio yield to the Senator from Iowa for the purpose of making a unanimous-consent request?

Mr. SAXBE. Mr. President, I yield to the Senator from Iowa to make that request without losing my right to the floor.

Mr. MILLER. Mr. President, for the purpose of ascertaining where the purpose of this body lies, I ask unanimous consent that the Chair be directed to advise the House messenger that the Senate doors are ready and waiting for him to come into the Chamber.

Mr. BYRD of West Virginia. Mr. President, I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. SAXBE. Mr. President, I want to speak at this time concerning another provision of the bill.

Mr. BYRD of West Virginia. Mr. President, I ask for the regular order. I ask that the Senator from Ohio not yield except for questions or for serious unanimous-consent requests.

Mr. MILLER. Mr. President, I think I am entitled to make a comment. I believe that the acting majority leader's comment about serious unanimous-consent requests was directed to the Senator from Iowa. There is nothing more serious than to get the farm bill here.

The ACTING PRESIDENT pro tempore. The Senator from Iowa has the floor. He can only yield by yielding the floor except by unanimous-consent request.

Mr. HANSEN. Mr. President, would the Senator from Ohio yield for a question.

Mr. SAXBE. I yield for a question only.

Mr. HANSEN. Mr. President, I would like to say, though I have not been here without interruption all afternoon, that it occurs to me, having listened to the dialog and the questions that have been asked, that apparently a messenger tried to present to the Senate a message from the other body.

The ACTING PRESIDENT pro tempore. The Senator was recognized to ask a question.

Mr. HANSEN. Mr. President, I am asking a question. May I continue with my question?

The ACTING PRESIDENT pro tempore. Very well.

Mr. HANSEN. Mr. President, I gather this is the situation. I would like to ask my distinguished colleague from Ohio if it is his opinion that the bearer of a message from the other body did indeed try to present that message and that the messenger from the other body was probably accosted by someone from the other side of the aisle and was informed in quite explicit terms, either orally or by actions that carried a very clear implication as to the wishes of the majority that he would not be welcome, that that message would not be received with any appreciation by the majority party. Is this the feeling that the Senator from Ohio has?

Mr. SAXBE. Mr. President, I am so informed.

Mr. HANSEN. Mr. President, I would like further to ask my distinguished friend, the Senator from Ohio, if he shares my opinion that this is a rather sad commentary on this body and if he views with dismay the callous disregard for the reception of a message from the other body, and if he looks with displeasure and with sore misgivings upon the motivation that would prompt one of our distinguished colleagues from the other side of the aisle to take such action. Does my friend, the Senator from Ohio, share my feeling?

Mr. SAXBE. Yes. And I deplore such actions. But I might point out further that it is in keeping with the matter that I am discussing here that with the present mood of the Senate, as indicated by the questions and replies and the heated words we have had, that this is not the time to involve ourselves with serious legislation that will affect every employer and employee in this country. This is not the time that we should try to put together a major piece of legislation that we are all interested in, that the administration has indicated their interest in, and that would affect 90 percent of the working men in this country.

I think that to be fair and completely objective we should put this off until such time as we can give it the type of treatment to which it is entitled. As I have said repeatedly, I would be willing to make this the first order of business when we return on November 16.

Now I will admit that as one of the cosponsors of the coal mine safety bill I had great hopes that we were striking a real blow for safety in this country. I am distressed by what the Senator from Kentucky has pointed out to me that as a result of the stringent regulations against the nongassy mines we have driven the miners into the gassy mines where the danger is greater than it was in the original place of employment.

Mr. WILLIAMS of New Jersey. I have two questions. What was the effective date of the coal mine safety bill? My second question is, during that entire period have we had a director of the Bureau of Mines? Those are my two questions.

Mr. SAXBE. I will answer those questions. The effective date was not the thing that drove them from the gassy mines. There was an economic fact involved. They had to make a decision whether to stay there and get the approved equipment or to make a further expenditure. It was in the future but they made the decision to go out of there and as a result we have the increase in strip mining.

