

If the above programs were implemented, much of the economic impact of layoff would be mitigated. Further, there would be no temptation on the part of the employers to manipulate who is selected for termination based upon cost of certain programs because the majority of cost advantage from such manipulation would be gone.

Clearly the heart of the problem is not to have these abrupt terminations that throw everything in turmoil. We must recognize that no one in government has infallible wisdom in selecting programs. I feel it would be irresponsible to say that once a program is started it must be completed.

Let us assume we agree that under all current considerations it was not in the national interest to continue with the Manned

Orbiting Laboratory. When the decision was made to build the M.O.L., the McDonnell Douglas company committed substantial funds and many thousands of employees several years of their lives. If later developments show that a project like M.O.L. should be dropped, I feel the Federal government should assume responsibility for its actions upon cancellation and:

1. Grant each employee laid off at least four weeks pay.
2. Cover the costs of employee group insurance for at least six months or until re-employed.
3. Establish provisions to insure that funds contributed to retirement plans inure to the benefit of the individual.
4. Establish or participate with State Gov-

ernment in establishing relocation allowances.

Many of the points I have set forth today, and suggestions have been dealt with briefly, as a full discussion would require more time than is practical.

While I have outlined an array of possible action programs, the next and most logical step, in my opinion, is to fund for a comprehensive study of not only my recommendations, but the others that will be presented.

Then, based upon full information, specific legislative programs should be formulated and presented for consideration. I sincerely hope the findings of your committee, and the recommendations that your staff will develop will not suffer the standard fate of "receive and file".

SENATE—Wednesday, March, 25, 1970

The Senate, in executive session, met at 9:30 o'clock a.m., and was called to order by the Acting President pro tempore (Mr. METCALF).

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

O Holy God, whose ways are higher than our ways and whose kingdom is everlasting, in this week of holy remembrance, keep our eyes fixed on Thee and direct all our work for the betterment of this Nation.

Deliver us from inordinate attention to the small concerns of the day so that we may give our energies to the paramount needs of this moment of history. Unite us where we are divided, reconcile us where we differ, and redeem us from all evil.

O Lord, grant us grace and wisdom to close the chasm between the strong and the weak, the rich and the poor, the rulers and the ruled, that dwelling together in the spirit of unity and the bonds of peace we may be masters of our own destiny. May Thy spirit so pervade the life of all the people that together we may build the holy city foretold by all the prophets since the world began. In the Redeemer's name we pray. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, March 24, 1970, be dispensed with.

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Oregon (Mr. PACKWOOD) is recognized for not to exceed 30 minutes.

Mr. MANSFIELD. Mr. President, will the Senator yield to me, without losing his right to the floor or having any time taken out of his time?

Mr. PACKWOOD. I yield.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees

be authorized to meet during the session of the Senate today.

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

ORDER FOR ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 o'clock tomorrow morning.

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

ORDER FOR RECOGNITION OF SENATOR EAGLETON TOMORROW

Mr. MANSFIELD. I ask unanimous consent that tomorrow, after the prayer, the distinguished Senator from Missouri (Mr. EAGLETON) be recognized for not to exceed 45 minutes.

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

PUBLIC HEALTH SERVICE HOSPITAL AT NEW ORLEANS, LA.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar 742. For the information of the Senate, this has been cleared on all sides.

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

The ASSISTANT LEGISLATIVE CLERK. A bill (H.R. 13448) to authorize the exchange, upon terms fully protecting the public interest, of the lands and buildings now constituting the U.S. Public Health Service Hospital at New Orleans, La., for lands upon which a new U.S. Public Health Service Hospital at New Orleans, La., may be located.

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

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Labor and Public Welfare with amendments, on page 2, line 1, after the word "the" where it appears the first time, strike out "administrators of the Tulane educational fund" and insert "Administrators of the Tulane Educational Fund";

in line 8, after the word "the" strike out "administrators of the Tulane educational fund" and insert "Administrators of the Tulane Educational Fund"; and in line 17, after the word "the" where it appears the first time, strike out "administrators of the Tulane educational fund" and insert "Administrators of the Tulane Educational Fund."

Mr. ELLENDER. Mr. President, I am delighted that unanimous consent was granted to permit consideration of the pending bill. I ask that it be passed.

Its purpose is to permit the Public Health Service to participate in the construction of a new medical complex in association with Tulane University in New Orleans, La., by authorizing the exchange of the present Public Health Service hospital site and buildings in New Orleans for lands of equal value presently owned by Tulane University. If it is determined that the value of the present properties owned by the United States exceed the market value of the lands exchanged therefor, the bill provides for payment to the United States of the additional amounts required to reimburse the United States in full.

The bill specifically states that the exchange authorized shall not be made unless the Secretary of Health, Education, and Welfare determines first, that the value to the United States of the property to be conveyed to it is equal to or in excess of the market value of the property to be conveyed by the United States, or second, that the United States is to receive from the Administrators of the Tulane Educational Fund upon conveyance of the properties to be exchanged, a sum of money equal to the amount by which the market value of the property to be conveyed by the United States exceeds the value to the United States of the property to be conveyed to the United States. Any money received shall be covered into the Treasury as a miscellaneous receipt.

It can readily be seen that the interest of the public is adequately taken care of.

The Tulane School of Medicine-Public Health Service hospital affiliation has developed over a period of years and is one of mutual respect and cooperation. Currently medical students from Tulane are assigned to the Public Health Service hospital for a portion of their clinical

training and a limited number of Tulane residents are also assigned to the hospital. In addition, cooperative research efforts in the areas of clinical and health services research have been carried out for several years. The distance of the hospital from the medical school and the hospital's facility limitations have minimized collaborative efforts between the institutions. In a new facility readily available, the number of medical students and residents assigned to the Public Health Service hospital could be increased and cooperative research activities expanded. The proposed Public Health Service facility adjacent to the school would provide additional teaching beds for the planned increase in the number of students admitted to the medical school. This year 135 students were accepted and it is proposed that this number be increased to 162 by 1974.

Tulane at the present time does not have a teaching hospital but utilizes Charity Hospital for most of its teaching beds. A study is now underway to explore alternative means of providing additional required teaching beds. A new Public Health Service hospital adjacent to the Tulane Medical School would increase Tulane's educational capability, improve the type of care provided to Public Health Service patients, and allow for conducting clinical and health services research on a broader basis.

Because of the important advantages to Tulane University and to the overall development of a great medical complex in New Orleans, Tulane with its own funds and with borrowed money has proceeded to acquire the site in which the U.S. Public Health Service indicated interest. Most of the land has now been obtained.

Two points are emphasized with respect to H.R. 13448. The first is that the interests of the U.S. Government are fully protected in that the transfer of lands contemplated in the building will have to be accomplished at no net cost to the Government. If the land to be provided by Tulane is less in value than the existing U.S. Public Health Service site, Tulane is obligated to pay the difference into the Treasury of the United States.

The second point of emphasis is that this is permissive legislation. Its passage will simply make it possible for the transfer to be concluded in the event the Public Health Service wishes to go ahead with the transfer and, for that matter, if the conditions are such that Tulane wishes to go ahead with the exchange. The passage of the bill would facilitate the planning of both institutions.

In conclusion, the location of a modern Public Health Service facility adjacent to the Tulane School of Medicine would contribute in a major way to Tulane's effort in educating physicians and conducting research directed toward improving the health of the country.

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

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

The bill was read the third time, and passed.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. The Senator from Oregon (Mr. Packwood) is recognized for 30 minutes.

S. 3632—INTRODUCTION OF A BILL TO DEAL WITH THE POPULATION CRISIS

Mr. PACKWOOD. Mr. President, the 1970's are the bicentennial decade of this country. Nearly 200 years ago our ancestors in effect looked the venerable English King George III in the eye and said:

No, thank you. Your system may work very well in England, but it does not work here. We are going to govern ourselves.

And for the last 200 years, we have indeed done things differently. We have settled a continent on the basis of equality for every State and opportunity for all individuals. We have come to lead the world in technical skill and industrial power. We have sent our citizens to walk on the moon. And as a Nation we have never turned away from any challenge because it was too big, too fearsome, too hard to manage.

Our vision has been westward. Our eyes have been on the future. Our concern has always been "what can be," not "what might have been." We have not been afraid to ask apparently unanswerable questions and then to search for the answers while others were still framing their questions.

Today, I believe the time has come when we as a Nation must ask ourselves a new set of questions and then we must look together toward the future—not backwards into the past—to find a new set of answers.

Today our country faces a pervading crisis which some call a population explosion, others an ecological threat, still others a polluted environment, because population and pollution are interdependent. I will speak of a population crisis—a crisis which makes a mockery of "America the beautiful." Who could write today that our "alabaster cities gleam undimmed by human tears"? Even our "purple mountain majesties above the fruited plain" are hidden by a veil of smog, while DDT and fertilizers pour pollution from the golden wheat fields into opaque and sluggish water.

We are living today in a country of more than 200 million people; 70 percent of the population is urban; population density along our east and west coasts is increasing even faster than the population of India, and in spite of our affluence and ingenuity, we are beginning to have trouble in buying clean air, pure water, or simply a piece of unoccupied space.

The real threat facing us is not creeping socialism or creeping capitalism, but rather creeping populationism. The growth of our population, generation by generation, year by year, is putting pressure on many of the resources we value; not only our lands and waters, our for-

ests and plains, but also our schools and hospitals, our roads and cities, our recreation and, ultimately, of course, our whole standard of living.

President Nixon has already given unprecedented attention to population growth. In the first Presidential message to Congress on population last summer the President said:

I believe that many of our present social problems may be related to the fact that we have had only fifty years in which to accommodate the second hundred million Americans. In fact, since 1945 alone some 90 million babies have been born in this country. We have thus had to accomplish in a very few decades an adjustment to population growth which was once spread over centuries, and it now appears that we will have to provide for a third hundred million Americans in a period of just 30 years.

Human life exists only in the space of barely half a mile of oxygen above the land areas of this planet. Human population cannot expand indefinitely because to the best of our knowledge, there are no other points in the entire universe where human beings can survive. Furthermore, every single human being becomes a burden on the environment: his food, shelter, his very breath, and all his possessions come from the resources—some renewable, many more not renewable—of this narrow life-giving layer.

During a normal lifetime the average American will devour 28,000 pounds of milk and cream, 10,000 pounds of meat, and 26 million gallons of water; he will require 21 million gallons of gasoline and \$8,000 worth of school construction. He will purchase \$6,000 worth of clothes and \$7,000 worth of furniture. And to supply these demands, America will produce nearly 50 percent of the world's industrial pollution. In this vast consumptive process, Americans pay the garbage collectors nearly \$3 billion every year just to collect the debris.

These numbers translate into the gradually deteriorating pictures of everyday life—dirty air, dying waters, slum-ridden cities, crowded parks, bumper-to-bumper traffic, a greater and greater struggle for less and less space—and with every half century, the appalling expectation that our population will double and redouble and double again. Until we see that an end is in sight, until we recognize that population and pollution are one and the same, until we appreciate that all our efforts for a pure environment are really nothing more than an effort to erase the dirty traces of mankind from the clean patterns of natural development—we will not find a lasting solution. We are in effect chasing our own tails in an endless and seemingly insane cycle of production, reproduction, construction and destruction.

Mr. President, three steps are necessary if we are to avoid not only the 100 million projected population increase in this country in the next 30 years but an increase to half a billion people within the next 60 to 80 years.

The first step we must take is mass family planning. A small step in this direction is S. 2108, of which I am a co-sponsor. By mass family planning, I

mean making available both the knowledge of and the access to contraceptive information and devices for every woman in this country. Lack of education or lack of money should not be a deterrent. We must do adequate research to develop three or four varieties of good contraceptive devices so that women who cannot tolerate one form of contraception will have others available to them. The purpose is to make sure that no woman becomes pregnant because of the lack of information about, or lack of access to, adequate contraceptive devices.

The second necessary step is to eliminate all restrictions against abortion in this country. Abortion should be a matter of private conscience for every woman in this country. Whether or not she wishes to have an abortion should be a decision that solely she and her physician makes. Dr. Charles F. Westoff of the office of population research at Princeton University indicates that approximately 22 percent of the pregnancies among married couples in this country are unwanted by at least one spouse. There is no reason why a woman should be forced to continue an unwanted pregnancy. Those women who can afford abortions should pay for them as they pay for other medical services. However, those women who cannot should not be forced to continue an unwanted pregnancy. Financial resources or medical services should be made available to those women so that they, too, can have the same rights as those with money.

The third step and the conclusive one which should enable us to effect population stabilization in this country is a Government taxation policy which encourages smaller families. We use tax incentives to encourage oil exploration; we use them to encourage the installation of pollution abatement devices; we use tax incentives to foster the growth of pension plans. Is there any reason why we should not use the tax incentive to tackle the most critical domestic problem in our country—the population crisis?

I am today introducing a bill which would limit child dependency deductions for children to no more than two starting on January 1, 1973. Hopefully with these three programs; first, good family planning; second, elimination of restrictions against abortion; and third, tax incentives for smaller families, we will achieve population stabilization in this country.

I have introduced these bills not because I think it is impossible to feed half a billion people in this country. We could perhaps feed that many people if we do not care whether or not we overutilize the farm land, and if we ignored the effect that pesticides used on the crops to feed that many people might have on the rest of the country. It might even be possible to house half a billion people if we do not care whether or not we cut down all of the trees in our forests and then deplete other natural resources that would have to be found as a substitute for wood to build that many houses. We might even be able to handle the solid waste disposal and the air and water

pollution that half a billion people would cause.

But at some stage, even the United States is finite. At some point we will reach a limit where we cannot feed, cannot house, and cannot clean up after all of the people who might be born in this country.

We must face the problem now and undertake a policy of population stabilization whereby we can look forward to limiting the population of this country by voluntary means, rather than having to do it in 40 or 50 or 60 years by compulsory means.

So I have introduced these three bills to offer honesty where we have had too much hypocrisy; to offer rationality where we have had too little commonsense; and to offer, I hope, an opportunity for our children and our children's children a better balance between man and his environment.

The time has come to look—without blinking or averting our eyes—at where we stand today in the population crisis. What was appropriate for Adam and Eve in biblical times or for our own forebears who crossed and populated a continent is no longer appropriate in a world of more than three billion people where two-thirds of all children are poor, hungry, or dirty, and without much hope of improvement. Our forebears had commonsense and determination. They possessed these qualities in abundance in taming the continent. Today the challenge is ours: Do we have the commonsense and determination to respond?

It does not matter that 50 or 100 years from now history will look back and remember Bob Packwood as a U.S. Senator or any other Member of this body as a U.S. Senator. What is important is that future generations will look back and appreciate the sensible policies which we have implemented to achieve a stabilized population.

If they can breathe clean air and enjoy pure water; if they can still relish a cascading river tumbling through a deep gorge that has not been dammed because of the necessity to produce electric power; if they can walk through a forest that has not been completely cut to produce homes for half a billion people; and if they can find a place where tranquility and quiet is still an actuality rather than a memory, then we will have fulfilled the adage which says:

What we have in this life when we die will pass to somebody else; what we are in this life will be ours forever.

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

The bill (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, introduced by Mr. PACKWOOD, was received, read twice by its title and referred to the Committee on Finance.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Does the Senator from Oregon yield the floor?

Mr. PACKWOOD. I yield the floor.

Mr. BYRD of West Virginia. Mr. President, under the previous order, who was to be recognized at this time?

The PRESIDING OFFICER (Mr. ALLEN). The Senator from Texas (Mr. TOWER) is supposed to be recognized for 15 minutes.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that there be a quorum call, without prejudice to the Senator from Texas under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that I may be recognized for not to exceed 15 minutes, without prejudicing the rights of the Senator from Texas, under the previous order.

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

The Chair recognizes the Senator from West Virginia.

SEATO SHOULD BE REORGANIZED ALONG MORE ASIAN LINES

Mr. BYRD of West Virginia. Mr. President, the continuing war in Vietnam, the increasing hostilities in Laos, and the recent coup in Cambodia, illustrate all too clearly the almost total impotence of the Southeast Asia Treaty Organization.

The United States, while moving to Vietnamize the war in Vietnam, should also move to Asianize SEATO—or, failing that, we should withdraw completely from the organization.

When he addressed the opening session of SEATO on September 8, 1954, the late Ramon Magsaysay, President of the Philippines, said:

On the success of this conference may well depend the peace of Asia in the next 10 years and the future of freedom in the world for the next thousand years. We propose to stand up and be counted.

Unfortunately, the 16 years that have elapsed since SEATO was founded have not produced peace in Asia. Instead, they have produced little more than a continuation of the strife that has plagued that part of the world for centuries.

In other words, Mr. President, SEATO has failed in its efforts to become a viable deterrent to war in Asia; and, to a large extent, its failure is a direct result of the manner in which it was organized—the manner in which it exists today.

Of the eight nations which formed SEATO, only four—Australia, New Zealand, Thailand, and the Philippines—still have long-range interests in Southeast Asia. Australia and New Zealand are becoming increasingly aware of their geographic kinship, while Thailand and the Philippines have always been among the most energetic of Asian nations.

The United States, which pays 25 percent of SEATO expenses, is heavily engaged in Southeast Asia at the present time. But our only long-range interest is in preparing Asian nations to be able to defend themselves.

President Nixon stated our aims during an informal news conference on Guam last July 25. During that conference, he laid the groundwork for what has become known as the Nixon doctrine which, in part, says:

Others now have the ability and responsibility to deal with local disputes which once might have required our intervention. Our contribution and success will depend not on the frequency of our involvement in the affairs of others, but on the stamina of our policies. This is the approach which will best encourage other nations to do their part, and will most genuinely enlist the support of the American people.

That statement makes it abundantly clear that the nations of Southeast Asia must prepare now for the time when they will have to shoulder the heaviest burden against Communist aggression.

The United States cannot do it alone, and the other two western nations in SEATO—England and France—have apparently lost all interest in the organization and in Southeast Asia itself. They no longer have colonies in that part of the world—no longer have an interest in the people who lived for so many years under their rule.

The final SEATO nation, Pakistan, joined simply because it felt the organization could offer it a measure of strength against India. Since SEATO could make no such offer, Pakistan's initial disillusionment quickly turned to lasting apathy.

However, Mr. President, I am not so much concerned with the nations admitted to SEATO as I am with the nations not admitted.

Laos and Cambodia were both covered under the organization's protocol, rather than granted full admittance. Cambodia removed itself from even this quasi-membership in September of 1955, and Laos was removed by the 1962 Geneva accords. Vietnam, the third former Indo-China State, was barred from consideration as a protocol state under SEATO because of the 1954 Geneva Convention.

Thus, Mr. President, we have the current situation in which the Southeast Asia Treaty Organization is powerless to act—even if it were willing to do so—in Vietnam, Laos, or Cambodia—powerless to forge solutions to the most pressing problems of Southeast Asia.

In the case of Cambodia, this is particularly tragic. In the wake of the recent overthrow of Prince Sihanouk, the Cambodian Government finds itself faced with the possibility of engaging in combat with Communist forces—and it finds itself unprepared to wage such a battle. As Washington Post correspondent Stanley Karnow noted in his Sunday, March 22, article:

With a small and ill-equipped army at their disposal, Cambodia's new leaders appear to have only a single option open to them: a plea for American help.

Mr. President, given the current state of affairs both here at home and in Viet-

nam and Laos, such a plea would probably go unanswered. The United States is just not ready to unilaterally open up a new front in what could become a new Indo-China war, and the United States should not do so.

If a viable SEATO were in existence today—a SEATO designed and operated by the free nations of Asia—the plight of Cambodia might be less frightened than it now appears.

I feel, Mr. President, that we should take immediate steps to explore the existence of such an organization in the future—an organization either formed by revamping the present structure of SEATO, or organized from scratch by the free nations of Asia.

Under Article 8 of the SEATO Charter, it states that the treaty area: "is the general area of South-East Asia, including also the entire territories of the Asia parties, and the general area of the South-West Pacific."

It is futile to think that so large an area of Asia can be effectively guarded by so few Asian nations. It is futile, for instance, to think of an effective SEATO that does not include Malaysia and Indonesia.

Malaya gained independence from England in 1957, and the Malaysian States were formed in 1963. Yet, no invitation to join SEATO was ever tendered. For its part, Indonesia overthrew the Communist-leaning government of President Sukarno on September 30, 1965; and 5 years have now gone by with SEATO making no concrete offers of membership to the new Indonesian Government.

Splitting with the Communist bloc was not an easy decision for Indonesia. Under Sukarno, it had relied heavily on the Soviet Union, which, since 1965, has shown predictable reluctance in refinancing almost a billion dollars in loans. Indonesia has been forced to turn to the United States for assistance during the past half decade; and our aid to that country has increased from \$19.7 million in 1966 to \$61 million last year.

It would have been far more meaningful to the future of Asia if Indonesia could have turned instead to SEATO.

To be sure, Mr. President, the apathy of SEATO toward broadening its base has been equalled by the reluctance of Asian nations to seek membership. But there are two very good reasons for this reluctance.

First, with the exception of Thailand, all the countries in Southeast Asia were formerly colonial possessions of some Western power. Their sensitivity to that history makes them leary about joining any organization that is, in large part, comprised of non-Asian countries.

And second, the Southeast Asia Treaty Organization proved to be highly ineffective the one time it was called upon to act. That was in March of 1962, when Communist forces in Laos threatened the northeast border of Thailand.

Instead of depending on SEATO, Thailand went to the United States for assurances of support. In what became known as the Thanat-Rusk Communique, Secretary of State Dean Rusk assured the Thai Foreign Minister that the United States: "intends to give full ef-

fect to its obligations under the Treaty to meet the common danger in accordance with its constitutional processes. (The United States) reaffirms that this obligation does not depend upon the prior agreement of all other parties to the Treaty, since this Treaty obligation is individual as well as collective."

The communique formed the basis for the United States sending 5,000 Marines to Thailand the following month; and it also showed the inability and unwillingness of SEATO to act in time of crisis. The Thais were deeply indebted to the United States, but their respect for the other nations in SEATO took an understandable dip. In fact, schoolchildren, as they pass the Bangkok headquarters of SEATO, refer to the organization as "Sleep, Eat, And Talk Only."

Mr. President, it is a source of pride in all Americans that our country fully meet its obligations—none of us would want it any other way. But I believe the time has come for Asians to shoulder the main responsibility of assuring freedom in their part of the world. This is what the Nixon doctrine says, and I hope the doctrine also provides for a revamping of SEATO—rather than simply letting it be killed off by the apathy of its present participants.

If such a reorganization of SEATO along more Asian lines cannot be implemented, then I would favor a U.S. withdrawal from the organization—because, as it now operates, it is virtually meaningless, except for the commitment and obligations which it imposes on the United States. In other words, the ghost is presently being kept alive mostly by the United States active response to its commitment.

Terms of withdrawing from SEATO are spelled out under article 10 of its charter:

Any Party may cease to be a Party one year after its notice of denunciation has been given to the Government of the Republic of the Philippines, which shall inform the Governments of the other Parties of the deposit of each denunciation.

Such a withdrawal on our part, Mr. President, could convince the free nations of Asia to put aside regional differences and unite behind the common cause of fighting the very real Communist menace. There is evidence they are willing to do. The New York Times News Service noted in a March 17 dispatch that former enemies: "Malaysia and Indonesia today signed a new treaty of friendship intended to replace an agreement which lapsed during President Sukarno's policy of confrontation."

If these two nations can move toward unity, then perhaps Thailand and Cambodia—which have been at odds for centuries—can also find common grounds for discussion and, hopefully, for agreement.

At the very least, we should give free Asian nations the encouragement to Asianize SEATO. We should give these nations the opportunity to make good on the promise of Ramon Magsaysay—"to stand up and be counted." A truly Asian SEATO, with the United States taking a less dominant role, or no role at all, could offer that opportunity.

ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senator from Texas (Mr. TOWER) is now recognized for not to exceed 15 minutes.

REMOVING UNFAIR LABOR PRACTICE CASES FROM THE JURISDICTION OF THE NLRB

Mr. TOWER. Mr. President, since its founding 35 years ago, the National Labor Relations Board has developed for itself the unenviable reputation of an agency given to "arrogant fact distortion, questionable legal interpretation, and callousness toward due process requirements." The words are not mine, but I concur in the thought so expressed by Prof. Sylvester Petro, one of the Nation's foremost authorities on labor problems. Even former Congressman Fred Hartley, Jr., coauthor of the Taft-Hartley Act of 1947, has said that the NLRB has "mutilated and emasculated" the law which bears his name.

Our colleague, Senator GRIFFIN, in testifying before the Senate Subcommittee on Separation of Powers in 1968, recalled a statement made by David Brinkley to the effect that the NLRB "usually behaves like a body of the AFL-CIO and is about as neutral as George Meany."

The hearings which I have just mentioned revealed a complete lack of public confidence in the National Labor Relations Board. This reflects adversely on Congress for the NLRB is of our own creation.

Witness after witness appeared before the Ervin subcommittee to protest the tenor of the actions of the Labor Board. Endless cases were cited which would have convinced even the most die-hard of the Labor Board's champions that congressionally enunciated labor policies had been ditched in favor of divergent approaches formulated by the Board. Having reviewed the testimony, there is no question in my mind about the objectivity of the witnesses. This was not simply a case of business versus labor during which management had its day on the witness stand. Those testifying presented cogent arguments to back up their contentions. The general opinion which emerged substantiated the open secret among all who must deal with the Labor Board: that the principle of free employee choice has been subverted by the Board's obvious preference for a policy of enforced unionization.

Mr. President, it is not my intention today to hold up the business of the Senate with a recitation of cases. The record has been made and is there for those interested to read. The conclusion is too clear to deny. Congress delegated quasi-judicial powers to the National Labor Relations Board to make effective a clearly enunciated labor policy.

The Board exercised these powers but ignored congressional policy and proceeded on a self-directed course. Further action is demanded of this body if it is to fulfill its constitutional responsibilities. To fail to remedy the present situation would be a gross abdication of our duties. Congress has had 35 years in

which to assess the value of our own delegation of responsibility and authority over national labor policy and to evaluate how faithfully the NLRB has carried out its functions.

One of the major political innovations of the 20th century—an innovation which remains still an experiment—is the delegation of congressional power to the agencies comprising the so-called independent fourth branch of government. Their authority derives from Congress, but their functions are legislative, executive and judicial. We favor a separation of powers in our own constitutional form of government, but we have found no way to impose this structure on the regulatory agencies.

A government which involves itself in the minutia of business management and addresses itself to the particulars of labor relations must delegate vast powers to a bureaucracy. There is no way the Congress can set rates for the transport of hundreds of thousands of commodities in interstate commerce any more than it can involve itself in a case-by-case analysis of unfair labor practices. If it desires such control, then a "headless fourth branch of government," as the regulatory agencies have been called, is the inevitable result.

How successful the regulatory experiment in general has been is a question to be answered at another time. Our experience with the National Labor Relations Board has not been favorable. An interesting difference between the Board and other agencies is that Congress need not involve itself in deciding unfair labor practice cases. This was originally the function of the Federal judiciary, and I believe, these are powers which we would be well advised to return to Federal district courts.

Probably the most serious allegation against the Board is that it has willfully ignored section 7 of the National Labor Relations Act which states:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection, and shall also have the right to refrain from any or all of such activities.

For special emphasis I repeat the last phrase: "and shall also have the right to refrain from any or all of such activities."

Section 7 has been called the "central dominant provision of the National Labor Relations Act" and the "most significant and most carefully considered expression of Congress fundamental labor policy."

In his appearance before the Ervin subcommittee in 1968, Prof. Sylvester Petro, a professor of law at the New York University School of Law, expressed the opinion that Congress had rated collective bargaining superior to employee freedom of choice in the Wagner Act, but that it specifically reversed this priority with passage of the National Labor Relations Act.

To quote from his testimony:

The Labor Board, sometimes blatantly, more often hypocritically and disingenuously,

but ever persistently has been attempting to restore the state of affairs prevailing under the Wagner Act. It has been trying, often successfully, to re-evaluate union organizing privileges and collective bargaining over the principle of free employee choice.

Professor Petro goes on to cite the Board's insistence that employers make concessions to the unions during bargaining to demonstrate their good faith—in defiance of clear statutory language to the effect that neither concessions nor agreements were required—and that the Board almost daily infringes upon the constitutional rights of the employers through its constriction of his freedom to speak.

He concludes:

Congress' labor policies survive in about the same proportion and to about the same extent as do the reviewing powers of the Federal courts of appeals.

I shall ask that the text of Professor Petro's testimony be printed in the RECORD at the conclusion of my remarks so that Senators who have not had the opportunity to study his very valuable conclusions may do so.

The argument is sometimes made that labor relations are such a distinct and inordinately complex field that they must be administered by specially qualified technicians familiar with and possessing expertise in this field.

I say the argument is made. The case has never been proven to my satisfaction that labor relations are any more complex than any other thousands of relationships with which the judiciary is called upon to deal daily. We do not assign judges to cases on the basis of their expertise in aerospace, when that is involved, or medicine, or mental therapy, or disputed contracts by motion picture actresses, or any of a number of other relationships.

In fact, judges do possess expertise in the only area which is important: they are practiced in the art of legal administration. The judicial temperament requires, to quote Professor Petro again, "a strong but open mind; a habit of reserving judgment until all the facts are in and disinterestedly evaluated; a willingness to listen—really listen—to argument; patience; respect for the opinions of other judges; a good logical mind which will adequately distinguish the relevant from the irrelevant facts and the cogent from the illogical arguments; an inclination to start out every case believing that the facts, the law, and the arguments—not the identity of the parties—should determine the decision."

I submit that these qualities are precisely the ones which have been conspicuously absent in the decisionmaking processes of the National Labor Relations Board in recent years.

I intend to introduce legislation which would remove unfair labor practice cases from NLRB jurisdiction and place them in Federal district courts. Unfair labor practice cases constitute, of course, the vast bulk of NLRB business.

It is not my intention to introduce this legislation today. I shall merely ask that it be printed in the RECORD at the conclusion of my remarks. I intend to send a letter to other Senators and provide them

with the opportunity to join in cosponsoring this bill if they so desire. It is my intention to introduce the bill next week.

Mr. President, I ask unanimous consent that the Sylvester Petro testimony and a copy of my bill which I intend to introduce be printed in the RECORD.

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

SEPARATION OF POWERS AND THE LABOR ACT—
HOW A DELEGATION OF JUDICIAL POWER TO
AN EXECUTIVE AGENCY HAS BROUGHT ABOUT
A LOSS OF POLICYMAKING LEGISLATIVE POWER
TO THE CONGRESS

(By Sylvester Petro, professor of law, New York University)

I. SUMMARY STATEMENT

When the Senate was considering the Taft-Hartley Bill in 1947, Senator Joseph H. Ball, though himself a leading proponent of the Bill, called attention to its outstanding weakness. He said: "The rights guaranteed to employees . . . could be made a complete dead letter overnight by a National Labor Relations Board that was so inclined."¹

One of the major objectives of the Taft-Hartley Act was to secure a fairer administration of the national labor policy, an application of the Labor Act more faithful to Congressional intent, than the Labor Board had provided under the Wagner Act.² Congress hoped in 1947 that such a result could be achieved by a number of provisions which exhorted the Labor Board to operate more in the manner of a regular court.³ Unfortunately, however, the Labor Board members were asked to produce judicial results without being given one of the essential characteristics of federal judicial office—life tenure—and without being placed in the only branch of the federal government which can, if it wishes, devote itself essentially to non-political, disinterested interpretation and application of law—namely, the federal judiciary. Asking the short-term, politically oriented Labor-Board members to act like a court was like asking a baseball pitcher to call his own balls and strikes. This is what disturbed Senator Ball. His fears have been borne out.

The labor policies prevailing today are as much those of the Labor Board as they are those declared by Congress in the National Labor Relations Act. The two are radically different in certain critical respects. Since the Labor Board is an administrative agency, and since the Constitution delegates all policy-making, legislative powers to Congress, a miscarriage of the principle of the separation of powers has occurred.

This miscarriage was not brought about by any defect inherent in the principle itself. It was brought about by a violation of the principle. Influenced by plausible error, Congress merged into a short-term politically oriented executive agency significant aspects of administrative, judicial, and legislative power. That merger upset the delicate balance which the Constitution establishes. It gave the administrative branch a critical edge over and above the natural advantage which it possesses as the activist branch of government—the only branch which possesses and wields substantial and sustained aggressive power, much money, and hordes of personnel.

The observable result is that Congress's labor policies now prevail only to the extent that the United States Courts of Appeals continue to exercise in Labor-Act cases the fragments of their constitutional judicial power that Congress and the Supreme Court permit them to exercise.⁴

It adds up to this: if Congress wishes to preserve its legislative policy-making su-

premacy, it must respect the judicial supremacy of the federal courts. We attain the height of practical realism today when we rediscover what Americans learned in the 18th Century, what Englishmen learned and re-learned a dozen times from the 11th Century to the 17th Century, and what Aristotle discovered in the 4th Century, B.C., namely, that executive power is strong stuff which must be carefully guarded.

Here, I respectfully submit, are the practical principles which should influence the thinking of this Subcommittee on Separation of Powers:

1. That a wary legislature and an independent court system with complete and unfragmented judicial power—even working as deliberate allies—are by no means overwatched against an ambitious executive;

2. That if the rule of law is to be roughly approximated, executive power must be confined to pure administration, even when plausible arguments, based on convenience or on necessity, are made in favor of adding legislative and judicial powers to the executive power;

3. That if all the inordinately complex and intersecting interests of this nation are to be harmonized and reconciled tolerably, it is going to have to be done by policies and legislation wrought from the kind of deliberation and compromise available exclusively to the representative branch of government, namely Congress;

4. That the executive branch is physically and politically unable to confine itself to disinterested interpretation and application of Congress's policies and statutes—especially those conceived and enacted in past times;

5. That an independent judiciary such as that envisioned by the Constitution may perhaps not be sufficient to insure faithful interpretation and application of the laws, owing to the possibility that men inherently lacking the requisite moral and intellectual virtues will be appointed for life to judicial office; but that nevertheless life tenure in judicial office, as the Constitution requires, is absolutely necessary if the policy-making legislative supremacy of Congress is to be preserved; and that to repeat if Congress wishes to maintain its constitutional legislative supremacy, it is going to have to accept and affirm the constitutional judicial supremacy of the federal judges.

There is more at stake here than an academic exercise in political theory. The nation is in trouble. Some of this trouble traces directly to the Labor Board's usurpation of the policy-making power and its clumsily biased exercise of judicial powers. While producing no perceptible social benefit, the Labor Board's administration of the Labor Act has been the source of definite social harm. Since its policies are materially at odds with those of Congress and since Congress represents public opinion far better than the Labor Board does, we may conclude that public sentiment is being flouted. That is evil enough in a country which values representative government. But there are other evils. Perhaps the worst product of the Board's unrepresentative labor policies has been a chronic, debilitating threat to the viability of the American economy, upon which rest both the well-being of American citizens and the hopes of decent men and women everywhere in the world.

II. CONGRESSIONAL POLICIES VERSUS LABOR BOARD POLICIES

Occupying the vital center of the labor policies declared by Congress is the principle of free employee choice. This principle was not worked out over-night in Congress. On the contrary, it emerged from over a half-century of legislative experimentation. It is visible in primitive and fragmentary form as far back as the Erdman Act of 1898. It figured implicitly in the Clayton Act of 1914 and explicitly in the Railway Labor Act of 1925,

the Norris-LaGuardia Act of 1932, and the labor relations legislation of the mid-thirties. It has come to rest in complete and definitive form in the central, dominant provision of the National Relations Act, Section 7, the most significant and most carefully considered expression of Congress's fundamental labor policy. Section 7 declares that:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities. . ."

Added in 1947, the italicized clause expressed what may be called a "quantum jump" in public and congressional evaluation of employee rights and collective bargaining. Prior thereto, as illustrated by the Wagner Act, public and congressional opinion seemed convinced that collective bargaining was so unqualifiedly in the public interest that there was no need to subordinate it to any other principle or even to place any federal restraints upon trade-union activities, however coercive, designed to spread collective bargaining. No doubt employee rights to freedom of choice in collective bargaining were even then favorably evaluated; Section 7 of the Wagner Act stated them, and Section 8 was comprehensively designed to forestall employer coercion of employee rights. However, the absence of any prohibition upon union activities designed coercively to impose unionization upon unwilling employees implies that Congress rated collective bargaining superior to employee freedom of choice.

Events during the Wagner Act period (1935-1947) brought about what has proved to be a permanent change of mind both in the general public and in Congress. Whereas previously unions and collective bargaining were thought to be unqualifiedly in the public interest, most people began seeing in the late thirties and forties that unrestrained power and privilege in trade union officials and a monolithic pro-collective-bargaining policy could produce serious damage in the form of both abuse of individual employees and weakness in the economy.

Still unwilling to discourage either union expansion or collective bargaining, however, Congress decided to subject them to another principle, the principle of free employee choice, and did so, as we have seen, by expressly declaring a right of employees to refrain from joining unions, or bargaining collectively, or participating in other union activities. There can really be no doubt that in so legislating Congress faithfully represented persistent public opinion. The Congressional majority in favor of the Taft-Hartley Act was overwhelming. It remains so. So far as I can tell, and this is the field of any major long-run interest, public opinion today is more than ever suspicious of unrestrained power and privilege in trade unions. Legislative trends are toward more control of trade unions and collective bargaining, not less. The principle of free employee choice, Congress's basic principle in labor relations law, is not only congruent with the traditions of the country; it is also in accord with the present wishes of the American people as a whole.⁵

Notwithstanding all that, the Labor Board, sometimes blatantly, more often hypocritically and disingenuously, but ever persistently has been attempting to restore the state of affairs prevailing under the Wagner Act. It has been trying, often successfully, to re-evaluate union organizing privileges and collective bargaining over the principle of free employee choice.⁶

Upon occasion one may observe the process clearly at work. The relatively recent *Garwin* case⁷ is an example. There the Board ordered

Footnotes at end of article.

an employer to bargain with a union even though none of his current employees belonged to that union. According to the Board, the order was necessary in order to remedy prior unfair practices. The fact that the order would have fastened upon employees a union which they obviously had not chosen seemed less important to the Board than the desirability of maintaining the bargaining status of the union involved. Fortunately a panel of judges was formed on the Court of Appeals for the District of Columbia a majority of which considered itself duty-bound to challenge the Board's evaluation of the policy issue. That Court, which does not habitually question the Board's policy determinations when they favor unionization or collective bargaining, held in this case that free employee choice is the paramount principle of the national labor policy and that the Board had incorrectly subordinated it to the bargaining principle.³

An almost equally egregious displacement of Congressional policy may be seen in the collective-bargaining rules which the Board has laid down. Congress guardedly and conditionally approved collective bargaining as an institution potentially in the public interest. The approval was conditioned upon the free choice of employees; there was to be no collective bargaining unless a majority of employees in the appropriate unit desired it. Moreover, the duty to bargain was carefully guarded by an explicit qualification in Section 8(d) to the effect that neither concessions nor agreements were required.

Defying these unmistakable indications of congressional intent, the Labor Board has held in hundreds of cases that employers must make concessions if they are to satisfy the good-faith bargaining requirement.⁴ In the hands of the Labor Board, collective bargaining has become an institution encouraging unreasonable, uneconomic demands by unions and discouraging resistance to such demands by employers.⁵

It is true that the Board does not straightforwardly and explicitly compel concessions—as Judge Wright in an extraordinary opinion recently said it should do.⁶ But any specialist in the field will agree that the employer who adamantly refuses to make any concession can expect to be harassed indefinitely by the Board, no matter how honest he is. As a result, employers tend to make concessions or offer counter-proposals whether or not they think it correct or economically feasible to do so. As a further result, collective bargaining practices are developing in an unwholesome way, and the law of collective bargaining surpasses the comprehension of even able practitioners.

A long string of NLRB decisions might be presented—each one requiring sustained and complicated analysis—in illustration of the Labor Board's persistent determination to replace Congress' policies with its own.⁷ Mindful, however, that this Subcommittee is less interested in the substantive minutiae of current labor law than it is in the general aspects most relevant to the separation of powers, I confine myself to an account of only some of the outstanding examples of the Board's negation of Congressional policies in favor of its own.

One of Congress' dominant purposes in labor legislation over the past twenty years has been to apply equal rules to employers and unions in organizing campaigns. Even a superficial glance at the parallel subdivisions of Section 8 of the National Labor Relations Act will convincingly reveal an intent to govern evenhandedly the activities of these normal rivals.⁸ Again this approach faithfully mirrors public opinion, which has always favored the equal rule of law. Yet again the Labor Board has flouted both Congress-

sional sentiment and the community consensus. The Board has stretched the rules relating to employer conduct to the point where infringement of constitutional right is a daily occurrence.⁹ On the other hand it has confined regulation of even the most aggressive, coercive, and monopolistic union conduct to the level, at most, of mere annoyance.¹⁰

Whereas Congress in Section 8(c) of the NLRA expressly immunized expressions of opinion in order to make sure that employees would hear both sides in union organizational campaigns, and could thus register an informed choice on the issues, the Labor Board has steadily constricted those free speech rights. So much so that it is dangerous nowadays for an employer to open his mouth at all during an organizing campaign.¹¹ And yet, as an outstanding federal judge, Judge Friendly of the Second Circuit, has said, "If Section 8(c) does not permit an employer to counter promises of pie in the sky with reasonable warnings that the pie may be a mirage, it would indeed keep Congress' word of promise to the ear but break it to the hope."¹²

Common sense would seem to suggest that an employer cannot coerce employee free choice by unconditionally offering benefits. Yet the NLRB, with the approval of the Supreme Court, has been holding that an employer violates the Act in granting even the most innocuous benefits, or merely promising them, during an organizational campaign.¹³ This may not seem a vastly important point. The fact is, though, that, together with the extra statutory limitations imposed upon employer free speech and other strained extensions of the law, it has made it possible for the Board to find employers guilty of unfair practices whenever they vigorously resist an organizational drive. The Board's apparent objective is to quell all resistance to union expansion. If it succeeds, employees and their freedom of choice will be the principal victims.

With its powers in such formidable array, the Board is in a position to impose collective bargaining virtually at will, quite regardless of the preferences which employees might register in the secret-ballot elections which the Board is tending to avoid. And this in spite of the fact that Congress has indicated that the preferred—if not the exclusive—means of establishing bargaining status for unions and imposing bargaining duties on employers is the secret-ballot election.¹⁴ The tortured, devious methods by which the Board has thus flouted Congressional intent is well worth this Subcommittee's attention. The recent case of *Bryant Chucking Grinder Co. v. NLRB*¹⁵ will serve as an example of how the Board is managing to impose collective bargaining, either without elections or, worse, in spite of election defeats. Here is an outline of the case.

1. A union had been defeated in a secret-ballot election in 1959.

2. In 1962 that union began another organizing campaign. The record showed that the union circulated employee authorization cards on the basis of both public and private representations that the cards would be used in order to secure another election, not in order to secure immediate recognition of the union as exclusive bargaining representative.

3. Cards were signed by 198 of the 337 employees in the bargaining unit, but the employer refused to recognize the union on the basis of the cards, insisting instead upon an election (as the law permits the employer to do).

4. An NLRB-conducted secret-ballot election was held in November, 1962. The union was rejected in this election by a vote of 184 to 124.

5. In December of 1962 the union filed objections to the election alleging employer interference.

6. Entertaining the objections, the Board ordered a new election.

7. After the Board ordered the new election, the union (for reasons not explained) withdrew both its objections to the past election and its petition for a new election; instead, in January of 1963, the union filed unfair labor practice charges against the employer based on his pre-election conduct.

8. The NLRB Regional Director dismissed these charges on the ground that they were disqualified by the Board's decision in *Aiello Dairy Farms*,¹⁶ establishing the rule that charges would not be entertained when they related back to pre-election conduct.

9. The union appealed the dismissal to the NLRB General Counsel.

10. The General Counsel sat on this appeal for roughly two years while prosecuting other cases in which he argued that the Board should overrule the *Aiello Dairy Farms* decision.

11. Finally, in *Bernel Foam Products Co., Inc.*,¹⁷ the Labor Board overruled *Aiello*.

12. The General Counsel thereupon ordered the Regional Director to issue a complaint based on the charges filed by the union in this, the *Bryant Chucking Grinder* case.

13. Owing in part to delays common in the Board's glacial processes and in part to exceptional ineptitude on the part of the Board's Trial Examiner, an NLRB decision was not reached till late in 1966—some four years after the events in issue and the union's defeat by a vote of 184 to 124.

14. This NLRB decision¹⁸ held—
(a) that the employer had never been entitled to the 1962 election because he had not had a reasonable basis for a "good-faith doubt" of the "majority status" established by the 198 signed authorization cards proffered in 1962;

(b) that the employer's conduct prior to the election interfered with the free choice of the employees and thus invalidated the election; and

(c) that the employer had a duty to bargain with the union from late 1966 on, despite the election defeat, because of the card majority in 1962.

The employer appealed to the Second Circuit.

Writing the court's decision, Judge Hays enforced the Board order with little attention to the facts of the case. Judge Friendly concurred specially, broadly indicating that he would much rather have denied enforcement of the Board order. He went along with Judge Hays, he said, because the Supreme Court's decision in *NLRB v. Katz*,¹⁹ "was couched in terms so strong that to impose an exception requires more boldness than I possess."²⁰

Judge Anderson, dissenting, took the position that it was not a matter of boldness at all but simply one of keeping the Board from inflicting another travesty of Congress' policies on the nation. He pointed out that the employer's pre-election conduct was innocuous; that the Union had misrepresented the purpose of the cards, thus disqualifying them as evidence of representative status; and that the Board's decision was imposing a bargaining representative upon employees who had shown only, if they had shown anything, that they did not wish to yield their individual rights to a union. Perhaps the most impressive fact adduced in Judge Anderson's powerful dissent was the difference in the bargaining unit in 1967 from what it had been in 1962, when the 197 cards were signed. There were 337 employees in the unit in 1962. There were 400 in 1967. Equally significantly, at least sixty of the card-signers had left Bryant Chucking in the intervening years. Thus, Judge Anderson concluded, the Board was giving the union exclusive bargaining status for over 400 employees in 1967 on the basis of signatures by roughly 135 employees in 1962—signatures gained, more-

over, on the representation that the cards would be used to secure an election!²⁶

The importance of this Subcommittee of the process illustrated by the *Bryant Chucking* case can scarcely be exaggerated. In the last two or three years that process seems to have become the preferred method of establishing bargaining status. If this is true, a wholesale departure from Congressionally declared rules and policies has occurred. It is not a matter only of abandoning the secret-ballot elections which Congress so clearly envisioned as the main means of establishing bargaining status. The full nature of the travesty cannot be appreciated unless one knows that the Board itself has frequently characterized authorization cards as unreliable methods of ascertaining employee choice.²⁷

Moreover, the rigged processes evident in *Bryant Chucking* illustrate another radical departure from Congressional intent. One of the main objectives of the 1947 amendments of the Wagner Act was fairer and more judicious conduct by the Labor Board. The 1947 amendments sought to induce Board members to deal more scrupulously with the facts and to give more sensitive heed to due process requirement.²⁸ But the Labor Board has repaid this Congressional solicitude in customary coin. Since 1947, and especially in the last few years, the Board has issued a long series of decisions which, in terms of arrogant fact-distortion, questionable legal interpretation, and callousness toward due process requirements, at least equal and often surpass the worst that it had produced under the Wagner Act.²⁹

Perhaps the outstanding historical example of such Board conduct is to be found in its decisions in the *Kohler* case. Since I have written a book³⁰ about the NLRB's first decision³¹ in the case and an article³² about the second,³³ I do not think it necessary to spend time and space on that affair here. Suffice it to say that, in my opinion, that litigation provides in itself sufficient basis for a re-evaluation by Congress of its grant of judicial power to the NLRB.

So disturbing has the Board's performance been that it seems increasingly to try the restraint of federal judges.³⁴ The federal circuit-court judges habitually bend over backwards in an effort to respect the limits on their reviewing power which Supreme-Court decisions and the statute to some extent impose. Judge Friendly's comment reflects the sentiment of a good many of his brethren on the federal bench and will be found repeated in one form or another in dozens of decisions each year. In short, the U.S. courts of appeals frequently enforce Board orders even when it is perfectly clear that, given a freer hand, they would vacate them.³⁵ In the opinion of easily a majority of the federal judges, I would say, the NLRB has a policy of its own which only accidentally intersects and coincides with the policies of Congress.

It would be inaccurate to conclude, however, that no vestige of Congress' policies survives today in labor relations law and practice. Those policies do survive to some extent. And in this fact resides another fact of significance to this inquiry into the separation of powers: Congress' labor policies survive in about the same proportion and to about the same extent as do the reviewing powers of the federal courts of appeals.

I turn now to consideration of the constitutional validity, the practical worth, and the consequences of Congress' having transferred so much judicial power from those courts to executive agencies.

III. "EXPERTISE," SEPARATION OF POWERS, AND DUE PROCESS

It is something said that, whatever their constitutional defects, quasi-judicial administrative tribunals are vital to good government because of the complexities of the

modern world. One used to hear, too, that such tribunals are necessary in order to get speedy justice and broad-minded, flexible, sophisticated decisions. Lately, with NLRB and other administrative agencies demonstrating a truly remarkable talent for delay and for hide-bound mechanical decisions,³⁶ one does not hear the latter encomium of administrative agencies so much. But "expertise," one still hears, is as necessary in government as it is in the other vital aspects of advanced, intricate, delicately interdependent contemporary society.

According to this view it is unrealistic and "reactionary" to expect the regular courts either to possess, to develop, or consistently to exercise the requisite expertise in so specialized and complicated a field as, for example, labor relations. There a tribunal manned by experts is needed. One does not ask a general handyman to build or repair a computer. In the same way, a judge of general jurisdiction cannot be expected to perform well in the complex, specialized area of labor relations. There a specialized expert tribunal such as the National Labor Relations Board must do the job.

It will be observed that this rationale is built around two assumptions: (1) that labor relations are a distinct, inordinately complex field; (2) that a specially qualified agency is thus required to administer them.

It is true that the employer-employee relationship is distinct from such other relationships as husband-wife, parent-child, buyer-seller, contractor-subcontractor, government-person, and teacher-student. It is not self-evident, however, that the employer-employee (or union-employee or union-employer) relationship is either more sensitive, more complicated, or more critically a matter of public interest than those and other human relationships. Society is a sensitive complex of human relationships; all human relationships are relatively subtle and complicated. It is not possible to maintain *a priori* that labor relations are more so. Such an assertion has to be proved. No one has ever done so—probably because it would be impossible to do so.

Even if it were conceded for the sake of argument that labor relations are exceptionally sensitive and complex, it would not follow that—the nation's *fundamental* policies being what they are—a specialized agency of government is necessary. The fundamental policies of this nation call for the administration of labor relations mainly by employers and employees and, to some small degree, by trade unions and arbitrators. The more complex relationships become, indeed, the more necessary does it become to leave to individuals the freedom to adjust their own relationships. The effect of thoroughgoing regulation of complex relationships is only frustration for both the regulating body and the persons regulated. Regulating an infant is relatively easy; the child grows more difficult; the teen-ager almost impossible—all because the relationships have grown more complex. It is the nature and supreme advantage of a free society, as distinct from a command or totalitarian society, to leave the *conduct* of all human relations essentially to the persons immediately involved, or to their agents, subject only to general rules, equally applied.

Congress has followed this policy in the Labor Act. It has never empowered the Labor Board to administer labor relations (although that agency has frequently had to be reminded by the Supreme Court, by the U.S. Courts of Appeals, and by Congress of the limited reach of its commission). Congress has empowered the Labor Board and its General Counsel to administer the *National Labor Relations Act*, not the *labor relations* of the country.

The General Counsel's functions are mainly to decide which charges should be prosecuted and then to prosecute them. The functions of the Labor Board and its subordinates

are (1) to conduct hearings; (2) to interpret and draw conclusions from written and oral evidence; (3) to apply Congress's law to the facts found in accordance with congressional intent; and (4) to issue appropriate orders.

No one has ever advanced a convincing reason for giving a prosecutorial monopoly to a lawyer entitled "General Counsel of the National Labor Relations Board" as against vesting this power, say, in the Department of Justice. Moreover, no one has explained why either policy or justice in labor law is served by denying private parties—employees, employers, or union officials—the power to prosecute their own cases which private parties are accorded under the antitrust laws. No one has even attempted to justify this—again probably because it would be impossible to do so.

On the contrary, the General Counsel's prosecutorial monopoly works against both policy and justice. Denying persons the right to a day in court more markedly denies justice than does a denial of due process. It is a denial of all process. This denial cannot be justified on "policy grounds," either, for its effect has been and must continue to be to inhibit and frustrate the development of labor law.

As matters now stand only such developments occur as the General Counsel wishes; dozens of decisions could be cited to the effect that there is no appeal from a refusal by the General Counsel to issue a complaint. Without in any way impugning the good faith of the General Counsel, it remains self-evident that he and his limited personnel cannot possibly equal the range, the vigor, and the litigational fertility of the nation at large. Even if it be conceded, as I do, at least for the sake of argument, that the General Counsel's staff includes lawyers as learned and as clever as those in private practice, the fact remains that the latter are more numerous and more zealous to serve their clients. The General Counsel's professional monopoly should obviously be withdrawn.

If it is difficult to understand why the General Counsel should have a prosecutorial monopoly, it is at least equally unobvious that human beings who become members of the National Labor Relations Board are more qualified to perform the judicial functions which Congress created in the National Labor Relations Act than are the men who occupy the federal bench. Conducting hearings, ruling on sufficiency of complaints and answers, admitting or excluding evidence, evaluating testimony, interpreting documents, drawing inferences, arriving at conclusions of fact of law, fashioning appropriate orders—these are all activities requiring a certain level of competence, training, and experience. The "man in the street" is not likely to carry out these functions very well without special training and experience.

The question, however, is not whether the NLRB is more qualified than the man in the street to carry out these functions. For the purposes of this investigation into the separation of powers, the main question must be whether Congress has a reasonable basis for delegating judicial powers to an administrative agency, rather than to the judges of the federal bench. Admitting that "expertise" is a good thing, we must then ask: expertise is *what*? If it is expertise in legal administration—in the arts and skills of *judging*—*prima facie*, at least, one would think that career-judges are the true experts.

In a period when principled analysis counted for more than it does in these "pragmatic" days, it would have been enough to point out that the members of the National Labor Relations Board are appointed for limited terms of office. That fact would alone serve to disqualify them for the exercise of any part, however small, of the judicial power of the United States. For the Constitution insists that the judicial power of the United States be exercised only by men appointed to the federal bench for life.

Footnotes at end of article.

The times being what they are, the analysis must extend beyond and behind the Constitutional standard, even though in doing so it will only confirm the acuteness and the wisdom of that standard. Two integrated inquires suggest themselves: (1) Are Board members and their subordinates better qualified than federal judges to carry out the judicial functions created by the Labor Act? (2) Are the congressional policies embodied in the Labor Act likely to be accepted with better grace and more faithfully effectuated by the Labor Board or by the federal courts?

1. No extensive "empirical research" is necessary in order to establish that the Labor Board members and their subordinates begin their careers with no significant training or experiential advantage over the men who are appointed to the federal bench. As a matter of fact, the only relevant specialist training for the functions under consideration is legal training. All federal judges nowadays, so far as I have been able to discover, are legally trained. Most Labor-Board members and personnel have likewise had legal training, although some have not. There is a stand-off here, and I doubt whether it could be resolved by reviewing the law-school records compiled by the judges and the Board people respectively.

As far as experience is concerned, it is quite probable that Labor Board personnel, if only for being younger on the whole, have had less general experience at the beginning of their Board careers than the federal judges (who come mainly to office after years of practice) have had in the beginning of their judicial careers. On the other hand, Labor-Board personnel, since their efforts are confined to the labor law field, tend to build a more concentrated and extensive experience in labor law much more quickly than the federal judges do.

Careless thinking might lead one to conclude from the foregoing that the Labor Board people soon acquire a significant advantage, even if they do not begin with one. More careful consideration leads to a different conclusion, however.

Of course a person specializing in labor law is likely to know more about that subject than the person who does not specialize in it. No court of general jurisdiction will ever be able to match a specialized court in the mastery of the minute detail of the substantive law in which the latter specializes.

It is a serious mistake, however, to regard this as a significant point. What we desire primarily in judges is not exhaustive mastery of the substantive details of any particular field of law. It is the job of the opposing lawyers to bring all the relevant law and doctrine to the court's attention.

A solid grasp of basic principles of law in the various fields is more than enough such equipment for any judge. What a democratic society wants essentially from its judges, however, is a complex of other qualities. It requires what it perhaps best comprehended within the term "judicial temperament": a strong but open mind; a habit of reserving judgment till all the facts are in and disinterestedly evaluated; a willingness to listen—really listen—to argument; patience; respect for the opinions of other judges; a good logical mind which will adequately distinguish the relevant from the irrelevant facts and the cogent from the illogical arguments; an inclination to start out every case believing that the facts, the law, and the arguments—not the identity of the parties—should determine the decision. There is no basis for the belief that NLRB members, trial examiners, or other Board personnel rank higher than the federal judges on this all-important standard of judicial temperament. Quite the contrary.

In a representative government, there is one more supremely desirable judicial qual-

ity. If representative government is to function properly, the judges must be satisfied to leave the policy-making to the legislature; they must be committed to interpreting and applying the statutes which the legislature has passed, not to competing with the legislature as a law-making, policy-making organ of government. For neither judges nor administrators can ever represent the nation and its people in the way that Senators and members of the House of Representatives do. It is physically impossible for judges and administrators to constitute themselves the deliberate and consultative micronism of the nation which the House and the Senate do without even thinking about it.

When judicial officers take on a legislative role, they make a mess all round. They produce neither good legislation nor good decisions. Litigation, the courtroom, and the judicial opinion are functionally neither adapted nor adaptable to either gathering the sense of the whole community or expressing it in legislative form. On the other hand, litigation, the courtroom, and the judicial opinion are the best means thus far devised for applying established law and policy to the facts of the individual dispute which every case or controversy involves.

This is why it is good for legislatures to stick to legislating and for judges to stick to judging. It may be all right for legislatures to care little about the facts of particular cases when they are contemplating general legislation. But the judicial officer who fails to attend excruciatingly to the facts of the particular case he is deciding, on the contrary, is fundamentally and dangerously untrue to his function and duty.

One of the characteristic defects of the NLRB is that it is continually forcing the facts to fit its predetermined policies. Instead of fitting Congress's law to the facts as they exist, the Board persistently manhandles the facts so that they will produce the results it wants. The Board wants every employee in the nation to wear a union label. If Congress says that employees need wear a union label only when it fits them, the Board does what it can to make a fit. If the facts don't fit, the Board will make them fit. If there are no material facts at all, the Board will frequently use adjectives to make up the deficiency. Thus in *Rivers Mfg. Co.*, the trial examiner delivered himself of the following comments: "In this setting of intensive and extensive [sic] interference, restraint and coercion, the Respondent terminated the employment of nine employees . . . known by management to be union adherents . . . The evidence sustaining General Counsel's allegations that these October 2 discharges were designed to discourage further self-organization is overwhelming."²⁷

After a painstaking examination of the entire record, Circuit Judge O'Sullivan concluded that the trial examiner's characterizations were not only exaggerations but "without foundation." "A right to infer," he said, "is not a right to create."²⁸

The point is that it is unrealistic to expect patient, painstaking analysis of fact and application of existing law from committed ideologues; for they are interested more in molding the world to their desires than in doing justice in the immediate dispute. The closely related point is that such ideologues cannot be expected to subordinate their policy wishes to those of the legislative. Hence, if Congress wishes its policies to govern the country it must insist upon judges who are willing to confine themselves to judging and to leave the policy-making to Congress.

Some will perhaps challenge this view of the necessity of Congressional policymaking supremacy. We have heard a great deal of talk in recent years, for example, about the superior representative qualities of the presidency. However, disinterested analysis of the relevant facts must quickly dismiss such talk. As remarkable as the presidents of this

country have been, it is impossible for any one man—even before being elected president—to equal Congress's representative capacity. And it is simply absurd to expect him to sustain a broadly representative character after he takes up the consuming burdens of office. No one man can even meet and know as many people in as many places as five or six hundred Congressmen and Senators can. Still less can he reconcile within himself the kind of consensus or compromise which is possible in a multitudinous consultative assembly originating in all the geographically distinct areas of which the country is composed.

If the President wished realistically to gather the consensus of the whole country on all issues, he would as a practical matter have available to him no better mechanism for doing so than the one already available in the House and the Senate. There is really a very peculiar meaning in the assertion that the President represents the whole country better than Congress does. Persons using such language mean that they have been able to convince the President of the worth of their proposal while Congress has remained unmoved. But when Congress remains unmoved—it being the genuine representative of the whole country—the meaning is that the whole country is not ready to endorse, as the President may be for his own reasons, the desires of the pressure group involved.

Many presidents have agonized over the "loneliness" of their position. This phenomenon, grown more frequent of late, is of potentially great significance to any study of the Separation of Powers. The lament grows out of the condition of executive power which, presumably, the person who gains the presidency has more or less actively sought. Executive responsibility must ultimately be concentrated in one person. In this country, with government grown to great, presidential responsibility absorbs as much time and energy as the incumbent is willing and able to give it. An executive decision always has to be made, one way or another, clearcut or ambiguous. There is no way in the world for the President to share his responsibility in the way that Senators and Representatives not only can do—but must.

This is not to say that Senators and Congressmen do not have to make "lonely" and difficult decisions with respect to their own personal choice of action. Of course they do, as all human beings must. But it is in the nature of legislation in a representative government that the responsibility for every legislative act is a well-divided and broadly shared responsibility, arrived at deliberately—with each Congressman or Senator in a position to be fairly confident that his vote either reflects the majority sentiment of his constituency or at least does not violate that sentiment sufficiently to lose him his office. It is physically impossible for a single person over any sustained period, however delicately tuned his antennae, to maintain such rapport with the whole nation, especially when he has heavy executive responsibilities to dispatch. He can take only one position on an issue at a time. That is the ineluctable consequence of being a single human being. Five hundred or so elected representatives can take five hundred positions, and each, theoretically, may be satisfying his duty to his own constituency.

The merit of representative government in the form established by the Constitution of the United States lies mainly in its realistic response to such practical considerations. No better way to run a country in accordance with the dominant wishes of the community has as yet been discovered.

If it is true that the President—the outstanding politician of the country (I use the word with no pejorative intent)—cannot represent the sum of the country's policy wishes as well as the Congress does overall,

It would seem to go without saying that no bureaucrat, no administrative agency, no judge or body of judges can do so. This is why, in a country which prides itself upon being a representative government, it is supremely desirable that anyone exercising judicial power be content to leave the policy- and law-making to Congress. For the alternative involves the abandonment of representative government and a substitution in its place of rule by the one or the few. In Aristotle's terminology, the commonwealth gives way to a democracy, and a democracy to tyranny.

If judicial temperament and a willingness to leave policy-making to the legislature are the two basic and reciprocal requirements for a proper exercise of judicial power, it is difficult to see how Labor-Board members and personnel qualify better than federal judges. On the contrary, a federal judgeship is far more likely to secure those qualities than is an administrative appointment. Consideration of our second basic question will further illuminate this matter.

2. That question is whether the Congressional policies embodied in the Labor Act and with them the supremacy of legislative policy-making are likely to be better enforced and preserved by the Labor Board or by the federal courts.

I happen to believe that, over the years, decisions of incomparably higher quality, greater fairness, and more cogency have been produced by the United States Courts of Appeals than by the National Labor Relations Board.³⁰ But it is not enough, for the purposes of this Subcommittee, to register the opinion that better decisions have come from the courts than from the Board. I assume that this Committee is interested in looking into the question whether there is something inherent in the character of federal judgeships or Board memberships on the basis of which a fair prediction about the future conduct of the respective incumbents can be made.

Human beings, customarily with legal training, man both the federal courts and the NLRB. We must assume, if we are to avoid interminable and inconclusive personality comparisons, that agency members and judges begin with equal moral and intellectual characteristics. The question then focuses on the respective institutional settings and the probable effects of those settings on the performance of their judicial duties.

IV. JUDICIAL COURTS VERSUS ADMINISTRATIVE COURTS: THE INSTITUTIONAL SETTINGS

The institutional setting of each member of the National Labor Relations Board is a five-year appointment to what is known as a quasi-judicial tribunal, located by law, fact, and tradition in the executive branch of government. Appointment is by the President, with the advice and consent of the Senate. The duties, described above, are essentially judicial in character. One hears varying opinions, concerning whether or not the Board members should conceive of themselves as essentially policy-making participants in any current Administration, on the one hand, or judges on the other. The "Eisenhower Board" avowed and to some extent adopted a judicial stance; the "Roosevelt-Truman-Kennedy-Johnson" Boards, while still not entirely disavowing a judicial role, have on the whole adopted an essentially policy-making stance conformable to that of the Administration in power.

Federal judges also are appointed by the President, with the advice and consent of the Senate. To this extent, the institutional setting of federal judges and NLRB members is the same. But to this extent alone. No federal judge has ever asserted that his job is to effectuate the policies of a given executive administration. On the contrary, when federal judges discuss the question, their uniform affirmation is one of *obedience* to

the Constitution and to the congressional intent expressed in valid legislation.

The Supreme Court of the United States has been accused of policy-making ambitions, both currently and in the past. Whether or not this Subcommittee or I credit such accusations is not material to the present inquiry. For no one can validly accuse the Supreme Court of a peculiar policy bias *conceived and pursued essentially because that policy is favored by the incumbent administration.*

Supreme-Court justices have been a constant source of surprise to the presidents who appointed them. Justice Holmes's contempt for antitrust law and policy—a shock to the President who appointed him—is only one example of a number of such cases. It is incorrect to believe that the present Supreme Court, "activist" though it may well be called, is acting the way it is because it believes that the present or any past Administration wished it to act in that particular way.

We come, then, to the first of two sharp distinctions between membership in the NLRB and federal judicial office: the five-year terms of the former and the life tenure of the latter. The five-year term of office goes far toward insuring allegiance in each NLRB member to the Administration which appointed him, to the one with power to re-appoint him, or to both. There is no need to oversimplify the situation. Tradition may call for a "pro-union" Administration to appoint one or two "pro-employer" types to the Board. In such a case, the "pro-employer" Board member would be unfaithful to the Administration if he abandoned his former stance as a means of insuring re-appointment. In order to keep the "bi-partisan" show going, he must maintain some semblance of the penchant which got him his appointment in the first place.

If a Board member wishes reappointment at the end of his five-year term, he must satisfy the Administration then in power that he can be relied upon to act in accordance with that Administration's labor-policy views, subject to the "bi-partisan" tradition. There is nothing sinister and nothing surprising about this. In the contrary, a given Administration has no basis for its appointments to the NLRB other than furtherance of its policies and political ambitions or payment of its political debts. Expecting an Administration which has gained power with the assistance of trade unions to appoint a Board which would deal as rigorously with unions as the law requires—that is as realistic as it would be to run for office on a platform which the voters demonstrably oppose.

It is true that a Board member is always in a position to "betray" the President who appointed him. The betrayal may even win him reappointment from a succeeding President who approves his new position. But this is of little significance. The fact remains that a majority of the Board will always be governed sooner or later by the political position of the Administration in power; five-year terms expire; then the Administration's labor policies reflect themselves in the new appointments. President Kennedy had a majority within a year or so of his accession.

It is possible that the Administration's labor policies will coincide precisely with those of the Congress which passed the legislation in question. Possible, but not likely. As time passes, the likelihood diminishes. An Act passed by Congress in 1947 is not likely to express exactly the policies that an Administration in 1967, or 1987, finds suited to its political and social objectives.

But even when Administration objectives coincide exactly with the legislatively expressed policies, it will be the Administration which controls the action of the quasi-judicial executive agency, not the legislation. It is important to bear this in mind because

results in particular cases will be affected. Thus, though there may be a general policy, coincidence between the legislation and the Administration, the Administration, may still feel that in a particular case, for one reason or another, it is desirable that the impact of the legislation be softened, hardened, or re-directed in some other way.

Our present structure of "administrative law" leaves plenty of room for this sort of thing. A busy General Counsel has to pick and choose the cases which he will prosecute. He cannot prosecute them all. Certainly he need not prosecute them all with equal vigor and persistence and acumen. After all, the main thing is to keep the staff busy. If it is kept busy in spite of the fact that one particular case is not prosecuted at all, or that it is put "on the back burner," what great harm has been done?

Or suppose the case is prosecuted so that it gets before the Board. Courts may not substitute their conclusions for those of the Board where there is substantial evidence in the record considered as a whole which supports the Board's finding. Not uncommonly the record as a whole will sustain contrary findings. In such a case, the reviewing court, if faithful to this basic principle of "administrative law," may not vacate the Board finding no matter which way it goes. Hence it is perfectly permissible for the Board to go either way. And the judge who keeps faith with the law—as most federal judges do—must enforce the Board order in either case. All this being true, the Board itself is in a position to do exactly what the General Counsel does in picking the cases to prosecute. It is in a position, in short, to make an exception whenever doing so is of great importance to the Administration of which it considers itself a part.

I am no muck-raker and do not wish to exaggerate the incidence of such conduct on the part of either the Board or its General Counsel. For the purposes of this Subcommittee, in any event, it is enough that such possibilities exist, even if they have never actually occurred. Indeed the analysis will proceed more disinterestedly and more expeditiously if it is realized that there is no necessity to establish that this sort of thing has or has not happened in any particular case.

For the major point in our inquiry is that nothing of the kind can reasonably be expected where judicial power is confined to men with life tenure who have been appointed to the insulated judicial department of government. If the Supreme Court is indeed an activist, consciously policy-making agency, rather than a genuine court of law, it is so because that is the way it conceives its function. If there is a flaw in the Court's position, that flaw is not a product of any defect in the Constitution, in the principle of the separation of powers, or in the institution of life tenure for judicial officers. It is a flaw, instead, in the conception of judicial office held by individual members of the Court. It is a product of their failure to understand the functional *inadequacy* of the court room as a political, policy-making institution, and the functional *superiority* of the courtroom, as an institution in which justice under law may be distributed among particular parties litigant on the basis of minute consideration of the particular facts and of the legal arguments which the adversary system is bound in individual cases to bring to the attention of the judges.

If misunderstanding and ineffective corrective measures are to be avoided, it is necessary to understand, *as well as we can*, what motivates the Supreme Court to take an activist, policy-making position. Of course, it is always possible to jump to the conclusion that the Court does not care about the Constitution; that the justices are arrogantly determined to follow their own will; that they are engaged in a completely extra-legal and extra-constitutional struggle for supreme power in the government of the

United States. This is not only a possible position; in my opinion, there are occasions upon which it seems the most plausible explanation of certain decisions of the Court. As an example, I would cite the recent (1967) decision of a bare majority of the Court in the *National Woodwork* case.⁴⁰

Mr. Justice Brennan wrote the opinion of the court for himself and Justice Warren, White, and Fortas. A majority was made by the special concurrence of Justice Harlan in the Brennan decision. Justices Black, Douglas, and Clark concurred in a dissenting opinion by Justice Stewart. With these dissenting justices I have concluded that Justice Brennan's opinion so blatantly flouted the clear meaning and intent of the statutory provision involved that the only possible explanation was a determination by the majority to challenge Congress' policy-making supremacy under the Constitution.⁴¹ In my view, Justice Stewart was correct in calling Justice Brennan's opinion "a protracted review of legislative and decisional history in an effort to show that the clear words of the statute should be disregarded."⁴²

However, I would remind the Subcommittee here of two points. The first is that Justice Brennan could not possibly have been meaning to carry favor with the Administration which appointed him; he was an Eisenhower appointee. Nor could he have been motivated by a desire to promote his own career by currying favor with the present Administration. There is nothing that the current Administration can do either to hurt him or harm him on the Court.

The second point to remember is that, no matter how blatantly a life-tenure justice may seem to misconstrue legislation, there is always, in the end, an objectively insoluble problem concerning motivation. We may eliminate economic insecurity where the judge has life-tenure and the position pays him enough to preclude ambition. We may eliminate vulgar corruption, owing to the traditions and the high dignity of the Court. We may eliminate light frivolity, for there is plenty of reason to believe that the justices take their role seriously. But when these and other such motivating factors are eliminated, it is still not possible for the external observer-analyst to be sure about the causal factor or factors which actually produced the judicial opinion in question. It could have been to trivial a thing as stupidity, a law clerk who did a fragmentary job of research among the authorities or in the record of the case, or an appealing argument on the wrong side, or simply the hard case which makes bad law.

It is best, then, to operate on the assumption that, however egregiously the justices may act in particular cases, they nevertheless perform their duties in good faith—by which I mean, in accordance with their conception of their role on the Court. Often, we must remind ourselves, the Court interprets Congress' statutes well and faithfully, reversing the NLRB in the process. Often, owing to the inherent ambiguities of language or to sloppy or evasive work in Congress, an interpretation can go either way, and the critic cannot complain with any great force merely because the Court has adopted an alternative which he would have rejected.

Moreover, with law professors in a state of great confusion over the judicial role with respect to statutory interpretation, it is easy to understand that at least some of the justices will share their confusion. A professor of law has recently published the following statement:

"... the myth that the courts only follow the intent of Congress inhibits most judges from examining solutions worked out in other countries, even when Congress had no intent or when that intent was not to solve

but to avoid the problem. Thus, the Court in the *Lockout Cases* condemned the NLRB for 'unauthorized assumption . . . of major policy decisions properly made by Congress,' and then fabricated a Congressional intent to support its own policy decision. The Court could have gained greater insight into the problem and made a more responsible decision if it had examined the alternative solutions from other countries; but that would require an open admission that the Court was making the policy decision which Congress had refused to make."⁴³

The foregoing comment may be broken down as follows:

1. Courts do not merely follow the will of Congress.
2. They are policy-makers.
3. It is proper that they make policy.
4. Congress did not express a policy on the legality of collective-bargaining lockouts.
5. The Supreme Court made its own policies in the *Lockout Cases*, but it did so inadequately because it was afraid to admit that it was making policy which Congress had declined to make.

The first two statements are inaccurate, though not completely incorrect. The vast preponderance of federal judges other than Supreme-Court Justices not only say that they are bound by Congressionally declared policies but act in accordance with that declaration, subject to three qualifications: (a) sometimes statutory ambiguity or other deficiencies require the court to contribute something more than mere interpretation to the decision which it must reach; (b) at times a federal judge does play fast and loose with legal doctrine and statutory interpretation; (c) sometimes the court must follow an interpretation at variance with the plain meaning of the statute because the Supreme Court has already imposed such a variant. The latter is peculiarly relevant in labor law. A large proportion of Circuit-Court affirmances of NLRB decisions is owing to the fact that the Supreme Court has so often endorsed the NLRB's revisions of the Labor Act. After the Court has done so, the Circuit Courts of Appeals have no real alternative but to go and do likewise.

The third statement is not only incorrect, but seriously so. Aside from "gap-filling" and selection among alternatives where legislation is ambiguous, the federal courts, including the Supreme Court, act improperly when they make policy. They act improperly from all relevant points of view: from the point of view of personal morality; from the point of view of Constitutional legitimacy; and from the point of view of functional-practicality. All federal judges swear to uphold the Constitution as a prerequisite to their office. The Constitution (as well as the basic concept of representative government which underlies it) states that:

"All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." For reasons already stated, no court of law can represent the nation adequately; confined to a particular dispute in the courtroom setting, broad policy-making by judges is bound to be abortive. The nation, the law, multitudes of persons, and the future of representative government in the United States—all are in a state of crisis today owing in no small part to the Supreme Court's assumption of policy-making and even constitution-making powers over the last thirty years or so.

The fourth and fifth statements are incorrect. Congress did not say in so many words that the collective-bargaining lockout was lawful. But such a lockout was plainly lawful at common law, and there was no language or no policy in the National Labor Relations Act from which an inference of Congressional determination to change the common law could properly or logically be drawn. On the contrary, there was much Congressional language from which the

Court could—and did—infer that Congress intended to preserve the legality of the collective-bargaining (as contrasted to the coercive anti-union) lockout. The Supreme Court decisions in the *Lockout Cases* were manifestly correct interpretations and applications of Congressional intent. Moreover, to suggest that the Court should have referred to *European* experience in order to determine how to govern *Americans* demonstrates a doubly peculiar lack of understanding of the system of government of the United States. It fails to understand not only what representative government means, but also what the constituency is whose views and preferences are to be represented by government and reflected in law.

I have discussed the foregoing comment on judicial-policy-making power at some length because of the help it affords in understanding the policy-making penchant of the Supreme Court. The comment does not represent the aberrant view of a single law-school professor. It represents, to my personal knowledge, a substantial body of opinion among law teachers, and therefore of necessity among law students, practitioners, and even judges. It is really ingrained enough to be called an unreconciled contradiction in our legal tradition—one which can be removed only by spreading a better understanding of the meaning and the requirements of representative government and of the Constitution.

We have come now to the second sharp distinction between the institutional framework of the federal judiciary and that of quasi-judicial administrative tribunals: the history and the traditions within which they respectively operate.

It would be a mistake to assume that an administrative agency such as the NLRB is something new, without history or tradition. The mistake is understandable because that history and that tradition are hidden and forgotten. The history and tradition which the NLRB carries forward today was rejected in the middle of the 17th Century in England. It was rejected on the basis of experience so repugnant, and so tragic for men who prized law and decency, that it could not be revived till consciousness of its terrible consequences had dimmed with the passage of more than 250 years.

I refer of course to the abolition in the 17th Century of such administrative tribunals as the Star Chamber and the Court of High Commission. Those agencies, like the NLRB, were rationalized as "expert" tribunals which could be relied upon to do "speedy justice," unhampered by the "technicalities" of the law courts, and obedient to the executive policies which parliament and the courts of law were frustrating.

The constitutional revolution which took place for a period of more than forty years in England during the 17th Century had two significant results, both relevant to our present inquiry: (1) the assertion of parliamentary policy-making supremacy, involving a radical reduction in the power of the executive; (2) the creation of a judiciary insulated from political pressures by life tenure in office, involving the abolition of all such quasi-judicial agencies as the Star Chamber.

Two great legal scholars—Sir Henry Sumner Maine and Professor William W. Crosskey—have demonstrated both broadly and in detail that the main features of the Constitution of the United States were the direct product of the English experience during the 17th Century.⁴⁴ It is impossible to read the Constitution against the background of that experience and come to any other rational conclusion. Article I gives all legislative policy-making powers to Congress; Article III gives the whole judicial power of the United States to life-tenure judges.

The result was to interrupt the history and the traditions of administrative courts. We had none for a long time, and even after the Interstate Commerce Commission was

Footnotes at end of article.

created at the end of the 19th Century, we still had little "administrative law" till the thirties. Few lawyers will now remember the names of the men who served in the Star Chamber or the Court of High Commission, if indeed those names were ever widely known. But neither will many lawyers remember the names of I.C.C. or F.T.C. or C.A.B. or N.L.R.B. members.

It seems to be in the nature of an administrative court to operate anonymously. Even today, NLRB decisions emerge anonymously. One is tempted to infer a lack of pride in or perhaps a hesitancy to assume responsibility for the NLRB's product. And the inference is strengthened by the fact that normally only dissenting or specially concurring opinions are signed by NLRB members.

The history and traditions of the federal judiciary are strikingly different. They trace directly back in an unbroken line to the great English chancellors and judges, even beyond the time when life tenure was accorded judges. It is a history full of shining examples of intellectual and moral courage—of judges who time after time vindicated the maxim, "let justice be done though the heavens fall." Roscoe Pound has described how the king's judges defied the king's will even though they served at the king's pleasure.¹⁵ Their names are known; even in the Year Books the judges are identified. One does not need to be a legal scholar in order to recognize such names as Coke, Holt, and Mansfield, or Marshall, Story, Shaw, Field, Holmes, Brandeis, Cardozo, Jackson.

It is a serious shortcoming—a failure to grasp one of the powerful determinants of human action—to underrate the influence of such a tradition, especially in the law, where a judge's nose is rubbed willy nilly so often in what his predecessors have said or done.

That thinnest, most unperceptive and most inaccurately designated of all schools of legal thought—"legal realism"—holds that judges not only do but should decide cases in accordance with their own inner intimations of immortality. But the "legal realist" does not explain how a person trained in the law, acting in a living tradition, thinking, as he must, in the categories of thought which prevail in the law, can possibly hand down decisions outside that tradition and those categories. As Morris R. Cohen was fond of pointing out, the "realism" of the "legal realists," like that of positivists generally, is better called simple-mindedness. There are more things in heaven and earth than they, apparently, have ever dreamt of.

Asking a career, life-tenure judge to act in the fashion that "legal realism" suggests is the same as asking a person to write without the alphabet. The only thing produced is an unintelligible mess, and few judges are willing to befool their tradition and the law books that way. And so most judges, especially those for whom judging is a lifetime career, tend after a while to settle themselves down into carrying on the great tradition of obedience to law as opposed to personal preference or political expediency.

Continuity, consistency, predictability—these are the values which most federal judges prize and which they try to achieve. In contrast, the field of "administrative law" presents a spectacle of violent change in the "law" with each change of Administration. Judges think that the function of law is to help the community as a whole by giving a firm standard to which persons in general may adjust their conduct without fear of finding, after they have acted on one legal assumption, that the law has been changed. Administrative agencies consider "law" only another tool with which to advance the interests and policies of the Administration in power.

I remind the Subcommittee of the vicious

Footnotes at end of article.

cunning illustrated by the *Bryant Chucking Grinder* case.¹⁶ The "Eisenhower Board" had held that unfair practice charges should not be allowed to relate back to pre-election conduct. The rule made good sense. A party should not consent to an election when he means to challenge it thereafter because of pre-election conduct. However, the "Kennedy Board," obviously for political reasons, found the rule unacceptable and simply reversed it. In so doing, it laid the basis for giving unions exclusive bargaining status and for imposing the duty to bargain on employers in hundreds of cases—in spite of the fact that the employees in those cases had, in secret-ballot elections, rejected collective bargaining.

Courts do make and change law to some extent. Unfortunately, as we have seen, they sometimes do those things even when the existing law is clear enough so that they are not required to do so by the necessity of deciding the case before them. Contrary to academicians of the kind I have mentioned above, there is no justification for such conduct. On the other hand, it is well to understand two things about it. First, the phenomenon is confined to relatively few judges, mainly on the Supreme Court. Second, it creates a power struggle between those few judges, on one side, and Congress, on the other; it does not necessarily align the judicial power with the executive power; and thus does not create so dangerous a threat to the principle of the separation of powers and to congressional policy-making supremacy as does the grant of judicial power to an executive agency.

Judicial power is the "weakest" of the three aspects of governmental power. It controls by itself neither men, nor guns, nor money, nor votes. If Congress did not keep itself to busy bootlessly trying to legislate this nation into a paradisaical state, it could without too much trouble keep the Supreme Court vividly aware of its inherent weakness. If for just a few years Congress would police Supreme Court decisions—instantly responding to so blatant an example of statutory misconstruction as occurred in *National Woodwork* by a suitable statutory amendment—even the dullest or the most arrogant Supreme Court justice would learn that he was not commissioned by the Constitution with the supreme and autocratic power which some of the justices have arrogated to themselves.

That would be a troublesome and an annoying job for Congress; an unnecessary one, too, since the Justice ought to know better, even if the professoria do not. But at least it is practical and possible for Congress to control the Supreme Court. It is a small body, turning out a limited number of decisions. In the last resort, Congress could simply take away much of its appellate jurisdiction without doing irreparable injury to the nation.

In contrast, the job of policing and controlling the activities of administrative tribunals is very nearly hopeless. There are so many. They do so many things. They grind out so many decisions. Their activities are as often off the record as on. The confusion between their powers and those of the reviewing courts creates an infinity of problems in itself. Allocating responsibility is extremely difficult. For example, the NLRB constantly contends that it must be doing a good job because the Courts of Appeals enforce a vast preponderance of Board orders. But the Courts of Appeals must enforce most Board orders because the substantial evidence rule ties their hands; moreover, by now, with the Supreme Court's support, the Board has the bulk of the substantive law under the statute in a posture such that it can write decisions pretty much at will, no matter what the facts are.

CONCLUSION

Congress's policy-making legislative supremacy, and with it this country's hope for an effectively operating representative gov-

ernment, is endangered by the merging of judicial power into such executive agencies as the National Labor Relations Board.

Delegating judicial power to an administrative agency is both unconstitutional and impractical. It is unconstitutional because the Constitution confines the judicial power of the United States to an independent judicially composed of life-tenure incumbents. It is impractical because competent judging cannot be expected from limited-tenure political appointees who operate outside the long and sustained judicial tradition of subservience to law rather than to political exigency. The principal argument in favor of specialized quasi-judicial administrative tribunals is based upon an erroneous and deceptive conception of "expertise." The relevant "expertise" must be in the art of judging. The real experts in that art are the judges who sit on courts of general jurisdiction.

Creating specialized quasi-judicial administrative courts, subject to fragmentary and limited judicial review, produces neither expert nor expeditious judicial administration. It produces instead, uncontrollable confusion. Out of that confusion, the executive branch emerges with precisely the concentration of governmental power which the outstanding achievement of the United States Constitution—the principle of separation of powers—was designed to disperse. As Thomas Hobbes said, liberty is fragmented power. The result today of re-concentrating power is a badly governed country. Tomorrow, if history is any guide, we shall have tyranny.

The process has gone far already in the field of labor policy. Although these matters are hard to quantify with any precision, in my judgment the Labor Board has managed to gather a preponderance of the policy-making power in its hands, together with executive and judicial power. Congress will to assert its Constitutional power must not be weakened by doubts of its functional and representational superiority as legislator and policy-maker for the nation. It is nonsense to hold that the President or his bureaucracy better represent the nation. It is equal nonsense to believe that courts or administrative agencies can isolate the consensus of the community into a set of coherent basic policies better than Congress can.

If Congress wishes to escape the fate of the British House of Lords and to preserve the representative character of this government, it must respect and enforce the principle of the separation of powers. This means that Congress must repeal its delegation of judicial power to the National Labor Relations Board and re-vest that power in the federal courts.

Problems will remain. Some judicial incumbents are unable to distinguish judicial activity from legislative activity even when the two are clearly distinguishable, let alone when, as often happens, it is difficult to distinguish them. Moreover, some judicial incumbents believe that judicial power is tantamount to legislative power, at least so long as they can get away with it. Ultimately, however, it is a simpler matter for Congress to correct such judicial mistakes and to subdue such power-lust in judges than it is to maintain its position against a multipowered executive.

So, even if Congress, respecting the Constitution, should confine power to the federal judges, it will have to keep a wary eye on its storehouse of legislative power. Raids by the other branches can be expected. But this is inherent in the nature of men and things. It is not only for liberty that the price is eternal vigilance.

APPENDIX

U.S. Constitution, Art. III:

"The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The

judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

"The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority. . . ."

The Federalist, No. 78:

" . . . The standard of good behavior for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government. . . . (I)t is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws.

" . . . For I agree that 'there is no liberty, if the power of judging be not separated from the legislative and executive powers.' . . . that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its coordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security.

" . . . Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence. If the power of making them was committed either to the Executive or legislature, there would be danger of an improper complaisance to the branch which possessed it . . . If to the people. . . there would be too great a disposition to consult popularity, to justify a reliance that nothing would be consulted but the Constitution and the laws"

FOOTNOTES

¹ 93 (Daily) Cong. Rec. 5013, 2 Leg. Hist. of the LMRA 1947, p. 1495.

² Cf. Rep. No. 105 on S. 1126, pp. 1-3, 8-10 (80th Cong. 1947); H. Rep. No. 510 on H.R. 3020, pp. 36-38 (80th Cong. 1947).

³ *Ibid.* And see Sec. 9(c) and Sec. 10(b) and (c) of the Act as amended. An amendment to 10(b) is typical. It exhorted the Board to follow the rules of evidence and procedure prevailing in the federal district courts, but only "so far as practicable."

⁴ The U.S. Court of Appeals cannot vacate NLRB findings of fact unless there is no substantial evidence in the record considered as a whole to support those findings. Cf. Section 10(e) of the Act and *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951). Obviously circuit judges will vary considerably in both interpreting and exercising such reviewing power as this necessarily vague standard imposes. Cf. the varying views of Judges Knoch and Schnackenberg in *Lincolum Mfg. Co. Inc. v. NLRB*, 55 CCH Lab. Cas. ¶ 12044 (7th Cir. 1967). With Judge Hays' view in *Bryant Chucking Grinder Co. v. NLRB*, 56 CCH Lab. Cas. ¶ 12344 (2d Cir. 1967), compare that of Judge Anderson, dissenting in the same case. With Judge Bryan's opinion compare that of Judge Boreman in *NLRB v. Dove Coal Co.*, 54 CCH Lab. Cas. ¶ 11604 (4th Cir. 1966).

⁵ I have discussed the evolution of Congressional labor policy at greater length in *The Labor Policy of the Free Society* at p. 125 et seq. (Ronald Press, 1957).

⁶ For particularly able criticisms of the Board's distortion of the Congressional policies, see the notes: Card Checks and Employee Free Choice, 33 U. Chi. L. Rev. 387 (1966); Union Authorization Cards, 75 Yale L. J. 805 (1966).

⁷ *ILGWU Local 57 v. NLRB; Garwin Corp. v. NLRB*, 54 CCH Lab. Cas. ¶ 11664 (D.C. Cir. 1967), opinion by Burger, J., Bastian J., con-

curing; McGowan, J., dissenting on the critical issue.

⁸ Judge McGowan dissented on the ground that the Board, "if it is to mediate between clashing interests with moderation and restraint, must have scope for inventiveness and experiment." *Ibid.*, at pp. 18084-85. This is about as close as one normally comes to an explanation of the rationale which affirms the existence and endorses the exercise of policymaking discretion in the Board.

⁹ The outstanding example of the Board's insistence that employers must make concessions to the union's demands (concessions to employees and obvious good-faith intent to reach an agreement not being enough) is the General Electric case, 150 NLRB No. 36 (1964).