As to the appointment to the head of this department, I do not question the fact that this was certainly a mistake. We should have had this man.

As the Senator knows, there was an abortive attempt to get a man. He did

not turn out to be satisfactory and after all this delay we finally have someone.

On that same score, there is the job of getting inspectors. You do not just put and ad in the newspapers and go out and hire inspectors.

Mr. WILLIAMS of New Jersey. Mr. President, will the Senator yield further?

Mr. SAXBE. I yield.

Mr. WILLIAMS of New Jersey. The Senator is well aware, I am sure, that there were 300 men who passed the examination to become inspectors and they were not placed on the rolls as inspectors. This bill authorized the money well in advance, an unprecedented action by the Senate in anticipating, authorizing, appropriating, and the men passed the examination and were not put on.

The committee of which I am chairman went to Pennsylvania and held field hearings. That was one of the matters that dramatically brought to the problem greater attention and it had something to do with putting men on the rolls as inspectors.

Mr. SAXBE. Yet in this bill that the Senator wants brought up the Senator wants to give sole responsibility to the same Department of Labor in the industrial health and safety bill which you propose to bring up.

Mr. WILLIAMS of New Jersey. The Senator does not mean "the same department." It is the Department of Labor.

Mr. SAXBE. The Department of Labor.

Mr. WILLIAMS of New Jersey. Yes.

Mr. SAXBE. I suggest that with all their other problems that the setting of the standards and hearing the cases should be separate from that job of the Secretary of Labor.

Mr. WILLIAMS of New Jersey. This is a matter of merit and can be reached by amendments. We have a committee bill before us, if it is taken up. That would go to the merits. That is why we are trying to get the bill before the Senate, for the amending or perfecting process.

Mr. SAXBE. I am aware of that and I say the amending or perfecting process cannot be carried on in the atmosphere that pervades the Senate at the present time. We have all this matter here about the agriculture bill. We never heard of it until this afternoon when we started.

Mr. WILLIAMS of New Jersey. I have a few questions myself about the farm bill. When is winter wheat planted, by the way?

Mr. SAXBE. In the winter, I suppose. [Laughter.]

Mr. DOMINICK. Mr. President, will the Senator yield on that point?

Mr. SAXBE. No. I will tell the Senator exactly when it is planted. It is planted just after the fly date. If the Senator does not know what the fly date is, I will explain it. It is the date set by the Department of Agriculture when the planting would be free of infestation by the Hessian fly, and this is usually, in our State, around the first of October. In other States it goes clear up to the first of December.

Mr. WILLIAMS of New Jersey. What does this farm bill do? Does it extend credit for planting winter wheat?

Mr. SAXBE. No. The acreage control established under this bill applies to that wheat that is planted. It is planted in accordance with a program that is approved.

Mr. WILLIAMS of New Jersey. It seems to me this body knows a great deal more about accidents on the job than the fly date and the period for planting winter wheat. Let us get back to industrial health and safety. Everybody knows about this, as one of the major matters. There have been three Presidential messages urging us to take it up and bring standards of safety to the working place.

Mr. SAXBE. I know the Presidential message urges a similar bill. The bill that the Senator from New York (Mr. JAVITS) introduced was the administration bill, and many elements of it are in the committee reported bill. I am well aware of that.

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

Mr. SAXBE. I yield on this same matter.

Mr. DOMINICK. Is it not true that the House already indicated it will not take up the occupational health and safety bill until November and hence, any consideration by us at this point does not speed up passage of the bill at all? Is that true?

Mr. SAXBE. That is true.

Mr. DOMINICK. Is it not also true that even after the bill is enacted, under the committee bill it would take 3 years before the health and safety standards are promulgated; it has to be done by 2 years under the committee bill before the rules and standards are set up; and hence before the health and safety standards can go fully into effect, it will be 2 years after the date of enactment?

Mr. SAXBE. That is right.

Mr. WILLIAMS of New Jersey. Mr. President, will the Senator yield?