¹⁰ For typical examples of NLRB decisions requiring concessions from employers as an aspect of the duty to bargain, see *California Girl, Inc.*, 129 NLRB No. 21 (1960); *Cummer-Graham Co.*, 122 NLRB No. 134 (1959); *Fetzer Television, Inc.*, 131 NLRB No. 113 (1961); *James Rubln*, 155 NLRB No. 37 (1965). The Board rarely reveals the facts in its decisions, tending as a rule simply to endorse the findings made by the trial examiner in his frequently prolix reports, and the reader is accordingly required to piece out the basis of the holding.

¹¹ Cf. *United Steelworkers v. NLRB* (Porter Co.), 56 CCH Lab. Cas. ¶ 12332 (D.C. Cir. 1967) (Miller, J., dissenting) and the same case at an earlier stage: 53 CCH Lab. Cas. ¶ 11238 (D.C. Cir. 1966).

¹² I cite the following cases as a mere cross section of decisions in which the U.S. courts of appeals have found more or less serious shortcomings in the Board's handling of fact of law. In some cases, the court completely denied enforcement; in others, partly. The classification is in the numerical order of the circuits; *Caribe General Electric Co. v. NLRB*, 53 CCH Lab. Cas. 11094 (1st Cir. 1966); *NLRB v. Purity Foods, Inc.*, 55 CCH Lab. Cas. 11896 (1st Cir. 1967); *Cooper Thermometer Co. v. NLRB*, 55 CCH Lab. Cas. 11863 (2d Cir. 1967); *NLRB v. Nichols*, 55 CCH Lab. Cas. 12016 (2d Cir. 1967); *Firestone Synthetic Fibers Co. v. NLRB*, 55 CCH Lab. Cas. 11783 (4th Cir. 1967); *NLRB v. Logan Packing Co.*, 56 CCH Lab. Cas. 12278 (4th Cir. 1967); *Home Town Foods, Inc. v. NLRB*, 55 CCH Lab. Cas. 12019 (5th Cir. 1967); *NLRB v. Ortronix, Inc.*, 56 CCH Lab. Cas. 12051 (5th Cir. 1967); *Southwire Corp. v. NLRB*, 56 CCH Lab. Cas. 12110 (5th Cir. 1967); *Rivers Mfg. Corp. v. NLRB*, 55 CCH Lab. Cas. 11902 (6th Cir. 1967); *NLRB v. Swan Super Cleaners, Inc.*, 56 CCH Lab. Cas. 12239 (6th Cir. 1967); *Frito-Lay Inc., v. NLRB*, 56 CCH Lab. Cas. 12264 (7th Cir. 1967); *National Can Corp. v. NLRB*, 55 CCH Lab. Cas. 11771 (7th Cir. 1967); *Dierks Forests, Inc. v. NLRB*, 56 CCH Lab. Cas. 12274 (8th Cir. 1967); *NLRB v. Frontier Homes Corp.*, 54 CCH Lab. Cas. 11701 (8th Cir. 1967); *NLRB v. Transmarine Navig. Corp.*, 55 CCH Lab. Cas. 12028 (9th Cir. 1967); *NLRB v. TRW Semi-Conductors, Inc.*, 56 CCH Lab. Cas. 12299 (9th Cir. 1967); *J. C. Penney Co. v. NLRB*, 56 CCH Lab. Cas. 12150 (10th Cir. 1967); *NLRB v. Groendyke Transport, Inc.*, 54 CCH Lab. Cas. 11690 (10th Cir. 1967); *Retail Clerks v. NLRB*, 54 CCH Lab. Cas. 11653 (D.C. Cir. 1967); *Clothing Workers v. NLRB*, 53 CCH Lab. Cas. 11335 (D.C. Cir. 1966).

¹³ Section 8 (a) (1)-(5) defines employer unfair practices; Section 8 (b) (1)-(7) defines roughly parallel or analogous unions unfair practices Section 8 (c)-(f) establish certain principles and provides for certain types of rules applicable to both unions and employers.

¹⁴ See the cases cited in note 12, supra.

¹⁵ Documentation of this assertion is beyond the scope of this paper. The process has been too long and too tortured for any kind of brief treatment. I have, however,

written two books which demonstrate in painstaking detail how—contrary to Congressional intent—the Board has liberated unions from any serious control by the NLRB. See: *How the NLRB Repealed Taft-Hartley* (Labor Policy Assn., 1958); and *Power Unlimited: The Corruption of Union Leadership* (Ronald Press, 1959). See also my labor law articles in the N.Y.U. *Annual Survey of American Law* dating back to 1951, and my *Unions, Housing Costs, and the National Labor Policy in 32 Law and Contempt*. Prob. 319 (1967).

¹⁶ Cf. *NLRB v. TRW Semi-Conductors*, 56 CCH Lab. Cas. 12299 (9th Cir. 1967); *National Can Corp. v. NLRB*, 55 CCH Lab. Cas. 11771 (7th Cir. 1967); *Southwire Corp. v. NLRB*, 56 CCH Lab. Cas. 12110 (5th Cir. 1967); *Amalgamated Clothing Works v. NLRB* (Hamburg Shirt Corp.), 54 CCH Lab. Cas. 11609 (D.C. Cir. 1966).

¹⁷ *NLRB v. River Togs*, 56 CCH Lab. Cas. 12097 at p. 19624 (2d Cir. 1967).

¹⁸ *NLRB v. Exchange Parts Co.*, 375 U.S. 405 (1964).

¹⁹ See the note, Union Authorization Cards, 75 Yale L.J. 805 (1966), against which the only authority of any significance is the Supreme Court's opinion in *UMW v. Arkansas Oak Flooring Co.*, 351 U.S. 62, 71-72 (1956). As Judge Friendly has pointed out, the brief discussion of the question found in that case "would hardly preclude Supreme Court reexamination of this issue." See *NLRB v. S. E. Nichols Co.*, 55 CCH Lab. Cas. ¶ 12016 at page 19359, note 1 (2d Cir. 1967).

²⁰ 56 CCH Lab. Cas. ¶ 12344 (2d Cir. 1967). The facts here recounted are drawn mainly from Judge Anderson's dissenting opinion.

²¹ 110 NLRB 1365.

²² 146 NLRB 1277 (1964).

²³ 160 NLRB No. 125.

²⁴ 369 U.S. 739 (1962).

²⁵ See 56 CCH Lab. Cas. ¶ 12344 at p. 20476.

²⁶ Judge Anderson said: ". . . I think a bargaining order, by imposing on respondent's employees a form of representation concerning which a substantial majority has never had an opportunity to express a preference, disregards the employees' Section 7 rights, and undermines the most fundamental policies of the Act." *Ibid.* at page 20476.

²⁷ See: Union Authorization Cards, 75 Yale L.J. 805, 828-31 (1966).

²⁸ See notes 2-3, supra.

²⁹ A goodly number of these will be found among the cases collected in note 12, supra.

³⁰ *The Kohler Strike: Union Violence and Administrative Law* (Regnery, 1961).

³¹ 128 NLRB 1062 (1960).

³² "Reward the Guilty," *Barrons* (Jan. 1965).

³³ 148 NLRB 1434 (1964).

³⁴ In *NLRB v. Purity Foods, Inc.*, 55 CCH Lab. Cas. ¶ 11896 at page 18952 (1st Cir. 1967), Judge Woodbury said after reviewing the testimony: "The Board's conclusion to the contrary flies in the face of reality." This is among the milder of the many critical references which circuit judges continue to make to NLRB findings. In *NLRB v. Getlan Iron Works, Inc.*, 55 CCH Lab. Cas. ¶ 11950 at page 19116 (2d Cir. 1967), Judge Feinberg said: "Because this is one of those instances where we find a lack of substantial evidence to support one of the Board's key findings, we decline to enforce the order to bargain and remand for further evidence." I doubt that Judge Feinberg could find any considerable number of other federal judges who share his confidence in the Board's fact-finding.

³⁵ Year after year numerous court of appeals decisions contain the following observation in one or another form: ". . . we have no hesitancy in saying that were we the fact finders we would have difficulty finding support for the charges of unfair labor practices." *NLRB v. Witbeck*, 56 CCH

Lab. Cas. ¶ 12148 (6th Cir. 1967). See also: *Int. Tel. & Tel. v. NLRB*, 56 CCH Lab. Cas. ¶ 12101 at page 19643 (3rd Cir. 1967); *NLRB v. Plymouth Cordage Co.*, 56 CCH Lab. Cas. ¶ 12135 (5th Cir. 1967); *NLRB v. Elco Corp.*, 55 CCH Lab. Cas. ¶ 11898 (9th Cir. 1967), where the court said: "Had this court been called upon to pass originally on the merits of this case, we might have disagreed with the ultimate conclusion of the Board."

²⁰ It took the NLRB fifteen years to bring the Mastro Plastics case to a conclusion. *Cf. NLRB v. Mastro Plastics Corp.*, 354 F.2d 170 (2d Cir. 1965). The excuse proffered by this "expert" agency: a shortage of competent personnel.

²¹ Quoted in *Rivers Mfg. Co. v. NLRB*, 55 CCH Lab. Cas. ¶ 11902 at pages 18977-78 (6th Cir. 1967).

²² *Ibid.* at pages 18977, 18978.

²³ I believe it would be very instructive for the Subcommittee to undertake a comparison of the court decisions cited in note 12 with the NLRB decisions which they reviewed. I have done so and have been greatly impressed with the acumen, the intellectual flexibility, and the large-mindedness of the judges as compared with the contrary characteristics in the NLRB decisions or trial-examiner reports. But for the reviewing power of the federal courts, I am convinced that we should be experiencing in labor law today a succession of travesties of justice such as has not been seen heretofore in either England or America.

²⁴ 386 U.S. 612 (1967). I have discussed this case at length in 32 *Law and Contemp. Prob.* 319 (1967).

²⁵ *Ibid.* at pages 337 et seq.

²⁶ 386 U.S. at 650.

²⁷ Summers, American and European Labor Law: The Use and Usefulness of Foreign Experience, 15 *Buffalo L. Rev.* 210, 218 (1966).

²⁸ *Cf. Maine. Popular Government* 196 et seq. (1895); 1 Crosskey, *Politics and the Constitution in the History of the United States* 414-68 (1953).

²⁹ Pound, *The Development of Constitutional Guarantees of Liberty* 16, 23, 25, 32, 40 (1957).

³⁰ See the text, *supra*, at note 20.

S. —

A bill to insure the separation of Federal powers by amending the National Labor Relations Act to provide for trial of unfair labor practice cases in the United States district court, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3(d) of the National Labor Relations Act, as amended, is hereby repealed. This section shall take effect on the thirtieth day following the date of enactment of this Act.

SEC. 2. Section 4(a) of such Act is amended by striking out "and the General Counsel of the Board" in the first sentence; by striking out ", examiners," in the second sentence; and by striking out the fourth and sixth sentences.

SEC. 3. Section 8(b)(5) of such Act is amended to read as follows:

"(5) to require of employees covered by an agreement authorized under subsection (a)(3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which is excessive or discriminatory under the circumstances, considering, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected."

SEC. 4. Section 9(c)(2) of such Act is amended by striking out "section 10(c)" and inserting in lieu thereof "the provisions of section 10 in effect at the time the order was issued".

SEC. 5. Section 9(d) of such Act is amended to read as follows:

"(d) Whenever the validity of a certification of a bargaining representative by the Board under this section is in issue in a proceeding before a court under section 10, the clerk of the court shall notify the Board of that fact. Within fifteen days after the date such notice is received the Board shall file such certification, together with the record on which it was based, with the court."

SEC. 6. Section 10 of such Act is amended to read as follows:

"PREVENTION OF UNFAIR LABOR PRACTICES

"SEC. 10. (a) The district courts of the United States, the district court of the Virgin Islands, and the United States District Court for the District of the Canal Zone shall have jurisdiction, as provided in this section, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce.

"(b) Any person aggrieved by any such unfair labor practice may, within six months after the date on which such unfair labor practice occurred, either (1) file and prosecute a complaint in any court specified in subsection (a) having jurisdiction of the parties, or (2) file a charge of such unfair labor practice with the United States attorney for the appropriate district and request him to file and prosecute such a complaint. Whenever a person aggrieved by an unfair labor practice is prevented by reason of service in the Armed Forces from filing a charge or complaint he may do so within six months after the date of his discharge.

"(c) Whenever a charge is filed with a United States attorney under this section, he shall promptly notify the person against whom such charge is made. Within a reasonable time thereafter, he shall file a complaint with the appropriate court and prosecute such complaint, in the name of and on behalf of the person who filed the charge, unless he determines that the charge is frivolous, or otherwise without basis in law or fact, in which case he shall promptly notify the parties of such determination. After receiving such notice, the charging party may file and prosecute a complaint under subsection (b) on his own initiative; and the period beginning with the date on which he filed the charge with the United States attorney, and ending with the date on which he received such notice, shall not be counted in determining whether the six-month period specified in subsection (b) has expired. The United States attorney shall give priority to charges of unfair labor practices within the meaning of paragraph (4) (B) or (C) of section 8(b) over all other unfair labor practice charges filed with him.

"(d) Proceedings under this section shall be tried by the court without a jury. The Federal Rules of Civil Procedure shall apply in each such proceeding, except as otherwise provided in this section. In any case in which the pleadings present issues of fact, the court may appoint a master and the order of reference may require the master to submit with his report a recommended order. The master shall be compensated by the United States at a rate to be fixed by the court, and shall be reimbursed by the United States for necessary expenses incurred in performing his duties under this section. Any court before which a proceeding is brought under this section shall advance such proceeding on the docket and expedite its disposition.

"(e) The court may grant such temporary relief or restraining order as it deems appropriate pending final disposition of any proceeding under this section, but only after publicly hearing testimony of witnesses (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition

thereto, if offered; and only after findings of fact by the court to the effect—

"(1) that one or more acts constituting an unfair labor practice have been committed and will be continued unless restrained;

"(2) that substantial and irreparable injury to the complainant will follow;

"(3) that as to each item of relief granted greater injury will be inflicted by the denial of relief than will be inflicted by the granting of relief; and

"(4) that complainant has no adequate remedy at law.

The Act of March 23, 1932, entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes' shall not apply to any proceedings under this section, except that section 10 of such Act, providing for expeditious review of temporary injunctions, shall apply with respect to any temporary relief or restraining order issued under this section.

"(f) If the court finds that any person named in the complaint has engaged in or is engaging in any unfair labor practice as charged in the complaint, the court shall enjoin such person from engaging in such unfair labor practice, and shall order such person to take such affirmative action, including reinstatement of employees with or without back pay (but not including the payment of damages in any other form), as may be necessary to enforce compliance with the provisions of this Act which such person is found to have violated. Where an order directs reinstatement of an employee, back pay shall be required of the employer, or the labor organization, or both, in such proportion as the court shall assess responsibility for the discrimination suffered by him. No order of the court shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In determining whether a violation of section 8(a)(1) or section 8(a)(2) has occurred, the same rules of decision shall apply irrespective of whether the labor organization affected is affiliated with a labor organization national or international in scope.

"(g) For the purposes of this section courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, (2) in any district in which its officers or agents are engaged in promoting or protecting the interests of employee members, or (3) in any district in which the unfair labor practice is alleged to have occurred. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit."

SEC. 7. Section 11 of such Act is amended by striking out "and section 10" in the matter preceding paragraph (1); by striking out "or proceeded against" in the first sentence of paragraph (1); and by striking out "Complaints, orders," in paragraph (4) and inserting in lieu thereof "Orders".

SEC. 8. Section 14(c) of such Act is hereby repealed.

SEC. 9. (a) Any proceeding under section 10 of the National Labor Relations Act which is pending before the National Labor Relations Board on the date of enactment of this Act shall be continued by the Board if the hearing provided for in subsection (b) of such section, as in effect immediately prior to the enactment of this Act, has been completed, and if, within thirty days after the date of enactment of this Act the person aggrieved by the unfair labor practice in question requests the Board to continue the proceeding. Upon request of any such person, the appropriate United States attorney shall appear and represent such person in proceed-

ings under this subsection before the Board and the courts. The Board shall act in such proceeding, and its action may be enforced or reviewed by the courts, in the same manner and with the same effect as if this Act had not been enacted, except that—

(1) the person requesting continuation of the proceeding, or the appropriate United States attorney, shall be substituted for the General Counsel in proceedings before the Board;

(2) any enforcement proceeding under section 10(e) shall be instituted by the party seeking enforcement of the Board's order, or the appropriate United States attorney, and thereupon the Board shall certify and file in the court a transcript of the entire record in the proceedings;

(3) the Board shall not appear in any proceeding under section 10(e) or 10(f); and

(4) if the court orders additional evidence to be taken in any proceeding under section 10(e) or 10(f), it shall be taken before a master designated by the court; the master shall be compensated by the United States at a rate to be fixed by the court, and shall be reimbursed by the United States for necessary expenses incurred in performing such duties.

(b) Where the Board has issued an order under section 10 of the National Labor Relations Act before the date of enactment of this Act, a proceeding in court for the enforcement or review of such order may be instituted after such date in the same manner and with the same effect as though this Act had not been enacted, except that the provisions of paragraphs (2), (3), and (4) of subsection (a) of this section shall apply to such proceedings.

(c) Any proceeding under section 10 of the National Labor Relations Act which is pending in any court on the date of enactment of this Act shall be continued as if this Act had not been enacted, except that after the effective date of section 1 an attorney employed by the Board and designated by the Board for the purpose shall be substituted for the General Counsel.

(d) Where a charge of an unfair labor practice is pending before the National Labor Relations Board on the date of enactment of this Act, and the hearing provided for in section 10(b) of the National Labor Relations Act, as in effect immediately prior to the enactment of this Act, has not been completed, and the time limit provided for in section 10(b) of such Act, as amended by this Act, for filing a charge or complaint based on the same acts has expired, a charge or complaint may nevertheless be filed under such section at any time within thirty days after the date of enactment of this Act.

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

Mr. TOWER. I yield to the Senator from North Carolina.

Mr. ERVIN. Mr. President, does the Senator from Texas agree with the Senator from North Carolina that section 7 of the Taft-Hartley Act was designed to give employees in our industries a freedom from coercion on the part of management and also a freedom from coercion on the part of unionism?

Mr. TOWER. The Senator is correct. That is my interpretation. And I think this is buttressed by the fact that section 14(b) of the Taft-Hartley Act afford permission and authorization to the States to enact so-called right-to-work laws which prohibit closed shops.

Mr. ERVIN. Mr. President, does not the Senator agree with the Senator from North Carolina that section 7 of the Taft-Hartley Act was intended to give an employee who happened to be a member

of a union an absolute right to participate in union activities and also a freedom to refrain from so doing?

Mr. TOWER. That is my interpretation.

Mr. ERVIN. Mr. President, I will ask the Senator from Texas if the National Labor Relations Board in the first instance and the Supreme Court of the United States in the last instance by a divided vote in the Allis-Chalmers case did not absolutely nullify the provision of section 7 which undertook to secure the freedom of employees from union coercion?

Mr. TOWER. I believe the Senator is correct.

Mr. ERVIN. Did not that decision say that an employee could be penalized and punished by the union for exercising a right clearly given him by the Constitution of the United States?

Mr. TOWER. The eminent former jurist from North Carolina is absolutely correct.

Mr. ERVIN. I ask the Senator from Texas if he does not agree with the Senator from North Carolina that the labor law, as contained in the Wagner law and the Taft-Hartley Act and the Griffin-Landrum amendments of 1957, is not unique in that it denies every one of the 200 million Americans who may be injured by an unfair labor practice as defined in the law any remedy in the courts or before the National Labor Relations Board unless he can persuade the general counsel to file an unfair labor charge?

Mr. TOWER. That is absolutely correct.

Mr. ERVIN. No matter how much an individual may be injured by an unfair labor practice as defined in the law, he is denied all right to seek relief for himself, and the only way he can obtain any relief is to persuade general counsel to file an unfair labor practice charge in his behalf.

Mr. TOWER. The Senator is correct because an individual has no standing before them.

Mr. ERVIN. And that is a violation of the boasted principle of our law that there is no wrong without a remedy.

Mr. TOWER. The Senator is absolutely correct. That is a clear denial of due process.

Mr. ERVIN. Mr. President, as I understand the Senator's remarks and the exhibits he offers it is the Senator's purpose to amend the present law so as to provide that Federal courts shall have jurisdiction of the trial of cases involving unfair labor practice charges.

Mr. TOWER. The Senator is absolutely correct. What it would do actually would be to restore to the courts the jurisdiction the courts possessed prior to the enactment of the law establishing the National Labor Relations Board.

Mr. ERVIN. Mr. President, the Federal courts were denied a large part of their equity jurisdiction in labor cases by what is called the Norris-LaGuardia Act on the theory that there should be an end to government by injunction.

Mr. TOWER. The Senator is correct.

Mr. ERVIN. And at the time of passage of the Norris-LaGuardia Act, we had no legislation from Congress defining what are and what are not unfair labor practices.

Mr. TOWER. Would the Senator kindly repeat that? I did not hear him.

Mr. ERVIN. The Norris-LaGuardia Act was passed before the Wagner Act and before there was any congressional legislation defining what constituted unfair labor practices. Is that not correct?

Mr. TOWER. The Senator is absolutely correct.

Mr. ERVIN. Would not the Senator from Texas agree with the Senator from North Carolina that the great outcry which preceded the passage of the Norris-LaGuardia Act and resulted in its passage was that the judges were, in effect, manufacturing law because the things that people were punished for in those days with respect to violations of injunctions were orders made by Federal judges without the guidance of congressional enactment?

Mr. TOWER. If I remember my history correctly, the Senator is absolutely right.

Mr. ERVIN. Since that time we have had passage of labor legislation embodied in the Wagner Act, the Taft-Hartley Act, and in the Griffin-Landrum amendments of 1957. And the legislation now in existence defines what acts or omissions constitute unfair labor practices.

Mr. TOWER. I agree. I concur that there is now and has been enacted since the Norris-LaGuardia Act a substantial corpus of law on labor policy. I do not think that anyone can make the charge that the court would be placed in the position of legislating.

Mr. ERVIN. That is the point I was trying to make. The bill of the Senator would be designed to put the enforcement of these provisions of labor law defining unfair labor practices within the jurisdiction of the Federal courts and the Federal courts would be permitted to try the cases.

Mr. TOWER. The Senator is correct. It would not change the substance of existing law, but would simply change the jurisdiction of the National Labor Relations Board to the Federal district court.

Mr. ERVIN. And in view of the fact that these labor practices are now defined by Federal law, the conditions which existed prior to the Norris-LaGuardia Act or in the days of government by injunction, no longer exist.

Mr. TOWER. The Senator is correct.

Mr. ERVIN. Can the Senator from Texas think of any reason why a Federal judge is not as competent to try a case involving a question whether an unfair labor practice has been committed in violation of an act of Congress as he is to try any other case based on an act of Congress?

Mr. TOWER. As I said earlier in my remarks, I can see no reason why an unfair labor practice could be singled out as requiring expertise by judges when judges are called upon to pass upon all manner of technical questions.

Mr. ERVIN. Mr. President, on page 3 of the proposed bill, it provides beginning on line 8:

Any person aggrieved by any such unfair labor practice may, within 6 months after the date on which such unfair labor practice occurred . . . file and prosecute a complaint in any court specified in subsection (a) having jurisdiction of the parties . . .

As I construe that provision of the proposed bill, it would restore to all Americans the right to go into court and protect themselves against unfair labor practices as defined by the acts of Congress.

Mr. TOWER. The Senator is correct.

Mr. ERVIN. And they would no longer be denied any relief for the injuries they suffer because of the refusal of the General Counsel to act.

Mr. TOWER. The Senator is correct. I do not see how anyone could oppose this legislation because it affords greater protection for a greater number of people.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. ERVIN. Mr. President, I thank the Senator.

I ask unanimous consent that I may proceed for 1 additional minute.

The PRESIDING OFFICER. The Senator is recognized.

Mr. ERVIN. Mr. President, I think the Senator's proposed bill merits the most serious study by Congress.

Mr. TOWER. Mr. President, I ask unanimous consent that I may proceed for 1 additional minute.

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

Mr. TOWER. Mr. President, I wish to thank my distinguished friend from North Carolina for adding so much to the dialog on this question with regard to taking the jurisdiction of unfair labor practice cases away from the NLRB and putting it in the district courts. The distinguished Senator from North Carolina is a jurist with a wide background and great experience in labor law, and he has added greatly to what I consider to be the extremely cogent arguments for the enactment of this legislation.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that the time of the Senator from Texas may be extended for 2 additional minutes.

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

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

Mr. TOWER. I yield.

Mr. GRIFFIN. Mr. President, I wish to commend the Senator from Texas for making a very important statement this morning and focusing attention upon the need to do something about the National Labor Relations Board, an agency of Government, of which the junior Senator from Michigan has been critical for a long time. Let me add that I have been critical of the Board under Republican as well as Democratic administrations.

This agency of Government, over the years, has been too much subjected to political and other pressures as it seeks to perform what is essentially a judicial function. The terms of the Board members are short; in too many instances they have not been selected because of legal or judicial qualification. As a result, such study as I have given to this subject over the years indicates to me that, generally speaking, the NLRB has not operated as a court or judicial body, as it should.

As the Senator from Texas knows, over a number of years I have introduced legislation which would abolish the National Labor Relations Board and set up in its place a U.S. Labor Court patterned after the U.S. Tax Court.

For various reasons which I do not have time to discuss this morning, I would prefer the reform route which I have proposed. However, I should like to indicate to the Senator from Texas that his proposal is certainly preferable to what we have now. And if a choice were to be made between continuing the present system or adopting his suggestion, I would certainly favor the proposal of the Senator from Texas.

I would suggest for a number of reasons that it would be well for committee consideration to be given to both reform proposals: The one offered by the Senator from Texas and the one offered by the Junior Senator from Michigan.

Again, I commend the Senator from Texas for his initiative and his discussion of this very important subject.

Mr. TOWER. Mr. President, I thank the distinguished Senator from Michigan, who is the author of some of the most significant labor legislation on the statute books today. I also express to him that I am openminded enough on the subject to be able to consider more than one approach. I thank the Senator.

Mr. President, I yield the floor.

THE PHILIPPINES—A REPORT FROM THE GENERAL ACCOUNTING OFFICE

Mr. SYMINGTON. Mr. President, last September and October the Subcommittee of the Foreign Relations Committee on U.S. Security Agreements and Commitments Abroad, which I have the honor to chair, held executive hearings on U.S. security agreements and commitments in the Philippines.

After some discussion with the Department of State, it was agreed that a censored version of these hearings would be published, but not released until after the Philippine elections in November.

This was done in order to avoid any possibility that these hearings might in any way affect the outcome of those elections.

In the course of the hearings, the subcommittee had occasion to inquire into the Philippine Civic Action Group in Vietnam, or PHILCAG as it is popularly known; and it was brought out that the PHILCAG's maximum strength had been 2,200. By the time of the hearings however, that number had been reduced to approximately 1,500.

It was also brought out that total Philippine casualties in Vietnam had amounted to eight killed and 17 wounded. The PHILCAG force has since been withdrawn from Vietnam.

It was also brought out, in sworn testimony, that the President of the Philippines accepted from the United States the "equipment for PHILCAG and the special overseas allowance for PHILCAG over and above their regular pay," and a table was furnished the subcommittee which showed that this special overseas allowance paid by the United States

ranged from \$210 a month for a brigadier general to \$33 a month for a private.

In all, the total costs of PHILCAG to the United States were listed as \$38.8 million, including supplies furnished in Vietnam as well as those "special allowances."

After the subcommittee's hearings were published, the Philippine presidential press office issued a statement, as reported in the U.S. press of November 19 and 20, which said:

The Philippines has received no fee nor payments of "any kind" in support of the PHILCAG, or its personnel, nor has there been any grant given in consideration of sending the PHILCAG to Vietnam.

This statement raised a clear and unavoidable question as to whether the U.S. officials who had testified under oath before the subcommittee were guilty of perjury; and in fairness to these officials, we felt we had to pursue the matter further. We, therefore, wrote to the Comptroller General on November 26, asking him to make a detailed study of the payments that had been discussed before the subcommittee.

On February 19, we received an interim report from the Comptroller General classified secret; and we have now received a further unclassified report from him which is based on information obtained by him from unclassified sources.

I ask unanimous consent that our letter to the Comptroller General of November 26 and his letter of March 21 be printed in the RECORD at the conclusion of these remarks.

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

(See exhibits 1 and 2.)

Mr. SYMINGTON. Mr. President, let us at this time note five points:

First. The Comptroller General confirms that the "quid pro quo" assistance given to the Philippine Government was substantially as described before the subcommittee.

Second. Other forms of military and economic assistance to the Philippine Government were increased during the period of the PHILCAG commitment to Vietnam.

Third. The United States made quarterly payments to the Secretary of National Defense of the Philippines. Most of these were in the form of U.S. Treasury dollar checks, endorsed with a signature which appears to be that of Ernesto S. Mata, the Philippine Secretary of National Defense, and which were deposited in the Philippine Veteran's Bank, usually the Camp Aguinaldo branch. We have photostatic copies of some of these checks.

Fourth. The Comptroller General was unable to determine whether the PHILCAG troops actually received the per diem and overseas allowances which were used to compute the U.S. quarterly payments to the Philippines. The Comptroller General also reports that "no information was required of, or received from, the Philippine Government on the disposition of these funds paid to them by the United States."

Fifth. Finally, the Comptroller General reports that his delay from November to March in responding to our in-

quiry was due to the fact that his work was "seriously hampered and delayed by the reluctance" of the Departments of State and Defense to give him access to the documents, papers, and records which he considered pertinent.

Mr. President, our correspondence with the Comptroller General speaks for itself. We only want to add that it is almost inconceivable the U.S. Government would get itself into a position where it pays money to foreign governments, or anybody else, without requiring information on the disposition of those funds, and also in a position where it refuses to furnish information about expenditures to the Comptroller General, who is an agent of the Congress which, in turn, holds, or at least is supposed to hold the purse strings on all U.S. expenditures.

EXHIBIT 1

NOVEMBER 26, 1969.

HON. ELMER B. STAATS,
Comptroller General of the United States,
General Accounting Office,
Washington, D.C.

DEAR MR. STAATS: In the course of the hearings held by the Subcommittee on U.S. Security Agreements and Commitments Abroad on October 2, 1969, Mr. James M. Wilson, Jr., Deputy Chief of Mission of the United States Embassy in Manila testified under oath that "President Marcos accepted (from the United States) as directly related to PHILCAG . . . the equipment for PHILCAG and the special overseas allowance for PHILCAG over and above their regular pay." (page 255) In support of Mr. Wilson's statement, the Department of Defense provided the Subcommittee a table detailing "additional allowances paid by the United States to PHILCAG" (page 265) and a listing of financial and material support of PHILCAG given by the United States which totalled "in the neighborhood of \$36 million." (p. 278).

In his prepared statement filed with the Subcommittee and printed in the Subcommittee record, Mr. Wilson detailed assistance to the Philippines in connection with PHILCAG totalling \$38,809,661 (p. 358).

On November 20, 1969, the press carried the enclosed story which contains the following paragraph:

"The Philippines has received no fee or payment of any kind for the Philcag or its personnel nor has there been any grant in consideration for the sending of Philcag to Viet Nam," a Presidential spokesman said in an official statement."

In light of the testimony given the Subcommittee and the above mentioned statement, reportedly made by a spokesman for the Philippine President Ferdinand Marcos, we request that your organization make a detailed study of the payments discussed by Mr. Wilson and determine the factors relevant to their disposition by U.S. Government officials.

Sincerely,

STUART SYMINGTON,
Chairman, Subcommittee on U.S. Security Agreements and Commitments Abroad.

EXHIBIT 2

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C., March 21, 1970.

HON. STUART SYMINGTON,
Chairman, Subcommittee on U.S. Security Agreements and Commitments Abroad,
Committee on Foreign Relations, U.S. Senate.

DEAR MR. CHAIRMAN: We have completed our review which was undertaken pursuant to your letter request of November 26, 1969, to make a study of the payments made to

the Government of the Republic of the Philippines by the Government of the United States in support of the Philippine Civic Action Group (PHILCAG) in Vietnam. After the receipt of your letter we met with the staff of your Subcommittee and it was agreed that we would direct our study to (1) payments for the cost of per diem and overseas allowances of PHILCAG personnel in Vietnam, (2) material and logistical support provided to PHILCAG by the United States Military Assistance Command in Vietnam, and (3) related material assistance given to military units in the Philippines.

We are now in the process of completing our final report which will be issued to you after it has been reviewed for security classification by the Departments of State and Defense. The information in this letter has been obtained from unclassified sources.

In summary, our report will show that we have verified the information contained in our interim report of February 19, 1970, and that the quid pro quo assistance given to the Philippine Government, which was service funded, was substantially as described by Mr. James M. Wilson, Jr., Deputy Chief of Mission, U.S. Embassy, Manila, in his testimony before your Subcommittee. This assistance consisted of approximately \$35 million of equipment and logistical support and about \$3.6 of direct payments to the Government of the Philippines. Due to incomplete Department of Defense documentation, we were able to verify only about \$31 million of this amount; however from the evidence we feel that the actual cost was probably closer to the amount stated by Mr. Wilson. We also found evidence that other forms of United States assistance to the Philippine Government, such as military and economic aid funded under the Foreign Assistance Act, were increased during the period of the PHILCAG commitment to Vietnam.

The \$3.6 million of funds included in the assistance was appropriated by the United States Congress for the Department of Defense and paid to the Philippine Government in quarterly payments between October 1966 and October 1969. One additional payment was made in January 1970. These quarterly payments were made by United States Treasury dollar checks payable to the Secretary of National Defense of the Philippines. Most of the checks were endorsed with a signature which appears to be that of Ernesto S. Mata, who is the Secretary of National Defense. The canceled checks show that they were deposited in the Philippine Veteran's Bank, usually the Camp Aguinaldo Branch. Attached is a photostatic copy of the front and back of one of the canceled checks [not shown in RECORD].

We were unable to ascertain whether the Philcag troops received the per diem and overseas allowances as shown in the following schedule of daily rates which was used to compute the amount of the quarterly payment by the United States:

Brigadier general	-----	\$7.00
Colonel	-----	6.50
Lieutenant colonel	-----	6.00
Major	-----	5.50
Captain	-----	5.00
First lieutenant	-----	4.50
Second lieutenant	-----	4.00
Master sergeant/first sergeant	-----	2.50
Technical sergeant/staff sergeant	-----	2.00
Sergeant	-----	1.50
Corporal	-----	1.20
Private first class/private	-----	1.10

Our inquiries into this matter were confined to United States sources and disclosed that no information was required of or received from the Philippine Government on the disposition of the funds paid to them by the United States.

We regret that we were not able to give you a report on our study in a more timely man-

ner; however, the delay could not have been avoided by us because of the time-consuming screening process exercised by the Departments of State and Defense before making records available for our examination. Our work was seriously hampered and delayed by the reluctance of the Departments to give us access to the documents, papers, and records which we considered pertinent to our review. Generally, we were given access to only those documents, papers, and records which we were able to specifically identify and request, and then only after time-consuming screening at various levels within the Departments. While we have been able to obtain sufficient information upon which to base our final report to you, we are not certain that we have the full story. In view of the restricted access to records there is the possibility that the agencies may have withheld information which is pertinent to our study.

As part of our continuing reviews of the foreign assistance programs we plan to make a more detailed review of the United States assistance to the Philippine Government, and we will report to the Congress on the results of this review in our usual manner.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

SENATE RESOLUTION 376—SUBMISSION OF A RESOLUTION RELATING TO CANCER RESEARCH

MR. YARBOROUGH. Mr. President, for myself and Senators ALLEN, BAYH, BIBLE, BROOKE, BURDICK, BYRD of West Virginia, CANNON, CASE, CHURCH, CRANSTON, EAGLETON, ERVIN, FONG, FULBRIGHT, GOLDWATER, GOODELL, HARRIS, HART, HARTKE, HOLLINGS, HUGHES, INOUE, JACKSON, JAVITS, KENNEDY, MAGNUSON, MANSFIELD, McGOVERN, McINTYRE, METCALF, MONDALE, MOSS, MURPHY, MUSKIE, NELSON, PACKWOOD, PASTORE, PELL, PROUTY, PROXMIER, RANDOLPH, SCHWEIKER, SMITH of Maine, SPARKMAN, WILLIAMS of New Jersey, and YOUNG of Ohio, I submit a Senate resolution and ask that it be referred to the appropriate committee.

I ask unanimous consent that the resolution may be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. ALLEN). The resolution will be received and appropriately referred; and, without objection, will be printed in the RECORD as requested.

MR. YARBOROUGH. This resolution has the massive support of Members of this body, including the present occupant of the chair (Mr. ALLEN), the majority leader, the Senator from West Virginia—and I want to refer in a minute to the former Senator from West Virginia, Senator Neely, who suffered from cancer—we feel the resolution will be adopted. Preparation of many months has gone into the resolution.

THE NEED FOR AN INVESTIGATION OF THE CAUSES AND CURES OF CANCER

MR. President, a medical dictionary defines cancer, which comes from the Latin word meaning crab, as "a progressive growth of tissue not adequately controlled by restraining forces within an individual's body, proceeding without regard to the needs of the body, leading ultimately, if unchecked, to the destruction of the individual in which it arose."

I prefer a more vivid definition of cancer given on the floor of the U.S. Senate more than 40 years ago by the late Senator Matt Neely, of West Virginia, who died in 1958 of the very disease he had been fighting legislatively for more than three decades.

Referring to the description by Charles Dickens in "A Tale of Two Cities" of the horrors of the guillotine in revolutionary France, Matt Neely on May 18, 1928, stood in the well of the Senate and uttered these prophetic words:

I propose to speak of a monster that is more insatiate than the guillotine; more irresistible than the mightiest army that ever marched to battle; more terrifying than any other scourge that has ever threatened the existence of the human race. The name of this loathsome, deadly and insatiate monster is cancer. It is older than the human race. Evidence of cancer has been found in the fossil remains of a serpent that is supposed to have lived millions of years ago. Records made on papyrus by the ancient Egyptians show that the cancer curse was known in the valley of the Nile more than 2,000 years before the birth of Christ.

At that time, Senator Neely noted that cancer took 125,000 lives annually. He warned the Senate that the annual toll from cancer would rise appreciably unless a major medical research offensive was mounted against it. Today, as we note the 320,000 lives lost to cancer each year, we realize the wisdom of Senator Neely's words.

I well recall the day I was sworn into this body, on the 29th day of April 1957, Matt Neely was brought to the Chamber in a wheel chair. He wanted to be here for that occasion. He was a friend of mine.

The rise in the incidence of cancer in the United States has reached epidemic proportions, according to a 1968 report from the National Advisory Cancer Council.

Last year, cancer killed more than 300,000 Americans. This vicious disease, which has cursed the family of man since the beginning of recorded history, strikes down one man, woman, or child every 2 minutes.

In 1968, cancer was the cause of 16 percent of all deaths in the United States; by way of comparison, in 1900 cancer was responsible for less than 4 percent of all deaths in this country. Of course, much of this increased mortality is due to the lengthened lifespan of the average American—many more of our people now survive the dread infectious killers of an earlier age, only to succumb to cancer in later years. But it is important to note that cancer is not just a disease of old age. About 45 percent of all of our people who die from cancer are under 65 years of age, with 10 percent of these under the age of 45.

According to a recent scientific report from the National Cancer Institute, unless we find new cures for the major forms of cancer the incidence of this disease in our population will more than double by 1985. The alarming nature of this projected rise can only be fully appreciated when one realizes that over 50,000,000 of our present population will get cancer, and 33,000,000 will die of it unless new cures are found.

As a nation, we are rightfully disturbed by our manpower losses in times of war. However, these losses are only a fraction of the toll exacted each year by mankind's most relentless foe—cancer. For example, in one year cancer kills more Americans than all of our military deaths during the 4 years of World War II. Last year, cancer killed more than 30 times the number of boys who lost their lives in combat in Vietnam.

As for our veterans, more than 5 million will be either hospitalized, or entitled to hospitalization, for cancer in the course of their civilian lives. If 80 percent of these veterans receive full hospital care from the Veterans' Administration, the cost to the taxpayer will approximate \$3.4 billion.

The cost of cancer to our economy and its people is staggering. Four years ago, a Presidential commission came up with a minimum loss estimate of \$8 billion. Losses in productivity and earning capacity are astounding—in the age group 25 to 64 alone, 100,000 man-years of productivity is multiplied by the working lifespan of the average American, the \$8 billion estimated loss is seen as conservative.

As a people, we have not been totally indifferent to the menace of cancer but, by the same token, we have not made the conquest of it a national goal.

In 1937, the Congress established the National Cancer Institute, but during the first two decades of its existence it did not give it the funds necessary to mount a research program commensurate with the size of the problem. In the late 1950's and early 1960's, the Congress did vote considerably accelerated funds to the National Cancer Institute; however, during the past 3 years the NCI budget has been barely sufficient to maintain the status quo in the face of rising research costs. In very simple terms, this kind of holding operation in the face of rising research costs and increased demands for the training of new investigators results in an actual cut of 10 to 15 percent in ongoing programs.

The Federal Government is spending less than \$200 million a year on finding cures for cancer. This expenditure averages out to about \$4 per year for each potential cancer victim. It is less than the sum spent each year by the Research Service of the Department of Agriculture. It is equal to the sum we Americans spend each year for ballpoint pens, and far less than the \$358 million we spend each year for chewing gum.

However, even with the comparatively small sums we have spent over the past 30 years against cancer, some remarkable successes have been achieved. Thirty years ago, the chief cause of cancer death in women was cancer of the uterus. In subsequent years, due to improved diagnosis—the Pap smear—and early surgical intervention, the death rate from this once major form of cancer has dropped by more than 50 percent. In addition, due to the more recent developments in drug therapy, there have been smaller but perceptible drops in the death rates from leukemia—a devastating illness among young children—and from Hodgkin's disease.

Overall, where early treatment is instituted, the ratio of cancer patients being saved is about 1 in every 3, as against a ratio of only 1 in every 5 at the time the National Cancer Institute was established in 1937. It is important to recognize that this represents a gain in lives of about 50,000 men and women each year.

However, our successes to date have been too sporadic, and have been limited to only a few kinds of cancer. We have made little progress against the slow-growing tumors which now claim an increasing number of American lives. For example, one-half of cancer deaths last year were due to malignancies too difficult to diagnose and almost impossible to cure—cancers of the lung, stomach, prostate, colon, and rectum.

In November of last year, National Cancer Institute scientists predicted that they could achieve chemical control of these slow-growing tumors in as little as 5 years if they were given sharply increased financial support. Under this year's budget and the one recommended for the coming year, no progress is possible toward that goal.

Furthermore, there is far from sufficient money available to exploit the tremendous scientific push toward a discovery of the relationship between viruses and various forms of human cancer. Over the past several years, distinguished cancer researchers in many parts of the country have published their findings suggesting a causal relationship between viruses and cancer. The establishment of such a relationship could lead to the development of one or more vaccines against major forms of cancer. As an example of the new hope in this area, I quote from a long article on the subject which appeared in this January's issue of the medical publication, *Family Health*:

Scientists may be on the verge of attaining one of the most sought-after goals in medicine—control of cancer.

It could take the form of vaccines to prevent specific malignant diseases, such as leukemia and cervical cancer. The first steps toward an experimental vaccine are being taken, and human testing on a small scale could start as early as 1973, if everything goes perfectly.

Or cancer control could come from a single injection designed to prevent all forms of the disease. This approach is considerably more controversial than the specific vaccines, but in the opinion of some cancer researchers, it is the real solution to the problem.

The key to both possibilities is the link between viruses and human cancer . . .

As a nation, we cannot afford business-as-usual budgets in the battle to conquer cancer.

Ten years ago, under the chairmanship of Senator Lister Hill, I heard leading cancer research experts of the Nation testify before the Senate Health Subcommittee, that with appropriations of \$1 billion a year for 10 years, we could find the cause of and cure for cancer. The appropriations have not been made, although that total cost would be only one-tenth of the hundred billion dollars we have spent in Southeast Asia in that 10-year period. It is time, past time, for

scientifically educated America to find the cause and cure of cancer.

Under the authority of the resolution which I am today introducing, I plan the establishment of a Committee of Consultants on the Conquest of Cancer to make a study and report their findings and recommendations to the Committee on Labor and Public Welfare. I can assure the Senate that this Committee will be composed of some of the Nation's most distinguished scientists and lay leaders who have dedicated their lives to the eventual conquest of cancer. Over the past few months, I have been discussing this mission with some of these outstanding Americans, and their response has been overwhelmingly and enthusiastically favorable.

As I see it and as they see it, the Committee of Consultants would have two primary tasks: First, to examine the adequacy and effectiveness of the present level of both governmental and nongovernmental support of cancer research, and second, to recommend to Congress and to the American people what must be done to achieve cures for the major forms of cancer by 1976—the 200th anniversary of the founding of this great Republic. It should be free to make recommendations in the fields of research, training, financing, and administration, with particular attention directed toward the creation of a new administrative agency which would guarantee that the conquest of cancer becomes a highly visible national goal.

There is a strong precedent for this kind of advisory committee in the work of my predecessor as chairman of this committee, Senator Lister Hill. In 1959 he proposed, and the full Committee on Appropriations unanimously agreed, that it should establish a Committee of Consultants on Medical Research "to determine whether the funds provided by the Government for research in dread diseases are sufficient and efficiently spent in the best interests of the research for which they are designated."

The chairman of the Committee of Consultants was Mr. Boisfeuillet Jones, a distinguished lawyer who was then vice president for health services at Emory University. Its 12 members included a number of distinguished scientists, but it also included several industrialists of the caliber of Gen. David Sarnoff, the chairman of the board of the Radio Corp. of America. Its report, made to the Senate Appropriations Committee in formal hearings in May of 1960, has had an enormous positive impact on the structure and progress of the general research effort conducted by the National Institutes of Health.

It is my deep-seated conviction that the time is long overdue for the setting up of a comparable nongovernmental committee in the complex field of cancer. I think all of us in the Senate need, and would benefit tremendously from, the considered judgments of such a group. Individually, we do not have the time to look into these intricate issues, but this is no excuse for postponing action.

Every 2 minutes, the clock ticks and

every 2 minutes an American dies of cancer. We are a great and powerful nation and we have it within our power to end this slaughter.

Let us get on with the job.

Mr. President, I yield the floor.

The resolution (S. Res. 376), which reads as follows, was referred to the Committee on Labor and Public Welfare:

S. RES. 376

Resolved, That the Committee on Labor and Public Welfare, or any duly authorized subcommittee thereof, is authorized under sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, and in accordance with its jurisdiction specified by rule XXV of the Standing Rules of the Senate, to examine, investigate, and make a complete study of any and all matters pertaining to (1) the present status and extent of scientific research conducted by governmental and nongovernmental agencies to ascertain the causes and develop means for the treatment, cure, and elimination of cancer, (2) the prospect for success in such endeavors, and (3) means and measures necessary or desirable to facilitate success in such endeavors at the earliest possible time.

SEC. 2. For the purposes of this resolution, the committee, from February 1, 1970, to January 31, 1971, inclusive, is authorized (1) to make such expenditures as it deems advisable; (2) to employ, upon a temporary basis, technical, clerical, and other assistants and consultants: *Provided*, That the minority is authorized to select one person for appointment, and the person so selected shall be appointed and his compensation shall be so fixed that his gross rate shall not be less by more than \$2,700 than the highest gross rate paid to any other employee; (3) with the prior consent of the heads of the departments or agencies concerned, and the Committee on Rules and Administration, to utilize the reimbursable services, information, facilities, and personnel of any of the departments or agencies of the Government; and (4) establish and defray the expenses of such advisory committees as it deems advisable.

SEC. 3. The committee shall report its findings, together with its recommendations for such legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than January 31, 1971.

SEC. 4. Expenses of the committee under this resolution, which shall not exceed \$250,000, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

Mr. JACKSON. Mr. President, I have joined as a cosponsor of the resolution introduced today by Senator YARBOROUGH, authorizing the Committee on Labor and Public Welfare to study research activities conducted to ascertain the causes and develop cures to eliminate cancer.

I have been a longtime supporter of appropriations for cancer research and I believe that we must do all we can to combat this vicious killer.

Cancer continues to be the second major cause of death in this country and it is estimated that there will be 625,000 new cases during 1970.

Tremendous progress has been made in the treatment of cancer as a result of research conducted and supported by the National Cancer Institute. One such program has been the cancer chemotherapy program. Treatment with chemotherapeutic agents has lengthened the survival of acute leukemic patients. The

number of acute leukemic patients who have been free of evidence of disease for 5 or more years has now risen to well over 200 identified cases. No such cases were known only two decades ago.

The importance of this research is underlined by a letter which I received recently from Patrick Baumgardner, a 19-year-old from Tacoma, Wash. Patrick is a courageous young man who is suffering from leukemia. I ask unanimous consent that his letter be printed in the RECORD as a part of my remarks.

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

MARCH 5, 1970.

DEAR SENATOR JACKSON: I am 19 years old and have recently contacted the cancer of the blood known as Leukemia. God has been good to me, and I am now in a remission stage. I pray every day a cure will be found for my disease and all forms of cancer.

Oh, please do all you can do to influence your fellow congressmen to PUSH the cancer program and its appropriations in Congress. You just can't understand the agony of cancer until you come in contact with this killer personally. Mr. Jackson, I love life—help me hold on to it as long as I can. Please! Who knows—you may be next. Remember, "One in every four of us will develop cancer!"

Sincerely yours,

PATRICK BAUMGARDNER.

Mr. JACKSON. Although the Senate voted to increase the appropriations for the National Cancer Institute, the institute is funded at less than \$200 million for fiscal 1970. The resolution which has been introduced today will establish a Committee of Consultants to examine the adequacy and effectiveness of this support of cancer research and make recommendations as to what must be done in the future.

I believe that we must conquer cancer and we must do it now. It is my hope that we can, through an increasing research effort, provide the answers to the many questions that still exist about cancer and its cures. And I hope that we can do this soon, to help those like Patrick Baumgardner who have already been stricken.

NOMINATION OF JUDGE CARSWELL TO THE SUPREME COURT

Mr. JACKSON. Mr. President, I intend to vote against the nomination of Judge Carswell to the Supreme Court. There is much at stake in the Senate's decision on this matter and I wish the record to be clear as to my position.

Mr. President, let me comment first about the standards that apply when the Senate considers nominations to the Supreme Court. Last year, when the Senate was debating a controversial Cabinet nomination, I argued that the President was entitled to wide latitude in the selection of his Cabinet. I took the position that the President, not the Senate, sets the standards of competence and qualification for his Cabinet. These are the President's men and, barring some extraordinary deficiency, he is entitled to exercise the Executive responsibility with men of his own choosing. If the voters

are unhappy with his selection, their voice will be heard at the next election.

This deference to Presidential choice is not, however, the standard to be applied when the Senate is asked to advise and consent to Supreme Court nominations for life tenure. These are not men who serve at the President's pleasure or execute his programs. They are members of a powerful tribunal, wielding influence far beyond the reach of any President. Their power stems from the Constitution, not from the Office of the Chief Executive.

Mr. President, it is not enough in this day and age that a nominee to the Supreme Court simply meet certain minimum standards. This is the only Supreme Court we have. If there was ever any doubt, the past two decades have shown what a dramatic and decisive role it plays in our life. Case after case presents the Court with critical issues. Decision after decision has far-reaching implications and enormous impact on every facet of our society.

The intellectual demands on the nine Justices of the Supreme Court are staggering. No army of law clerks, no array of legal treatises will substitute if a man is not equipped to meet this challenge. The standards to be applied to prospective members of this Court must be set with these facts in mind. They must be set high, and the burden is on the proponents of a nomination to show that the nominee in question is eminently qualified to serve on the highest court of the land.

This burden has not been met in the case of Judge Carswell's nomination. My colleagues on the Judiciary Committee have amply demonstrated his lack of qualification, and I need not belabor the points they have already made. The fact is that Judge Carswell's record nowhere reflects the professional competence, the openmindedness, the ability to make the difficult decisions, that we have a right to expect from a nominee to the Supreme Court. I think it is quite clear that he has been unable to separate his personal views on the matter of race from his obligation to uphold the Constitution and law of the land embodied in the decisions of its highest courts.

Tempting as it must have been to argue, no Senator—even among Judge Carswell's ardent supporters—has placed on record the view that he is brilliant or exceptional. The expressed hope of some Senators that he will rise to the occasion on his appointment to the Supreme Court leaves little doubt about the level he presently occupies.

We are told that the President wants to nominate a southerner and a so-called strict constructionist to the Supreme Court. Whether or not this description fits Judge Carswell is open to question. But there are others, both southern and conservative in their approach to the judicial function, whose qualifications to serve on this Court are beyond doubt. The issue is not philosophy—the issue is competence. And in stressing competence, I include in that term the ability to decide cases irrespective of personal preference.

Mr. President, I have voted for the Supreme Court nominees of the last four Presidents, starting with Chief Justice Warren in 1953 and continuing up to Chief Justice Burger in 1969. These men have come before the Senate with distinguished records at the bar, on the bench, or in high public office. They have been liberals and conservatives, activists, and strict constructionists. They were presented to the Senate as men of proven ability and intellectual capacity who, regardless of their personal philosophies, would contribute to the effective functioning of the Supreme Court. This last point is not without significance. We have an obligation to nominate those who are equal to the challenge of the work and equipped to share the burdens with their colleagues.

People all over America look to the Supreme Court as the protector of our civil and constitutional rights and liberties. Many of our citizens are strengthened in their resolve to seek peacefully the civil rights and liberties guaranteed to all Americans by the determination of the Supreme Court to hear their case, and to respond with decisions reflecting the justice and humanity of the Constitution. The Court has demonstrated that justice can be obtained by law rather than lawlessness; by judicial decision rather than destruction; by reason rather than revolution; by tribunals and not by terror.

The Supreme Court is the central instrument for the protection of the few—be it one man or many millions. I cannot vote to confirm as Justice a man who does not inspire my full confidence that he is a detached, unprejudiced, and judicious judge.

Mr. President, I have reviewed with care the hearings, the reports, and the comments of many Senators and others qualified to have a view on this matter. It is clear to me that the case for Judge Carswell is weak. His qualifications for the Court are meager and the nomination should not be confirmed.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A resolution adopted by the city council of Philadelphia, Pa., praying for action relative to ending the war in Vietnam; to the Committee on Foreign Relations.

A resolution adopted by the Laguna Hills Republican Club, of Laguna Hills, Calif., extending its condolences on the death of Hon. James B. Utt, late a Representative from the State of California; ordered to lie on the table.

REPORT OF A COMMITTEE

The following report of a committee was submitted:

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

S. 3313. A bill to exempt Federal Housing Administration and Veterans' Administration mortgages and loans from the interest and usury laws of the District of Columbia, and for other purposes (Rept. No. 91-750).

AMENDMENT OF COMMUNICATIONS ACT OF 1934 RELATING TO EQUAL-TIME REQUIREMENTS FOR CANDIDATES FOR PUBLIC OFFICE—REPORT OF A COMMITTEE (S. REPT. NO. 91-751)

Mr. PASTORE, from the Committee on Commerce, reported an original bill (S. 3637) to amend section 315 of the Communications Act of 1934 with respect to equal-time requirements for candidates for public office, and for other purposes, and submitted a report thereon, which bill was placed on the calendar and the report was ordered to be printed.

BILLS AND JOINT RESOLUTIONS INTRODUCED

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

By Mr. PACKWOOD:

S. 3632. A bill 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; to the Committee on Finance.

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

By Mr. PROUTY:

S. 3633. A bill for the relief of Yosef Pin-cu; to the Committee on the Judiciary.

By Mr. PELL:

S. 3634. A bill to amend the Public Health Service Act to provide for the conduct of a systems analysis of alternative national health care plans, and for other purposes; to the Committee on Labor and Public Welfare.

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

By Mr. PASTORE (by request):

S. 3635. A bill to amend the Communications Act of 1934 to provide for the regulation of community antenna television systems; to the Committee on Commerce.

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

By Mr. JAVITS (for himself and Mr. DOMINICK):

S. 3636. A bill to extend and amend the Higher Education Act of 1965, and for other purposes; to the Committee on Labor and Public Welfare.

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

By Mr. PASTORE:

S. 3637. A bill to amend section 315 of the Communications Act of 1934 with respect to equal-time requirements for candidates for public office, and for other purposes; placed on the calendar.

By Mr. FONG:

S. 3638. A bill for the relief of Elpidio D. Ybarzabal, Jr.; to the Committee on the Judiciary.

By Mr. SPARKMAN (for himself and Mr. BENNETT):

S. 3639. A bill to increase the supply of decent housing and to consolidate, extend and improve laws relating to housing and urban renewal and development; to the Committee on Banking and Currency.

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

By Mr. SPARKMAN (for himself and Mr. MUSKIE):

S. 3640. A bill to provide for the development of a national urban growth policy, and

to encourage and support the rational, orderly, efficient, and economic growth and development of our States, metropolitan areas, cities, counties, and towns, with emphasis upon the development of new communities and upon inner city development; to the Committee on Banking and Currency. (The remarks of Mr. SPARKMAN when he introduced the bill appear later in the RECORD.)

By Mr. TOWER:

S. 3641. A bill for the relief of Edgar Fredrico Estrada; to the Committee on the Judiciary.

By Mr. PROUTY (for himself, Mr. SCOTT, Mr. GRIFFIN, Mr. COTTON, and Mr. PEARSON):

S.J. Res. 186. A joint resolution providing for a full and complete study of charges for the transportation of freight by all regulated modes of transportation and the submission of recommendations with respect to appropriate standards for determining the lawfulness of such charges and the most effective means of administering such standards; to the Committee on Commerce.

(The remarks of Mr. PROUTY when he introduced the joint resolution appear later in the RECORD under the appropriate heading.)

By Mr. HRUSKA:

S.J. Res. 187. A joint resolution to authorize the President to designate the third Sunday in June of each year as Father's Day; to the Committee on the Judiciary.

(The remarks of Mr. HRUSKA when he introduced the joint resolution appear later in the RECORD under the appropriate heading.)

S. 3635—INTRODUCTION OF A BILL TO PROVIDE FOR THE REGULATION OF COMMUNITY ANTENNA TELEVISION SYSTEM

Mr. PASTORE. Mr. President, for some time the Senate Commerce Committee, more particularly the Subcommittee on Communications, has concerned itself with the complex subject of community antenna television and its relationship to free broadcasting.

On December 19, 1969, Senator McCLELLAN forwarded to this committee a letter indicating that the Subcommittee on Patents, Trademarks, and Copyrights reported to the full committee on the judiciary S. 543, a bill generally revising the copyright law. Section 111 of S. 543 is concerned with secondary transmission by cable systems.

Senator McCLELLAN raised the question that section 111 could have an impact on the regulatory aspects of the FCC's responsibility in the field and that the Senate Commerce Committee would, therefore, have an interest. As a consequence, the Senate Commerce Committee requested the Federal Communications Commission to review this matter to determine the impact the bill would have on the FCC's broadcast-cable television regulatory policies.

On March 11 the Chairman of the FCC, Mr. Dean Burch, replied and indicated that the Commission believed that clarifying legislation in the form of general guidelines should be adopted.

I ask at this point that the letter in full from Mr. Burch be printed in the RECORD.

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

FEDERAL COMMUNICATIONS COMMISSION,

Washington, D.C., March 11, 1970.

HON. JOHN O. PASTORE,
Chairman, Subcommittee on Communications, Senate Commerce Committee, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: You have requested the Commission's views on those portions of S. 543 which deal with CATV. The Commission appreciates the opportunity since S. 543 would have such substantial impact on our broadcast-cable television regulatory policies.

The Commission has long favored Congressional guidance in this important field, including the enactment of a bill which would be a meld of copyright and communications law. See Letter of Chairman Hyde to Chairman McClellan, dated February 17, 1969. But the approach of S. 543 to the CATV field raises substantial questions.

We do not refer merely to the need for clarifying the language of the bill, nor even to the more significant questions raised by its treatment of several important communications policy questions. Rather, we wish to raise the fundamental question whether it is a sound legislative approach to attempt to deal in such detail with a dynamic, changing field such as is here involved.

For example, the concept of "adequate television service" in S. 543, defined as precisely as it is, or the use of fixed mileage concepts like the 35-mile zone for program exclusivity, or the inflexible FCC non-duplication requirement specified, may not be legislatively sound, even recognizing that in some respects there is some authority given the agency to make future revisions. The approach which has been taken in the Communications Act seems preferable to us—namely, the Congressional determination of general guidelines, with the Commission left to develop and, most important, revise detailed policies to implement those guidelines in the light of rapidly changing communications technologies, and with Congress overseeing such Commission activities, particularly through the legislative hearing process.

We wish to point out that the Commission has made several false starts in the CATV field (e.g., compare Report on CATV and TV Repeater Services 26 FCC 403 (1959), with First Report and Order in Docket 14895, 38 FCC 683 (1965)), and has often had to revise its policies in light of the changing nature of the field. We do not cite this flexibility as a weakness, but rather as a strength of the administrative process. See *National Broadcasting Co. v. U.S.*, 319 U.S. 190, 219 (1943), where the Court stated:

While Congress did not give the Commission unfettered discretion to regulate all phases of the radio industry, it did not frustrate the purposes for which the Communications Act of 1934 was brought into being by attempting an itemized catalogue of the specific manifestations of the general problems for the solution of which it was establishing a regulatory agency. That would have stereotyped the powers of the Commission to specific details in regulating a field of enterprise the dominant characteristic of which was the rapid pace of its unfolding. And so Congress did what experience had taught it in similar attempts at regulation, even in fields where the subject-matter of regulation was far less fluid and dynamic than radio. The essence of that experience was to define broad areas for regulation and to establish standards for judgment adequately related in their application to the problems to be solved.

We therefore believe that clarifying legislation in this field should set forth general guidelines and eschew detail. This approach, we believe, may also be employed as to any copyright legislation dealing with CATV. Such legislation can be broadly framed—for example, the Congress could adopt a provi-

sion that a CATV system shall have a compulsory license for such signals as the Commission, by rule or order, may authorize the system to carry. The copyright law could then specify the appropriate amount to be paid, or method of determining the amount, a method for distributing the funds thus paid in (e.g., a so-called "ASCAP-BMI" method), a provision for periodic adjustments in the amounts to be paid, and any exemption for existing small systems deemed desirable.

This would leave the remaining communications policy matters for resolution by the Commission in appropriate rule making and other proceedings, or by the Congress through general CATV legislation and subsequent agency regulation. As stated, we would welcome such Congressional guidance in this important field. Thus, Congress could set forth general guidelines aimed at the orderly accommodation of both cable and broadcasting in order to secure maximum diversity of programming, through the maintenance and expansion of free broadcasting and the provision via cable of multiple reception, origination and related services. The guidelines could also include such matters as fair competition for programming sources, minimum disruption of existing cable systems, and appropriate application to cable systems of Public Law 87-331, dealing with the telecasting of professional football, baseball, basketball or hockey contests. In short, the clear advantage of proceeding in this fashion (i.e., agency action under present or revised Congressional guidelines, with appropriate Congressional oversight of specific Commission actions) would be the retention of flexibility to adjust policies to changing circumstances.

The Commission hopes that the foregoing is helpful to you in your consideration of this most important matter. The Commission would, of course, be glad to cooperate with your Committee and its staff in any way which you might find useful.

This letter was adopted by the Commission at its meeting of March 11, 1970.

By direction of the Commission:

DEAN BURCH,
Chairman.

P.S.—Commissioner Bartley believes there is more merit to S. 543, with the flexibility afforded the Commission in regard to CATV than what he believes to be the likelihood of failure of adoption of copyright revision legislation at an early date.

Mr. PASTORE. Mr. President, following receipt of this letter, I requested the FCC to submit the legislative guidelines. By letter dated March 24, 1970, the Commission sent me a letter outlining its views and also enclosing a copy of a bill which I am introducing today.

I also ask that the March 24, 1970, letter from the Commission be printed in full at this point in the RECORD.

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

FEDERAL COMMUNICATIONS COMMISSION,

Washington, D.C., Mar. 24, 1970.

HON. JOHN O. PASTORE,
Chairman, Subcommittee on Communications, Senate Commerce Committee, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In line with your request, the Commission is submitting a draft of suggested legislative amendments to the Communications Act, which are of a clarifying nature and give general guidance to the Commission in the CATV field.

The attached draft reflects the general guidelines set out at pp. 2-3 of my letter of March 11, 1970. Under these guidelines Con-

gress would be directing the Commission to effect the orderly accommodation of both cable and broadcasting in order to secure maximum diversity of programming through the maintenance and expansion of free broadcasting and the provision via cable of multiple reception, origination and related services.

We recognize that there would be great interest in the Commission's possible actions to implement the above guidelines, and would, of course, be prepared to give some indication of those actions. You will appreciate, however, that the Commission is still in the process of analyzing the voluminous material received in its pending rule making proceedings in this complex area.

Finally, as stated, it is our hope that enactment of legislative guidelines in the Communications Act, along the above lines, would also facilitate legislative resolution of the difficult question of copyright. Specifically, we raise the possibility that a provision might then be inserted into S. 543 which simply bestowed upon CATV systems a compulsory license for such signals as the Commission, by rule or order, might authorize the system to carry. Other specifications of such a provision would, of course, go to such matters as the appropriate amounts to be paid and the mechanism of compulsory license (and any exemption for existing small systems).

The Commission hopes that the foregoing is helpful to you, and again stresses its desire to cooperate fully with your Committee in its consideration of this most important matter.

By direction of the Commission:

DEAN BURCH,
Chairman.

Mr. PASTORE. Mr. President, it is my understanding that copies of the two letters have been made available to Senator McCLELLAN.

It is my hope that the committee will hold hearings on this proposal in the very near future.

I ask that the bill be printed at this point in the RECORD.

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

The bill (S. 3635) to amend the Communications Act of 1934 to provide for the regulation of community antenna television systems, introduced by Mr. PASTORE, by request, was received, read twice by its title, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

S. 3635

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended by adding at the end thereof the following new subsection:

"(gg) 'Community antenna system' means any facility which, in whole or in part, receives directly or indirectly over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more broadcast stations and distributes such signals by wire or cable to subscribing members of the public who pay for such service."

(b) Part I of title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) is amended by inserting therein, immediately after section 330 thereof, the following new section:

"REGULATION OF COMMUNITY ANTENNA SYSTEMS

"Sec. 331. (a) The Commission shall, as the public interest, convenience, or necessity requires, have authority—

"(1) to issue authorizations and orders, make rules and regulations, and prescribe such conditions or restrictions with respect to the construction, technical characteristics, and operation of community antenna systems, to the extent necessary or appropriate to carry out the purposes of this Act, with due regard to the orderly accommodation of both the community antenna and broadcasting industries, in order to secure maximum diversity of programming through the maintenance and expansion of broadcasting and the provision via community antenna systems of multiple reception, origination and related services; and

"(2) to make general rules exempting from regulation, in whole or in part, certain community antenna systems where it is determined that such regulation is unnecessary because of the size or nature of the systems so exempted.

The Commission shall, in determining the application of any rule or regulation concerning the carriage of broadcast stations by community antenna systems, give due regard to the avoidance of substantial disruption of the services to subscribers of community antenna systems which were validly in operation on April 1, 1970.

"(b) The Commission shall prescribe such rules and regulations and issue such orders as may be necessary to require the deletion by community antenna systems of signals carrying any professional football, baseball, basketball, or hockey contest if, after application by the appropriate league, the Commission finds that the failure to delete such signals would be contrary to the purposes for which the antitrust laws are made inapplicable to certain agreements under the Act of September 30, 1961 (75 Stat. 732; 15 U.S.C. 1291 et seq.)."

S. 3639—INTRODUCTION OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1970

Mr. SPARKMAN. Mr. President, I am introducing for myself and the Senator from Utah (Mr. BENNETT) for appropriate reference a bill, Highlights of the Housing and Urban Development Act of 1970.

This is the administration's bill sent to Congress by Secretary George Romney of the Department of Housing and Urban Development.

The essential thrust of the bill is a proposed overhaul of the existing FHA housing laws in which Secretary Romney says he is proposing to consolidate 50 programs into eight. The bill also proposes significant changes in the public housing, urban renewal, and other housing and urban development programs. Secretary Romney says that the major goals of the proposed legislation are:

First, to more efficiently provide dwelling units for low-, moderate-, and middle-income families by streamlining and consolidating existing HUD programs.

Second, to attract substantially greater private sector investment in low-cost housing by eliminating unnecessary bureaucratic requirements and establishing uniform criteria for subsidized housing programs.

Third, to make the assistance programs more responsive to the needs of local communities by basing eligibility limits and construction requirements on income and cost factors prevalent in the community.

Fourth, to include the optimum number of low-income families in rental and

homeownership programs by deepening the maximum subsidy available for a certain percentage of units.

I have not fully studied the provisions of this legislation and therefore am in no position to recommend or reject any of these proposals at this time. There are several provisions which I recognize as extremely controversial and which will require extensive hearings and debate before agreeing. Also several of the provisions proposed are contrary to positions taken by our Subcommittee on Housing and Urban Affairs. I am not yet sure that I can support these particular provisions.

I have promised Secretary Romney to give the bill full and extensive hearings and committee action as soon as possible. However, the Banking and Currency Committee's calendar is very heavy and we may not be able to schedule hearings in the immediate future.

Last week the Banking and Currency Committee approved mortgage credit legislation which is to be reported to the Senate, and hopefully taken up very shortly after the Easter recess. The recommended bill, called the "Emergency Home Finance Act of 1970," is intended to provide additional mortgage credit to stimulate the sagging housing market.

The bill I am introducing today should not be confused with the emergency mortgage credit bill. They are quite different. The mortgage credit proposal needs prompt action to meet the urgent needs of the spring home building season but this more comprehensive housing bill will probably take several months of deliberation before enactment.

The PRESIDING OFFICER (Mr. CRANSTON). The bill will be received and appropriately referred.

The bill (S. 3639) to increase the supply of decent housing and to consolidate, extend, and improve laws relating to housing and urban renewal and development, introduced by Mr. SPARKMAN, for himself and Mr. BENNETT, was received, read twice by its title, and referred to the Committee on Banking and Currency.

S. 3640—INTRODUCTION OF THE URBAN GROWTH AND NEW COMMUNITY DEVELOPMENT ACT OF 1970

Mr. SPARKMAN. Mr. President, I am introducing for myself and the junior Senator from Maine (Mr. MUSKIE) for appropriate reference a bill entitled "The Urban Growth and New Community Development Act of 1970."

The purpose of this bill is to provide for the development of a national urban growth policy to support the rational and orderly growth and development of our States, metropolitan areas, cities, and small towns, with emphasis on the development of new communities and inner-city development.

This bill is an outgrowth of work done over the last several years, particularly by the National Committee on Urban Growth Policy, of which I was a member, on the subject of America's future urban growth. That committee published a report in 1969 which suggested that

the Federal Government should help support the development of 100 cities of approximately 100,000 population and 10 larger cities in the next 30 years.

Most importantly, however, the committee laid great stress on the need to develop a national urban growth policy, and the financial and technical resources to implement such a plan, Mr. President, I do not need to tell this body the necessity for the leadership of our Nation, at the Federal, State, and local levels, to look ahead and intelligently plan the growth of our cities and communities in the years ahead. As we look at the overcrowded cities and the continuing flight from country to the cities, it is obvious that action needs to be taken to get control of this movement.

This bill would provide for the development of a national policy under which the Nation's resources and the power of Government, representing the best interest of our people, would be mobilized to guide the growth of our communities in which people will live in the next 30 years.

There is much talk today about the quality of our environment. Sometimes I fear that the environmentalists forget our cities and the plight of people living in slums and overcrowded blighted areas. The purpose of this bill would be to develop an urban growth policy in which environmental factors would be given full consideration in conjunction with the elimination of slums in our overcrowded cities. I believe the figures show that our 200 million inhabitants occupy only 1 percent of the land area of the United States. We need to plan a latter distribution of our people and with proper incentive and planned urban growth I know that we can do it.

I hope that our Banking and Currency Committee will hold hearings on this bill in the near future and that the Congress will move rapidly toward developing plans for our future growth in the years ahead.

As everyone knows, the planning of the growth of America is an extremely difficult subject, and I want it understood that the bill before us makes certain proposals to carry out such a plan. However, obviously, these proposals need considerable study, and before we can agree on the best policy before us, there are several provisions, for example, in this bill that I need further information on before I can fully support it. However, I believe that this should not prevent us from pushing forward with the bill as written.

Mr. President, I ask unanimous consent to place in the RECORD a summary of the bill.

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

The bill (S. 3640) to provide for the development of a national urban growth policy, and to encourage and support the rational, orderly, efficient, and economic growth and development of our States, metropolitan areas, cities, counties, and towns, with emphasis upon the development of new communities and upon in-

ner city development, introduced by Mr. SPARKMAN, for himself and Mr. MUSKIE, was received, read twice by its title, and referred to the Committee on Banking and Currency.

The summary presented by Mr. SPARKMAN is as follows:

SUMMARY OF S. 3640—THE URBAN GROWTH AND NEW COMMUNITIES DEVELOPMENT ACT OF 1970

The objectives of this bill are to provide for the development of a national urbanization policy and to encourage and support more rational, orderly, efficient, and economic growth and development of our States, metropolitan areas, cities, and towns with emphasis upon the development of new communities and upon inner city development. In order to achieve the objectives, the act establishes a Council on Urban Growth to develop a national urbanization policy, requires the submission to Congress and to the President of a biennial Report on Urban Growth, creates a Community Development Corporation within the Department of Housing and Urban Development to promote and sponsor new community and more orderly urban development, provides for inner city development to augment the supply of housing, and encourages State and regional planning for growth and stabilization.

Title I of the act recognizes the need for a national urbanization policy and specifically outlines the purposes of this policy. A Council on Urban Growth is created within the Executive Office of the President to prepare a biennial Report on Urban Growth, to collect, analyze, and evaluate relevant information, to assess the effects of Federal programs on urban growth, and to assess other public and private efforts to create rational urban growth. The report shall include significant problems encountered as a result of urban growth trends and developments, a review of existing programs and efforts, and recommendations for future programs and policies.

Title II, the Development of New Communities, encourages public and private bodies to undertake community growth and development programs, including the development of new communities, satellite communities, accelerated growth centers, new towns-in-town, and other large scale urban development. The Community Development Corporation is established and authorized to extend financial assistance through loans to eligible developers for feasibility studies, planning, land acquisition and development, construction of essential public works and facilities, and necessary commercial and industrial areas. The Corporation may also provide public service grants for the staffing of essential public facilities and services. Any development undertaken under this title must be economically feasible and must contribute to the orderly growth and development of the area. The developer must provide a sound internal development plan which is consistent with any comprehensive planning in the area and which has received all necessary governmental approvals. The new community guarantee program authorized by title IV of the Housing and Urban Development Act of 1968 is transferred to the Corporation. The Community Development Corporation, as a government corporation within the Department of Housing and Urban Development, is authorized to establish a Community Development Fund, carry out demonstration programs and advise on the compatibility of any major Federal installation with the provisions of this act.

Title III provides for inner city development to augment the inventory of housing and essential public services through more rational use of urban land and space. Title I of the Housing Act of 1949 is amended to permit the Secretary of Housing and Urban Development to make financial assistance available to local public agencies for re-

building projects on land which is currently occupied by functionally obsolete or uneconomic uses or which is currently unusable because of natural hazards or inadequate development, though not necessarily "blighted". Grants under this title shall be available for feasibility studies, planning and developing the project, and the acquisition and preparation of land and space.

Title IV, Assistance Planning for State and Regional Growth and Stabilization, amends section 701 of the Housing Act of 1954 to provide grants to States, regional bodies, State boundary commissions and municipal incorporation control agencies to assist in financing the cost of conducting population growth and urban development planning programs. In addition this title provides technical assistance to State and regional agencies engaged in land-use planning and authorizes grants to enable such agencies to purchase open land surrounding urban and metropolitan areas to insure proper growth and development.

Title V of this act includes general provisions relating to relocation requirements and payments, housing priorities for programs assisted, requirements for the utilization of new and improved construction methods and techniques, and advance consent to interstate compacts for mutual assistance in carrying out the objectives of the Act.

SENATE JOINT RESOLUTION 186—INTRODUCTION OF A JOINT RESOLUTION PROVIDING FOR A STUDY OF CHARGES FOR THE TRANSPORTATION OF FREIGHT

Mr. PROUTY. Mr. President, in 1944 the Board of Investigation and Research, established under the National Transportation Act of 1940, made its report to the first session of the 79th Congress. That report, which represents the last major study of the relationship of common carrier cost to our national transportation policy begins with the following introduction:

The economic welfare of the whole country is affected by freight-rate levels and relationships. People want to live where there are opportunities for them to work and prosper. Those opportunities come, directly or indirectly, from the production and distribution of raw materials and manufactured products. Transportation charges determined, to an important degree, the opportunities in any given locality to find profitable markets for the raw materials of the region or to manufacture these materials and distribute the products. In order to provide equal opportunity to utilize to best advantage the human and natural resources of all parts of the country, rates for every transportation service must be fair in relation to the service performed. So, a knowledge of transportation costs and the expression of those costs in rates related to costs are necessary for the proper growth and prosperity of the Nation.

Mr. President, last week the Nader report on the ICC reaffirmed this basic premise when it stated:

A discriminatory rate system results in hidden diseconomies and inefficiencies, affects decisions on what kinds of natural resources to utilize, and on where to locate manufacturing plants—which affects in turn urbanization, pollution and inflation.

More importantly, Mr. President, transportation costs account for from 15 to 20 percent of our gross national product.

Those costs, Mr. President, are reflected in the price every consumer must pay

for an automobile, television set, light bulb, or a loaf of bread. The great technologies which have made our Nation the most affluent in the world have often done so at the price of inefficiency. Perhaps, Mr. President, the cost of transportation is an area inefficiently arrived at, inefficiently distributed, and inefficiently adjusted. Mr. President, I say "perhaps" because quite frankly we do not have accurate data necessary for any intelligent assessment of the transportation freight rate structures.

Mr. President, transportation charges by all modes of transportation have been increasing, but this is only one part of a more complex program. Such charges as they have developed over the years have become so complex, conflicting, and contradictory that it is difficult, if not impossible, to determine whether increases on individual commodities are justifiable and the extent to which such charges are discriminatory. This renders oversight difficult. It also deprives us of the opportunity to take advantage of the benefits, now technologically feasible, for intermodal transportation of freight.

Mr. President, the system we have devised in this country for determining the fair and reasonable charge for the shipment of goods is made tremendously complex by the anachronistic system we have for determining the rate a carrier may charge a shipper. For example, Mr. President, the basic rail class rate structure, which is complicated enough, only governs about 5 percent of the freight which travels in this country. Another 10 to 15 percent of rail freight is governed by the so-called exceptions to the classified freight rates. The vast amount of rail freight in this country is governed by commodity rate structures, which are on an individual point-to-point, group-to-group basis. The same situation pertains with respect to the freight rate structures of other regulated modes of transportation.

Because of this, Mr. President, it is easy to understand why the ICC alone received 277,633 tariffs which were published during fiscal year 1969. Some of those tariffs were only two pages long. Others consisted of over 25 pages of very fine print. In its area alone, the ICC during fiscal year 1969 had filed with it over 950,000 pages of rates.

From what I have said, Mr. President, it is evident that a study of the freight rate structures of the various regulated modes of transportation is not only desirable, but absolutely necessary. Last week the Surface Transportation Subcommittee of the Senate Commerce Committee conducted 3 days of hearings on S. 2355, a bill to authorize such a study. As I pointed out during those hearings, I am in complete accord with the goals sought to be accomplished by the bill, S. 2355. However, as I also pointed out, I cannot approve of the implementation of those goals by the creation of yet another independent commission to study and report on the situation.

Mr. President, at the outset, I questioned the wisdom of bypassing the Department of Transportation, the agency we created to serve as a coordinator of the various modes of transportation, and as the mechanism to develop a truly na-

tional transportation system. As the hearing progressed, I became convinced there were even more important reasons for designating the Secretary of that Department as our agent to undertake the contemplated study.

Therefore, Mr. President, I am today introducing a joint resolution for myself and on behalf of Senators SCOTT, GRIFFIN, COTTON, and PEARSON which would direct the Department of Transportation to make a comprehensive study of the freight rate structure of all modes of regulated transportation, including maritime and freight forwarders which were not included within the bill, S. 2355.

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD immediately after my remarks.

The PRESIDING OFFICER (Mr. SCHWEIKER). The joint resolution will be received and appropriately referred; and, without objection, the joint resolution will be printed in the RECORD, as requested by the Senator from Vermont.

Mr. PROUTY. Mr. President, this joint resolution by directing the Department of Transportation to undertake the study would have two principal advantages over having such a study conducted by an independent commission. First, it would reduce leadtime to an absolute minimum and reduce the time required to make the study itself. Second, it would reduce the costs attendant upon such a study.

Although no one knows how long it would take to establish an independent commission, obtain a competent staff and the necessary materials, there can be no doubt that this would be a time-consuming process. Deputy Under Secretary Baker of the Department of Transportation, on the other hand, indicated to us when he was before the subcommittee, that if such a study were undertaken by the Department, it could be gotten underway within 3 or 4 months; and that much of the source material necessary for conducting a comprehensive and thorough study is already on hand and being processed at the Department. For this reason he also indicated his belief that the Department could complete such a study within 1 year.

Mr. President, I am convinced that we need such a report, together with recommendations, and we need it now.

We can get it sooner by utilizing the resources of the Department of Transportation and this fact in and of itself is sufficient to convince me that we should proceed by directing the Secretary of Transportation to undertake the study as would be done under the joint resolution.

Mr. President, I would hope that the Department of Transportation's study would focus on the challenges and the means for developing an appropriate standard for rate regulation in the future, rather than being simply a forum for the airing of grievances concerning inequities in the present freight rate structure.

The challenges of the 1970's are great and we must be equipped to meet them with pragmatic solutions rather than piecemeal promises.

The study envisioned in my joint reso-

lution will give us the facts we need to develop a truly national system of transportation, which makes the most efficient use of all of our available transportation resources.

Finally, Mr. President, the adoption of this joint resolution would complement the mandate put forth by the distinguished chairman of the Senate Commerce Committee, Senator WARREN G. MAGNUSON, who in his January 27 letter to the Rules Committee pointed out:

The committee will undertake a root and branch, systematic evaluation of national transportation policy, to define the needs and goals of the 1970's and beyond and to redirect and guide future policy planning.

The joint resolution (S.J. Res. 186) providing for a full and complete study of charges for the transportation of freight by all regulated modes of transportation and the submission of recommendations with respect to appropriate standards for determining the lawfulness of such charges and the most effective means of administering such standards, introduced by Mr. PROUTY (for himself and other Senators), was received, read twice by its title, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

S.J. RES. 186

Whereas the freight rate structures of the various modes of transportation as they have developed over the years are conflicting, contradictory, and confusing; and

Whereas in this state there exist virtually unlimited possibilities for the sort of discrimination which it was the intent of Congress to eliminate by the passage of the various regulatory statutes, more specifically referred to hereinafter; and

Whereas to secure the benefits of multimodal transportation now made possible through advances in technology, some way must be found to rationalize the disparate freight rate structures of the various modes; and

Whereas uniform or comparable standards by which to judge the lawfulness of the charges for the transportation of freight by each of the various modes is desirable and would greatly facilitate the free flow of goods transported both domestically and in foreign commerce; and

Whereas the Department of Transportation was created to coordinate the various modes of transportation and as the mechanism to assist in development of a truly National Transportation System in which the most efficient use will be made of all of our transportation instrumentalities: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Transportation acting in cooperation with the Interstate Commerce Commission, the Civil Aeronautics Board, the Federal Maritime Commission and other interested Federal and State agencies shall make a full and complete study of rates and charges for the transportation of freight within the fifty States by the various modes of transportation subject to regulation pursuant to the Interstate Commerce Act, including freight forwarders subject to regulation under part IV thereof, the Federal Aviation Act of 1958, the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, and, within one year after the date of enactment of this joint resolution, prepare and submit to the President and the Congress a report and recommendations on:

(1) the extent to which freight rates and other charges for the transportation of freight differ depending upon place of origin, destination, or commodity;

(2) the principal factors underlying such differences;

(3) the standards applied by each of the agencies of the United States Government responsible for the regulation of such rates and charges in passing upon the lawfulness thereof, both in the aggregate and on an individual basis;

(4) the extent to which competition is permitted to and does determine the levels of freight rates and charges under the various regulatory acts above referred to;

(5) the extent of commonality between the standards applied by such regulatory agencies in passing upon the lawfulness of the freight rates and transportation charges of carriers; and

(6) appropriate standards for determining the lawfulness of freight rates and charges for all modes of freight transportation and the most effective means of administering such standard or standards as may be recommended.

SEC. 2. (a) In order to carry out his functions under this resolution, the Secretary is authorized and directed to appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive services, such advisory committees, representative of the divergent interests involved, as he deems appropriate to represent the interests of consumers, shippers, and the transportation modes for the purpose of consultation with and advice to the Secretary. Members of advisory committees appointed under this section, other than those regularly employed by the Federal Government, while attending meetings of such committees or otherwise serving at the request of the Secretary, may be compensated at rates to be fixed by the Secretary but not exceeding \$100 per day, and while away from home or regular place of business they may 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. Members of such advisory committees shall, for the purposes of chapter 11, title 18, United States Code, be deemed to be special Government employees.

(b) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Secretary, upon request, such information as the Secretary deems necessary to carry out its functions under this Act.

SEC. 3. (a) For the purpose of carrying out the provisions of this resolution, the Secretary, or on the authorization of the Secretary any officer or employee of the Department of Transportation may require, by subpoena or otherwise, the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, or such officer or employee, deems advisable.

(b) In order to carry out the provisions of this resolution, the Secretary or his duly authorized agent shall at all reasonable times have access to, and for the purposes of examination the right to copy, any documentary evidence of any corporation, business firm, institution, or individual having materials or information relevant to the study authorized by this resolution.

(c) The Secretary is authorized to require, by general or special orders, any corporation, business firm, or individual or any class of such corporation, firms, or individuals to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to the study authorized by this resolution. Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe.

(d) Any of the district courts of the United States within the jurisdiction of which an

inquiry is carried on may, in case of contumacy or refusal to obey a subpoena or order of the Secretary or such officer or employee issued under subsection (a) or subsection (c) of this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) Witnesses summoned pursuant to this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(f) Any information which is reported to or otherwise obtained by the Secretary or such officer or employee under this section and which contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall not be disclosed except to other officers or employees of the Federal Government for their use in carrying out this resolution. Nothing in the preceding sentence shall authorize the withholding of information by the Secretary (or any officer or employee under his control) from the duly authorized committees of the Congress.

(g) In carrying out his functions under this section, the Secretary shall to the maximum possible extent avoid the imposition of any requirements for reports, information, or other material from carriers subject to economic regulation by the Civil Aeronautics Board, the Federal Maritime Commission, and the Interstate Commerce Commission which duplicates the requirements by any of these agencies.

SEC. 4. There is hereby authorized to be appropriated, out of any monies in the Treasury not otherwise appropriated, to the Secretary of Transportation not to exceed \$750,000 for the purpose of carrying out the provisions of this joint resolution.

SENATE JOINT RESOLUTION 187—
INTRODUCTION OF A JOINT RESOLUTION TO AUTHORIZE THE PRESIDENT TO DESIGNATE THE THIRD SUNDAY IN JUNE OF EACH YEAR AS FATHER'S DAY

Mr. HRUSKA. Mr. President, I am pleased to introduce a Senate joint resolution which will authorize the President to designate the third Sunday in June of each year as Father's Day.

The Congress took a similar action in 1966, when Public Law 450 officially proclaimed Sunday, June 19 of that year, as Father's Day. No resolution permanently recognizing Father's Day has been passed, although Mother's Day has been recognized on a continuing basis since May 8, 1914.

Mr. President, it is my view that fathers deserve this official recognition. It seems a small thing to do, considering the burdens and responsibilities placed upon them.

I hope that this resolution will receive prompt attention, and that the Senate will see fit to approve it when it comes before this body for passage.

I ask unanimous consent that the text of the joint resolution be printed at the conclusion of my remarks; and that the joint resolution be appropriately referred.

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

The joint resolution (S.J. Res. 187) to authorize the President to designate the third Sunday in June of each year as Father's Day, introduced by Mr. HRUSKA,

was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

S.J. RES. 187

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the third Sunday in June of each year is hereby designated as "Father's Day". The President is authorized and requested to issue a proclamation calling on the appropriate Government officials to display the flag of the United States on all Government buildings on such day, inviting the governments of the States and communities and the people of the United States to observe such day with appropriate ceremonies, and urging our people to offer public and private expressions of such day to the abiding love and gratitude which they bear for their fathers.

ADDITIONAL COSPONSORS OF BILLS

S. 3417

Mr. MCGEE. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from Arizona (Mr. GOLDWATER) be added as a cosponsor of S. 3417, to amend the Gun Control Act of 1968 to permit interstate transportation and shipment of firearms that are limited to use for sporting purposes and target competition.

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

S. 3551

Mr. PELL. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from New York (Mr. GOODELL) be added as a cosponsor of S. 3551 concerning the installation of sanitation devices in railroad cars to prevent the discharge from such cars of sewage.

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

S. 3598

Mr. AIKEN. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senator from Alaska (Mr. STEVENS) and the Senator from Oregon (Mr. HATFIELD) be added as cosponsors of S. 3598, to amend section 32(e) of title III of the Bankhead-Jones Farm Tenant Act, as amended, to authorize the Secretary of Agriculture to furnish financial assistance in carrying out plans for works of improvement for land conservation and utilization, and for other purposes.