Mr. DOMINICK. So the urgency is not here as it is in the farm bill.

Mr. WILLIAMS of New Jersey. Mr. President, I wish to point out that in the committee bill on page 36, at the top, it is stated:

> The Secretary shall, as soon as practical—

The ACTING PRESIDENT pro tempore. The Senator from West Virginia has called for the regular order.

Mr. WILLIAMS of New Jersey. What is the regular order?

The ACTING PRESIDENT pro tempore. The Senator from Ohio can yield only for a question.

Mr. SAXBE. Another question of serious discussion is the question of who has the right to demand an inspection and what is the response to this inspection. If an employee writes a letter and says that there is a safety problem in the plant where he works, or in an area of the plant, he can request the Secretary to make an inspection. On the face of it, it looks like this is a very good provision because it gives the man an opportunity to identify a safety hazard and to know that there will be a response, because it is also required that if they feel that imminent danger is present, they have to make this inspection.

The problem is with the shortage of inspectors, and there will never be enough. They will have to have one in every plant of any size. How in the world is the enforcement arm going to plan their inspections so that the plants are all covered, at the same time having an available source of inspectors who can respond to complaints?

Imagine also the question that is raised as to harassment. If the employee wants to be a harassing agent, of course he can send in a complaint every day, and then the Secretary would have to determine whether it is genuine. In other words, is he crying wolf and, therefore, not entitled to an inspector, or is it genuine? But it would pose a terriffic problem for the Secretary to determine whether he should send a man in there.

Suppose he did not send a man in there and serious injury resulted from an accident that resulted from faulty equipment, or from failure to follow proper safety practices.

These are areas of discussion.

While I personally favor the response required in the committee bill, when a man puts in writing that safety hazards exist and that the Secretary, or a regional officer of the Labor Department, feel they are of sufficient interest to assign an inspector, I think that is good. I think he should go. It is going to take more inspectors. But I think this matter should be fully discussed. I doubt if we could even clear up that point in the short time we are going to have available in the morning.

Mr. DOMINICK. Mr. President, will the Senator yield for a question?

Mr. SAXBE. I yield.

Mr. DOMINICK. Is it not also true that if an inspection is conducted on a complaint by the employee, and then the inspector, through the Secretary, decides that there really was not a violation, or at least that it was so de minimis that they really did not have to worry about it, at that point the employee is entitled, under the committee bill, to demand and require that the Secretary of Labor issue a written report, and as to every complaint which he sent, issue a citation.

Mr. SAXBE. I am informed that that is the way it would operate.

Mr. DOMINICK. It would seem to me—and would it not so seem to the Senator from Ohio?—that this also opens the door for not only an enormous amount of paperwork, but a good deal of harassment, if there were a real labor-employer series of bitter disagreements going on from time to time in a particular plant or in a particular business.

Mr. SAXBE. Yes; and this could be an element that would prevent a settlement of disputes.

Mr. DOMINICK. And I think would create animosity between the parties.

I gather, from listening to the Senator from Ohio, that he would agree with the Senator from Colorado that the best method of getting health and safety practices into effect is through one of cooperation and not one of antagonism between the groups.

Mr. SAXBE. As I pointed out in my remarks, safety, to be effective, must be a closely coordinated, cooperative effort between the management of a plant and the employees that are under it. The elements that create safety hazards have to be removed or identified or somehow made less harmful to those people who come into that area.

At the present time, if the Senator has observed in the plants that he has gone into, there are a great deal of visual aids for the use of the employees. The first sign one sees when he walks into a plant is that "We have had so many accident-free days in this plant," and the other slogans that are current, such as, "Safety is everybody's business," that are plastered all over the place. That is the beginning of the education. In other words, the employee must first be made safety conscious. Then, when he goes into his place of work, come the protective clothes, the steel-toed shoes, the hard hats, for women the hair nets or other covers to keep them from being caught in a machine, the discrimination against—the outlawing, in fact—of loose clothing that might become caught in moving machinery.