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

SENATE RESOLUTION 376—RESOLUTION SUBMITTED AUTHORIZING THE COMMITTEE ON LABOR AND PUBLIC WELFARE TO STUDY RESEARCH ACTIVITIES CONDUCTED TO ASCERTAIN THE CAUSES AND DEVELOP CURES TO ELIMINATE CANCER

Mr. YARBOROUGH (for himself, Mr. ALLEN, Mr. BAYH, Mr. BIBLE, Mr. BROOKE, Mr. BURDICK, Mr. BYRD of West Virginia, Mr. CANNON, Mr. CASE, Mr. CHURCH, Mr. CRANSTON, Mr. EAGLETON, Mr. ERVIN, Mr. FONG, Mr. FULBRIGHT, Mr. GOLDWATER, Mr. GOODELL, Mr. HARRIS, Mr. HART, Mr.

HARTKE, Mr. HOLLINGS, Mr. HUGHES, Mr. INOUE, Mr. JACKSON, Mr. JAVITS, Mr. KENNEDY, Mr. MAGNUSON, Mr. MANSFIELD, Mr. MCGOVERN, Mr. MCINTYRE, Mr. METCALF, Mr. MONDALE, Mr. MOSS, Mr. MURPHY, Mr. MUSKIE, Mr. NELSON, Mr. PACKWOOD, Mr. PASTORE, Mr. PELL, Mr. PROUTY, Mr. PROXMIER, Mr. RANDOLPH, Mr. SCHWEIKER, Mrs. SMITH of Maine, Mr. SPARKMAN, Mr. WILLIAMS of New Jersey, and Mr. YOUNG of Ohio) submitted a resolution (S. Res. 376) authorizing the Committee on Labor and Public Welfare to study research activities conducted to ascertain the causes and develop cures to eliminate cancer, which was referred to the Committee on Labor and Public Welfare.

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

SENATE RESOLUTION 377—RESOLUTION SUBMITTED RELATING TO THE CONDUCT OF COMMITTEE BUSINESS WHILE THE SENATE IS IN SESSION

Mr. LONG submitted a resolution (S. Res. 377) relating to the conduct of committee business while the Senate is in session, which was referred to the Committee on Rules and Administration.

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

SENATE RESOLUTION 378—RESOLUTION SUBMITTED RELATING TO THE DETERMINATION OF THE PRESENCE OF A QUORUM

Mr. LONG submitted a resolution (S. Res. 378) relating to the determination of the presence of a quorum, which was referred to the Committee on Rules and Administration.

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

SENATE RESOLUTION 379—RESOLUTION SUBMITTED RELATING TO THE RECORDING OF VOTES OF ABSENT SENATORS

Mr. LONG submitted a resolution (S. Res. 379) relating to the recording of votes of absent Senators, which was referred to the Committee on Rules and Administration.

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

SENATE RESOLUTION 380—RESOLUTION SUBMITTED RELATING TO THE RECORDING OF VOTES WHEN A LIVE PAIR HAS BEEN ENTERED INTO

Mr. LONG submitted a resolution (S. Res. 380) relating to the recording of votes when a live pair has been entered into, which was referred to the Committee on Rules and Administration.

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

NOTICE OF HEARINGS ON ESTABLISHMENT OF A FEDERAL BROKER-DEALER INSURANCE CORPORATION

Mr. WILLIAMS of New Jersey. Mr. President, I wish to announce that the Subcommittee on Securities of the Committee on Banking and Currency will hold hearings on S. 2348, a bill to establish a Federal Broker-Dealer Insurance Corporation.

The hearings will be held on Thursday and Friday, April 16 and 17, 1970, and will begin at 10 a.m., in room 5302, New Senate Office Building.

Persons desiring to testify or to submit written statements in connection with these hearings should notify Mr. Stephen J. Paradise, assistant counsel, Senate Banking and Currency Committee, room 5300, New Senate Office Building, Washington, D.C. 20510; telephone 225-7391.

ADDITIONAL STATEMENTS OF SENATORS AS IN LEGISLATIVE SESSION

TWENTY-FIFTH ANNIVERSARY OF SERVICE OF SENATOR YOUNG OF NORTH DAKOTA

Mr. BURDICK. Mr. President, on Thursday of last week several Senators paid tribute to my colleague from North Dakota, the Honorable MILTON R. YOUNG, upon serving 25 years in the U.S. Senate. I was in North Dakota at the time, but would now like to add my congratulations.

Few men have served in this great body for that length of time, and this is not only a mark of distinction for Senator YOUNG, but it is also a tribute to the State of North Dakota. It is with pleasure that I join with the others to say: Congratulations, MILT.

Mr. FONG. Mr. President, today marks 25 years and 6 days that my distinguished colleague and good friend, the senior Senator from North Dakota, MILTON R. YOUNG, has served in the U.S. Senate.

On that rare and remarkable record, I extend my warmest congratulations and best wishes and pay tribute to him in the CONGRESSIONAL RECORD.

I congratulate the people of North Dakota, too, for their perception and intelligence in choosing MILT YOUNG to represent them for a quarter century in our Nation's highest legislative body. That is tribute of the highest kind—and it is entirely deserved.

During his tenure in the Senate, MILT YOUNG has risen to positions of leadership. He is the top ranking Republican on the Senate Appropriations Committee, regarded as one of the most influential committees in the Senate. He is the second ranking Republican on the Committee on Agriculture and Forestry, which has jurisdiction over one of America's basic industries. He has been chosen by his fellow Republicans since 1948 to serve as secretary of the Senate Republican conference committee.

Self-effacing, quite, and modest, MILT YOUNG is a hardworking, commonsense Senator. His knowledge, his understanding, and his integrity have won him the respect of all of us who serve with him.

It is no wonder North Dakotans have elected and reelected him.

Appointed to the Senate in March 1945, MILT YOUNG was first elected on June 25, 1946, to fill out the remaining term ending January 3, 1951. He was reelected November 25, 1950, November 6, 1956, November 6, 1962, and November 5, 1968, for full 6-year terms.

In the 1968 election, he received the highest percentage of vote of any Republican Senator in the Nation who had to run against an opponent.

MILT YOUNG has carried every county in North Dakota in seven different statewide elections, losing only three counties in two other statewide elections.

He is a formidable vote-getter. Those of us from other States can be glad we do not have to run against him.

The 25 years spanning MILT YOUNG's tenure have seen many hotly debated issues brought up on the floor of the Senate and many grave crises. Through it all, MILT YOUNG has displayed the calm good judgment and down-to-earth reasoning that have earned him the respect and affection of his colleagues. He is a true son of the Midwest heartland of America, and he is a credit to his State and Nation.

MILT YOUNG has been a fine and valued friend to me ever since I came to the Senate in 1959, following our first statehood election. In fact, MILT YOUNG voted for statehood for Hawaii and so in part is responsible for my being here.

For all his many kindnesses and for his wise counsel, I take this opportunity to express my heartfelt thanks and warmest aloha.

LEGISLATIVE VICTORY FOR INNOCENT VICTIMS OF CRIME; SENATE PASSES BILL FOR DISTRICT OF COLUMBIA

Mr. YARBOROUGH. Mr. President, the passage of my bill to compensate innocent victims of crime in the District of Columbia yesterday is a great victory for all the citizens who reside here and who visit here. The distinguished and able Senator from Maryland (Mr. TYDINGS) is to be commended for his leadership and effective labor in seeking greater justice in the District of Columbia. As chairman of the Committee on the District of Columbia, he has devoted countless hours of his time to legislation which will provide the District of Columbia greater security, greater protection from the ravages of crime, and greater justice for all citizens who reside in or visit this great Nation's Capital. Under the able leadership of Senator TYDINGS, the committee has done an outstanding job, and every member is to be commended for his efforts in behalf of law, order, and justice.

The passage by the Senate yesterday of my District of Columbia Criminal Injuries Compensation Act is a significant legislative victory in my long fight to

establish a program of compensation for victims of crime in Federal jurisdictions.

Our law's failure to compensate innocent victims of crime has disturbed me for many years. As a district judge in Texas over 30 years ago, I tried many criminal cases. The law is properly solicitous of the rights of the person accused of committing a crime. These vital constitutional protections are fundamental to justice in our society. However, all of our attention has been devoted to the apprehension, trial, and treatment of the criminal. I believe that our society is great enough to also extend justice to the innocent victim of crime by providing him compensation for the injury or death he suffers from society's failure to protect him. This irony of our law, which ignores the innocent victim while treating the aggressor as fairly and justly as we possibly can, bothered me as a trial judge, and I have been conscious of this injustice for all these years. In 1965 I seized upon an idea as old as history itself, but only recently revived in modern systems of law: Government compensation of innocent victims of crime.

The justification for a program of compensation is compelling.

The fundamental purpose of any government is to protect its citizens from injury. Order and security are fundamental to any society, but in civilized nations justice is also a major goal. Our Nation is founded on the principle that the individual is entitled to protection, not only from foreign and domestic enemies, but from unjust treatment by the Government itself.

As we have progressed to a more civilized state, citizens are obliged to rely almost entirely upon the Government for protection from criminal injuries. The law-abiding citizen must go forth unarmed and should have confidence that the institutionalized protections will save him from injury.

Our society has assumed this responsibility of protecting citizens from criminal injuries. When it fails to fulfill this duty, it is only just that the State should absorb at least some of the cost of the injury which results from its failure of protection.

While the idea of victim compensation was contained in the Code of Hammurabi Mosaic Law, and in many ancient societies, the first modern system of victim compensation was adopted in New Zealand in 1963, and the second in Great Britain in 1964.

When I heard of this action by these nations, I realized that the time had come for this idea, and in 1965 I introduced S. 2155, the first bill ever introduced in either House of Congress to meet this problem. This was before any State in our Nation had acted to compensate victims of crime. My proposal was to establish a Federal Violent Crimes Compensation Commission to provide up to \$25,000 compensation for victims of bodily injury or death.

In January 1967, in the first session of the 90th Congress, I again introduced such a bill, S. 646, the Criminal Injuries Compensation Act of 1967, which was a refined version of my original bill.

In this Congress I introduced two bills on the subject. The first on January 15, 1969, is S. 9, which would apply to all areas in which the Federal Government exercises general police power—the District of Columbia and the special maritime and territorial jurisdiction of the United States. Later, on September 19, 1969, I introduced S. 2936, which would apply only to the District of Columbia. While I think this law should have the broadest possible application, the situation in the District seemed to me to be critical. In effect, S. 2936, the District of Columbia bill, is carved out of the larger jurisdiction of S. 9.

National interest in these plans to compensate victims of crime is growing. Several States have already acted. California instituted a plan in 1965 as a part of their welfare system. New York State enacted a compensation plan in 1966, then Hawaii and Massachusetts established theirs in 1967. Maryland approved a compensation plan in 1968.

The reason why Congress must act in the District of Columbia to compensate victims of crime is that we are responsible to these citizens for their police protection, and when we fail in that responsibility, we must assist the innocent by relieving him of some of the tremendous economic burden thrust upon him by the criminal's act of violence.

The bill as passed by the Senate has a special provision whereby resident victims will be compensated from District funds, and only visitors to our Nation's Capital will be compensated by funds from the General Treasury. The taxes of residents will be used to compensate residents, and the taxes of all citizens will compensate visitors to our Capital. This is a fair and just provision.

Compensation in this program will only be paid to those victims who suffer bodily injury as a result of a specified violent criminal act, or to the dependents of those who suffer death. Property loss is not covered because the most serious and most crushing loss is the loss of health or life. Such items as actual medical and hospital expenses and loss of earnings are compensable. To absorb these expenses is the least we can do for the innocent victim whom we have failed to protect from harm.

This plan is not dependent upon conviction of the aggressor. The commission will determine whether the injury was caused by a criminal act and make an award even though the aggressor was not apprehended, or was insane, drunk or a juvenile.

An important provision of the legislation directs the commission to consider whether the person making the claim contributed to his own injury or death, and the commission may refuse to make an award, or reduce the amount of the award, to take the victim's conduct into account. Thus, the injured participant in a barroom brawl will not be compensated. However, the good Samaritan, injured when he goes to the aid of another, or helps the police, will be compensated.

The bill contains a limitation of \$25,000 on awards. In the case of death or permanent disability, the actual monetary loss will be much greater than this.

However, this limit is a necessary one as we are establishing a new program and must use our limited funds to relieve the most pressing claims for compensation.

It is appropriate that Congress should be in the forefront of this movement to provide the victims of crime their share of justice under our laws. This program administered in the District of Columbia should be an example to all those States which have not yet enacted a program of victim compensation. As the Federal Government exercises police power in this jurisdiction, the State exercise that power in each of their jurisdictions and should fulfill their responsibility to those victims injured by their failure of protection from criminal injury.

The Senate's action on this measure, along with the other programs and provisions important to the District of Columbia, contained in this omnibus crime bill provides me with a great sense of achievement. I have fought this battle since 1965, and passage of the bill by the Senate substantiates my firm conviction that this program is necessary for the achievement of a full measure of justice in our Nation's Capital.

EMERGENCY EXPENSE CREDIT FOR THE POOR

Mr. SCOTT. Mr. President, I welcome this opportunity to comment on one of the important steps taken by the Office of Economic Opportunity in meeting a frequent problem of the poor—lack of credit to enable them to cover emergency expenses.

This problem always afflicts the poor but is particularly severe in times of high interest rates and tight money. Frequently, the poor have been forced to borrow from loan sharks at extortionate interest rates. Or they are forced to deal with easy credit merchants and end up paying three or four times the value of the purchased goods.

Because of this situation, I introduced legislation, S. 2259, to assist in the establishment of credit unions in poor areas. The presence of credit unions in poor rural and urban neighborhoods can bring into such areas the basic ingredient most lacking—access to legitimate money and credit. I am hopeful that Congress will take prompt action on S. 2259.

However, in the interim, thoughtful steps must be taken to meet this problem. The Office of Economic Opportunity has taken such steps and is to be applauded. In the District of Columbia, the Office of Economic Opportunity through the United Planning Organization, the local community action agency for the District, has been assisting nine local community credit unions. Over the past 5 years these credit unions have loaned a total of \$4.3 million to more than 16,000 residents of the city's ghetto areas.

These OEO-advocated credit unions have given the District's residents an opportunity to take out loans to pay rent, buy necessities and consolidate debts—problems which can achieve emergency proportions if funds are not available. The average loan is about \$300 and can often rescue a family from eviction or

outfit children for school attendance or pay for groceries.

During the next 5 years, the United Planning Organization will be phasing out its support of the credit unions, as they become self-supporting. This is the strongest proof possible that these credit unions can make it on their own.

I commend to the attention of Senators a recent article published recently in the Washington Star which discusses these credit unions. I believe it is a fine example of how the Office of Economic Opportunity's local community action programs can work to meet the urgent needs of the poor.

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

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

[From the Washington (D.C.) Star, Mar. 8, 1970]

SLUM CREDIT UNIONS QUIETLY GIVE AID TO 16,000 OF POOR

(By Duncan Spencer)

Almost unheralded, nine local community credit unions here have loaned a total of \$4.3 million to more than 16,000 residents of Washington's ghetto areas in the last five years.

The credit unions, unvarnished and stuck in crowded storefront community centers throughout the city, are beginning to feel confident that this is one—perhaps the only one—of the community-oriented government projects to help the poor that is going to survive on its own.

Yesterday at the first "open house" of the American Federation of Community Credit Unions, there were expressed emotions of pride and an unexpressed feeling that the ghetto credit union movement is on the map.

"The trouble is," said Miss Shirley Grasty, federation managing director, "we never make any news."

Eight of the nine community credit unions here were started in 1965 under the aegis of the United Planning Organization, and were promptly lost from public view in the welter of acronymic projects that sprang almost daily from the Johnson administration's war on poverty.

Basically, a credit union is an unglamorous thing. A place where people place their savings and borrow money at lower rates because they are nonprofit, special interest institutions aimed at specific groups of people.

MOVEMENT IS UNIQUE

But the community credit union idea—which is basically just a way of providing the poor a shelter from easy-credit shysters and loan sharks—is unique in that it is open to anyone who lives in the nine Washington areas in which they serve. It was also the first such government-sponsored experiment in the U.S., and still is the primary such project.

Add to the basic gray of financial matters the dull routine of a ghetto family's constant battle with debt, and it's easy to understand Miss Grasty's remark.

But the fact remains that the credit unions are opposed by no important black radical group, no conservative group, and no one in between.

UPO and the Office of Economic Opportunity have assured the credit union leaders that their funds (backing of about \$30,000 a year for each union's expenses) will not be subject to a general 20 percent anti-inflation cutback asked by the Nixon administration.

The talk yesterday at the federation gathering was remarkably free of rhetoric. The facts and figures spoke of gradually rising

community participation in spite of a ban on advertising only recently lifted. And the assets of the separate unions have been doubling yearly.

ROBBERY CONSTANT PERIL

Naturally, running a credit union in Washington's depressed areas has its drawbacks. Robbery is a constant menace (in December, for instance, a single union was robbed twice), the delinquency rate on loans is high, and the unions are often unable to help the people who need financial aid the most.

A majority of the loans made are unsecured, collection is often difficult, and many borrowers are turned away.

But an individual can join one of the unions for a fee of 25 cents, and many people on welfare join merely to have a place to cash their checks without paying the usual 50-cent cashing charges at liquor stores and banks.

The federation estimates that the unions have a potential membership of 65,000, and hopes that the idea will spread nationally and eventually provide backing for black entrepreneurship on a large-scale enabling individual credit unions to accept poorer and riskier loan seekers.

WELFARE CHECK PLAN URGED

The federation decided yesterday to ask the federal government to allow members' welfare checks to be paid directly to the credit unions, a move that would save the government, as well as the recipients, money.

Mrs. Gheretina Wilson, president of Hospitality House Community Credit Union on H Street NE, explained that most of loans are made for things more affluent people would never think of borrowing for. The most frequent loans are to pay rent, to buy clothes, and to consolidate debts, she said. "The average loan is about \$300, and the average individual investment in the credit union, \$90.

This may seem small potatoes to middle-income people, Mrs. Wilson pointed out, but the number of individuals is showing a steady rise.

UPO plans to phase out its support of the credit union scheme over the next five years, cutting back a percentage each year as the unions themselves grow able to pay their own expenses.

"This is the only program I know of where the end of government funding will be a mark of success," Miss Grasty said.

EARL RUDDER: SOLDIER, STATESMAN, AND EDUCATOR

Mr. YARBOROUGH. Mr. President, on March 23, 1970, Gen. Earl Rudder, president of Texas A. & M. University, died at the age of 59. During his life, General Rudder distinguished himself as a military leader, State official, community leader, and educator.

During World War II, Earl Rudder organized and trained the 2d Ranger Battalion which was given the dangerous assignment of scaling the cliffs of Pointe du Hoe during the D-Day invasion of Normandy. At the time of this heroic action, General Rudder, then a lieutenant colonel, was only 34. His leadership prompted the highest praise the Commander of the U.S. Forces in Europe, Gen. Omar Bradley, could give. During his service in World War II, he was wounded twice and received numerous decorations, including the Legion of Merit, Silver Star Medal, Bronze Star Medal with oak leaf cluster, the Purple Heart with oak leaf cluster, Legion of Honor with Croix de Guerre and palm—France—Order of Leopold with Croix de

Guerre and palm—Belgium—and the Distinguished Service Medal. He was promoted to the rank of major general in the U.S. Army Reserve in 1956 and commanded the 90th Infantry Division, USAR, from 1954 until the division was deactivated.

After World II, Gen. Earl Rudder entered into a career of service to his community and his State. From 1946 to 1952 he served as mayor of his hometown of Brady, Tex. From 1955 to 1958, he served as State land commissioner of Texas and as chairman of the veterans land board. He took over the veterans land board at a time when it was riddled with scandal. Through his efforts and efficient management, he cleaned up the scandal and reestablished the veterans land board as an efficient and effective State agency.

In 1958, General Rudder answered the call of his alma mater, Texas A. & M. University, and assumed the position of vice president. In 1959, he became president of Texas A. & M. and held this position until his death. During his 10 years as president, General Rudder led Texas A. & M. into a new era of growth and progress. When he became president the enrollment of Texas A. & M. was approximately 7,500 students. This year the enrollment has reached 14,000.

Despite the many problems associated with the management of a large university and the many demands made on General Rudder's time, he still found time to take part in the affairs of his community. Recently, he had been devoting much of his efforts toward obtaining the appropriations necessary to commence work on the Millican Dam and Reservoir project which is so important to the people of Brazos Valley of south Texas. His death is a great blow to the university, community, and State that he loved and served so well.

Inscribed upon the statue of another great president of Texas A. & M. are the words, "Soldier, Statesman, and Knightly Gentleman." General Rudder was all of these things. He will be missed by all whose lives he touched.

NOMINATION OF G. HARROLD CARSWELL TO THE SUPREME COURT

Mr. GURNEY. Mr. President, I ask unanimous consent to have printed in the RECORD an editorial written by William A. Mullen, editor of the Pompano Beach, Fla., Sun-Sentinel. The editorial is a further testament that no case has been presented against the nomination of G. Harrold Carswell to the Supreme Court of the United States.

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

[From the Sun-Sentinel (Fla.), Mar. 19, 1970]

BICKERING OVER CARSWELL ANTI-MAN OR ANTI-SOUTH?

(By William A. Mullen)

As the battle for control of the U.S. Supreme Court rages over the nomination of Federal Judge Harrold Carswell as associate justice, the opposition debate gets less and less concerned with fact.

The latest gambit is the charge raised by

Sen. Joseph Tydings, D-Md., leader of the anti-Carswell forces, that endorsement of the Tallahassee-based federal appeals judge by an esteemed colleague had been withdrawn over racial conflict.

Senator Tydings implied that Judge Carswell had failed to disclose that former Chief Judge Elbert Tuttle of the U.S. Fifth Circuit Court of Appeals, had rescinded his endorsement of Judge Carswell.

The purported reason was Judge Carswell's involvement in the organization of an all-White private club.

At this writing, there has been no confirmation from Judge Tuttle that he intended to reverse his position on the Carswell nomination. Nothing has been said by him about the racial overtones. All that is definitely known is that Judge Tuttle informed Judge Carswell by telephone that he would not be able to testify in his behalf before the Senate Judiciary Committee.

But the Tydings insinuations perpetuate the racial allegations against Judge Carswell, to which have been added contentions by the United Steelworkers Union, AFL-CIO, that confirmation of President Nixon's nominee would indicate that "bigotry and incompetence" would not disqualify a man for the court.

The union, Senator Tydings, Sen. Edward Kennedy, D-Mass., Sen. Edward Brooke, R-Mass., the Senate's only Negro member, and a number of others opposing Judge Carswell for supposed bigotry all conveniently overlook an entry in the Feb. 16 Congressional Record that records support of the jurist by the former president of the Cleveland, Ohio, chapter of the National Assn. for the Advancement of Colored People (NAACP).

The entry is a letter to the editor published in the Cleveland Plain Dealer and written by Chester Gillespie, presently a member of the chapter's executive committee, urging that unless the NAACP "has very strong evidence against Judge Carswell," it should compromise and support Mr. Nixon's appointment.

The letter further states, in part:

"He (Judge Carswell) has made some mistakes in his several rulings, but he ruled a Negro must be served in a barber shop and that Negroes must be served in public restaurants, both in the State of Florida and his White friends were unhappy about these ruling and the barber closed his shop.

"Judge Carswell should be promptly confirmed so the court can function as the law requires and for the good and welfare of America. We cannot always get everything we desire."

That admonition is wasted upon the liberals who have shown they will fight any Southern conservative nomination, merely because of it being Southern and conservative.

In so doing, they are wholly unrealistic about giving proper regional and philosophical balance to the nation's highest court.

Other than Associate Justice Hugo Black, no southerner is on the bench, and he is 84 years old. Should his place in the court be vacated, the South would be without a voice in the court where a number of cases are brought directly against the South.

The Court's only Negro justice, Thurgood Marshall, was born in Maryland, but his appointment was from New York. And he could hardly be regarded as a Southern conservative.

Three of the jurists are from the Northeast, the citadel of liberalism; one is from Ohio and another from Colorado.

Chief Justice Warren Burger resided in Virginia at the time of his appointment, but he is a native Minnesotan.

We believe Senator Tydings, et al., are more in opposition to President Nixon's intention of having, properly, more southern representation on the bench than they are against Judge Carswell, per se.

They would be wiser to heed Mr. Gillespie's views and his counsel that they cannot always get everything they desire.

ALICEAN STUDY CLUB URGES 100,000 ACRE BIG THICKET

Mr. YARBOROUGH. Mr. President, the Big Thicket National Park, proposed to be established by my bill, S. 4, has been endorsed by numerous groups and individuals throughout Texas and the United States.

An overwhelming majority of the groups and individuals have urged that the Big Thicket National Park include at least 100,000 acres.

These groups understand that a sufficiently large area is necessary for the preservation of nature's bountiful gift of animal life to the Big Thicket. The remote, wild character of the Big Thicket makes it an attractive haven for all forms of wildlife, which find in its dense forests an abundant food supply. The mingling of species which lends so much interest to the plant life of the Thicket is reflected in an intriguing diversity of its animal inhabitants.

Among the larger mammals are the Texas white tail deer, both red and gray fox, raccoon, ringtail, bobcat, mountain lion, and on occasion, black bear. Both the jaguar and ocelot of Mexico were formerly sighted, and there are those who believe these beautiful cats are still present. One of the most interesting animals in the Thicket is the shy, timorous, and ever-present armadillo. Lesser mammals range from rare beaver to abundant gray, flying, and fox squirrels, cotton tails, muskrats, and of course, multitudinous smaller rodents.

Mr. President, I ask unanimous consent to have printed in the RECORD the resolution of the Alicean Study Club of Alice, Tex., at this point.

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

Whereas, the Big Thicket is a refuge for rare species of plant and animal life; and

Whereas, exploitation of the area now threatens the existence of the Big Thicket as an ecological unit; and

Whereas, 300 bird species make the Big Thicket their home year-round while countless other migratory birds visit the area; therefore

Be it resolved that the Alicean Club of Alice, Texas urges the preservation of at least 100,000 acres containing the most unique areas of the Big Thicket, these areas to be connected by environmental corridors; and

Be it further resolved that the Interior and Insular Affairs Committee of the Senate of the United States be requested to set immediate hearings on S. 4 which would create a Big Thicket National Area.

MRS. PATRICK H. FRERKING,
President.

WATER POLLUTION

Mr. ALLOTT. Mr. President, the problem of water pollution is a major concern to all Americans, and it is the object of a determined attack by this administration.

Much of the national concern focuses upon pollution arising from the normal operations of our cities and our commercial processes, both agricultural and industrial.

But we should not lose sight of another kind of pollution, the pollution that results from accidents on or around water. Consider, for example, the problem of oil spills.

A panel appointed by President Johnson came up with the grim estimate that by 1980 there will be a major oil spill at least once a year. This panel was considering spills resulting from oil transportation, as well as from offshore drilling.

So far we in America have been very lucky. We have not experienced a spill of major proportions.

In saying this I am not minimizing the unpleasantness and loss resulting from the blowout around the drilling rig in the Santa Barbara Channel.

The blowout was a disaster for that community. Its damages should not be underestimated or forgiven. But nor should we delude ourselves by thinking we have seen the worst that oil spillage can bring.

During the 2 weeks of maximum leakage, a total of 7,000 barrels of oil spilled into the Santa Barbara Channel.

In contrast, when the tanker *Torrey Canyon* broke up off the Scilly Isles along the south coast of England, it spilled 850,000 barrels into the water and onto the beaches. The *Torrey Canyon* disaster involved approximately 120 times more oil than the Santa Barbara leak.

Even the *Torrey Canyon* disaster may be eclipsed by a future spill. Last year a Shell oil tanker returning empty from its maiden voyage sank off the West Coast of Africa. This tanker, the *Marpessa*, had a capacity of 206,000 dead weight tons. Had the *Marpessa* been loaded with crude oil when she sank she would have dumped over 1.3 million barrels.

The largest tanker in operation is of 306,000 dead weight tons capacity. This ship could spill nearly 2 million barrels.

The Japanese are preparing to build a tanker of 420,000 dead weight tons capacity. This tanker will be able to spill 2.7 million barrels. That is over 113 million gallons of crude oil on one tanker.

Another way of getting an idea of the relative sizes of the new tanker is to compare them with other well-known ships. The tanker *Manhattan*, which recently navigated the icepacked northwest passage, is of 115,000 dead weight tons capacity. It is considered a "medium" tanker. But the majestic *Queen Mary* was only 80,000 tons.

The point is clear. When it comes to accidental pollution, we have not seen anything yet. And if the Presidential panel is correct—if we can expect a major spill each year by 1980—we had better start thinking of this problem as a major facet of our total water pollution problem.

But as is the case with so many environment problems, we should note that our problems stem from developments we do not deplore.

In just 30 years seaborne oil commerce has increased from 84 million tons to 893 million tons. Today it represents 60 percent of the world's ocean commerce.

The seaways are crisscrossed by tank-

ers because the oil consumption worldwide has been rising by almost 7 percent per year for the last two decades. This is evidence of healthy economic growth.

Further, the spectacular growth in the size of tankers may be a kind of blessing in disguise. Certainly we should not allow ourselves to be bewitched by statistics of size. If all the world's oil were shipped in small tankers, the congestion in the shipping lanes and ports would be very much worse—and more dangerous—than it is today. The big tanker of the World War II period—the T-2—had a capacity of 16,000 dead weight tons—about one-tenth the capacity of the *Manhattan*. Imagine the congestion—and collisions—if all oil were carried in 16,000 ton tankers.

But even recognizing these facts, we must also recognize that the pollution potential is great enough to warrant a sense of urgency. One out of every five vessels trading along the Atlantic coast carries oil as its principle cargo. We should be ready for the worst along all our coasts and along our internal waterways.

Many people are already deeply concerned about this. It is easy to understand why the citizens down east have some serious anxieties concerning the plan to locate some oil terminals and refineries on the coast at Machiasport, Maine.

It has been estimated that a *Torrey Canyon*-type accident near Machiasport could dump enough oil to form a slick 24-foot wide and long enough to reach from Halifax, Nova Scotia to Boston.

The threat of oil spills is especially serious along the Maine coast, because so many persons there earn their living from the sea. In that area there is an annual income of \$1.2 million from marine worms, \$1.3 million from fishing, \$2 million from shrimp, and \$15 million from lobsters. All of this could be endangered by oil spills.

The problems now confronting the people of Maine should be considered by all Americans, because all Americans have a stake in preserving our inland and coastal waters. The first thing we need to do is assess the scope of the activity that can be considered potentially dangerous in terms of water pollution accidents.

In the 12 month period beginning in June 1965, there were over 50,000 visits to U.S. ports by medium-size and large ocean-going vessels with a cumulative capacity of almost 300 million tons of potentially polluting materials.

In addition domestic coastal trade from one American port to another involves another 80 million tons of potential pollutants.

Finally, potential pollutants are moved in large quantities on America's 25,000 mile network of inland waterways. In 1964, 188 million tons of oil and other potentially hazardous materials were transported on these waterways. A single movement of petroleum on the Mississippi-Ohio river routes involved a tow 1,180 feet long carrying 277,000 barrels of oil.

Further, various potential pollutants are moved, loaded and unloaded on or around water.

America is laced by approximately 200,000 miles of pipelines which in 1965 carried more than 1 billion tons of oil and other hazardous substances. These pipelines operate at pressures of up to 1,000 pounds per square inch.

Many of these lines are concentrated near heavily populated areas.

And many lines run through or across navigable waterways and reservoir systems.

Accidental puncture, cracked welds and corrosion all contribute pollution where it is most harmful.

America has already experienced many oil transport problems which have not received widespread publicity. Here are some examples:

The U.S. Army Corps of Engineers estimates that there were over 2,000 oil spills within U.S. waters in 1966, of which 40 percent came from landbased facilities.

The U.S. Coast Guard reported 371 "cases of record" for 1966 of which 279 involved vessels—143 U.S. flag and 86 foreign flag. By vessel category the 279 incidents involved 49 tankers, 56 barges, 18 dry cargo vessels, 91 naval vessels, and 15 vessels of other categories.

The California State Department of Fish and Game reported 181 oil spills during 1966 in the Los Angeles and Long Beach areas alone, of which 59 were from merchant vessels, 19 from landbased facilities, and 67 from naval vessels.

In January of 1966, the tanker *Chelwood Beacon*, was grounded off Sandy Hook, N.J. The 50,000 tons of crude oil in her tanks, fortunately saved, menaced the Port of New York and the coastlines of New York and New Jersey.

In June of 1966, the British tanker, *Alva Cape*, disgorged 23,000 tons of naphtha into Arthur Kill—New York area—after colliding with the tanker, *Teraco Massachusetts*.

In April of 1967, about 5,000 gallons of gasoline were spilled from a barge which struck a bridge pier in the Mississippi River at Chester, Ill.

In December of 1966, about 120,000 gallons of oil were spilled when an oil barge hit a sunken obstacle in the Illinois River.

A joint study produced by the Departments of Interior and Transportation has listed these additional examples of other kinds of accidental pollution:

1967, Cape Cod National Seashore, Massachusetts. Several large slicks of oil material contaminated about 30 miles of coastline, including recreational beaches. Ducks and other waterfowl were killed. The source of the oil was not determined.

1965, Mississippi River, Louisiana. A hurricane caused the sinking of a barge loaded with 600 tons of chlorine. Infirm patients in the area were evacuated during salvage.

1965, Spring Creek, Missouri. Railroad tank cars, containing 20,000 gallons of cresylic acid and 40,000 gallons of high octane gasoline, were derailed and spilled their contents into the creek. Fish were killed and groundwater supplies contaminated. Downstream water users were notified and further damages were averted.

1963, Minnesota-Mississippi Rivers. Storage tanks ruptured and 2,500,000 gallons of crude soybean oil and 500,000 gallons of salad oil

spilled. Two thousand ducks were killed and recreation and wildlife areas were fouled for 130 river miles downstream.

1963, Chattahoochee River, near Atlanta, Georgia. A pipeline burst, spewing an estimated 60,000 gallons of kerosene into the river 5 miles above one of Atlanta's water supply intakes. The river was polluted for three weeks and a plant supplying one-fourth of Atlanta's water was taken out of service for 2 days. Greatly increased chemical treatment of the water was needed.

1963, Coosa River, Alabama. A tractor-trailer hit a bridge and spilled 25 tons of barium carbonate. Downstream water supplies were threatened.

1961, Illinois River, Peoria, Illinois. A hose was ruptured while unloading anhydrous ammonia from a barge. Forty-two persons were hospitalized. Five million fish were killed.

1960, Mississippi River, Louisiana. Industry drained several tons of phenol into the river near Baton Rouge. Water supplies for New Orleans and nearby communities were contaminated.

The danger of accidental water pollution is manifold. The first thing we need to do is to make the danger manifest to the American people so they will devote to it a proper portion of their environmental concern.

But after arousing public concern, what is to be done?

Regarding ship design and construction, we need more research aimed at improving tanker vessels and barges. This should include examination of ways of improving existing vessels.

Regarding ship movement, there should be a constant review of all procedures and guidance systems that help prevent accidents.

Further, we need strict policing of prohibited discharge zones and of loading and unloading procedures.

The problem of preventing pollution from vessels is complicated by the fact that a diminishing fraction of the tankers entering American waters are under American registry.

Thus we need to seek increasing international cooperation in setting and enforcing standards.

With regard to pipeline movements and storage facilities, there should be an active program of Government interest and incentives regarding technical improvements.

Work is now in progress on the development of a collection agent for spilled oil and other pollutants. Such an agent will be poured on a slick, causing it to agglomerate into a gel which can be skimmed from the water's surface. The Government should encourage research relating to such products.

Further, we need a continuing review of procedures used in offshore drilling and production.

The recent fire and oil spill in the Gulf of Mexico indicates that engineering talent should be employed in devising new mechanisms for shutting down flowing wells in the event of an accident. It should be understood, however, that the problems of controlling these leaks vary with the type of production involved.

Flowing wells present problems quite different from those of a well requiring

artificial lifting of the oil. Those wells requiring a method of artificial lifting, whether by gas injection, water flooding or pumping, are generally more easily controlled since the rate of spill may be stopped or greatly diminished simply by shutting off the source of artificial lift.

Flowing wells, on the other hand, have many producing advantages, but these are offset to some extent by control problems. I am confident, however, that the State of the art is sufficiently advanced that unresolved control problems can be resolved without any major disruption or interdiction or production or development of producing fields.

Needless to say, since human beings are in control of drilling and producing facilities, human errors will occur. Thus we should emphasize research that will lessen the number of human errors and that will minimize the damage caused by whatever errors do occur.

Technology has posed some serious threats to our society. Now technology must be used to eliminate these threats.

Until we achieve the required technology, we should be especially careful to insist on a full exercise of the Government's enforcement powers to protect us from environment damage caused by offshore operations.

Secretary of the Interior Walter J. Hickel, speaking on March 12 at a New Orleans news conference, reported that the current oil problems in the Gulf of Mexico are coming from operations that do not meet Federal specifications.

The rig that is currently causing the serious damage is not properly equipped with the antileak safety device that is required by Federal regulations. Further, the oil company involved was recently found to be operating approximately half of its rigs in this oil field without the required devices.

Granted, there is some scepticism concerning the effectiveness of the safety device. But such scepticism does not excuse disregard for regulations. A proper response to doubts about the effectiveness of the device would be a crash program—financed by the producing companies—to develop and install really effective safety mechanisms.

Finally, there is another form of waterborne pollution that should be mentioned here. This is the human waste that is dumped by vessels of all sorts.

There are approximately 46,000 federally registered commercial vessels, 65,000 unregistered commercial fishing vessels, 1,600 federally owned vessels, and 8 million recreational vessels using American waterways.

The human pollution potential from such watercraft is estimated to be equivalent to that of a city of over half a million population—a city the size of Cincinnati or San Diego.

Only a small percentage of these watercraft is equipped with sewage treatment facilities. Requirements should be toughened to eliminate this pollution potential.

Mr. President, we have already suffered from accidents on and around water. But we have not suffered a really big accident—not yet.

Nevertheless, we should not be content to accept the very real and painful damages inflicted by small- and medium-size accidents. And we should not rely on luck to protect us from the big accidents that are a permanent possibility in the modern world.

We are fortunate that we have become alert to these damages before being struck by the worst of them. Let us do everything in our power to take advantage of our early alertness. Let us act now so that in the future we will rely less on luck. Let us make ships and shipping safer and cleaner.

Let us make all activities on and around water a blessing of, rather than a threat to, our beautiful coasts and inland waterways.

LEGISLATION TO RELIEVE WESTERN FREIGHT CAR SHORTAGES VITALLY NEEDED

Mr. CHURCH. Mr. President, on March 24, a special subcommittee of the Committee on Commerce dealing with freight car shortages began hearings under the chairmanship of the distinguished Senator from Indiana (Mr. HARTKE) on S. 3223, a bill to change the present time-mileage formula on boxcars held by a railroad company other than the owner of the freight car.

This legislation is vitally needed in the west where we face perpetual freight car shortages under the current rules. This continual freight car shortage has a serious and detrimental effect upon the commerce of the Western States.

Because of the great interest expressed in this legislation by people throughout my State of Idaho, I ask unanimous consent that the text of my testimony presented on the bill be printed in the RECORD.

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

STATEMENT OF SENATOR FRANK CHURCH

MR. CHAIRMAN: Each year, around harvest time, Idaho farmers and producers face a deplorable crisis. Because of ineffective ICC regulations, there simply are not enough railroad freight cars to serve Idaho and other Western states.

Under present law, a "time-mileage" system is used to charge railroads that use another company's boxcars instead of retaining them. This system has a two-fold effect upon Western railroads and producers. First, it is more profitable for Eastern and Southern railroads to hoard Western boxcars and pay the charge than to build their own. Thus many boxcars belonging to Western companies never reach their home. Secondly, Western railroads cannot afford to take advantage of the same system because, as a rule, they travel much greater distances to deliver their loads than their Eastern counterparts.

I believe, as do many concerned Idahoans who have written me, that S. 3223 would effectively end this perennial crisis. If passed, it would eliminate the inequitable mileage provision from the law. A system based purely on time would be established, and, hopefully, make it unprofitable for the Eastern and Southern railroads to keep Western freight cars, forcing them to return these cars to the West, where they are vitally needed and rightfully belong.

The severity of the boxcar shortage is not to be underestimated. In a letter, R. L.

Henry, administrator of the Idaho Transportation Council, described the situation: "... at its height this shortage was so serious that a collapse of the normal distribution functions provided grain during harvest was threatened. Great economic loss has resulted to all segments of agriculture and forestry in the West." Furthermore, Mr. Henry noted that "car shortages which in the past were relatively short-lived appear to be growing in intensity and to be of longer and longer duration."

Another constituent, Lewis I. Phillips, manager of the Lewiston Grain Growers, Inc., wrote me and provided another insight to the problem: "Traditionally we pay our producers for grain in full at time of purchase. Money from sales of grain is not received until the car is shipped. Ninety per cent is advanced when loaded and final settlement when the grain is unloaded, weighed and graded—approximately a month to six weeks. We handle from 175,000 to 200,000 tons of grain and peas per year. Many times during the marketing season we are from 100 to 200 cars behind in shipments. This is very costly to us, especially since the cost of money is so high."

Idahoans are rightfully concerned over the freight car shortage. I have received many letters from worried constituents urging passage of S. 3223. None of the mail has been unfavorable.

As a co-sponsor of S. 3223, I urge quick action. Passage of this bill will end the costly discrimination that farmers and producers in Idaho and other Western States now face each year.

BYELORUSSIAN INDEPENDENCE DAY

Mr. WILLIAMS of New Jersey. Mr. President, March 25 marks another reminder of the hardships and deprivation faced by millions of oppressed people across the world. On this day, Byelorussian descendants will celebrate the 52d anniversary of the Declaration of Byelorussian Independence, a brief moment of freedom in that nation's history.

Prior to World War I, great steps were made among several European nations in establishing a firm foundation for democracy. Through an organizational congress, those nations hoped to protect themselves from outside aggression.

The Byelorussian State, withstanding military pressure from Russian forces, was secretly preparing for the opportune moment to break from their oppression. Such a moment presented itself when the Russians became involved in the Bolshevik Revolution of 1917; and February 19, 1918, with the support of the military, the Byelorussian Congress gained total control of their government. On March 25, 1918, the congress declared its nation an independent and free state.

However, in late 1918, the Russian armies again invaded the Byelorussian territory. On December 10, a Soviet government was reestablished, destroying the self-governing Byelorussian Congress.

Although their independence was short-lived, the citizens of this nation demonstrated to the world their determined capability in self-government. With improved education, immediate advancements were made in literature and the arts. Great emphasis was placed on social reforms, and citizen participation in the democratic procedures was immense.

Mr. President, as Americans join with Byelorussian descendants in acknowledging their Independence Day, we honor and pay tribute to the aspirations of all free men.

DR. JAMES EARL RUDDER

Mr. TOWER. Mr. President, I was saddened to learn of the passing of a great Texan and distinguished educator, Dr. James Earl Rudder. Dr. Rudder was the president of the Texas A. and M. University and system. He was born in 1910 in Eden, Tex. His career of public service began in 1933 when he was a teacher and football coach at Brady High School in Brady, Tex. From 1938 to 1941 he taught at Tarleton Agricultural College, at Stephenville, Tex.

In 1941, Earl Rudder heeded his country's call. He served with great distinction in the U.S. Army and rose from first lieutenant to colonel in 5 years. He emerged from the service richly decorated, having received the Distinguished Service Cross, the Silver Star Medal, the Legion of Merit, the Bronze Star Medal with oak leaf cluster, and other awards for valor and service.

When he returned to Texas after the war, he became mayor of Brady and served in that office until 1952. He subsequently became commissioner of the general land office of Texas, chairman of the veterans' land board, and in 1958, vice president of Texas A. and M. University. The following year, Dr. Rudder was made president of the university and served in that office until his death.

Mr. President, Texas A. and M. University has enjoyed more than a decade of growth and advancement in educational quality under the leadership of Dr. Rudder. He will be sorely missed.

NOMINATION OF GEORGE HARROLD CARSWELL TO THE SUPREME COURT

Mr. GURNEY. Mr. President, I wish to add to the RECORD several additional telegrams which have come to my office expressing support for Judge Carswell. As I have said before, I dislike this numbers game, and I think endorsements of this sort add little real substance to our proceedings. But now that the game is in progress I cannot very well withdraw, lest by doing so, we create the erroneous impression that the naysayers have carried the field. For this reason, I ask unanimous consent to have printed in the RECORD several telegrams from judges and lawyers from Florida and Indiana.

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

ST. PETERSBURG, FLA.,
March 23, 1970.

Senator EDWARD GURNEY,
U.S. Senate,
Washington, D.C.:

I urge your vote for approval of Judge Carswell nomination to the United States Supreme Court.

ROBERT E. BEACH,
Circuit Judge, 6th Judicial Circuit,
State of Florida.

LAKELAND, FLA.,
March 23, 1970.