These are the things that are done even before the man gets to his place of employment. He is warned. He is educated to some degree. He is clothed in such a manner as to be in as safe as possible a condition when he gets to his job.

Then, as he goes to his job in the modern plants, the light and air are all controlled. In the less modern plants, a great deal is still left to be desired. If he is working on a machine that creates particles, they have a vacuum fitted on there to take those off. If it creates fumes, or he is working over tanks of volatile material, say in plating, those fumes are carefully monitored at all times, and taken away.

These, again, are things that have been worked out over a long period of time, and this is what our standards are going to be on.

Then he is given rest periods. He is given a special area to smoke in. He is protected against falls, because falls are the greatest source of injury in any plant. It is not the machinery or equipment he gets into; it is a simple fall. He steps on something on the floor, falls, and has a resulting back injury.

Mr. DOMINICK. Mr. President, will the Senator yield for another series of questions?

Mr. SAXBE. I yield.

Mr. DOMINICK. Is the Senator acquainted with the mining industry, and the road construction connected with it?

Mr. SAXBE. To some degree, in quarrying.

Mr. DOMINICK. In our area—and I do not know whether the Senator has been there; I can ask him a question at the end if that would help—in uranium mining in particular, we find that, in exploration for and finding of uranium, you always find it in the most unlikely places.

One company I was connected with many years ago found that there was a necessity to build a road from the top down, because you could not get down to the bottom any other way. This meant you had to carve out your road out of a 1,200-foot sheer wall, and the only safety mechanism we could figure was to buy each of the cat drivers a parachute harness, which we did. Then we drove the parachute into the side of the cliff. We took out extra insurance on them, so that, if the road went away, they would be hung by a piton into the cliff by a parachute.

There are not many other standards I can think of that would take care of that situation.

Mr. WILLIAMS of New Jersey. What is the question?

Mr. DOMINICK. But this was interstate commerce. We had only one man lose his hat, and he was saved by this mechanism. So we were pretty lucky.

The ACTING PRESIDENT pro tempore. The Senator from Ohio yielded for a question. Is the Senator from Colorado about to propound a question?

Mr. DOMINICK. Yes. Is it not true that it would be extremely difficult, in situations of this kind, to find any kind of health and safety regulation which would really meet the criterion in here which says that you have got to put them in so that there is no risk to people?

Mr. SAXBE. It would have to be done in that manner; there is no question about it.

I am better acquainted with industrial plants than I am with this type of operation; but in these plants, where a man goes to work, the light, the air, all of those qualities that can be controlled are usually controlled by union agreement, or by safety engineers of the plant, who make a time study and a safety study at the same time of the operation.

Some machines are quite adaptable to safety devices. With your large brakes that press metal, obviously, you have to have a dual control to handle that shear —that is, you have to have both hands on a control so you cannot get one hand in that machine at the time you are pushing those buttons. These are prescribed, usually, by outside safety regulations as well as the plant's regulations; and the other developments on some of these machines are indeed ingenious. They have a great many machines that I have seen and am aware of that have actual leather cuffs attached to chains, so that, when that press comes down, an eccentric drags that hand out of there; if the workman puts that cuff on, there is no way he can get that hand under that press.

This is particularly true in the machinery that develops high-speed production, because with high-speed production, many safety devices are necessary because the time is all-important. You just cannot grab a blank piece of steel and put it in there and forge it, and grab it out of there; it has got to be done with some degree of efficiency.

One of the elements that keeps stirring into this and stirring into it is, of course, the piecework incentive system. There have been more injuries created from piecework incentives or time incentives, in a coal mine, than almost any other factor. It makes the man forget; he gets a little greedy and forgets his well-learned safety standards. He shoots a little more powder than he should, or he takes that cuff off so he can get his hands in and out of there a little faster, and first thing you know, he has a calamity. But these things are all done at the present time in practically all industrial States, and in all major plants.

In what is sometimes referred to as an alley shop—and I certainly do not mean that all alley shops are of inferior planning or design, but most of them are—you have a number of machines jammed together without proper planning, proper time study, or proper working conditions, and usually you have no safety minded person on duty there all the time.

Again, you may have a one- or two-man operation, and under this condition, this man tends to try to do more, because, he says, "Well, I am not subject to these safety regulations; that is for the hired help, and I am the employer," and he and his son and a couple of others work there.

That is one thing about this bill: There is no question that he would be just as covered here as he should be, and in many cases is not covered, today.

Mr. WILLIAMS of New Jersey. Mr. President, will the Senator yield for a question?

Mr. SAXBE. I yield.

Mr. WILLIAMS of New Jersey. Let me say it is appreciated that the Senator is so familiar with safety practices in industry.

I wonder if the Senator realizes that in the application of standards, there is a difference between the committee bill and the substitute. Does the Senator know that in the establishment, promulgation of early standards is of three types under the committee bill: First, national consensus standards; second, already existing Federal standards; and third—and this is important—standards also promulgated prior to the date of enactment of this act, not by national organizations, but by a nonconsensus method? These are referred to as proprietary standards, and the question is, Does the Senator realize that that third, or the proprietary standard provision, is not included in the substitute bill?

Mr. SAXBE. Yes; and, as I say, that is one of the reasons I would rather amend the committee bill than necessarily accept the substitute bill.

But one other thing I think the Senator will agree with, too, in there: Regardless of whether it is in the committee bill or the substitute bill, we are going to have to accept these consensus standards and proprietary standards wholesale, to start with, because we will not have the real opportunity to go into each State and start from scratch.

Mr. WILLIAMS of New Jersey. If the Senator will permit, I would certainly agree, and that is why there will not be a 2-year delay in effective standards after the enactment of the occupational health and safety bill.

Mr. SAXBE. But there will be a delay in establishing what they are going to be, according to the advisory committee to the Secretary of Labor.

Mr. WILLIAMS of New Jersey. This is not for the early standards. This is for the promulgation of later standards.

Mr. SAXBE. Of the temporary standards.

Mr. WILLIAMS of New Jersey. What the Secretary would do would be to accept standards that exist now in the three categories, and they would be applicable at an early date after the effective date of the bill.

Mr. SAXBE. Where we are going to have our trouble in enforcement of this is in the alley shop, the small foundry, and places of that kind. It will also occur in the areas where people are not confined in a regular place of employment.

As the Senator knows, service industries are the fastest growing industries in this country, and probably the one area where there is less safety control next to farming and some of those that probably will not be covered. It is one of the greatest areas, because a man and his helper go out on a truck in the morning and they go to a home as plumbers, and this is going to be difficult.

But I think we are going to find that most of them are covered under the interpretation of being in interstate commerce, especially when they go out and fix the plumbing at a hotel engaged in interstate commerce, at a factory engaged in making interstate products, and so forth. For the first time, there is going to be a requirement for them to have definite safety standards, and it is going to come as quite a shock I think because I do not think they realize at this time that they are going to be covered.

We have talked around and about the question of why should we not take this bill up until after we get back. I think —and I will say again my reason for opposing it—that the attendance is such that we are not going to get an opportunity to present it fairly to all the Members of the Senate, that the depth of the concern is more casual than I would like to see at this time.

Mr. WILLIAMS of New Jersey. May I ask the Senator at that point what he means as to a depth of concern?

Mr. SAXBE. Of the membership of the Senate. I think there would be much greater concern and more depth of concern if they had the time to spend on hearing the arguments involved.

I am always distressed, as I know the Senator is, that more Senators are not on the floor to hear arguments on a great many bills. But on this particular bill I have gone to Senator after Senator and I have said, "Do you know what is in this bill?" The reply has been, "No, I don't know what is in it."

I have then asked, "Do you know that it is going to affect this and this and this, and this is going to be the result?" The reply has been, "No, I didn't know this."

Mr. WILLIAMS of New Jersey. If the Senator will yield, if that test were applied to everything, the farm bill, believe me, would not be up this year. We all know all the details of the farm bill.