Hon. EDWARD J. GURNEY,
New Senate Office Building,
Washington, D.C.:

Having served in U.S. Attorneys Office, Southern District of Florida, when Judge Carswell was U.S. Attorney in Northern District, I know from liaison between us that Judge Carswell was astute, knowledgeable in the law, honest, fair to all and conscientious. It is inconceivable that more could be expected of a nominee to any judgeship in the land. Particularly to that on U.S. Supreme Court. Urge prompt vote and confirmation of Judge Carswell's nomination.

JOSEPH P. McNULTY,
Judge, Court of Appeal, Second District
of Florida.

MIAMI, FLA.,
March 23, 1970.

Hon. EDWARD J. GURNEY,
U.S. Senator,
Senate Office Building,
Washington, D.C.:

DEAR SENATOR: I believe Judge G. Harrold Carswell is well qualified by reason of his judicial background, experience and temperament to serve as Justice of the Supreme Court of the United States I respectfully urge his appointment.

JAMES LAWRENCE KING,
Circuit Judge, Dade County Court-
house.

PETERSBURG, IND.,
March 23, 1970.

Senator EDWARD GURNEY,
Senate Office Building,
Washington, D.C.:

I recommend the immediate confirmation of Judge Carswell as a Justice of the Supreme Court of the United States. The overwhelming evidence establishes his qualifications. Only a red herring is being dragged across the trail. For purposes of identification only I am a former president of the Indiana Bar Association, former chairman of the house of delegates, former chairman of the Trial Lawyers Section and have been practicing law for almost 50 years.

CARL M. GRAY.

INDIANAPOLIS, IND.,
March 24, 1970.

Hon. EDWARD J. GURNEY,
Senate Office Building,
Washington, D.C.:

Am happy to add my endorsement of Judge Carswell and urge his affirmation.

FLOYD W. BURNS,
Past President, Indiana State Bar
Association.

COLUMBUS, IND.,
March 24, 1970.

Senator EDWARD GURNEY,
Senate Office Building,
Washington, D.C.:

As a past president of the Indiana State Bar Association, I find among members of the legal profession in Indiana, strong support for the appointment of Judge Carswell to the U.S. Supreme Court. I recommend that Judge Carswell's appointment to the U.S. Supreme Court be confirmed without delay for the good of the country.

THOMAS C. BIGLEY,
Charnack, Biley & Jurgemeyer.

ORLANDO, FLA.,
March 24, 1970.

Hon. EDWARD J. GURNEY, JR.,
U.S. Senator,
Senate Office Building,
Washington, D.C.:

Strongly urge active support Judge Carswell. I have known Judge Carswell for many years as a man, lawyer, and judge and am

familiar with his service as United States Attorney and United States District Judge both from the viewpoint of an interested citizen, practicing attorney and one active in the affairs of the bar. Judge Carswell in my opinion is most eminently qualified to be a Justice of the Supreme Court of the United States by virtue of his legal ability, humanness, and judicial temperament.

O. B. McEWAN,
President Florida Bar 1958-1959.

MARION, IND.,
March 25, 1970.

Hon. EDWARD J. GURNEY,
Senate of the United States,
Washington, D.C.:

I believe the substantial majority of Indiana attorneys regret the controversy over Judge Carswell's confirmation and fear the effect it might have on the prestige of both the Senate and the Supreme Court. This personal opinion is based on my experience as past president and incumbent House of Delegates chairman, Indiana State Bar Association. I consider Judge Carswell eminently qualified in all respects.

ROBERT A. GEMMILL.

ANNIVERSARY OF GREEK INDEPENDENCE DAY

Mr. WILLIAMS of New Jersey. Mr. President, 149 years ago, Greek loyalists started the groundwork for a revolution that eventually led to an independent state.

Under the leadership of Alexandros Ypsilantis, the first of a series of revolts against the Turks started on March 25, 1821, the accepted birthdate of Greek Independence. The Turkish empire did not accept the government of the Greeks and the subsequent fighting is comparable to that of the American colonists after our own Declaration of Independence. As in our case, it was several years and many battles before the final official acceptance of Greece as a free and independent nation occurred on October 20, 1827.

The Greeks were convinced this would be a permanent freedom, and they received protection from three world powers, Great Britain, France, and Russia. Because their earlier intervention aided in the Greek revolution, those powers collectively selected a ruler for Greece. However, a nationalistic overthrow in 1843 provided Greece with not only a democratic-oriented national assembly, but also a constitution based on democratic principles.

However, from that year until the present, Greece has been continually confronted with change in government control. But despite the turmoil, the Greek loyalists have shown to the world their enthusiastic determination to remain free.

Mr. President, in acknowledging March 25 as a day Americans should pay tribute to Greek descendants in their fight to remain a free nation, we should remember their deep influence on our way of life. Our democratic principles and beliefs are derived directly from ancient Greece. Much of our culture, including literature, the arts, and athletics, has been derived from noted Greeks. And the contributions of Greek-Americans to

this Nation's way of life have been singularly notable.

Therefore, let all Americans, this day, extend to Greece and her people, our hope for lasting peace and freedom.

REPRESENTATIVE BROOMFIELD PRESENTS POLICY FOR THE MIDDLE EAST STATEMENT

Mr. JAVITS. Mr. President, I invite the attention of Congress to a timely and compelling address on United States-Israeli relations by a distinguished member of the House Foreign Affairs Committee, Representative WILLIAM S. BROOMFIELD, of Michigan.

Representative BROOMFIELD's remarks merit study and consideration. Indeed, I would say that his address is among the best summaries of the current situation available to Congress and the people.

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

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

LADIES AND GENTLEMEN: We know why we are here. This is a time for action, not rhetoric. As devoted Zionists, you are committed to Israeli-American friendship and the preservation of freedom not only in our own country but also in the State of Israel.

You know the facts of the very serious and very grim crisis confronting Israel. You have carefully followed every development—heart-warming developments and heart-rending developments. You are not misled by double-talk and high-sounding formulations. You want to know the score in Israeli-American relations.

The situation is too tense for sugar-coating. There are very real fears that Israel's support in Washington has eroded. There is concern that the Jewish State is being cut off, isolated, rejected, and betrayed.

Your invitation to address the Zionists of Detroit came at a timely moment. It came at a moment when my own concern was increasing.

As a member of the House Committee on Foreign Affairs, I am the ranking Republican on the Far East and Pacific Affairs Subcommittee. I have observed the brutality of Communist aggression. I have followed the phony peace talks and feel that we should not be seduced by Communist tactics.

Just as world communism works through stooges and agents in Southeast Asia, Moscow is today operating through the radical Arab States to penetrate the Middle East and Mediterranean. Israel is the target because Israel is an outpost of freedom. A defeat for Israel would be a very terrible defeat for the United States of America. It would undermine the American position and that of all free nations in the Mediterranean, Africa, and Western Europe as well as the Middle East. The implications are far more serious than some situations in Southeast Asia when viewed from the overall national security interests of the United States.

If we were justified in committing thousands of American lives in Southeast Asia and draining our economy to halt aggression there, the least we can do is to support Israel in the arena of diplomacy. The least we can do, under the Nixon doctrine, is to provide arms for a nation fighting for its survival against Communist-supported aggressors.

No American troops are sought by Israel. But we nevertheless must deter direct Soviet military intervention. President Nixon told Congress last month that "the United States would view any effort by the Soviet Union

to seek predominance in the Middle East as a matter of grave concern."

The President was referring to Israel when he said that "the time has passed in which powerful nations can or should dictate the future to less powerful nations. The policy of this administration is to help strengthen the freedom of other nations to determine their own futures. Any effort by an outside power to exploit local conflict for its own advantage or to seek a special position of its own would be contrary to that goal."

In accordance with this aim, the President reaffirmed our stated intention to maintain careful watch on the balance of military forces and to provide arms to Israel as the need arises.

JETS NEEDED NOW

My own assessment on the situation is that the need already exists. Further delay is dangerous.

France has joined the Soviet Union in supplying sophisticated arms to the radical Arab states. Israel can look only to Washington for continuity of supply of sophisticated military aircraft. If Washington does not act, the danger of aggression will grow; the strength of the Arabs will increase while Israeli deterrent power deteriorates; violations of the cease-fire will escalate, and the Soviet Union might miscalculate and wrongly assess American intentions in a grave error that could bring about a terrible nuclear confrontation threatening the entire world.

It is no longer a question of whether we can afford to provide Israel with the necessary jets and even to extend new lines of credit to cover financing. It is now a matter of whether we can afford not to take action on Israel's urgent needs. This is the way to avoid confrontation. This is the way to peace through strength. And this is the way to redeem our moral and ethical commitments to the people of Israel.

Coinciding with my appearance here tonight, I have sent the following telegram to President Nixon:

"Urgently recommend immediate authorization of sale of additional military jet aircraft to Israel. In my judgment, a favorable decision necessary in response to new French arms policy favoring Arabs which compounds continuing Soviet involvement on Arab side. Favorable action would redeem our commitment, promote regional stability, deter aggression, serve cause of peace, and bolster the national security interests of the United States."

I did not concur in any American role at the United Nations or in concept with the Soviet Union, France, or Britain to impose a peace at Israel's expense during the previous administration.

BIG FOUR FAILURE

I do not accept such a dubious diplomatic approach under the present administration in view of the record of the Big Four talks. That record adds up to a great big nothing in terms of actual results. But the Russians and their Arab friends have extracted great propaganda value and attempted to drive a wedge between the United States and Israel.

The United States remains convinced that peace can be based only on the voluntary agreement of the parties directly involved. The only peace worthy of the name must be based upon direct, face-to-face negotiations that produce a genuine settlement. Nothing less will suffice. The President has said that "there is no substitute for negotiations. Peace and security can only emerge from the mutual agreement of the two sides immediately concerned."

That is the position. It must remain our position. You are a very sophisticated group and realize that the art of diplomacy is complex.

Words and stories that appear in the press

are often confusing and misleading. I looked into the diplomatic situation just before leaving Washington and have reassured myself that this Administration, alone or in concert with any other power, will not dictate the terms of peace or seek to impose a settlement.

President Nixon stated on September 8, 1968, that "it is not realistic to expect Israel to surrender vital bargaining counters in the absence of genuine and effective guarantees." This Administration continues to recognize that fact.

REAL PEACE VITAL

As a Member of the Foreign Affairs Committee, I would go one step further. I would strongly urge upon the Government of Israel that the Israelis refuse to withdraw from even a single inch of occupied territory unless the Arabs sign a real peace treaty. That is the only way to translate the continuing bloodshed into an acceptable basis for national and human existence.

The Soviet Union or Egypt or anyone else would be badly misguided to conclude that the United States is going to high-pressure Israel into unilateral withdrawal.

There are some who advocate a spirit of compromise on the issue of Israel, a policy of "give and take." We must make sure that the United States does not "give" at the expense of Israel while the Soviet Union "takes" for the Arabs.

It was in the historic days following the Six Day War that I visited Israel. I was deeply moved by the brave and modest young men of Israel who faced the terrible Russian firepower provided to the Arabs. In recent months, I have received many telegrams from constituents concerned that Israel would be sold out. My memory of what I saw and felt in Israel remains so compelling that the telegrams renew my determination to keep the faith with the Israeli soldiers whose hands I grasped in admiration and friendship.

Some facts must be brought home to Washington. Not everyone understands how Israel feels. Israel is surrounded, besieged, subjected to vilification and hatred, to guerrilla attacks and sabotage.

The Israelis may point out that while the United States is the advocate of peace, the Soviet Union is the advocate only of the Arabs. The Israelis may also raise a very relevant question: Would a rollback from occupied territory and one-sided concessions actually satisfy the extremists of the so-called National Liberation Front of the Arabs?

It is perfectly understandable that Israel would scrutinize everything our Government says and does. Israel's survival is at stake.

The Israelis remember very well the Nazi genocide which was perpetrated while the civilized world stood by and phrased platitudes. The Israelis remember the liquidation of Jews in the Warsaw ghetto. They remember Munich and all that followed.

They saw what happened to Czechoslovakia only two years ago. Israel is determined not to become another Czechoslovakia!

Israelis are well aware of the anti-Jewish persecution now practiced in various Arab states. They watch with dread foreboding as the Soviet Union impugns the loyalty of its Jewish citizens.

I read with horror in the Detroit Jewish News of the insidious pressure with which Russia is forcing prominent Soviet Jews to condemn Israel and Zionism. I read of the courage of those brave Jews in Russia who expressed indignation.

SOVIET ANTI-SEMITISM

If the Soviet Union sends those courageous people to Siberia for speaking their minds, Russian pretensions will stand exposed anew in the eyes of all Americans, Jewish and non-Jewish.

These new demonstrations of Communist hatred for Israel and the Jewish people may lead to show trials of those who spoke out against discrimination or applied for visas to settle in Israel. Jews may be made scapegoats in pursuit of domestic conformity in the monolithic Soviet state and to advance Russian aspirations in the Arab world.

I wish to note in this connection that President Nixon has urged Senate ratification of the Genocide Treaty. The President is trying to get Senator Fulbright, Chairman of the Senate Foreign Relations Committee, to take action—after so many years of delay—to act on the Convention on the Prevention and Punishment of the Crime of Genocide. American ratification would strengthen the hand of the President in speaking out against Soviet anti-semitism. I am proud to see a Republican Administration take this initiative.

REPUBLICANS BACK ISRAEL

Let me say quite frankly that all the friends of Israel are not to be found clustered together in one particular political party.

Take a look at the absence of certain names—and the presence of others—on the most recent Congressional declaration in support of Israel.

I do not say this in a partisan spirit but in a sense of pride that my party, as represented in Congress, now has a leadership that affords us great leverage on crucial issues when dealing with the State Department and other agencies of the Executive Department.

On the other hand, some key personalities in the leadership of the majority party, especially in the Senate, have given aid and comfort to the makers of dubious Middle Eastern policies.

The new Congressional declaration to which I refer was introduced by my distinguished colleague, Manny Celler of New York, the beloved dean of the House.

It stipulates that "It is not in the interest of the United States or in the service of world peace to create the impression that Israel will be left defenseless in face of the continuing flow of sophisticated offensive armaments to the Arab nations supplied by the Soviet Union and other sources."

This reflects my own thinking to the extent that I not only signed the declaration but called it to the attention of colleagues in my own party from Michigan.

Recent events have caused great concern. The fighting has escalated. The young and brave are giving their lives so that Israel may live.

Arab fanatics are trying to blockade Israel by bombing commercial airliners. They seek to strangle the airline routes linking Israel with the free world. Airports and passengers have been attacked.

This outbreak of extremism against Israel is quietly encouraged by those who send new supplies of the latest arms to extremist Arab states that give aid and comfort to the terrorists.

FRANCE UPSETS BALANCE

A new factor was introduced by the massive French arms transaction with Libya. I cannot imagine why Libya, with an army smaller than the Detroit police department, needs 110 of the latest Mirage jet fighter-bombers—or hundreds of powerful tanks.

Much has been said about the recent visit of President Pompidou of France.

When President Pompidou was an official guest in Washington, I gave him the respect but scrutinized his actions.

Upon returning to Paris from our hospitality, President Pompidou announced a credit of \$810 million to the Soviet Union to finance Russian purchases of French machinery and equipment over the next five years. Some of the machinery and equipment would

facilitate Soviet munitions manufacture. The French Communist Party has welcomed this action by the Pompidou Administration, just as it supports his policy toward Israel and Zionism.

When our Committee on Foreign Affairs takes up matters pertaining to France, I intend to raise a question about Pompidou's new transaction favoring the Russians, coming as it does on top of the irresponsible transaction with Libya.

I can assure you that President Nixon may be persuaded by the requirements for diplomatic protocol in receiving foreign guests, but he is not necessarily won over to their policies.

POMPIDOU JEOPARDIZES PEACE

I have very deep reservations about French policies and categorically reject the contention that massive build-up of leftist extremists in Libya serves the cause of peace in the Middle East. I think that Pompidou has done the world a disservice by cancelling contracts made in presumably good faith to provide jets to Israel and then turning around and giving such jets and additional ones to Israel's mortal enemies.

This is two-faced policy and I deplore it. There have been reports that France may even sell Mirage jets to Communist China. We are looking into this.

There is also a new question involving possible shipment of French jets to Pakistan. But that is not yet confirmed.

I am shocked to learn that Pakistan, a major beneficiary of the U.S. foreign aid program, has sent troops to Jordan to assist in the unrelenting war against Israel.

It is my understanding Pakistani troops, equipped with anti-aircraft weapons, are being deployed in Jordan to shoot down the jets provided to Israel by the United States.

Over 1,000 Pakistani soldiers have already arrived in Jordan and are taking combat positions near the cease-fire lines. I feel that this intrusion by Pakistan into the friction embroiling Israel and her immediate neighbors adds a dangerous new element to the crisis.

The time has come from our Government to serve notice on Pakistan that her entrance into the Arab-Israeli hostilities will not be tolerated by the United States.

Another new situation is developing in Iraq. Following the announcement of a peace between the Iraqi government and dissident Kurdish elements and solution of the civil war in Iraq, announcement was made that more Iraqi troops will be sent to Jordan to fight Israel.

This also adds a new element in that Iraq was a party to neither the 1949 armistice agreement nor the 1967 cease-fire. Thus, an active state of war between Iraq and Israel exists. The grim fact is that the Iraqis are the very worst offenders of human rights among the modern Arab states in terms of mass executions of Jewish citizens and others persecuted by the dictatorial regime.

The situation on the Middle Eastern horizon is compounded by threat after threat. But Israel is not without friends. I want to tell you that I have been reassured on the highest levels in Washington that the United States Government stands by its friends. Israel is one of its friends.

The action on the supply of additional jets to Israel is behind the timetable that I would prefer. But I am fully confident that this step will be taken. Indeed, deliveries of Phantoms and other weapons are proceeding week by week and month by month under previous authorizations and existing contracts.

The friendship of our two countries is an article of faith. President Nixon has very recently reaffirmed American-Israeli friendship.

Mrs. Golda Meir, Prime Minister of Israel, stated that she "noted with gratification"

the clear expression by President Nixon on the issue of Israel's security and integrity.

I refer to the message sent to the emergency conference of Jewish leaders in Washington on January 25 through my good friend, Max Fisher.

It would be unfair to judge the President and condemn him merely because he found it necessary to apologize to President Pompidou—nor because of the delay in approval of the latest jet transactions. I feel that the total record of this Administration should be judged in perspective when all facts are in. But, I do not identify with every twist and turn of State Department and White House policies. I support what seems right and oppose what seems wrong.

The Zionist movement is inherently valuable. It serves as a prod to conscience; a guideline amidst confusing and contradictory voices from many sources. Zionism makes for better Americanism.

Despite all that I can say, there remains a residue of fear about U.S. policies. A new declaration on Middle East policy is essential. But it must do more than voice phrases. Actions must occur. Our friends must be reassured. Our enemies must not miscalculate.

ACTIONS URGED

I wish tonight to propose a 6-point action program, inspired by the Star of David, symbolic of Jewish national survival. I urge the Government to take the following actions to meet the crisis:

1. Announce without further delay the provision of additional Phantom and Skyhawk jets and other weapons required by Israel with appropriate financing arrangements.

2. Establish a telephone "hot line" between Washington and Jerusalem, a proposal first advanced by the Republican leadership of Congress. This would enable Mrs. Meir to clarify any misunderstanding directly with the President or vice versa. It would be useful if new factors were introduced into the conflict by an outside power.

- In an emergency, the President could act instantaneously. The existence of the hot line would reassure Israel and deter those who would drive a wedge between Israel and the United States.

3. Withdraw from the Big Four talks to dramatize our rejection of the Soviet and French manipulation of such talks. The Franco-Soviet position would enable the Arabs to accomplish through diplomatic pressures what they failed to achieve on the field of battle. Moscow has shown contempt for American good faith. There is no real benefit in continuing in a forum for anti-Israel propaganda.

4. Re-affirm the principle of a just settlement involving direct face-to-face negotiations in which the Arabs acknowledge their responsibility for real peace and sign such a treaty. Proclaim that Israel must not withdraw from a single inch of occupied territory until a genuine peace is achieved covering all forms of aggression including guerrilla warfare.

5. Convene an international conference of all nations serving the Middle East through commercial airlines to take strong steps to stop terrorism. These measures should include a boycott of the airports and aircraft of any nation that gives aid and comfort to terrorists. Seek international embargo on sale of all aircraft, civilian and military, to any country that collaborates with Arab terrorism like that in the Swiss Air tragedy.

6. Serve notice upon the Soviet Union at the highest diplomatic levels that the United States Government looks with concern at new indications of anti-semitism within the Soviet Union just as we deplore racism and persecution throughout the world. Take new initiatives at the United Nations in conformity with international undertakings on

human rights and accompanied by United States Senate ratification of the convention on Genocide.

We have no warlike motives in the Middle East. The American people desire only the friendship of all the various nations of that region. It is our fervent prayer that nations accord others the right to exist.

Perhaps realization will come that true liberation can be found in development of one's own country, raising of one's own living standard, and the development of one's own social justice. Aggression will not succeed, no matter the grandiose phrases invoked to justify the unrelenting warfare by regular and guerrilla forces.

All parties are obviously better served by peace negotiations and the acceptance of the facts of life. The real interests of both Arab and Israelis require peaceful coexistence.

In that land where the Prophets dreamed that nation should not lift up sword against nation, let there be peace.

For Israel, a nation of people whose suffering merits a life more creative than perpetual service in an armed camp, let there be peace. For the Arabs, whose poverty and frustration require schools and hospitals and a decent life rather than the endless purchase of jets and guns, let there be peace.

Israel could be a light unto the nations of that region if the Arabs would accept fellow human beings of the Jewish faith as entitled to nationhood as any other people. The genius and productivity of the Israelis could help others make their deserts blossom.

Instead of the cradle of civilization becoming its grave, let the cradle of civilization give rise to two peoples, Arab and Jewish, each in their own countries, with commerce and travel flowing across peaceful borders, and with a new sense of mutual respect in keeping with our dream of the brotherhood of man under the fatherhood of God.

I want to add a special and very personal word to this audience. Many of you have devoted your lives to the Zionist cause. You have seen in Zionism a redemption of freedom and human dignity, the rebirth of a nation, and the rebirth of a people. But we are now witnessing painful days, tragic days, in which the powers and political trends and pressures of the world appear to be converging on the Middle East.

Israel was reborn in blood and fire. Israel is today struggling in an ordeal of blood and fire. But this time it is different. The State of Israel has proved its mettle. Israel is a nation among the nations.

You can take pride, as dedicated supporters of Israel, as Zionists, in the nation you have helped build. But the watchman of Israel does not sleep.

Trying days lie ahead. Yet, in your heart of hearts, you can draw faith and sustenance and reassurance from one fact: This is the United States of America. This is our country and we, Jews and non-Jews, peoples of all parts of this country, the silent Americans and the articulate Americans, will not let Israel down.

I thank you.

JUDICIAL REFORM—STATEMENT OF HON. J. DUDLEY DIGGES, ASSOCIATE JUDGE, MARYLAND COURT OF APPEALS

Mr. TYDINGS. Mr. President, throughout the country our civil and criminal courts continue to be plagued with congestion and delay as a result of the use of archaic, inefficient judicial machinery. Last week, the Subcommittee on Improvements in Judicial Machinery, of which I am chairman, held a hearing on this crucial problem. Special attention was focused upon S. 3289, the National Court Assistance Act, a bill that

would provide Federal assistance to State and local courts to help modernize and improve their judicial operations.

My subcommittee was privileged to receive at this hearing the testimony of the Honorable J. Dudley Digges, associate judge of the Court of Appeals of Maryland and formerly chief judge of the Seventh Judicial Circuit of Maryland. Judge Digges is not only a most learned and sensitive judge but also one of the finest judicial administrators in the country. When he speaks on the subject of judicial reform, it behooves all concerned with the problem to listen keenly. At the subcommittee hearing, Judge Digges delivered an outstanding statement which could serve as a fine lesson in judicial administration for every court in the country. I ask unanimous consent that Judge Digges' statement be printed in the RECORD.

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

TESTIMONY OF J. DUDLEY DIGGES

Mr. Chairman, in response to your request for comments on your proposed bill (S. 3289) establishing a National Institute for Judicial Studies and Assistance, I would like to make two observations, and those are that—

(1) Where modern business and analytical techniques have been applied to the crisis in our courts, they have resulted in dramatic improvements, and

(2) At the present time the states are neither financially equipped nor motivated to initiate a long range, persistent and sustained drive to clear up the congestion in our courts. I am of the opinion therefore that the educational and advisory functions of the Institute that you are attempting to establish can supply both the impetus and the back up needed to educate judges, lawyers and state officials to the needs and the possible solutions for the problems of the administration of civil and criminal justice in this country.

Addressing myself to the first observation, I can only speak from a very parochial viewpoint. As early as 1960, before I was Chief Judge of Maryland's Seventh Judicial Circuit, composed of the trial courts of a suburban county bordering on Washington, D.C., and three rural counties, my colleagues on the Bench and I initiated administrative reform techniques along the lines you plan for the Judicial Institute. I note now, with some relief, that we began to apply these modern business techniques before and not after the explosion of cases began, having anticipated an immense population shift into our judicial bailiwick. Our population shifted from 357,395 to 768,900 and our yearly number of cases filed in our circuit court alone rose from 4,749 to 8,751 annually. (See appendix A and B) The successful results of our anticipation is significant and, I believe, strong reason for waiting no longer to establish your institute, for the problems raised by an increased docket must be made manageable before they get completely out of hand, as they already have in many urban areas.

Our experiences in the Seventh Circuit have been most gratifying to us, for by identifying our problems early, and discarding old unworkable solutions to them, we checked what many believed to be the inexorable fate of all urban court systems, the drift into court congestion.

For example, we realized initially that under the ever increasing press of cases that we could no longer depend on the good will of competing lawyers to insure a smooth running docket. Instead we placed this responsibility in an efficiently run assignment of-

fice, which ran its calendars independently of the elaborate and slow moving filing system of our Clerk's office. A lawyer would be given reasonable notice as to the next available trial date and a reasonable opportunity to object, but absent an objection we also assured him that his case would in fact be heard on that day. This last assurance fell on the judges, for in order not to disrupt a following day's trial calendar we made it our policy to finish a case on its scheduled day, even if this meant leaving after 4:30. The system worked. Interpolating our ideal requirements into actual figures, we now give 4-6 months notice of a trial date with 30 days to object and reschedule. As for the assurance of trial on that date I believe it is instructive to note that since we have instituted this system there have only been eleven known instances of litigants not getting into court on the day assigned.

In another problematic area, when we saw the first signs of massive filing congestion we enacted local rules of court which gave our judges authority to dismiss or place on an inactive docket half-dormant cases. We found that this was not enough, and we changed our rules so they would be self-executing, that is, when a case reached certain points in time, 6 months, 12 months, 18 months, without appropriate action, the Clerk would automatically place them on our inactive dockets, and if a case presented special problems we would assign it to an individual judge for his special attention. For the general inactive case, however, we shifted the administrative burden from the judges to the clerks and then to the individual attorney to get his case back in an active status. To our surprise over 75% of the cases so disposed of were never brought to life again and were eventually dismissed. But even this was not enough, for all we had been doing was shifting the burden of responsibility among individuals, judges, clerks, or attorneys, who were already overburdened by other demands of the system. Finally, in 1967 we succeeded in creating the post of court administrator for our entire Circuit, and filled it not with a broken down lawyer but with a bright young businessman who, fortunately for us, had extensive experience with the administration of justice as a probation officer. The task of sifting out deadwood and placing attorneys on their toes ultimately devolved upon him as coordinator of other courthouse offices responsible for this task.

As with our assignment system, we routed our old inactive cases out of the labyrinth of the court house filing system and placed them in an independent system amenable to efficient analysis, which we have set up in such a way that can be converted into a computerized data processing system. While we employed a programmer for this very purpose only last November, even on a manual system we came to grips with a potential backlog of cases by changing our entire approach to the problem. Moreover, by channeling this administrative burden into an office where an adequate number of efficient man hours could be applied on a full time basis we freed clerks, judges and attorneys for chores for which they were better motivated and equipped. We have found ourselves in the enviable position in this state, and perhaps in the nation, of terminating annually more cases than are filed. Last year in Prince George's County we closed 9,238 cases while only 8,851 were begun. (See Appendix B) We attribute this to the application of modern business techniques.

I do not mean to imply that we were simply juggling statistics, or that most courts only have 25% as many active cases as most judicial statistics would seem to indicate. What I am trying to stress is that by loosening up what was basically a filing logjam, we found more judicial, clerical,

and attorney work time to give the active litigant his full day in court much sooner than could ever be anticipated. Except in cases requiring a mental examination for an insanity defense, we now hear a great majority of our criminal trials within much less than three months after arrest. Our active civil cases, still in the mainstream of the system, are disposed of within less than six months from the date an answer is filed—as the rule and not the exception. Now we have no criminal cases over 9 months old, and by singling out our 100 "most wanted cases" in the various divisions of our case load, we can proudly report that as of yesterday at 10 A.M. there are less than 336 civil cases in Prince George's County that have been pending for more than 18 months, and we are trimming that list down continually.

In other areas of civil and criminal judicial administration we have speeded up processes of preliminary dispositions as much as ten times. A good example of this is in the juvenile field, an area where the problem of delay between arrest and disposition is being critically felt all over our nation. It once took us over eight weeks to get from arrest to a preliminary disposition in even the simplest of cases. We appointed Juvenile Masters to cope with the flood, but that only seemed to be followed by an even greater flood of cases, in a rather grim application of Parkinson's law of increased work for increased personnel. With the assistance of our court administrator, we sat back and analyzed the problem. The answer was simple and still astounds us: By allowing our master to sit for initial arraignment and preliminary disposition on weeknights we found we can get a young offender into court with his parents within 48 hours after arrest. If the case gets beyond that point a final disposition can be set within three weeks. Thus, instead of treating all juvenile cases on the same footing requiring quadruplicate filing and processing by four different court agencies before any court action whatsoever, we now sift out those cases in advance that do not require the attention of so many judicial hands. We have completely eliminated our juvenile backlog, freed numerous services for those cases that deserve it, and most importantly, we have brought our young offenders into court for the immediate application of swift and attentive justice, all, I might add, with the full panoply of rights that were later set forth in the Galt decision.

This brings me to my second point, that as a rule most state and local judicial systems cannot sit back and evaluate their problems as we have been fortunate enough to do. Perhaps it's a lack of state funds or state motivation. I am not sure. But I suspect, just from my own attempts in Maryland, while on our State Rules and Procedures Committee, to have our approaches adopted on a statewide basis, that all of us involved in the administration of justice are simply too overwhelmed by our day to day problems and our fear of change to apply the initial impetus or long range persistence to adequately cope with these problems. It is here that I believe that the help of a National Institute for Judicial Studies and Assistance would be most invaluable. As we found that we could not keep passing the buck of reform to already overburdened components of our system and had to create a full time office devoted to efficient organization techniques, so too should the national government help create a full time office of study, analysis and education that could give each court in this country the benefit of fresh ideas in judicial administration. This can be an office that will not just pop up when congestion becomes intolerable and attempt to push the cap of the iceberg below the water line for a year or two, and then throw up its hands in despair when the inevitable re-emerges. The Institute for Judicial Studies and Assistance as you have

conceived it, Mr. Chairman, will be able to supply the impetus and, most importantly, the long range persistence and study needed to cope with long range problems. Its educational function can alert our state government to the problems and new solutions to court congestion and help them work out answers suited to their individual long range needs. I heartily endorse its establishment.

APPENDIX A—Population estimates for Prince George's County

Date:	Population ¹
July 1, 1960.....	357,395
July 1, 1961.....	378,221
July 1, 1962.....	404,119
July 1, 1963.....	449,400
July 1, 1964.....	485,800
July 1, 1965.....	529,550
July 1, 1966.....	551,700
July 1, 1967.....	582,470
July 1, 1968.....	614,730
July 1, 1969.....	644,800
July 1, 1970.....	675,100
July 1, 1971.....	705,900
July 1, 1972.....	737,300
July 1, 1973.....	768,900

¹ Projections by Maryland State Department of Health, Division of Biostatistics, March 10, 1970.

APPENDIX B—CASES FILED PRINCE GEORGE'S COUNTY

	Law	Equity	Criminal	Total ¹
1960-61.....	1,968	1,850	931	4,749
1961-62.....	2,214	2,113	1,007	5,334
1962-63.....	2,623	2,398	993	6,014
1963-64.....	2,861	3,106	1,058	7,025
1964-65.....	3,175	3,322	1,319	7,816
1965-66.....	3,343	3,568	1,542	8,453
1966-67.....	3,116	3,507	1,661	8,284
1967-68.....	2,803	3,837	1,926	8,566
1968-69.....	2,757	4,039	1,955	8,751

¹ These figures are from the annual reports of the administrative office of the State of Maryland.

EFFORTS TO FIND A CURE FOR CANCER

Mr. HARRIS. Mr. President, I am pleased to have the opportunity to co-sponsor the resolution offered by the distinguished senior Senator from Texas (Mr. YARBOROUGH) authorizing the Committee on Labor and Public Welfare to examine our efforts to find a cure for cancer. As Senator YARBOROUGH has indicated, the 300,000 American deaths last year from cancer dictate that conquest of cancer become a "highly visible national goal."

This Nation, with its vast resources, cannot continue to give a low priority to the health of its citizens. Statistics reveal that the richest Nation in the world has been doing so. The United States ranks 12th among industrial countries in the percentage of mothers who die in childbirth; 14th in infant mortality; and 18th in life expectancy of its males and 11th for its females. The fact that we have failed to commit sufficient funds for cancer, heart, and stroke research is equally disturbing.

We cannot be content to spend on the average of only \$4 per year for each cancer victim in our efforts to find cures for cancer. It is almost unbelievable that a country that is spending approximately \$2½ billion a month in Vietnam, has only been spending \$200 million a year for cancer research.

I think that it would be most helpful in increasing our commitment to finding

a cure for cancer, if, as this resolution requires, an Advisory Committee of Consultants on the Conquests of Cancer is appointed and reports to the Committee on Labor and Public Welfare.

ECONOMICS OF AGING IN NEWARK, N.J.

Mr. WILLIAMS of New Jersey. Mr. President, the U.S. Senate Special Committee on Aging has received many stirring and informative statements during the past year for its study of "Economics of Aging: Toward a Full Share in Abundance."

Many of those presentations have been made at formal hearings or at information sessions conducted on Saturday mornings. On every such occasion, we have received heartfelt testimony about a national retirement income crisis and its effects upon individual older Americans.

One of the finest statements on the subject was received recently in Newark, N.J., during a discussion arranged by the National Council on the Aging. The speaker was the Reverend Kelmo Porter, executive director, Newark Council of Senior Citizens. Occasionally angry even while expressing compassion and concern, Reverend Porter spoke of elderly individuals who try to live on \$600 a year, of others who must withdraw from medicare because they cannot pay the increased premium costs, and of others who—despite great progress made in providing public housing—cannot find shelter at rents they can afford.

Fortunately, the Reverend Mr. Porter and the Newark Commission are attempting to direct help to those who need it so much. Another source of help would be the kind of social security reforms offered in Senate bill 3100. This bill would raise minimum benefits, establish a cost-of-living adjustment mechanism, and provide more adequate payments to widows. In addition, it would eliminate the monthly premiums under part B of medicare.

Mr. President, the Reverend Mr. Porter's statement is a powerful commentary which—as he said—is equally applicable to other urban centers. I ask unanimous consent that it be printed in the RECORD.

In addition, I also ask unanimous consent to have printed in the RECORD a prayer read as a benediction at the closing of the proceedings by William Fitch, Executive Director of the National Council on the Aging. The prayer was originally read as an invocation at the White House Conference on Nutrition, but I believe that it offers a message which should be worthy of careful consideration by the Congress of the United States.

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

STATEMENT BY THE REVEREND KELMO PORTER

I deem it a great personal honor and privilege to have this wonderful opportunity to tell you a little bit about our Commission, its eight multi-purpose senior centers located in the hard core poverty areas of our city, and something about the many, many

economic problems encountered by our elderly citizens on a day to day basis.

For your information, our Golden Age Project, set up by the City of Newark under the Newark Senior Citizens Commission and funded by the Office of Economic Opportunity through our CAP Agency the United Community Corporation, was originally designed to create senior centers in the socially and economically deprived areas of the city of Newark, where thousands upon thousands of elderly citizens lived in conditions of poverty, isolation, public dependency, cultural deprivation, poor health and the lack of knowledge concerning a great variety of available community resources. Many of our seniors were entitled to Social Security, Medicare and free health services who were not even aware of this fact. Our senior centers provide for the recreational housing, health, social services, employment and educational needs of thousands of elderly citizens, with the purpose of establishing a formula to alleviate poverty and loneliness and to stimulate renewed interest in community living.

It can be clearly stated that of all the citizenry of our city, our state and nation, our elderly are the hardest hit by the ravages of poverty. Their limited incomes are, for the most part, fixed, and fiscally they have a most difficult time trying to make ends meet. In more human terms this simply means that they are soon confronted with conditions which lead to a breakdown of personality; a frustration of the individual, which ultimately leads to a greater degree of public dependency, which they so vehemently detest, due to unemployment. It leads to a variety of health problems of ever increasing severity, and finally a tremendous slump into the bleak twilight years, usually devoid of all meaning and/or hope.

I am perfectly sure that the City of Newark is no different than any of the other large hard core, depressed urban areas of our nation, with respect to the economic plight of the elderly; no different than New York, Chicago, Philadelphia, Los Angeles or San Francisco; no different than Jersey City, Paterson, Trenton or Camden, N.J. The mounting economic problems of Newark's senior citizens are a gross travesty to our City, our State and our Nation.

In the City of Newark there are approximately 65,000 people 60 years of age or older. This represents about 15% of the total population of our city. One of every four families whose head is 65 years or older live in poverty. This rate of poverty is, by far, higher than for any other group residing in the city. In the city of Newark, among older persons living alone or with non-relatives, six out of every ten are poor. And because of their age they have little or no chance of making their way out of poverty through gainful employment. The high cost of living has spiraled far out of their reach; rising prices for food, clothing and medicine gradually consumes their purchasing power; their real income soon diminishes; their property taxes, for those fortunate enough to have a home, have become unbearable; and soon all of their limited assets are depleted. And I am sure my friends, that the story of Newark, N.J. with respect to the financial needs of our elderly, is the story of our state and our nation. All that the senior citizens of our city seem to ask is to be allowed to live their declining years with a measure of independence, self respect and dignity. They do not ask for hand-outs; they seek no charity; they do not want to sponge from or intrude upon relatives. But after thirty, forty and fifty years of sweat and honest toil; after founding and establishing the New Deal, braving the New Frontiers and perpetuating the Great Society, they want and deserve that which they firmly believe is right—themselves.

But what a tragedy, especially when the seniors of our city are penalized simply for the crime of growing old? The great majority of senior citizens in the City of Newark receive Social Security benefits, with the average monthly social security check being under \$100, and closer to \$90.00. The clarion cry in our city is that the recent 15% social security increase was far too little and much too late. The rapid increases in taxes, rents and medicare; the rising cost of food, clothing and medicine, had already absorbed this pittance long before it was actually received. The elderly of Newark were among the first to rally and strongly lobby for a 40% to 50% social security increase. One woman recently told me that her total annual income was about \$1,200. Her \$50 monthly public housing rental left her about \$50 a month or \$600 a year to live on. She went on to say she often had a difficult time trying to decide whether she should buy food so she wouldn't starve, medicine so she could stay well, or some needed clothing so she could stay warm. This is but one of thousands of such cases in our city.

Many seniors have already indicated to me, our Executive Staff or our Center Directors that they have already, or that they soon intend to withdraw from Medicare. Their most common reason being that they simply aren't able financially to pay the monthly increase of from \$4.00 to \$5.30. Others tell stories of abuse from doctors who would rather receive cash other than the medicare process as prescribed by law.

The great lack of adequate housing for the elderly is another problem which confronts so many senior citizens in our city. And yet perhaps per capita our city has provided more elderly units than any other city its size in the nation. The City of Newark has a public housing population of nearly 50,000 people. There are more than 5,500 elderly units, housing almost 10,000 senior citizens; 2,500 of these units having been opened within the last two years. Another 500 units are currently on the Housing Authority's planning boards. And yet Housing's waiting lists indicates that another 3,000 to 4,000 units are necessary in our city. And as for a large number who reside outside of public housing, who live with relatives or perhaps own their own homes; our records indicate that they live in blighted homes, usually badly in need of expensive repairs, which they cannot afford, which are primarily located in the urban renewal or urban redevelopment areas of the city.

The rising cost of public transportation is another very serious economic problem within our city. Senior citizens, like all other travellers must pay from 25c to 45c per trip or from 50c to 90c round trip to ride to various points within the city. Many seniors, with their limited fixed income, simply can't afford to pay the price. Consequently they won't go to see their doctor, they won't seek the needed social services available to them, they simply won't go to visit a friend. Every effort is being made, however, to secure, in their behalf, reduced bus fares during the non-rush hours of the day.

Yes, there are so many other problem areas affecting the lives of the elderly in Newark; matters with which you perhaps are already familiar in your various communities. And yet our daily, weekly and monthly records indicates that hundreds and thousands of senior citizens who were heretofore living in unbelievable conditions of poverty, isolation, ill health, cultural deprivation and lack of knowledge concerning the available community resources, have now found wholesome community activities, medical attention, social services, adequate housing, employment, social and recreational activities, in spite of their economic situation.

In closing we, therefore, thank the Almighty God for the untiring efforts of dedicated men like our U.S. Senator Harrison Williams and his staff for his historic hearings in the interest of the State's and Nation's senior citizens, and for a good number of other great legislators like him, the nation over.

PROLOGUE: THE INVOCATION AT THE PEOPLE'S
PLENARY SESSION

At the Opening of the December 3rd People's Plenary Session on the grounds of the White House Conference, the Reverend Joseph M. Clark, vicar of St. Christopher's Episcopal Church, Linthicum, Maryland, delivered the following invocation:

Almighty God, we who have been attending a conference at which we receive \$18.30 a day for food, while our Government gives poor and needy children 15 cents for breakfast and 23 cents for lunch. We give thee no thanks.

We who place our priorities on the War, ABM's, S.S.T.'s and moon trips, while the poor of our nation go hungry, we give thee no thanks.

We who can live among the nation's 175,000,000 healthy Americans, while turning our backs on the 25,000,000 hungry, we give thee no thanks.

Oh Lord, we have failed Thee, we have failed our country, we have failed our communities and have failed ourselves. We ask thy forgiveness.

Oh Lord, give us the strength to fulfill our commitment to feed the hungry of our nation now.

All of this we ask in thy Son's Name, Amen.

CONCLUSION OF MORNING
BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

EXTENSION OF PROGRAMS OF ASSISTANCE FOR ELEMENTARY AND SECONDARY EDUCATION—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate 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. 514) to extend programs of assistance for elementary and secondary education, and for other purposes.

At this time, the Senator from North Carolina (Mr. ERVIN) is recognized for the purpose of concluding the speech on which he was interrupted yesterday.

Mr. BYRD of West Virginia. Mr. President, will the Senator from North Carolina yield, without losing his right to the floor?

Mr. ERVIN. I yield.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that there be a brief quorum call, without prejudicing the rights of the Senator from North Carolina under the order.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. ERVIN. I also ask unanimous consent that I may be permitted to yield to the distinguished Senator from Rhode Island and the distinguished Senator from Virginia for a colloquy relating to the conference report, without losing my right to the floor.

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

Mr. SPONG. I thank the Senator from North Carolina for his courtesy.

Mr. President, for the purpose of legislative history, I would like to ask the manager of the bill, the distinguished Senator from Rhode Island (Mr. PELL) several questions.

It is my understanding that present law authorizes advance or forward funding of all programs administered by the Commissioner of Education. Is that correct?

Mr. PELL. That is correct. It should also be noted that the Senate bill and the conference report reiterate congressional support for forward funding.

Mr. SPONG. I believe it is also correct that Congress has voted advance funding four times. In 1967 we voted to permit advance funding of all programs contained in the Elementary and Secondary Education Act. In 1968 we voted to permit advance funding of higher education programs. The same year, in the vocational education legislation, we voted to permit advance funding of all programs which the Commissioner of Education administers. This year, during initial consideration of this bill we again approved the concept of advance funding for all education programs.

Mr. PELL. The record will bear out those facts.

Mr. SPONG. Is it not true, however, that the advance funding procedure has been used only once—in fiscal 1969—and for only one program—title I of the Elementary and Secondary Education Act? Furthermore, I believe the only request for advance funding in this year's budget is for title I.

Mr. PELL. Unfortunately, this is also correct.

Mr. SPONG. On February 4, during initial Senate consideration of the bill, the Senate adopted my amendment to create a Commission to study ways of implementing the advance funding procedure. The amendment passed by voice vote after discussion of the possibility of combining the Commission provided by my amendment with the National Commission on School Finance provided by the committee bill.

Later, I voiced some concern about the possibility of combining the two studies. I feel that my study is of some urgency. As written the two studies appear to deal with different aspects of funding: the National Commission seems to be concerned with where the money is coming from, while my Commission would be concerned with when the money is disbursed.

Another concern is that the National Commission on School Finance is appointed by the Commissioner of Education and no provision is made for congressional participation, although imple-

mentation of advance funding will require action by both the legislative and executive branches. I think it is obvious from past votes that Congress favors advance funding for education programs but there is no assurance whatsoever that the congressional view will be represented on that Commission.