Mr. BELLMON. Mr. President, will the Senator yield for a question?

Mr. SAXBE. I yield.

Mr. BELLMON. Mr. President, on page 32 of the bill, subsection (d), the term "employer" is defined. It says that the term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the U.S. Government or any State or political subdivision of a State.

My question is this: In the judgment of the Senator from Ohio, does this definition bring under the terms of this act all farmers who have employees? Farmers do engage in business that affects commerce. They produce wheat and corn.

Mr. SAXBE. As the Senator knows, this is a question that has not yet been determined. There are some cases—this is in regard to the minimum wage—in which a farmer engages in business such as the seed business in connection with his farm operation. There is no question that they are involved in interstate commerce, and have been so held.

Mr. BELLMON. This says nothing about interstate commerce. It says, "in business affecting commerce."

Mr. SAXBE. What I am saying is that this Federal bill can only be applied to the individual States by referring to those businesses engaged in interstate commerce. Businesses not engaged in interstate commerce become fewer and fewer every year, and extremely few are left.

The cases on this arise because of the question of the minimum wage, which applies to any business in interstate commerce. The cases have said that a farmer who just runs a regular farm operation is not engaged in interstate commerce. But a farmer who is engaged in processing seed that moves in interstate commerce is involved and must pay the minimum wages, and therefore it would be the same interpretation that would put him under this bill. Then it would apply to the farmer, and it would apply to that operation. There is no specific exemption unless it is specifically granted.

Is that not correct?

Mr. WILLIAMS of New Jersey. I believe it is correct.

I am advised that a case that does rather define employees in occupations affecting commerce arose out of a case in Ohio, in a prison, where the inmates were growing vegetables for use in the prison.

Mr. SAXBE. That is correct.

Mr. WILLIAMS of New Jersey. The question came up as to whether the Secretary of Agriculture's program had an effect here. It was found that it affected commerce. They were growing vegetables in the prison farm in Ohio and were eating it there; otherwise, they would have bought it.

Mr. SAXBE. Not only that, but in that case the question was raised that they were also making shoes, clothing, and sheets, which they were selling to themselves—that is, the prison-made goods did not go on the market. But because they provided themselves, this stuff would have gone in.

So I think we have an ever-reducing group of employers who are not engaged in interstate commerce.

As the Senator will recall, the restaurants and hotels just came under it 4 or 5 years ago, by court decision. Hotels always held that they were not part of interstate commerce. Someone has a hotel and asks, "How am I involved in interstate commerce, in selling a meal and renting a bed?" He is told, "This man comes from Indiana and puts up in a hotel in Ohio, and therefore you are engaged in interstate commerce."

Mr. BELLMON. Mr. President, if the Senator will yield further, suppose a hog farmer in Ohio fattens hogs and sends them across the State line, to Chicago, to be slaughtered. Is he in interstate commerce?

Mr. SAXBE. That has yet to be decided, but I suppose that would be the next step.

Mr. BELLMON. Even though, under the terms of the present court interpretation of the term "interstate commerce," such a farm might be exempted, at any time a court decision could change that. Is that correct?

Mr. SAXBE. That is correct.

Frankly, the courts have leaned over backward to keep from bringing farms into this thing; not only farms but also other agricultural enterprises—nurseries. Nurseries now are taking advantage of this, because they are not under the Federal Wage and Hour Act; and I see that it will not be long before they will even lose this agricultural exemption, because nurseries are exploiting to some degree on the farm labor field. Competition has raised wages to the point that perhaps it is not the issue it once was. Nevertheless, it is an area that I would guess would fall under this at some time in the future, not now.

Mr. BELLMON. If the Senator will yield, does the Senator know how many individual farmers there are in this country?

Mr. SAXBE. I have no idea. I could only guess.

Mr. BELLMON. There are several million.

Mr. SAXBE. This is correct.

Mr. BELLMON. How many inspectors would it take, under the terms of the proposed legislation, properly to supervise, say, 1 million farmers?