That concern becomes secondary, however, in view of the fact that the conference bill contains neither my amendment nor any directions for the National Commission on School Finance to study advance or forward funding, although, I was pleased to note that you mentioned in your statement printed in yesterday's RECORD that the Commission on School Finance could study the question of advance funding. I certainly hope that this Commission will study advance funding and that it will do so expeditiously. There is an immediate need here. We simply cannot ask our schools, year after year, to go through Federal funding experiences such as they did this year.

Mr. PELL. I would support the Senator in that hope, for advance funding is not only a needed mechanism but one whose ramifications should be fully understood. Such a study would bring to the specific attention of the Congress the urgent necessity to act on this matter.

Mr. SPONG. I thank the Senator very much. I also thank the Senator from North Carolina for yielding to me.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, will the distinguished Senator from North Carolina yield to me, retaining his right to the floor, so that I may propose a unanimous-consent request?

Mr. ERVIN. Mr. President, I am delighted to yield under those circumstances.

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

The Senator from Montana is recognized.

UNANIMOUS-CONSENT REQUEST

Mr. MANSFIELD. Mr. President, I have been conferring with various parties interested in the conference report which, of course, is a privileged matter under the rules of the Senate and is the pending business. I would like at this time with the concurrence of the Senate to offer a unanimous-consent request which I believe has been cleared with all principle interests.

Mr. President, I ask unanimous consent that the vote on the conference report on H.R. 514, the education measure—either on its merits or on a motion to recommit—occur at 2 o'clock on Wednesday afternoon next, and that there be a 4-hour time limitation, the time commencing at 10 a.m. that day to be equally divided between the distinguished Senator from Rhode Island

(Mr. PELL) and the distinguished Senator from Mississippi (Mr. STENNIS).

Mr. ALLEN. Mr. President, reserving the right to object, may I inquire of the distinguished majority leader if his request also carries with it a request with respect to the confirmation of Judge Carswell's nomination, which was the pending business before it was displaced by the present pending business.

Mr. MANSFIELD. I wish I could answer in the affirmative. Unfortunately, I cannot. I have asked some of the Senators interested in the Carswell nomination to come to the Chamber so that I may discuss the matter with them. But I believe that if we could get this unanimous-consent agreement it would be helpful; and we ought to strike while the iron is hot, so to speak.

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

Mr. MANSFIELD. I yield.

Mr. SCOTT. Mr. President, I note, and as far as I am able to ascertain, there is no Senator present who has announced his opposition to the confirmation of the nomination of Judge Carswell. I note that the Senator from Rhode Island (Mr. PELL) is present. Perhaps he could give us some guidance on this matter, and perhaps not.

Mr. PELL. I cannot, because as I said yesterday, I feel squeezed between two filibusters. Personally, I am against Judge Carswell, but I think we ought to vote.

Mr. SCOTT. I commend the Senator for his statement. I would hope we could come to some agreement on the confirmation as well. I also am seeking information as to whether a vote on the confirmation will come on a direct up or down vote or whether it will come, as I have heard discussed, on a motion to recommit.

I take it the Senator from Rhode Island cannot enlighten us on that matter.

Mr. PELL. I cannot.

Mr. SCOTT. Could the distinguished majority leader enlighten us on whether the vote on the confirmation will come on a straight up and down vote or on a motion to recommit?

Mr. MANSFIELD. Mr. President, I have heard rumors and rumblings about a motion to recommit the Carswell nomination to the committee.

I read the RECORD, of course, as all Senators do, and I note that the distinguished Senator from Oklahoma (Mr. HARRIS) raised that possibility. So I am assuming that when a vote comes on the Carswell nomination it could well be on a motion to recommit. However, I cannot state definitely, because I do not know.

The PRESIDING OFFICER. The Chair would advise the Senator that any Senator at any time he may wish to do so may move to recommit the nomination, and a Senator could move to lay that motion on the table. A motion to lay on the table is not debatable.

Several Senators addressed the Chair.

Mr. ALLEN. Mr. President, reserving the right to object—and I have not released that reservation—I would like to state to the distinguished majority leader that some while ago we were engaged in a

debate on the Voting Rights Act. And that matter was concluded in order that we could get to the Carswell nomination.

We were in the midst of an extended discussion on the Carswell nomination when that pending business was displaced by the consideration of the conference report on the elementary and secondary education amendments.

It would occur to the junior Senator from Alabama that if there is to be any agreement made on a limitation of time, we ought to turn first to the matter that was first under consideration and not the matter that was second under consideration.

For that reason, and until there is an agreement with respect to the Carswell nomination, a final vote on that matter, the junior Senator from Alabama would just as soon be discussing the pending business as the other pending business, having in mind that the opponents of the Carswell nomination would have the opportunity at any time to bring the debate on the pending question to a close by their agreement to set a time for the vote on the Carswell nomination. So it would be the opponents of the Carswell nomination that would be holding up the vote on the two matters.

Mr. SCOTT. Mr. President, will the Senator yield to me for a clarification?

Mr. MANSFIELD. I yield.

Mr. SCOTT. I take it that the concern of the junior Senator from Alabama is not that these votes shall take place necessarily at roughly the same moment in time, but that he is seeking to find out whether or not a vote can be taken at some agreed time on the Carswell nomination.

Mr. ALLEN. That is right.

Mr. SCOTT. As well as the conference report.

Mr. ALLEN. It does not matter to the junior Senator from Alabama which comes first so long as they came in fairly rapid succession.

The PRESIDING OFFICER. Is there objection?

Mr. ALLEN. Mr. President, reserving the right to object—

Mr. GRIFFIN. Mr. President, reserving the right to object—

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

Mr. MANSFIELD. I yield.

Mr. STENNIS. I wish to ask one question about the vote on the conference report. The request is for a limitation of time. We do not know yet just what the precise issue might be—the possibility of a motion to recommit, or the possibility of just a straight up and down vote.

I suppose the Senator's request would include the idea that once there was an agreement and voting started, then any vote that failed to dispose of the matter would be under controlled time, such as another motion to table.

Mr. MANSFIELD. Of course.

Mr. STENNIS. I thank the Senator.

Mr. MANSFIELD. Mr. President, I can well understand the Senator from Alabama reserving his right to object, if he has not objected already. May I say to him that no one is more anxious to vote on the Carswell nomination than is the Senator from Montana. How we get to

that juncture is something we have to approach on a graduated basis, as I see it.

If we could get an agreement to vote on Wednesday next on the conference report, I think that would enhance the chances of getting an agreement sometime around that time, hopefully, for a vote on the Carswell nomination. I have no choice, speaking personally, as to what comes first. All I am interested in is the conduct of the affairs of the Senate and facing these issues and disposing of them one way or another.

Mr. GRIFFIN. Mr. President, will the Senator yield for a question?

Mr. MANSFIELD. I yield.

Mr. GRIFFIN. For the purpose of information and clarification I wonder, if there were an agreement to vote on Wednesday next on the pending business, if it would be the intention of the majority leader to devote all time between now and then on the conference report, or would it just be to have some agreement that we could go back to the so-called filibuster on the Carswell nomination and let those who wish to speak on the Carswell nomination speak so we would be in a better position to get to a vote on the Carswell nomination shortly after the vote on the pending business?

Mr. MANSFIELD. Yes. May I say in reply to the distinguished Senator from Michigan that what I had in mind was that if this were agreed to, we would return to the Carswell nomination and not again proceed to the privileged conference report until the 4 hours preceding the vote on Wednesday. In the interim, those who still have remarks on the Carswell nomination could make them. It would be my hope if we could get an agreement of this sort it would speed up the Carswell nomination.

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

Mr. MANSFIELD. I yield.

Mr. ERVIN. Mr. President, I would like to make an observation. I was in the middle of a speech on the conference report. I would like about 15 minutes more to place matters in the RECORD so that the RECORD may be complete before that subject is laid aside.

Mr. MANSFIELD. That is a reasonable request, and it will be granted.

Mr. SCOTT. Mr. President, will the distinguished majority leader yield further?

Mr. MANSFIELD. I yield.

Mr. SCOTT. I would like to make a point. This suggestion does not come from me but I have heard at least one Senator and maybe others who have discussed the possibility of cloture proceedings with respect to the nomination before us.

I would hope we could get to an agreement but I think it is proper to surface at this time that there is some such talk going around. I hope we could come to some agreement on the nomination so that the work of the Senate can go forward. We have appropriation bills almost ready.

Mr. MANSFIELD. There are 16 stockpile bills on the calendar. They are ready to be debated.

Mr. SCOTT. We have stockpile bills, and, of course, the Supreme Court is be-

ing very seriously affected by this delay. I know the Court is holding up a number of matters because it does not think they should be decided by an eight-judge Court. Therefore, there is a matter of public interest involved in getting all of these matters disposed of as soon as we can with all due respect to the fact that every Senator has the right to discuss them until—

Mr. MANSFIELD. Doomsday.

Mr. SCOTT. Doomsday. This is a sacred privilege we have, and we do not want to lose it; yet I do not want to see it abused here.

Mr. MANSFIELD. Mr. President, if the Senator will allow me, I would like to make a brief statement at this time which I think will indicate to the Senate as a whole just how effective and efficient it has been in slightly more than 2 months.

The PRESIDING OFFICER (Mr. LONG). Is there objection?

Mr. GRIFFIN. Mr. President, reserving the right to object—

The PRESIDING OFFICER. The Chair did not put the unanimous-consent request objected to by the Senator from Alabama. The Chair asked if there is objection to the majority leader making a statement.

Mr. MANSFIELD. The statement sets out what the joint leadership has been trying to do.

THE 100TH ROLLCALL VOTE OF THE SECOND SESSION

Mr. President, when the Senate approved yesterday the conference report on the Water Quality Improvement Act of 1970 by a vote of 80 to 0, that action was representative of the 100th rollcall vote of the second session of the 91st Congress.

In passing, it might be noted that last year the Senate's 100th rollcall vote took place on October 9, some 9 months after the convening of the first session on January 3. By contrast, the second session has been under way only since January 19 of this year.

I believe the casting of the 100th Senate roll call vote of the second session yesterday speaks well for the record of the Senate and for its entire membership. A number of the significant legislative measures approved in 1970 have been the result of long and arduous scrutiny and efforts undertaken during 1969 and prior years. However, the Members of the Senate during the past 2 months have applied themselves diligently and dutifully to their tasks and have tended to the business of the American people they represent and in trying to translate the people's needs into tangible and meaningful legislative results.

May I express, too, my opinion that it was quite fitting that the 100th vote be on an important measure relating to water pollution control. The protection and preservation of our resources and the enhancement of the overall quality of our environment are assuredly among the Nation's most urgent priorities.

Mr. President, I make this statement at this time—and I consider it germane to the subject under discussion—only to indicate that the Senate has been working at a very rapid and, at the same time,

effective pace this year. It has been putting in long hours. There has been little or no grumbling. I hope we will continue on this basis so that the goal which the joint leadership has set of adjournment by Labor Day can be achieved.

I must point out that all the leadership can do is to propose, and it is up to the Senate to dispose. I would like to see this matter brought to a head soon. I want to repeat again, as I did to the Senator from Alabama, there is no one in this Chamber who is more anxious to get a vote on the Carswell nomination than is the Senator from Montana. I can say the same thing with respect to the conference report on the elementary-secondary education bill—the privileged matter which is now pending and which has been pending since last Tuesday.

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

Mr. MANSFIELD. I yield.

Mr. SCOTT. First, I want to join with what the distinguished majority leader has said. He and I began this parallel with last year's session sometime back. From time to time one or the other of us do mention the number of votes, the fact that we have worked not only harder but more effectively and efficiently this year, and that we are 9 months ahead of last year. That is a good record in any league. I am delighted that we are.

We have temporarily run into a couple of hurdles, but Senators have had a good deal of high hurdling experience over the years.

I have heard it said that there is a very real possibility that we can have an agreement to vote on the nomination pending before us on April 7. I bring this up for the purpose of indicating to the distinguished majority leader, with whom I share the desire to get all these matters disposed of, that possibly, if he would be willing, as he always is, to explore further with his colleagues the possibility of an agreement to have a vote on the nomination on April 7 and a vote next Wednesday on the conference report, we might find some goodwill now prevalent on both of those matters.

Mr. MANSFIELD. That is putting it off an awfully long time.

Mr. SCOTT. I agree. I cannot do any better.

Mr. MANSFIELD. We were going to have a vote on it this week. Now we want to go beyond next week. I think the Senate should face up to its responsibility a little more efficiently.

Mr. SCOTT. I would rather vote sooner.

Mr. MANSFIELD. We ought to recognize that the people's business comes first, and I see no reason why we should wait until April 7. We have important legislation pending. I do not think much more can be said on the Carswell nomination. Frankly, I would hope we could come to a decision earlier than that, preferably next Wednesday or Thursday soon after a vote on the pending proposal.

Mr. SCOTT. I would agree to vote now. I was willing to agree to the seventh for

fear that it might be the ninth if not then.

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

Mr. MANSFIELD. I yield.

Mr. JAVITS. Knowing the realities that we face, that Senators can talk, and there are enough Senators opposed to the Carswell nomination so that the time could be filled in easily, I have a suggestion to make to the majority leader. I have not seen it done, but I do not see why it is not possible in the same unanimous-consent agreement to agree that the consideration of the nomination may, for certain bills, be set aside. Then the majority leader could deal next week with a whole group of legislation, even including appropriation bills. No time would be lost which could have been filled up with talk which the majority leader might consider unnecessary but which the opponents of the Carswell nomination consider necessary discussions, and therefore days certain could be fixed for votes, so we would not be delaying anything. I do this as a constructive suggestion to the majority leader.

Mr. MANSFIELD. I can read the handwriting on the wall as well as the next Senator. As I said, the leadership can only propose; it is up to the Senate to dispose, and there are many means, many avenues, which can be utilized in lengthening the debate, in discussing various kinds of subjects, eating up time, and delaying the business of the Senate.

Would the distinguished minority leader—

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

Mr. MANSFIELD. If I may finish this thought first.

Would the Senator agree to vote on April 6, rather than April 7, which is a Tuesday. Waiting until a week from next Tuesday is too long to wait. Preferably the Senate could vote next week.

Mr. SCOTT. Yes, I would agree to April 6. I would agree to vote now.

I would point out to all parties participating here that there is a way to have a vote here today or tomorrow, and that would be for a Senator who favored the nomination—the majority leader is familiar with this precedent, and I have seen my predecessor, the late great Senator from Illinois, use this very device—move, today or tomorrow, to recommit, with the announcement that he was going to vote against it, and immediately have a motion to table, and the issue would be before us. We can do that if we cannot have an agreement. So I am politely saying something to the Senator from Montana which I hope others will hear.

Mr. MANSFIELD. Yes; I join the distinguished Republican leader and the distinguished Senator from Louisiana (Mr. Long) in their proposals. I hope some Senator will make a motion so we can face up to this matter.

I yield now to the Senator from Indiana.

Mr. BAYH. Mr. President, first let me suggest to the Senator from Pennsylvania that I was listening.

Mr. SCOTT. That was the purpose of the exercise.

Mr. BAYH. I feel flattered.

Just as one Member of the Senate who is very much opposed to the Carswell nomination, let me repeat what I said in the colloquy with our distinguished colleague from Delaware yesterday. As far as the Senator from Indiana is concerned, we are not involved in a filibuster. As I see it now, I have no intention of getting involved in a filibuster, but as I suggested in conversation with the leader this morning, I am willing to agree to a day certain. I am only one Member of the Senate.

I think it is only fair to point out, with all due respect to the analysis of our leader, that I do not share his opinion that everything has been said that legitimately can be said. Just this morning we made available for public scrutiny the result of the entire caseload of appealed cases that has been rendered by the fifth circuit from 1959 to 1969. We related Judge Carswell's record with all 66 other judges in the circuit.

It seems to me this type of information is relevant to the debate. It does not fall in the category of filibuster. It goes to the qualifications of Judge Carswell.

At the time any member of the opposition resorts to purely delaying tactics, then I think we can be subject to criticism as being in the area of filibuster. I hope we will never get to that particular place. As the Senator from Rhode Island suggested so eloquently yesterday almost in one breath, he was opposed to the nomination of Judge Carswell but equally opposed to anything which might delay until doomsday, to quote our distinguished majority leader, getting to a vote.

So I am perfectly willing to follow up the suggestion of the leadership after consultation with other Senators. I can speak only for one Member, but I am quite willing to get it to a vote.

Mr. MANSFIELD. Would the Senator be in favor of voting the sixth?

Mr. BAYH. The Senator from Indiana would be in favor of a unanimous-consent agreement for a motion to recommit being set for no later than high noon, or 1 o'clock, or 2 o'clock, on the sixth. Out of courtesy to some other Members of the opposition, I feel I should take the next 15 or 20 minutes to consult with them. But my personal opinion is that that would be a good reconciliation. I am not saying I am not prepared to vote sooner than that, but that I am willing to accept that, and I can speak only for myself.

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

Mr. BAYH. I yield.

Mr. ALLEN. Assuming the motion to recommit was rejected, would the Senator be willing to have a vote then on the confirmation of the nomination itself?

Mr. BAYH. I would have to discuss that with other Members of the opposition.

Mr. ALLEN. I see.

Mr. WILLIAMS of Delaware. Mr. President, will the Senator yield, since the Senator mentioned my name?

Mr. MANSFIELD. I yield.

Mr. WILLIAMS of Delaware. We had a

colloquy on this matter last night, in trying to expedite a way to get to a vote. Since referring to the lengthy debate on the Carswell nomination as a filibuster was somewhat embarrassing to some liberal Members of the Senate, I made an agreement that I would not refer to this filibuster as a filibuster any longer, but would refer to it as an extended talkathon which means an unnecessary waste of time. I shall from now on continue to refer to this filibuster as an extended talkathon rather than what it actually is.

Mr. MANSFIELD. Mr. President, there are various ways and means of getting a point across, and, as I have said, I can read the writing on the wall as well as the next Senator.

CALL OF THE ROLL

Mr. MANSFIELD. Mr. President, with the permission of the distinguished Senator from North Carolina, I suggest the absence of a quorum, and this may well be a live quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll, and the following Senators answered to their names:

[No. 109 Leg.]

Alken	Hansen	Proxmire
Allen	Hart	Saxbe
Bayh	Hatfield	Schweiker
Byrd, Va.	Javits	Scott
Byrd, W. Va.	Long	Smith, III.
Cranston	Mansfield	Sparkman
Ellender	McCarthy	Stennis
Ervin	Pell	Talmadge
Griffin	Prouty	Williams, Del.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Nevada (Mr. BIBLE), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. MAGNUSON), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Connecticut (Mr. REICOFF), and the Senator from Georgia (Mr. RUSSELL) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Maryland (Mr. MATHIAS), the Senator from California (Mr. MURPHY), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The PRESIDING OFFICER. A quorum is not present.

Mr. MANSFIELD. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

After some delay, the following Senators entered the Chamber and answered to their names:

Allott	Fulbright	Miller
Bellmon	Goldwater	Mondale
Bennett	Goodell	Muskie
Boggs	Gore	Nelson
Brooke	Gravel	Packwood
Burdick	Gurney	Pastore
Cannon	Harris	Pearson
Case	Hartke	Randolph
Church	Holland	Smith, Maine
Cook	Hruska	Spong
Cooper	Hughes	Stevens
Cotton	Inouye	Symington
Curtis	Jackson	Thurmond
Dodd	Jordan, N.C.	Tower
Dole	Jordan, Idaho	Tydings
Dominick	McClellan	Williams, N.J.
Eagleton	McGee	Yarborough
Eastland	McGovern	Young, N. Dak.
Fannin	McIntyre	Young, Ohio
Fong	Metcalf	

The PRESIDING OFFICER. A quorum is present.

UNANIMOUS-CONSENT REQUEST

Mr. MANSFIELD. Mr. President, again, with the permission of the distinguished Senator from North Carolina, I have nothing definite to add at this time because negotiations are still underway to see if there is not some way we can bring about a consent agreement affecting the Carswell nomination and the privileged conference report on the elementary and secondary education amendments.

I think some progress is being made. But only time will tell whether the efforts now underway are sufficiently successful.

So, I would suggest that Senators stay near the Chamber for the next 15 or 20 minutes, or not to exceed one-half hour, and that in the meantime we allow the distinguished Senator from North Carolina to proceed.

Hopefully, within that period of time, it will be possible to propose some kind of unanimous-consent request which may be granted if the Senator is willing. But until then, I can give no further information.

EXTENSION OF PROGRAMS OF ASSISTANCE FOR ELEMENTARY AND SECONDARY EDUCATION—CONFERENCE REPORT

The Senate continued with the consideration of the report of the committee of conference on disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 514) to extend programs of assistance for elementary and secondary education, and for other purposes.

The PRESIDING OFFICER (Mr. MONDALE). The Chair recognizes the Senator from North Carolina.

Mr. ERVIN. Mr. President, yesterday I was discussing the strange judicial decisions which have been handed down to implement the demands of certain pressure groups and the demands of certain very sincere citizens that the public schools should be forcibly integrated regardless of the wishes of the parents and the schoolchildren attending the schools.

Yesterday I pointed out that in the Jefferson County School Board case, two of the three sitting Federal judges ignored the plain words of an act of Congress. This means the Federal judges in that case ignored the majority vote of

100 Senators and the majority vote of 435 Representatives and held that Congress did not mean what it said when it prohibited the assignment of children to schools to overcome racial imbalance and the busing of children to achieve racial balance. Former Senator Hubert Humphrey, the floor manager of the bill, in the Senate debate on the 1964 Civil Rights Act made the intent of Congress very plain in this area when he alluded to a case which arose in Gary, Ind., and involved de facto segregation.

I mentioned yesterday that I wished to discuss the wrong decision of Judge Wright in the District of Columbia. This decision bears the title of *Hobson* against *Hansen* and appears in 200 Fed. Supp. at page 401 and the following pages.

In this opinion, Judge J. Skelly Wright clearly demonstrates that judges are not competent to tell how schools ought to be operated.

He took 118 pages to instruct the School Board of the District of Columbia how it should go about desegregating public schools of the District which are segregated because of the residential patterns of the District and to tell the School Board, school administrators, and teachers how they should instruct the children after they had achieved the desegregation of schools which were segregated because of residential patterns.

The District of Columbia had what was called the track system. The track system groups students according to their ability to learn. By so doing, it avoids the very deplorable situation in which bright students and dull students and diligent students and lazy students are assigned to the same classrooms, and in which the same quantity of intellectual food, regardless of their capacity to assimilate it, is attempted to be fed them.

Judge J. Skelly Wright, whose abilities as an educator are refuted in large measure by his opinions, handed down a strange decision: that under the Constitution of the United States, as it has been mangled in school desegregation cases, it is unconstitutional for any public school to undertake to teach a bright or a diligent student anything more than it attempts to teach to a dull or a lazy student. In other words, under this miraculous decision, according to Judge Wright, the Constitution of the United States now requires in the public schools of this Nation an equality of inferiority. That is the sort of adjudication made in *Hobson* against *Hansen*. I deny with all the emphasis at my command that the Constitution of my country requires any such fool thing as that.

I say that the public schools are designed, or ought to be designed, to do what a former Governor of my State, Charles Brantley Aycock, declared: To aid every student in an effort to become everything that God Almighty made it possible for him to become. Yet, in this case we have a solid adjudication that the Constitution of the United States as now applied to the public school system forbids a public school from undertaking to teach anything more to a bright or a

diligent student than it attempts to teach to a dull or a lazy student.

I deny that the Constitution of my country requires such an equality of inferiority. Yet that is the decision of Judge Wright in this case, and it demonstrates quite clearly the incapacity of Federal judges to discharge the duties of school boards. I think we should return to a system that confines Federal judges to their duties and deprives them of the power to undertake to tell school boards how they shall run the schools.

Now, we have some other decisions. Back in the 1830's there was a resident of Philadelphia, Stephen Girard, who by his hard work and by his business acumen amassed what was for that day a considerable fortune. He left a last will and testament in which he created a trust whereby he left his property, or he left a considerable amount of his property, in trust with directions that it be used to conduct a college for the education of poor white orphan boys.

About 135 or 140 years after Stephen Girard had descended into the tongueless silence of dreamless dust, the Federal courts, in effect, wrote a codicil to the will of Stephen Girard whereby they confiscated the private property he had left in trust for private use and they gave his trust no compensation whatever. And this was done under a Constitution which says you cannot take private property for even public use except upon the payment of just compensation.

Then there was a testator in the State of Virginia who endowed Sweet Briar College by a will which devoted her property to the support of Sweet Briar College in order that it might afford education for white girls. By the same process of legal legerdemain the Supreme Court handed down a decision entitled "*Sweet Briar Institute v. Button*, 387 U.S. 423." In effect, they wrote a codicil to the will of the testator in that case and said that the property the testator had amassed should be devoted in part to purposes other than those authorized by the testator's will.

So in this great zest to bring about forced integration of education institutions, we have had judicial opinions which rewrite the wills of testators who have been slumbering in the tongueless slumber of dreamless dust for generations, testators who entertained the correct opinion while they walked the earth's surface that the disposition of property by will is a matter for the owners of the property rather than for Federal judges ascending the bench long after they have gone to that bourn from which no traveler returns.

Those are some of the absurd decisions which have been made by those who think the way to realize the American dream is to convert it into a nightmare where there will be no freedom and where there will be no equality except in the absence of freedom.

There is another Federal decision that bears some comment, a decision by the Supreme Court in the case of *Green v. County School Board of New Kent County, Virginia*, 391 U.S. 430.

I charge, without fear of successful contradiction, that this decision horribly distorts the equal protection clause of the 14th amendment. The equal protection clause of the 14th amendment applies to States. It has no possible application to individuals, except those individuals who might be acting as agents or officers of States. It merely says that no State shall deny to any person within its jurisdiction the equal protection of the laws. By this it means that no State shall treat people differently if they are similarly situated.

Three years before the Supreme Court handed down its decision in the Green case, the school board of New Kent County, a rural county in Virginia, which had only two schools, the Watkins School and the New Kent School, abolished the last vestige of State-imposed segregation and gave all of the children in that county, black and white, an absolute right to go to whichever of those two schools that the county maintained they desired.

None of the white children shifted from the New Kent School, which had been a white school during the days of segregation, and only about 150 of the colored children shifted from the Watkins School, which had been a Negro school during the days of segregation, to the New Kent County School.

It is to be noted that there is not a single syllable in the equal protection clause that places any limitation upon the freedom of any human being who is an individual anywhere in the United States. The equal protection clause is no limitation upon the freedom of any individual. But some of the Justices of the Supreme Court did not like the way these little children, black and white, saw fit to exercise their freedom, and they handed down a decision which is murky and ambiguous and which presents no workable rule for the guidance of school administrators.

The effect of that decision is that they said freedom of choice was all right, was perfectly constitutional, if the little children, black and white, exercised their freedom of choice in the manner in which the Supreme Court Justices thought they ought to exercise it. This is the effect of the decision; it is not the legal jargon used in the opinion. But they held that in that particular case the freedom of choice given to the children, both black and white, of New Kent County by the school board did not satisfy the Supreme Court decision in the second Brown. The only reason they gave for this was that the children given the freedom of choice to go to any school did not mix themselves racially in the undefined proportions which the Supreme Court Justices sitting in that case thought they should have done.

In other words, schoolchildren and the parents of schoolchildren can have freedom in this land of ours if, and only if, they exercise their freedom in an undefined manner pleasing to Supreme Court Justices. But if American citizens who happen to be children or the parents of children elect to exercise their freedom according to their own judgments rather

than in the manner in which Supreme Court Justices think they ought to exercise it, they can have no freedom.

I deny that under the Constitution of my country the freedom of Americans hangs on such an arbitrary and such a capricious and such a tenuous judicial thread as that.

Mr. President, I could quote the strange decisions we have had in the effort to force integration of the schools against the wishes of people of communities and against the wishes of parents and against the wishes of little children. For example, according to the Charlotte News, of Charlotte, N.C., under a decree rendered by a Federal judge sitting on the western district of North Carolina a few weeks ago, 23,000 children are to be bused from their respective homes, in many cases to distant schools, merely to mix them in the schools in a proportion of 71 to 29 percent white and black. In other words, under this theory of forced integration, we have the Federal Government more interested in the integration of the bodies of little children than it is in the enlightenment of their minds. We have our public schools being converted into integrating institutions rather than educating institutions.

A number of articles have been written recently which indicate that the people of the United States, and even some people who at one time believed in forced integration, are having second thoughts about this matter.

On February 26, 1970, an article appeared in the Wall Street Journal under the name of Vermont Royster, its editor. It started with the quotation of the words of Stewart Alsop in Newsweek. The quotation is this:

Surely it is time to face up to a fact that can no longer be hidden from view. The attempt to integrate this country's schools is a tragic failure.

Now, during the course of this article, which is entitled, "Forced Integration: Suffer the Children," the writer said this, speaking of racial imbalances in neighborhoods and in schools:

Or let us suppose the proportion does change. Let us suppose that for some reason—any reason, including prejudice—large numbers of white families move out of the neighborhood, making room for black people to move in, so that after a few years we have entirely reversed the proportions. The neighborhood becomes 95% black, 5% white.

Again we have an imbalance. Again we do not truly have segregation but call it that, if you wish; de facto segregation. In any event we do not have integration in the sense that there is a general mixing together of the blacks and whites.

Now suppose that we act from the assumption that this is wrong. That it is wrong to have the neighborhood either 95% white or 95% black. That the mix, to be "right," must be some particular proportion.

What action is to be taken? In the first instance, do we by law forcefully remove some of the white families from the neighborhood so that we can force in the "proper" number of black families? Or, in the second instance, do we by law prohibit some of the white families from moving out of the neighborhood? If we do either, who decides who moves, who stays?

The example, of course, is fanciful. We do none of this. No one has had the political

temerity to propose a law that would send soldiers to pick people up and move them, or to block the way and prevent them from moving. No one stands up and says this is the moral thing to do.

Stated thus baldly, the immorality of doing such things is perfectly clear. No one thinks it moral to send policemen, or the National Guard, bayonets in hand, to corral people and force them into a swimming pool, or a public park or a cocktail party when they do not wish to go.

No one pretends this is moral—for all that anyone may deplore people's prejudice—because everyone can see that to do this is to make of our society a police state. The methods, whatever the differences in intent, would be no different from the tramping boots of the Communist, Nazi or Fascistic police states.

All this being fanciful, no one proposing such things, it may seem we have strayed far from the school integration program. But have we?

The essence of that program is that we have tried to apply to our schools the methods we would not dream of applying to other parts of society. We have forced the children to move.

There are many things wrong with the forcible transfer of children from school to school to obtain the "proper" racial mix. It is, for one thing, wasteful of time, energy and money that could better be applied to making all schools better.

To this practical objection there is also the fact that in concept it is arrogant. The unspoken idea it rests upon is that black children will somehow gain from putting their black skins near to white skins. This is the reverse coin of the worst segregationist's idea that somehow the white children will suffer from putting their white skins near to black skins.

Both are insolent assertions of white superiority. Both spring from the same bitter seed.

I ask unanimous consent that the entire article be printed in the RECORD at this point.

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

[From the Wall Street Journal, Feb. 26, 1970]

FORCED INTEGRATION: SUFFER THE CHILDREN
(By Vermont Royster)

"Surely it is time to face up to a fact that can no longer be hidden from view. The attempt to integrate this country's schools is a tragic failure."

The words of Stewart Alsop in Newsweek will serve as well as any. They are startling, honest and deeply true. Whatever anyone else says otherwise, however shocked we may be, we know he is right.

The proof lies in the fact that Congress, in a confused sort of way, has made it clear that it no longer thinks forced integration is the way to El Dorado. Since Congress is a political body, that in itself might be evidence enough. But Mr. Alsop has also put the statement up for challenge to a wide range of civil rights leaders, black and white, ranging from Education Commissioner James Allen to black militant Julius Hobson, and found none to deny it. Beyond that, we have only to look around ourselves, at both our white and our black neighbors, to know that the failure is there.

But that only plunges us into deeper questions. Why is it a failure? And why is it tragic? Why is it that something on which so many men of good will put their faith has at last come to this? Where did we go wrong?

And those questions plunge us yet deeper. For to answer them we must go back to the beginning. It is the moment for one of those agonizing reappraisals of all our hopes, emotions, thoughts, about what is surely the

most wretched of all the problems before our society.

A SIMPLE PROPOSITION

We begin, I think, with a simple proposition. It is that it was, and is *morally* wrong for a society to say to one group of people that because of their color they are pariahs—that the majesty of law can be used to segregate them in their homes, in their schools, in their livelihoods, in their social contacts with their fellows. The wrong is in no wise mitigated by any plea that society may provide well for them within their segregated state. That has nothing to do with the moral question.

In 1954, for the first time, the Supreme Court stated that moral imperative. Beginning with the school decision the judges in a series of decisions struck down the legal underpinnings of segregation.

Since emotions and prejudices are not swept away by court decisions there were some white people in all parts of the country who resisted the change. But they were, for all their noise, in the minority. The great body of our people, even in the South where prejudice had congealed into custom, began the task of stripping away the battens of segregation. Slowly, perhaps, but relentlessly.

Then some people—men of good will, mostly—said this was not enough. They noticed that the mere ending of segregation did not mix whites and blacks in social intercourse. Neighborhoods remained either predominantly white or black. So did schools, because our schools are related to our neighborhoods. So did many other things. Not because of the law, but because of habit, economics, preferences—or prejudices, if you prefer.

From this came the concept of "de facto" segregation. This Latin phrase, borrowed from the law, describes any separation of whites and blacks that exists in fact and equates it with the segregation proscribed by law. The cause matters not. These men of good will concluded that if segregation in law is bad then any separation that exists in fact is equally bad.

From this view we were led to attack any separation as de facto segregation. Since the first attack on segregation came in the schools, the schools became the first place for the attack on separation from whatever cause. And since the law had served us well in the first instance, we chose—our lawmakers chose—to use the law for the second purpose also. The law, that is, was applied to compel not merely an end to segregation but an end to separation by forced integration.

It was at this point that we fell into the abyss. The error was not merely that we created a legal monstrosity, or something unacceptable politically to both whites and blacks. The tragedy is that we embraced an idea *morally* wrong.

That must be recognized if we are to understand all else. For what is wrong about forced integration in the schools is not its impracticality, which we all now see, but its immorality, which is not yet fully grasped.

Let us consider.

Imagine, now, a neighborhood in which 95% of the people are white, 5% of them black. It is self-evident that we have here a de facto imbalance. We do not have legal segregation, but we do not have integration either, at least not anything more than "tokenism."

Let us suppose also that for some reason—any reason, economics, white hostilities, or perhaps black prejudice against living next door to whites—the proportion does not change. The only way then to change it is for some of the whites to move away and, concurrently, for some blacks who live elsewhere to move into this neighborhood. One is not enough. Both things must happen.

CREATING AN IMBALANCE

Or let us suppose the proportion does change. Let us suppose that for some reason—any reason, including prejudice—large

numbers of white families move out of the neighborhood, making room for black people to move in, so that after a few years we have entirely reversed the proportions. The neighborhood becomes 95% black, 5% white.

Again we have an imbalance. Again we do not truly have segregation but call it that, if you wish; de facto segregation. In any event we do not have integration in the sense that there is a general mixing together of the blacks and whites.

Now suppose that we act from the assumption that this is wrong. That it is wrong to have the neighborhood either 95% white or 95% black. That the mix, to be "right," must be some particular proportion.

What action is to be taken? In the first instance, do we by law forcefully remove some of the white families from the neighborhood so that we can force in the "proper" number of black families? Or, in the second instance, do we by law prohibit some of the white families from moving out of the neighborhood? If we do either, who decides who moves, who stays?

The example, of course, is fanciful. We do none of this. No one has the political temerity to propose a law that would send soldiers to pick people up and move them, or to block the way and prevent them from moving. No one stands up and says this is the moral thing to do.

Stated thus baldly, the immorality of doing such things is perfectly clear. No one thinks it moral to send policemen, or the National Guard bayonets in hand, to corral people and force them into a swimming pool, or a public park or a cocktail party when they do not wish to go.

No one pretends this is moral—for all that anyone may deplore people's prejudice—because everyone can see that to do this is to make of our society a police state. The methods, whatever the differences in intent, would be no different from the tramping boots of the Communist, Nazi, or Fascistic police states.

All this being fanciful, no one proposing such things, it may seem we have strayed far from the school integration program. But have we?

The essence of that program is that we have tried to apply to our schools the methods we would not dream of applying to other parts of society. We have forced the children to move.

There are many things wrong with the forcible transfer of children from school to school to obtain the "proper" racial mix. It is, for one thing, wasteful of time, energy and money that could better be applied to making all schools better.

To this practical objection there is also the fact that in concept it is arrogant. The unspoken idea it rests upon is that black children will somehow gain from putting their black skins near to white skins. This is the reverse coin of the worst segregationist's idea that somehow the white children will suffer from putting their white skins near to black skins.

Both are insolent assertions of white superiority. Both spring from the same bitter seed.

Still, the practical difficulties might be surmounted. The implied arrogance might be overlooked, on the grounds that the alleged superiority is not racial but cultural; or that, further, both whites and blacks will gain from mutual association. That still leaves the moral question.

Perhaps it should be restated. Is it moral for society to apply to children the force which, if it were applied to adults, men would know immoral? What charity, what compassion, what morality is there in forcing a child as we would not force his father?

It is a terrible thing to see, as we have seen, soldiers standing guard so that a black child may enter a white school. You cannot help but cringe in shame that only this way is it done. But at least then the soldiers are standing for a moral principle—that no one,

child or adult, shall be barred by the color of his skin from access to what belongs to us all, white or black.

But it would have been terrifying if those same soldiers had been going about the town rounding up the black children and marching them from their accustomed school to another, while they went fearfully and their parents wept. On that, I verily believe, morality will brook no challenge.

Thus, then, the abyss. It opened because in fleeing from one moral wrong of the past, for which we felt guilty, we fled all unaware to another immorality. The failure is tragic because in so doing we heaped the burdens upon our children, who are helpless.

MUST WE TURN BACK

Does this mean, as many men of good will fear, that to recognize as much, to acknowledge the failure of forced integration in the schools, is to surrender, to turn backward to what we have fled from?

Surely not. There remains, and we as a people must insist upon it, the moral imperative that no one should be denied his place in society, his dignity as a human being, because of his color. Not in the schools only, but in his livelihood and his life. No custom, no tradition, no trickery should be allowed to evade that imperative.

That we can insist upon without violating the other moral imperative. So long as he does not encroach upon others, no man should be compelled to walk where he would not walk, live where he would not live, share what company he would shun, think what he would not think, believe what he believes not.

If we grasp the distinction, we will follow a tragic failure with a giant step. And, God willing, not just in the schools.

Mr. ERVIN. As Mr. Royster suggests, it would be as sensible to send out policemen or National Guardsmen to round up black and white people and require them to go swimming together in a public swimming pool, to prove that the swimming pool had been desegregated, as it is to round up little black and white children and deny them the right to attend their neighborhood schools, and put them on buses and transport them to distant points merely to integrate their bodies.

Yet, as the article so well points out, that is precisely what the Federal Government has been doing, what HEW has been doing, and what the Federal courts have been doing in their efforts to supplant outmoded State segregation in the schools with federally coerced integration.

It is about time that we get realistic and realize that you cannot have a free society if you are going to have activities on the part of the Federal Government which convert the little children into the hapless and helpless subjects of judicial or bureaucratic oligarchies, and that is precisely what forced school integration is. We are not going to have peace in this area of our national life, we are not going to rid ourselves of the tensions in this field, until we restore the United States to a free society, and say that it is constitutional and legal for State and local school boards to grant to schoolchildren the right to attend the public schools they wish to attend.

As Judge Parker so well pointed out in the Briggs case, there is nothing in the Constitution, and there is nothing in the Brown case, which outlaws freedom of choice. As Judge Parker said, "Where a school board opens all the schools in its jurisdiction to children of all

racess and allows them or their parents to select the schools they attend, the school board is acting in perfect harmony with the equal protection clause because it is treating all parents and all schoolchildren of all races exactly alike." Despite what Justice Brennan stated in the Green Case, oceans of judicial sophistry cannot wash out the plain and obvious truth that the best way for a school board to afford equal protection of the laws to all parents and all schoolchildren is to say to them, "You have the freedom to attend any of the public schools under our jurisdiction which are open to children of your ages and intellectual attainments that you wish to attend."

On March 24, 1970, an article was published in the Wall Street Journal entitled "Beyond Education's Status Symbolism," written by Harley L. Lutz, a professor emeritus of public finance at Princeton University.

He points out in this article that the important thing in education is teaching people and developing the personalities of children; and he points out how this Nation departed from that proper course of conduct in the effort to give priority to forced integration of schools.

This article by Dr. Lutz merits the serious consideration of everyone charged with any official duty having reference to public education in this country. He speaks about the essentials of a good education, and about the wisdom of our abandoning the concept of forced integration in favor of quality education, and he closes the article with this very significant sentence:

These objectives should receive the main thrust of judicial concern and of official inquiry. When the quality of education for all children is raised, it will not matter where that better education is obtained.

So I close what I have to say on this occasion with the statement that it is time to recognize that the cause of education is not promoted by forced integration against the will of parents and against the will of schoolchildren, and by perverting and distorting sound legal and constitutional principles. The important thing is to educate the children, not to integrate them.

I ask unanimous consent that the entire article be printed at this point in the RECORD.

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

BEYOND EDUCATION'S STATUS SYMBOLISM

(By Harley L. Lutz)

More than 15 years have passed since the Supreme Court announced its reversal of the doctrine of separate but equal accommodations for whites and blacks with respect to public transportation, schools and other public service facilities. The new policy became effective with reasonable promptness in some cases but delay and resistance developed in others.

The dual school system maintained in the states with the greatest concentration of black population was separate but not always equal. After World War II, however, many places had provided school facilities for blacks that generally were equal to those for whites. With the large-scale migration of blacks into northern cities, settlement patterns then developed that meant the schools

in urban sections occupied mainly by blacks were in fact separate. Similar segregation existed in the urban areas occupied mainly by Puerto Ricans and other minority groups. And as any urban or rural area begins to deteriorate economically, the public buildings—schools, post office or whatnot—tend to deteriorate in step with the decay of housing and streets. School buildings in poor white sections are often in no better condition than those in poor black areas.

The decision in *Brown vs. Board of Education* did not involve the most important issue in the public education and no actions taken under that case will contribute to a solution. Equality of civil rights is deemed to include the right of black children to be enrolled in a white school. Complete school integration has come to mean that there must be a mixture of whites and blacks in every school. If there are no white children in an all-black community and no black children in an all-white community, the imbalance is supposed to be corrected by cross-shipment of pupils in numbers that will provide the proper mix.

The symbolism of the concept is self-evident. If a genuine educational motive were involved, and black pupils were to be moved into white schools because of the better educational facilities, the shift would benefit only those who were transferred. However, the white pupils who were shifted into the supposedly inferior black schools would be penalized. Actually, no question of comparative school efficiency is involved.

It is time the status symbolism of the current concept of school integration be set aside. Instead, our attention and energy might be devoted to the task of redefining the primary purpose of education and of formulating the steps to be taken to improve the quality of education for all children.

SOCIETY'S SURVIVAL

If our society is to survive and make steady advances in well-being, its first and major obligation is to equip the young of each new generation to meet the duties, privileges and responsibilities of adulthood. This obligation rests in part on parents and in part on society.

It must be admitted that parents can often be remiss, not always because of indifference but because of the sweeping changes in economic condition and the social structure. It is no longer necessary for every member of the family to have certain tasks or "chores" when almost everything about the house can be done by pushing a button. The daily chores had a disciplinary value and contributed to family unity. There was youthful rebellion against them, just as there is youthful rebellion today against the dullness of life in an affluent environment in which the young seem to have no significant place.

Society's role for the young is performed mainly through the school system. The first essential of a good school is good teaching. This is one of the most difficult of professions and top-flight practitioners are in short supply. Every normal child has great curiosity and eagerness to learn. Good teaching is required to sustain and expand these attitudes.

Adequate physical plant is useful but subordinate. There was often better teaching in the "little red school house" than is now found in the most modern and expensive school buildings. Too often, so much is spent—under the pressures of architects, contractors and local rivalries—on the school plant that the debt service-cost squeezes the salary side of the budget. Building janitors are often paid more than teachers.

Complaints about the poor quality of teaching abound, from elementary schools to the universities. The curriculum of teacher training in the schools of education has tended to emphasize method rather than content and many states have based certification rules on this policy.

The emphasis of university administrators on research and publication as conditions of tenure and promotion has relegated teaching to the background. Any official examination of the educational system must dig deeply into these practices.

The population explosion since the 1930s has contributed to the decline of teaching quality at all levels. Birth-rate statistics provided a warning but it went unnoticed until too late. In consequence there have been unduly large classes, makeshift quarters, short sessions and automatic promoting of all pupils up the line regardless of achievement. The white-black mixture rule does nothing to better this situation, under which good and incompetent teachers alike have been helpless, the courts would do a better service for the quality of education if they were to impress on negligent school boards and communities the need for establishing the conditions under which good teaching would be again possible.