Mr. SAXBE. Well, of course, is there not a saying that when the number of employees in the Department of Agriculture exceed the number of farmers then they will have a cutoff? I would guess, if they employed the number of safety inspectors necessary, it would rapidly reach that number where Department of Agriculture employees and the safety inspectors would exceed the number of farmers.

I point out again to the Senator—he knows it as well as I—that one of the most unsafe places to work in this country is on the farm, because of lack of supervision and dangerous equipment. The Senator would find in his State of Oklahoma that the premium rate for workmen's compensation for farmers is as high as any other perilous occupation; that is, it is as high as pouring which is regarded as one of the most perilous of occupations. But farming is extremely high on the list. A farmer works with edge tools, which is always a safety problem; he works with machines, and he works with animals. Thus, he has three of the elements that always bring a great deal of hazard to anyone working with them.

There are other perilous occupations that show up in workmen's compensation, in the trades, such as the building trades and the steel workers. There are other perilous jobs, but none of them compares to the job of the farmer.

One of the good things about the bill, which I am hoping will survive, is the study required on workmen's compensation.

As an attorney general for the State of Ohio, I was a defender of the fund, which means that they had a board, an industrial commission that went into the matter of any injury. They made the case before the board, and the board gave an award as to the number of weeks they were entitled to and the benefits.

They did not give lump-sum awards but they would say, "You are entitled to 5 weeks total disability and 50 weeks 20 percent disability."

Even though Ohio has one of the better systems, it is not a satisfactory way to handle it because in many instances the man would come in and say, "I want a lump sum settlement," and he would walk out with a thousand dollars or $1,500, but would have a permanent disability and have no recourse to go back in there. Or a man would have a back injury and a 50-percent disability and he would get a lump sum payment for that disability, with no recourse to the fund again.

I am hoping that within the bill, when it becomes law, the study that is proposed will bring about a uniform system of workmen's compensation that will be as uniform as it can be. I do not doubt that we will have to weight it, because a wage earner in New York perhaps earns more money than one in Alabama and necessarily, his benefit schedule would have to be greater. But I think that there should be uniformity as to weighing. I think, although it is not directly related here, minimum compensation benefits should be uniform, with weighing for regional differences.

It is a sad thing to see some of our State prerogatives drifting away. Sometimes we begrudge them and declare that our State prerogatives are very dear to us, but when it comes to health and safety, workmen's compensation, and minimum compensation, we hate to see them used as trading stock in competition over location of businesses. To say to an employer in Ohio, "Come to Oklahoma where workmen's compensation is only 50 percent," or, "You do not have to have as much on safety," that is not the kind of thing we want. This bill would bring uniformity on that score.

I think that it has a great many good things in it and I hope that we pass it. I certainly will use my good offices to collect as many pledges of votes as I can for its passage.

As I have said many times during this afternoon, I suggest that we should give Senators an opportunity to approach this matter objectively, and that we should not do it under a time restriction, especially when we have so much legislation that is of such great importance.

I cannot help remarking on the attitude of the membership here, that it would make consideration most unpleasant. That is to be deplored, as all of us here recognize the value of harmony in a legislative body.

Mr. MILLER. Mr. President, will the Senator from Ohio yield so that I may make a parliamentary inquiry?

Mr. SAXBE. Mr. President, I yield——

Mr. BYRD of West Virginia. Mr. President, I ask for the regular order.

The ACTING PRESIDENT pro tempore. The regular order is called for.

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

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

The legislative clerk called the roll and the following Senators answered to their names:

[No. 378 Leg.]

Allen	Dole	Miller
Bellmon	Dominick	Proxmire
Byrd, W. Va.	Griffin	Saxbe
Curtis	Mansfield	Williams, N.J.

The ACTING PRESIDENT pro tempore. A quorum is not present.

ADJOURNMENT UNTIL 9 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, I move that the Senate stand in adjournment under the previous order.

The motion was agreed to; and (at 7 o'clock and 13 minutes p.m.) the Senate adjourned until tomorrow, Wednesday, October 14, 1970, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate October 13, 1970:

U.S. ATTORNEY

Lester Engler, of Arizona, to be U.S. attorney for the district of the Canal Zone for the term of 8 years, vice Rowland K. Hazard, resigned.

U.S. NAVY

Rear Adm. George E. Moore, II, Supply Corps, U.S. Navy, having been designated for commands and other duties determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of vice admiral while so serving.

DIPLOMATIC AND FOREIGN SERVICE

Melvin L. Manfull, of Utah, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Central African Republic.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Ethel Bent Walsh, of the District of Columbia, to be a member of the Equal Employment Opportunity Commission for the term expiring July 1, 1975, vice Elizabeth Jane Kuck, term expired.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 13, 1970:

BUREAU OF MINES

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

FEDERAL TRADE COMMISSION

David S. Dennison, Jr., of Ohio, to be a Federal Trade Commissioner for the term of 7 years from September 26, 1970.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

David Ogden Maxwell, of Pennsylvania, to be General Counsel of the Department of Housing and Urban Development.

U.S. CIRCUIT COURTS

Paul H. Roney, of Florida, to be a U.S. circuit judge, fifth circuit.

U.S. DISTRICT COURTS

Samuel Conti, of California, to be a U.S. district judge for the northern district of California.

Robert H. Schnacke, of California, to be a U.S. district judge for the northern district of California.

Gordon Thompson, Jr., of California, to be a U.S. district judge for the southern district of California.

J. Clifford Wallace, of California, to be a U.S. district judge for the southern district of California.

Peter T. Fay, of Florida, to be a U.S. district judge for the southern district of Florida.

James L. King, of Florida, to be a U.S. district judge for the southern district of Florida.

Gerald B. Tjoflat, of Florida, to be a U.S. district judge for the middle district of Florida.

Charles A. Moye, Jr., of Georgia, to be U.S. district judge for the northern district of Georgia.

William C. O'Kelley, of Georgia, to be a U.S. district judge for the northern district of Georgia.

C. Rhodes Bratcher, of Kentucky, to be a U.S. district judge for the western district of Kentucky.

Nauman S. Scott, of Louisiana, to be a U.S. district judge for the western district of Louisiana.

James R. Miller, Jr., of Maryland, to be U.S. district judge for the district of Maryland.

Clarkson S. Fisher, of New Jersey, to be a U.S. district judge for the district of New Jersey.

John J. Kitchen, of New Jersey, to be a U.S. district judge for the district of New Jersey.

Frederick B. Lacey, of New Jersey, to be a U.S. district judge for the district of New Jersey.

Robert B. Krupansky, of Ohio, to be a U.S. district judge for the northern district of Ohio.

Nicholas J. Walinski, Jr., of Ohio, to be U.S. district judge for the northern district of Ohio.

Carl O. Bue, Jr., of Texas, to be a U.S. district judge for the southern district of Texas.

DEPARTMENT OF JUSTICE

George J. Long, Jr., of Kentucky, to be U.S. attorney for the western district of Kentucky for the term of 4 years.

Lester Engler, of Arizona, to be U.S. attorney for the district of the Canal Zone for the term of 4 years.

Benjamin F. Butler, of New York, to be U.S. marshal for the eastern district of New York for the term of 4 years.

SUBVERSIVE ACTIVITIES CONTROL BOARD

John William Mahan, of Montana, to be a member of the Subversive Activities Control Board for the term expiring March 4, 1975.

HOUSE OF REPRESENTATIVES— *Tuesday, October 13, 1970*

The House met at 12 o'clock noon.

The Reverend Father Thomas G. Fahy, president, Seton Hall University, South Orange, N.J., offered the following prayer:

Let us pray.

Almighty and most merciful Father, the rights of Your people and the power to govern them came from Your hand. Shed Your grace and Your light abundantly on those who rule us in Your name, our President, our Congress—especially this distinguished House—and our courts. Grant them length of days, health of body, inspiration of mind, and