A second essential of a good school system is that it be, in every respect, a community undertaking, identified with the community and loyally supported by it. Parents have, or should have, more concern about the quality of education provided for their children than anyone else. This is a major reason for the tradition that the chief responsibility for elementary and secondary education should be vested in the communities to be served.

Support means more than financing, although the local share of the cost should be substantial. It means more than pride in the basketball team and the marching band. These and other extracurricular activities are useful outlets for youthful energy and enthusiasm and they contribute to the overall sense of community satisfaction. Local support also means, however, a close and sympathetic relation between parents and school staff, with complete freedom of communication regarding educational and disciplinary problems through parent-teacher groups and various other arrangements.

The current judicial application of the integration rule disrupts the basic concept of the community school. Forcible transfer of white or black pupils into an alien community deprives these pupils, and their parents, of that sympathetic relationship so important for a good attitude on both sides. Teachers and parents can no longer communicate with regard to the problems of individual pupils. The latter can have no sense of belonging and, no chance of sharing in extra-curricular activities.

And every parent, whether white or black, might have good reason to appeal the selection of his or her children for transfer as there is no equitable way of making the choice. A case could be made that arbitrary transfer of a pupil to a school outside its community would be a violation of the child's civil rights.

Every good purpose of the integration concept would be served if it were interpreted to mean that all schools were to be open to all children of the community, regardless of color or racial origin. The degree of mixture could then be governed by the residential pattern. As it becomes normal and acceptable for different races and national groups to live in the same community, it will be equally acceptable for all children to attend the same school. Except for large-scale, subsidized housing projects, this change will come slowly—despite legislative efforts to hasten it. But it will come, as a natural evolution that will lack the bitterness and animosity engendered by current policies. Cross-shipment of children will not hasten the rate of change in residential patterns. It could, in fact, increase resistance to change.

The resort to private schools in some places is an understandable reaction to judicial harshness. But as an expression of antag-

onism to genuine, realistic integration of any sort it is as wrong as the current, legalistic application of the concept.

Such private schools are likely to be makeshift, with inadequate financing and dubious quality of teaching. Even the moderate tuition may be a barrier to some white children. This subterfuge will penalize the children put into such schools just as the children will be penalized who may be shifted out of their home community by judicial order.

THE THIRD ESSENTIAL

A third essential of the good school system is wise selection and judicious emphasis on what is to be taught. The current judicial policy is indifferent to this matter, although a genuine concern for the future of the children would rank it above formalistic mixture.

The scientific and technological explosion has widened the field of knowledge so greatly that no one can possibly learn all about everything. There is a temptation, however, to broaden the secondary, and even the elementary, curriculum to cover more territory. These contacts with ever wider fields of knowledge are brief and limited and, however alluring, they tend to involve neglect of the real foundation of education. This foundation is now, as it has always been, thorough training in what was once described as the "three R's." Of these, reading and writing are certainly fundamental to all further educational accomplishment.

Reading means more than recognition of words on the printed page. It means understanding of the message conveyed by the words. Writing means more than the ability to put down words on a piece of paper. It means the ability to express, through written words, a coherent, logical train of thought. College students are sometimes deficient in both respects, and their spelling is often atrocious. And yet, without command of these basic tools of the learning process, how can the young be expected to benefit from all of the additional knowledge to which they are exposed and which they are expected to absorb?

The precise content and emphasis of elementary and secondary curricula, and the extent to which state or Federal dictation should occur as the price of supplying part of the funds, are matters beyond the scope of this article. It should be said, however, that since an important aspect of the preparation that the schools are to provide involves the ability to earn a living, the obligation to supply an introduction to various kinds of vocational training must be recognized.

Much more must be done through redirection of our educational program and emphasis to prepare the young for self-support. Just as there should be an open door and freedom of access to the schools for all the children of each community, so there must be access for all youth to the opportunities for acquiring skills on which a future good livelihood depends. These objectives should receive the main thrust of judicial concern and of official inquiry. When the quality of education for all children is raised, it will not matter where that better education is obtained.

Mr. ERVIN. Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. PELL. 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. PELL. Mr. President, am I correct

in saying that the Pastore rule of germaneness is no longer applicable?

The PRESIDING OFFICER. The Senator is correct.

S. 3634—INTRODUCTION OF THE NATIONAL HEALTH CARE SYSTEMS STUDY, RESEARCH, AND DEMONSTRATIONS ACT OF 1970

Mr. PELL. Mr. President, I introduce, for appropriate reference, a bill to amend and extend section 304 of the Public Health Service Act which is to be cited as the "National Health Care Systems Study, Research, and Demonstrations Act of 1970."

In my statement in the CONGRESSIONAL RECORD of December 10, 1969, I described the reasons why I believe our present national nonsystem of delivery of health care must be replaced. The reasons are now quite well known, having been discussed since that time in numerous national magazines and in statements by other Members of the Congress.

In my statement I emphasized the need for utilizing a systems approach to our Nation's health crisis in order that we do not overlook the fact that the replacement of our present nonsystem of delivery of health care may not only involve a new financing mechanism, such as national health insurance, but it may also require additional health manpower and new methods of health care delivery.

Following my statement, the Surgeon General, Dr. Jesse Steinfeld, in response to my interrogatory, stated:

It seems to me, speaking as an individual, that we are moving toward a national health insurance program and it is our duty to be ready for it in terms of not only the capacity to provide the services, but in terms of the administrative mechanisms to have an efficient program. I feel, therefore, that it is imperative for us to begin both such experiments and pilot programs as soon as possible.

In a January issue of Business Week magazine, an editorial commented:

The question no longer is whether the U.S. is to have a national health program. It is whether we shall have a good one or a bad one. The chances of getting a good one will be far better if everyone involved accepts that fact.

Mr. President, the bill I introduce today is designed to insure that the national health insurance program, which Dr. Steinfeld, like myself, believes is inevitable, is "a good one" as Business Week recommends.

The National Health Care Systems Study, Research and Demonstrations Act of 1970 provides for the extension and increased authorizations for the experiments and research which the Surgeon General believes is necessary to prepare for an eventual national health insurance program, and it calls for the systems approach toward health care which I outlined in my statement of December 10.

Under the provisions of my bill, the Secretary of the Department of Health, Education, and Welfare would receive increased authorizations for research and demonstrations relating to health facilities and services. And, he would be

required to undertake a systems analysis of the alternative mechanisms which have been suggested as the basis of a national health care program in the United States.

Under the Secretary's supervision a study would be made of each of the major financing mechanisms suggested for a national health care program, such as the tax credit proposal, the modified social security proposal, and the Federal purchase of private health insurance premiums for the poor proposal.

A report would then be made to Congress describing: first, the costs and benefits associated with each financing proposal; second, the changes in the supply of health manpower and methods of health delivery which would be required by implementation of each proposal; third, the number of persons who can be expected to receive an adequate health coverage if a proposed alternative financing and delivery system was to be established; fourth, the legislative and administrative changes required by each alternative system, and fifth, the relative effectiveness and efficiency of each system as compared to the present nonsystem of health care.

In order that the Congress would not be excessively delayed in its consideration of existing national health care proposals and proposals about to be introduced in this session, my bill has a second provision requiring an interim report to the Congress in June of 1971 as to the adequacy and cost of national health insurance bills introduced in the 91st Congress.

Mr. President, I propose this systematic procedure for moving toward a national health care program not only because I believe we must be prepared for the inevitable, but because I am doubtful whether we can transform the country's present \$60 billion nonsystem of health care through the traditional patchwork response mechanisms of the executive branch and the Congress.

The usual response of the executive branch and the Congress to national crisis situations is a Presidential recommendation proposing a legislative panacea which is subsequently enacted by the Congress, and is eventually found to be, years later in highly publicized hearings, not adequate to resolve that which was a more complicated problem than what it first appeared to be. The hearings on Medicaid might be an example of that process.

The inadequacy of this response mechanism is often complicated by the fact that there is rarely a congressional legislative committee which has complete jurisdiction over all relevant aspects of a problem.

For example, if we examine the method by which the Senate considers just one element of the health nonsystem, the hospital, we find that the Labor and Public Welfare Committee has held hearings on hospitals to authorize money for their construction, the Finance Committee has held hearings on hospitals regarding their reimbursement formulas under Medicare, the Judiciary Committee has held hearings on hospital costs to examine antitrust implications, the Joint Economic Committee has held

hearings on hospital costs to analyze their impact on the economy, the Post Office and Civil Service Committee has held hearings on hospital costs to analyze their impact on the economy, the Post Office and Civil Service Committee has considered hospital costs in terms of their impact on Federal employee health plans, and the Government Operations Committee has considered hospitals in the context of the 23 Federal agencies concerned with health.

A reform of our country's nonsystem of health care is going to demand a more coordinated approach than the fragmental consideration we have given the problems of hospitals. It is going to demand more than the traditional crisis inspired Presidential message and legislative band aids. The transformation of \$60 billion segment of the economy will require a new process of national change. It will require a systematic, step by step approach. It will call for a new type of executive-legislative relationship.

The Congress cannot legislate in an informational vacuum. We must have all the facts. We must be made aware of all alternatives that are available to us. We must be informed as to the ramifications of the enactment of each alternative available to us. I do not ask the executive branch to support a national health plan, I only ask that Congress be informed of the options available to it.

We cannot afford to be limited in our perspectives on social change by the blinders of committee jurisdiction and the limits of the information provided by the executive in sole support of administration legislation. If the report I call for is properly developed, the Congress will be able not only to debate the merits of a national health program in a rational manner, but it will enable the various committees of Congress concerned with health to legislate with a wider perspective in a harmonious manner proper to each committee's jurisdiction.

The legislation I propose today is not only to be considered as a major step toward a truly comprehensive national health care system, but also as a first step in a redefinition of the role of the Congress in relation to the executive branch as a modern mechanism of social and economic change.

Mr. President, I ask unanimous consent that following my remarks the text of my bill, my dialog with the U.S. Surgeon General, Dr. Jesse Steinfeld, the Business Week editorial and special report on medical care, the report of the Library of Congress Legislative Reference Service on the financing aspects of national health insurance proposals, and my RECORD statement of December 10, 1969, be printed in the RECORD.

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

The bill (S. 3634) to amend the Public Health Service Act to provide for the conduct of a systems analysis of alternative national health care plans, and for other purposes, introduced by Mr. PELL,

was received, read twice by its title, referred to the Committee on Labor and Public Welfare, and ordered to be printed in the RECORD, as follows:

S. 3634

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 Health Care Systems Study Research and Demonstrations Act of 1970".

SEC. 2. (a) (1) Section 304(a) of the Public Health Service Act is amended—

(A) by inserting "(1)" immediately after "Sec. 304. (a)";

(B) by redesignating clauses (1) and (2) as clauses (A) and (B), respectively; and

(C) by redesignating clauses (A), (B), and (C) as clauses (i), (ii), and (iii), respectively. (2) Section 304(b) of such Act is amended—

(A) by striking out "(b)" and inserting in lieu thereof "(2)"; and

(B) by striking out "this section" each place it appears therein and inserting in lieu thereof "this subsection".

(3) Section 304(c) of such Act is amended—

(A) by striking out "(c)" and inserting in lieu thereof "(3)"; and

(B) by striking out "this section" each place it appears therein and inserting in lieu thereof "this subsection".

(b) Section 304 of such Act is further amended by adding after the provision thereof redesignated as paragraph (3) by subsection (a) (3) (A) of this section the following new subsection:

"Systems Analysis of Alternative National Health Care Plans

"(b) (1) (A) The Secretary shall develop, through utilization of the systems analysis method, two or more alternative plans for health care systems designed adequately to meet the health needs of the American people. For purposes of the preceding sentence the systems analysis method means the analytical method by which alternative means of obtaining a desired result or goal is associated with the costs and benefits involved.

"(B) When the Secretary has completed the development of the alternative plans referred to in subparagraph (A), he shall submit to the Congress not later than 18 months from the date of enactment of this Act a report which shall describe each plan so developed in terms of—

"(i) the number of people who would be covered under the plan;

"(ii) the kind and type of health care which would be covered under the plan;

"(iii) the cost involved in carrying out the plan and how such costs would be financed;

"(iv) the number of additional physicians and other health care personnel and the number and type of health care facilities needed to enable the plan to become fully effective;

"(v) the new and improved methods, if any, of delivery of health care services which would be developed in order to effectuate the plan;

"(vi) the accessibility of the benefits of such plan to various socio-economic classes of persons;

"(vii) the relative effectiveness and efficiency of such plan as compared to existing means of financing and delivering health care; and

"(viii) the legislative, administrative, and other actions which would be necessary to implement the plan.

"(C) In order to assure that the advice and services of experts in the various fields concerned will be obtained in the alternative plans authorized by this paragraph and that the purposes of this paragraph will fully be carried out—

"(1) the Secretary shall utilize, whenever appropriate, personnel from the various agencies, bureaus, and other departmental sub-

divisions of the Department of Health, Education, and Welfare;

"(ii) the Secretary is authorized, with the consent of the head of the Department or agency involved, to utilize the personnel and other resources of other Departments and agencies of the Federal Government; and

"(iii) the Secretary is authorized to consult with appropriate State or local public agencies, private organizations and individuals.

"Cost and Coverage Report on Existing Legislative Proposals

"(2) (A) The Secretary shall, in accordance with this paragraph, conduct a study of each legislative proposal which is introduced in the Senate or the House of Representatives during the 91st Congress, and which undertakes to establish a national health insurance plan or similar plan designed to meet the needs for health insurance or for health services of all or the overwhelming majority of the people of the United States.

"(B) In conducting such study with respect to each such legislative proposal, the Secretary shall evaluate and analyze such proposal with a view to determining—

"(i) the costs of carrying out the proposal; and

"(ii) the adequacy of the proposal in terms of (I) the portion of the population covered by the proposal, (II) the type health care provided, paid for, or insured against under the proposal, (III) whether, and if so, to what extent, the proposal provides for the development of new and improved methods for the delivery of health care and services.

"(C) Not later than June 15, 1971, the Secretary shall submit to the Congress a report on each legislative proposal which he has been directed to study under this paragraph, together with an analysis and evaluation of such proposal."

(c) Subsection (d) of section 304 of such Act is hereby redesignated as subsection (c) and is amended to read as follows:

"(c) (1) There are authorized to be appropriated for payment of grants or under contracts under subsection (a), and for purposes of carrying out the provisions of subsection (b), \$84,000,000 for the fiscal year ending June 30, 1971 (of which not less than \$4,000,000 shall be available only for purposes of carrying out the provisions of subsection (b)), \$85,000,000 for the fiscal year ending June 30, 1972, \$90,000,000 for the fiscal year ending June 30, 1973, \$95,000,000 for the fiscal year ending June 30, 1974, and \$100,000,000 for the fiscal year ending June 30, 1975; except that, for any fiscal year ending after June 30, 1970, such portions of such sums available for payment of grants or under contracts under subsection (a) as the Secretary may determine, but not exceeding 1 per centum thereof, shall be available to the Secretary for evaluation (directly or by grants or contracts) of the program authorized by subsection (a).

"(2) In addition to the funds authorized to be appropriated under paragraph (1) to carry out the provisions of subsection (b) there are hereby authorized to be appropriated to carry out such provisions for each fiscal year such sums as may be necessary."

SEC. 2. The amendments made by subsection (c) of section 2 of this Act shall be effective only with respect to fiscal years ending after June 30, 1970.

The material, presented by Mr. PELL, is as follows:

DIALOG BETWEEN SENATOR PELL AND DR. JESSE STEINFELD, U.S. SURGEON GENERAL

SENATOR PELL. Do you agree that the United States should implement a national health insurance plan in the early 1970's?

SURGEON GENERAL. The Federal Government has moved more and more into health research, health education, and provision of

health services through financing mechanisms. In the latter situation, the Federal Government in partnership with those citizens over 65 in the instance of medicare and in partnership with the States in terms of medicaid is actively in the field of financing the provision of health services. Unfortunately, medicaid is not a resounding success since it is primarily a purchaser of services. The problem in this country is to improve both the quality and quantity of health care and to make it available for all who need health care. What I believe we must do immediately is to undertake a number of experiments and pilot projects involving the use of para-professional personnel as well as professional personnel with emphasis on preventive care or preventive medicine and use of ambulatory care facilities in lieu of institutional or hospital type facilities wherever possible. It seems to me, speaking as an individual, that we are moving toward a national health insurance program and it is our duty to be ready for it in terms of not only the capacity to provide the services but in terms of the administrative mechanisms to have an efficient program. I feel, therefore, that it is imperative for us to begin both such experiments and pilot programs as soon as possible.

SENATOR PELL. Since the poor have shown by government statistics to be least able to pay for the health care that they need, do you agree that the Federal Government should pay the premium for the poor as part of a national health insurance plan?

SURGEON GENERAL. There are two aspects to this question, Senator, as I interpret it. First and foremost, the goal really should be to eliminate poverty, to eliminate the ghetto, and in that situation then all our citizens will be able to afford either health care or the premium for health care or their share of the premiums for health care depending upon the type of program that the Congress and the people choose. However, that is a long-range solution. For the short-range, it is clear that the Government must help provide medical care for the poor through whatever mechanism is most efficient and most appropriate to get the job done in a fair or equitable way.

SENATOR PELL. Would you favor a national health insurance plan based on a plan similar to Social Security or a plan similar to the one Governor Rockefeller suggested where third party vendors, such as Blue Cross, would be paid through employer-employee work place contributions?

SURGEON GENERAL. Here again, Senator, I think we must do pilot studies in different parts of the country such as urban areas, rural areas, suburban low, middle or upper income areas, and in what has been called the American ghetto, and have our decisions then be based upon our experience as to which of these programs fits our needs. It may well be that in different States or in different areas we will have modifications of a health insurance program rather than a single national plan.

SENATOR PELL. Do you agree that all the government's 23 health programs should be organized under one federal official?

SURGEON GENERAL. Here I believe that there could and should be far more coordination and cooperation among these several programs and coordination and cooperation with States, local government, and the large number of private organizations and groups involved in health programs. As a step in this direction for the Federal programs alone it might be desirable to set up a coordinating mechanism with a single agency as the lead agency, once again, to learn from this what the problems are, what can be accomplished, and whether our overall effort would be helped or hindered if we were to move in such a direction.

SENATOR PELL. What types of incentives could be utilized to encourage physicians and hospitals to lower costs?

SURGEON GENERAL. Regarding hospital costs, it must be remembered that hospitals are a recent institutional development in the sense that we utilize them for delivery of children, for intensive care, myocardial infarctions, operation on diseases as appendicitis, all of which result hopefully in cure of the patient. Not too long ago hospitals were places where people went to spend their last remaining days and it was not usual for the patient to return home able to function in society. In that not too distant past hospitals were charitable institutions run by religious organizations and staffed by dedicated individuals who were paid little or nothing beyond room and board. Accordingly, hospital wage scales have been appallingly low. As the hospital is looked upon more and more as any other business enterprise, wage scales, which make up the great bulk of hospital costs, have risen.

Another important feature, and there are many others I won't mention, but another important feature is the increasing complexity and expense of instrumentation, as for example the monitoring equipment in a coronary intensive care unit.

To lower hospital costs might mean having different types of rates for patients who required different levels of complexity of hospital care. We might, as an incentive, provide higher fees for diagnostic medical work done on an outpatient rather than an inpatient basis. Some of our programs which provide payment only when the patient is hospitalized encourage the physician to hospitalize the patient for diagnostic work which could be accomplished with the patient in a non-hospitalized status.

Another form of experimentation would be prepayment of fees for an entire group of patients paid to a group of physicians who have access to and the use of a hospital as well as outpatient facilities. This might encourage more preventive medicine or preventive care. Such prepayment plans have not been utilized in any of this country's governmental health programs. At this point I am not proposing that this be done on a national basis but I do feel that here, too, experimental or pilot programs should be undertaken promptly to see if we can lower costs while maintaining or even improving the present quality of care.

SENATOR PELL. Do you agree that no federal money should be spent in any region unless that money is spent in conformance with a comprehensive regional health plan?

SURGEON GENERAL. For health research and health education—no. For health services, this may be desirable if it is truly a comprehensive regional health plan but, as you indicated earlier, when you mentioned that the government has at least 23 health programs, it may be difficult to enforce such a ruling directed presumably at the civilian population if other governmental facilities as DoD or VA facilities are present in a particular region.

SENATOR PELL. What steps should be taken to encourage a greater emphasis on preventive care services, such as neighborhood health centers, in the United States?

SURGEON GENERAL. All of our programs should emphasize preventive care much more than we now do. This will involve education not only of our school age population but in industrial concerns, in all work situations, and hopefully of housewives as well. It may require the addition of new courses in medical school curricula, and in many or all paramedical educational institutions. We may even need a new type of professional but it seems to me that not only should our professionals be stimulated in this regard but our financing devices such as medicare and medicaid should be remoulded so as to emphasize and to reward those who can utilize preventive medicine rather than the much more expensive hospitalization approach.

[From Business Week, Jan. 17, 1970]

REFORM IN HEALTH CARE

Sometime within the next few years, Congress will have to set up a comprehensive national health program for the U.S. Experts on medical care differ violently on many things, but they agree almost to a man that the nation cannot struggle along indefinitely without a complete overhaul of its present patchwork system.

As things stand now, the federal government underwrites medical care for the aged and gives some assistance to state programs for the indigent. The rest of the population is either covered by private insurance or not covered at all. Some 61-million Americans under the age of 65 have no insurance covering in-hospital medical expenses, and 102-million have no coverage for office visits to doctors.

The infusion of federal money has not been enough to provide first-class medical care for all citizens, but it has been enough to give a violent inflationary kick to the whole structure of medical costs. The U.S. now spends more than \$60.3 billion a year for health services. This is a higher proportion of gross national product (6.7%) than any other country puts into health care, but the results do not show it. Judged by such key indexes as average length of life and infant mortality, the U.S. lags well behind Western Europe, Canada, Australia, and Japan.

To upgrade its standards of health care as well as to get full value for the money it is spending, the U.S. obviously must overhaul its system. On the financial side, it needs an adequate system of insurance covering the great majority of the population against medical expenses. With this should go some system of keeping doctors' fees within reasonable limits and incentives for efficient hospital management.

There is no hope for transferring bodily to the U.S. the system worked out in some other country. Any workable program must be home grown and developed on the foundations of the present system. This means it must be worked out in a cooperative effort by the U.S. medical profession, the insurance carriers, and the government.

The question no longer is whether the U.S. is to have a national health program. It is whether we shall have a good one or a bad one. The chances of getting a good one will be far better if everyone involved accepts that fact.

[From Business Week, Jan. 17, 1970]

THE \$60 BILLION CRISIS OVER MEDICAL CARE

A lot of Americans would rather die than get seriously sick. For millions, going to the hospital means going broke or close to it. For many more, good medical care is nonexistent.

Private health insurance plans, with a large measure of business support, have helped to ease the pains in recent years. So have medicare and medicaid. But pressure is mounting for far more sweeping changes in the way Americans get their medical care, and the answer looks more and more like the one adopted by practically every other major Western country: a national health program.

Many people still regard medicare and medicaid as incipient socialized medicine. They haven't seen anything yet. Before the end of this decade, the federal government will almost certainly get deeply into the health insurance business by sponsoring a program that will cover everyone in the country.

BEYOND BAND-AIDS

Washington is already in up to its knees with medical aid for the aged, the veterans, and some of the poor. But a growing body of opinion holds that this just is not enough, that medicare and state medicaid have been, at best, rather badly administered first aid—Band-Aids and tourniquets, when what is needed is major surgery and more intravenous feedings of that magic medicine, money, but under careful supervision.

The clamor for some kind of national health plan is already drowning out the shouts against "socialism," and it has been heard on Capitol Hill. Perhaps as early as 1971, Congress will start formulating a national health care program.

A flurry of bills is being prepared already (page 64) and even the American Medical Assn., although still staunchly opposed to broad federal intervention in medicine, supports one. None of the drafts spells out in fine detail just how a national health scheme would work, but their very number is evidence that a sweeping change is coming in the way the nation's doctors and hospitals operate.

Two things underlie the impending changes: skyrocketing medical costs and a spreading realization that the U.S. medical system is not delivering the goods. Ironically, this is not for want of trying.

The total health bill for Americans now stands at some \$60.3-billion a year. This comes to 6.7% of the gross national product, a greater proportion of national resources than any other country puts into health care. The national bill per person for medical goods and services is up to \$293, more than double what it was a decade ago, and is still rising. Since 1966 the cost of health care has been climbing at an average annual rate of 7%, well above the rates of increase in other consumer prices.

For all this, the U.S. has been slipping behind other nations in the key indexes of national health. In infant mortality we now rank 14th, behind many Western European countries. Men live longer in 17 other countries; women live longer in 10.

Quality gap. Few dispute the U.S. medical research in most fields is the world's most advanced and that many U.S. hospitals are among the world's best equipped. But the fruits of this research are not getting out to the great bulk of the population.

IN SEARCH OF A CURE FOR ECONOMIC CHAOS

It is true that national health statistics reflect more than just the quality of medical care. Social, economic, cultural, and environmental factors play a part, too. Americans may drink more, smoke more, or work harder than many Europeans, for instance. And it is obvious that the poor health conditions of millions of blacks who have lived on Southern farms or in Northern slums over the last 20 years have put a drag on U.S. health indicators.

Lately, though, economists have combed through the statistics and come up with some surprising findings. One study shows that in 49 of the 50 states the infant mortality rate among whites alone is higher than the highest provincial rate in Sweden. Says Dr. George A. Silver, a former deputy assistant secretary of the Health, Education & Welfare Dept.: "Sweden spends only 5% of its GNP on health services and gets in return better medical care, lower infant mortality, longer life expectancy, and has fewer people dying in the productive years of their lives."

MISSING ELEMENT

Clearly, something is lacking in the U.S. health care system. One thing that every other industrialized country has that the U.S. lacks is some form of national health program or insurance that can deliver adequate care to the bulk of its people. Such plans cannot guarantee better medical care than the U.S. now provides. They cannot, in themselves, put the brakes on health care inflation. Nor can they ensure that poor rural areas or big-city ghettos get an adequate supply of doctors. But numerous medical experts do maintain that the plans can, and often do, set the base for a broader and more efficient allocation of a nation's health care resources.

Ironically, the first U.S. steps toward a national health insurance scheme—the medicare and medicaid programs—have helped a lot to fuel the wild inflation in medical care costs. How it all happened is a complex

story that goes back to the end of World War II. That was when costs of medical care first began to outpace the gains in personal income and the general cost of living. At the time, the impact of the rise was softened for many Americans by the spectacular growth of private health insurance plans.

By the early 1960s, though, it was all too clear that at least two big groups were left without protection against the upward sweep of costs: the poor and the elderly. Both are victims of high rates of disease and disability, the poor because of bad nutrition and bad housing, the elderly because illness almost inevitably accompanies old age. So, in 1966, the federal government moved in with medicare for the aged and began helping the states set up their medicaid programs for the poor.

Skyrocket effect.—In theory, these programs were not supposed to boost inflation. In the past, hospitals and doctors had treated poor patients at little or no cost and had covered the losses by charging others a bit more. Thus, when federal and state aid programs began picking up the tab for charity patients, the charges to regular patients were supposed, at least, to rise less rapidly than before.

Instead, charges to everyone skyrocketed. Since the beginning of 1966, doctors' fees have jumped by 29% and hospital charges by 59%. And the trend may be getting steeper.

One part of the problem is that medicare went into operation just when hospitals faced, and could not hold off, demands for sharp wage increases from newly militant employees. That multiplied costs quickly because labor accounts for some 60% of a hospital's costs. Part of the jump also came because new demands were put on limited supplies of medical manpower and facilities. But many economists believe that the major cause of the sudden and sharp inflation was that the new health programs poured in massive amounts of money without any meaningful controls over expenditures or any attempt to build more efficiency into the health care system.

"Blank checks." Says Rashi Fein, Harvard Medical School professor of medical economics: "The government went into the business of signing blank checks. It gave hospitals cost-plus contracts—and costs rose. It paid doctors on the basis of their customary fees—and their fees rose."

Fein and others point out that the lack of controls was part of the price that had to be paid to get the medicare bill through Congress; AMA lobbyists would probably have succeeded in beating it back if it had involved more than a minimum of government intervention. But once the law was passed, many doctors and hospitals not surprisingly reacted by seeking as much of the government money as possible.

Today, the cost of health care has moved so high that other groups are starting to demand the kind of broad protection that medicare gives to the elderly. With daily hospital charges just for room and board in New York City and Boston running as high as \$110, even the relatively affluent can have their savings and homes wiped out by the cost of a catastrophic or chronic illness. While the more generous major-medical insurance plans will pay up to a maximum \$15,000 or \$20,000, a patient under intensive care in a big-city hospital for as long as a month could well get a bill that exceeds that amount.

Left out. Wide gaps in private health insurance are showing up, too. Some 24-million Americans under 65 have no health insurance at all; 61-million have no coverage for in-hospital medical expenses, 102-million have no insurance to help pay for doctors' office visits.

Private insurers admit that they cannot fill these gaps. Many, such as New York's Blue Cross, are having trouble maintaining

present coverage, much less expanding it. So now Blue Cross, some insurance companies, and some state governments are backing the idea of a federally supported national health insurance scheme to supplement private insurance programs.

With all the support for national health insurance, however, even its advocates have one big worry. The treatment might be disastrously worse than the illness if not administered properly.

Martin Feldstein, professor of economics at Harvard, warns that unless vigorous controls are built into a national health scheme, inflation will eat up any benefits the program might produce. If national health insurance is to achieve its promise of providing adequate health care for all, most medical economists agree, the way in which the U.S. now delivers medical care has to be changed to make it more rational and efficient.

"What we have now," says Rashi Fein of Harvard, "is a highly disorganized, wasteful delivery non-system." While Fein wonders whether any major change will be politically feasible in initial health insurance legislation, he finds it "inconceivable that the government and taxpayers would continue to tolerate" the present system.

Victor Fuchs, vice-president for research at the National Bureau of Economic Research and a specialist in medical economics, says one source of the present system's inefficiency is the medical profession's faulty notion of how it really operates. For ages, doctors have said that so long as patients have free choice of physicians, unhampered by bureaucratic government control, medicine gets all the advantages of a free-market system: The profit motive and open competition will guarantee efficiency, a proper price and rate of output, and a fair return. If demand outstrips supply, prices will rise for a while, but then new suppliers will enter the market.

But medicine, Fuchs points out, is organized on radically different lines: Most hospitals are not run for profit and have little direct incentive to be efficient; doctors do not compete on price; the number of new doctors turned out by the medical schools is tightly restricted; and until recently the AMA has steadfastly resisted expanding these schools.

Another hole in the free-market theory: Consumers of medical services are generally not able to judge their quality or necessity, or to question the price. Insurance plans shield the consumer and make it less likely that he will protest fee hikes. And third parties, such as Blue Cross and insurance companies, have tended to reflect the interests of the providers of medical services, rather than those of the buying public.

BAD ECONOMICS

Most people would not accuse medical men of being bad businessmen: Median income for doctors in the U.S. rose from \$28,380 a year in 1964 to around \$40,000 last year. But the fierce independence of doctors, hospitals, and medical schools has long blocked all but a minor degree of cooperation, and has been self-defeating in broader economic terms. One result, critics charge, is that much of the money poured into training medical men and equipping hospitals goes to waste through duplication and inefficient use.

This is the root problem that a national health plan will have to solve if it is going to work. Fortunately, doctors themselves have already pointed the way by recognizing the economies of scale. Over the last two decades, they have fostered a strong trend toward group practice. Groups share the cost of offices, nurses, and secretaries, and bring a range of specialties together in one place. Group doctors not only see more patients—as many as 15% to 25% more—but also have more free time to keep up with the latest research in their fields. Patients benefit by dealing with doctors who keep up to date and have better equipment than the individual practitioner.

Group practice reaches its present peak in such programs as New York's Health Insurance Plan (HIP) and California's Kaiser Permanente group. These, says Harry Becker, professor of community medicine at Albert Einstein College of Medicine, are the most promising forms of group medicine. Subscribers pay a flat annual fee; the doctors work for salaries paid by the group, not for fees from the patients. It is the closest U.S. medicine has come to the ancient Chinese notion that you pay the doctor to keep you well, and nothing if you get sick.

Kaiser and HIP may, indeed, best point up the value of group practice for preventive medicine. Kaiser and HIP, says Becker, can give far broader care, for about the same cost, than the more limited health insurance plans. Their record also shows that they can reduce the need for hospitalization by at least 30%, because doctors have no economic reason to hospitalize patients, and subscribers get preventive care.

Both HIP and Kaiser have grown enormously over the 20 years since they were founded, and their efficiency has won lavish praise from outside experts. But they have had very few imitators. The main growth in group practice has come from doctors who still charge patients for each service performed.

The need to scale up for the sake of economy is even more glaring when it comes to hospitals, says medical economist Anne R. Somers of Princeton University. Most community hospitals, she notes, are independent empires that plan their services and by costly facilities with little consideration of what the hospital up the road might be doing. Duplication and inefficiencies abound. It is not unusual for neighboring hospitals to install precisely the same expensive open heart surgery equipment and cobalt radiation units when one facility could easily do.

"Division of labor," Economist Fuchs finds a similar problem in medical practice, through failure to adapt to the enormous technological changes of recent years. "There would be a greater chance of controlling costs if there was a rational division of labor in the profession," he says. At least some of the routine work handled by most physicians today could be taken over by less highly trained people.

The trend to wider use of para-professionals is already apparent. At the Kaiser clinics, for example, batteries of tests are handled by technicians working with computers, not by doctors. The physicians go to work when anything abnormal shows up.

Even in more traditional aspects of a doctor's work, there is room for better division of labor, Fuchs says. A pediatrician, for example, spends 30% of his time caring for healthy children. In Sweden and the Netherlands, specially trained nurse-midwives—not obstetricians—handle most of the work of prenatal care and delivery of babies.

In the U.S., a few medical schools are starting to turn out a new breed of paramedical personnel with responsibilities halfway between those of doctors and those of nurses, but so far fewer than 100 have been graduated.

The high price of hospital care could also be cut if there were more halfway houses between the hospital and the doctor's office. Some experts estimate that up to 30% of hospital patients could be treated in out-patient clinics or extended-care centers, if there were enough of these facilities. Medicare has helped spur substantial growth in nursing homes in the last few years, and this, economists believe, represents a step in the right direction.

The future, Becker of Einstein College thinks these trends point the way to the future shape of the U.S. medical system. "In a coherent and efficient system," he says, "the country would be divided into regional medical service areas. At the center of each

area, there would be a large teaching hospital affiliated with medical schools. Around these would be local hospitals, local clinics, group practices, and solo practitioners. And plugged into the system would be nursing homes, extended-care centers, and home visitation services."

Such a system will not evolve overnight, say the experts. It will have to be based on the voluntary participation of doctors and hospitals, and be flexible enough to tolerate competing ways of providing health care, depending on local needs and desires. A national health plan can help bring it about. "National health insurance is no panacea," says Rashi Fein. "But properly powerful incentives for creative innovation."

A BROAD SPECTRUM OF HEALTH PROGRAMS

When Congress does get around to considering what to do about the country's medical care system, it will find that quite a few high-powered people have been seriously thinking about the problems for quite some time. Schemes for changing the system have already been drafted, some calling for minimal alteration, others going a great deal further (page 64).

Not surprisingly, the Committee for National Health Insurance has worked up the plan that calls for the most sweeping changes. Its ideas are embodied in what is called, in short form, the Reuther Plan—named for the committee's chairman, Walter P. Reuther, president of the United Auto Workers. Reuther and his law have long been among the most fervent critics of present methods of health insurance and the system of health care.

But CNHI is a lot more than a group of labor activists. Its members run from Texas heart surgeon Michael E. DeBakey, to Whitney Young, Jr., director of the Urban League, to retired General James M. Gavin, chairman of Arthur D. Little, Inc.

Federal funding. Reuther and his allies want their plan to provide virtually every kind of medical care for virtually everyone in the country. They would finance it by getting two-thirds of the money needed from Social Security payroll taxes and one-third from general federal revenues. They would put the whole operation in charge of a special office in the Health, Education & Welfare Dept., and this office would also swallow up many of the present federally backed medical programs: medicare, medicaid, and services for civilian dependents of servicemen. There would be ways of controlling costs and controlling the quality of medical care.

Out of this, the committee members maintain, would come a whole rationalization and redistribution of medical care. The gist of their argument is that the present practice of handling health care protection as if it were casualty insurance produces policies that focus on covering the costs of expensive illnesses, the kind best treated in hospitals.

Aetna cluster. Aetna's plan is "a cluster of coordinated programs," says vice president Daniel W. Pettengill. "Aetna, the nation's largest commercial carrier of health insurance, has tried to combine the flexibility of the private sector with the economic capacity of the public sector." The plan, according to Pettengill, is not simply a different means for financing medical costs, but also "seeks to solve the fundamental problem—the availability of quality medical care. Any plan that does one without the other will simply deepen the country's medical problems."

Aetna is now trying to whip up support for its plan among other insurance companies. Its chances of success are fairly good because the plan proposes that the insurance carriers retain a considerable role: Employee group insurance plans, among other things, would continue to provide some coverage for a large part of the nation's work force. Several large and important areas are left blank

in the Aetna Plan, however, and it is unlikely that they will be filled in until there has been more public debate over the issue.

Even bigger blank spaces exist in the scheme proposed by Senator Jacob K. Javits, but this is not likely to be the result of poor homework by the New York Republican. For 20-odd years, Javits has been among the chief advocates in Congress of the need for the reshaping of the medical care system. His key adviser on health insurance is Wilbur D. Cohen, former HEW Secretary and the man who shepherded medicare through the Congress. Cohen probably knows more than anyone else about dealing with the special interest groups in health care.

AMA prescription. The only major plan yet in the form of a bill is the American Medical Assn.'s proposal. Sponsored in Congress by Representative Richard H. Fulton (D-Tenn.) and Senator Paul Jones Fannin (R-Ariz.), it calls largely for a sliding scale of income tax credits for the purchase of private health insurance. It deals only with the cost of insurance; it provides no control over what the insurance would buy.

Most observers consider this bill a delaying action and rate its chances for passage as low. For one thing, it would have to get through the House Ways & Means Committee, whose chairman, Wilbur D. Mills (D-Ark.), frowns on federal programs financed through tax credits. For another, even groups that disagree passionately on just how to control the cost and quality of health care do agree that there must be some form of controls.

Aside from these four main plans, many other more fragmentary proposals are beginning to bubble up in Congress. And at HEW, Secretary Finch has studies going on the problems of financing medical care. Say the activists of CNHI: "Reforming the medical system is an idea whose time has come."

THE BATTLE MOVES TO CAPITOL HILL

"I'll bet you that national health insurance will be a plank in both political party platforms in 1972." That forecast comes from one of the professional staffers of the Committee for National Health Insurance and, naturally, reflects a high degree of self-interest. But as Congress begins to stir itself on the subject, the prediction seems increasingly likely to come true. In fact, CNHI's first target is to get craft legislation introduced in the first half of this year.

From that point on, the country will be in for a good deal of public education on the deficiencies of the present medical care system, and Congress will be the national classroom.

Nobody expects a national health insurance law to be enacted this year. But there is a chance that first steps will come in time for the 1972 elections. The timing depends on a variety of factors: Most important, by general consent, are the rate of future medical cost increases, the makeup of future Congresses, and the relative power of the AMA, currently considered to be one of the strongest lobbies in Washington. The most telling of these will probably be the rate of increase of medical costs.

Washington gossip has it that the small group of legislators who fought steadily for medicare decided not to jeopardize passage of the bill by holding out for stiff cost controls. They had wanted them originally, but later they decided that loose controls might be a disguised blessing. They reasoned that physicians and hospitals would take advantage of the new flow of medicare money to raise costs so high that comprehensive national health insurance would become a necessity.

If that was the strategy, it may well have proven effective. For today, as medical care costs go spiraling on, many health care experts are thinking along the same lines when they predict that a national plan will become law "sooner than you expect."

RESTRAINT

But this time, experts say, Congress will not be so permissive about cost and quality controls as it was on medicare. How long it takes for Congress to decide just what those controls should be and how they should be applied will, they believe, depend a great deal on what is happening to medical costs while the fight goes on.

For the present, backers of a national health insurance plan are doing their best to avoid public disputes over what details the plan might contain. They are trying to generate wide support for the general notion of a national plan and to spike the notion that such schemes would represent "socialized medicine." At the same time, they are spreading the word that medical care in the U.S. is nowhere near as good as it should be.

They appear to be having some success. Says Mike Gorman, executive director of the National Committee Against Mental Illness and a staunch advocate of national health care: "I'm getting invitations to talk on national health insurance from state medical associations that would have hanged me a couple of years ago if I turned up at one of their meetings."

Senate push. To build up a base in Congress, CNHI has already recruited three senators—Ralph W. Yarborough of Texas, John Sherman Cooper of Kentucky, and Edward M. Kennedy of Massachusetts. Kennedy gave the campaign a push a month ago with two proposals. He suggested that Congress adopt legislation this year that would provide complete health coverage for all infants and school-age children, and that it go on from there in each succeeding year to extend coverage to the next 10-year age group. Yarborough, chairman of the Senate committee on labor and public welfare, intends to hold public hearings on the various health insurance proposals sometime this year.

But the group has yet to pull in a member from the House, and it is through the House—and specifically the Ways & Means Committee—that any health insurance legislation must pass.

Ways & Means Chairman Mills has no plans just now to hold health insurance hearings. But he is committed to write new welfare legislation and to look again into the financing of medicare this year. Backers of a national plan see this as a good chance to get in an opening wedge.

HOW THE UNITED STATES LAGS IN HEALTH

Rank	Country	Infant mortality per 1,000 births	Country	Life expectancy at birth
1	Sweden	12.9	Sweden	71.6
2	Netherlands	13.4	Norway	71.32
3	Finland	14.2	Netherlands	71.1
4	Norway	14.6	Denmark	70.3
5	Japan	15.0	Switzerland	68.72
6	Denmark	15.8	New Zealand	68.44
7	Switzerland	17.5	Canada	68.35
8	New Zealand	18.0	East Germany	68.27
9	Australia	18.3	Ireland	68.13
10	Britain	18.8	Britain	68.1
11	France	20.6	Australia	67.92
12	East Germany	21.2	Bulgaria	67.82
13	Canada	22.0	Japan	67.73
14	United States	22.1	West Germany	67.59
15	West Germany	22.8	Greece	67.46
16	Czechoslovakia	22.9	Italy	67.24
17	Belgium	23.4	Hungary	67
18	Ireland	24.4	United States	66.8
19	U.S.S.R.	26.3	U.S.S.R.	66
20	Austria	26.4	Austria	65.6

Note: More newborn babies die in United States than in 13 other countries and men live longer in 17 other countries.

Source: U.N., U.S. Health, Education and Welfare Department

THE WAY IT WORKS IN OTHER LANDS

If the U.S. decides to relinquish its special status as the only major Western nation that

has no state-assisted national health care plan for the great bulk of its citizens, it will be looking abroad at the ways in which others have handled the health care problem. And judging by what others have done these are some of the lessons to be learned.

No fancy theoretical scheme can be imposed on a country. The plan must evolve from whatever health care structure is already there.

Every scheme that others have tried has serious imperfections. All are very difficult to manage.

Attempts to set up these schemes produce an enormous amount of bickering, but after a while both doctors and the public give it solid backing. London's Dr. M. R. Salkind, former secretary of Britain's General Practitioners' Assn., sums it up: "We must have national health. Private health is just too expensive."

Canada's national scheme may well be closest to any national plan that is likely to emerge in the U.S. The Canadian scheme started operating on July 1, 1968, but it was designed to include the country's 10 provincial governments. So far, seven of the 10 have joined. The big breakthrough came last Oct. 1 when Ontario finally signed up. It is Ontario that is most industrialized, most populous, and most like the U.S.

In Ontario, a battle had raged over the role that private insurance companies would play in the scheme. The fighting ended in a peace pact between public and private insurance interests. Under the pact, 31 private insurance companies were grouped in a non-profit agency called Healthco to act as administrators of the plan. Healthco handles the bulk of the paperwork in return for about 7% of the premiums paid by Ontario's citizens.

COSTS

In Canada, medical costs are lower than in the U.S. But they are comparable. Under the scheme, a family that pays \$14.75 a month is covered for doctor visits, surgery, and various diagnostic and lab tests. For another \$11.80 under a separate plan, the family gets coverage for hospital ward costs, ambulance needs, physiotherapy, and other care. The companies in Healthco are still free to sell insurance for items not covered by the basic plan, and the market is strong.

The Canadian scheme rests primarily on the provincial governments. But an average of 50% of the cost will be paid by the federal government—more for the poorer provinces, less for the richer ones. To participate, each province's health plan must cover at least 90% of its population, include a wide range of services, and be run by a nonprofit agency.

Ontario's Health Dept. reports that, since Oct. 1, it has been paying out more than \$1-million in claims daily. It estimates total claims for the first year will be about \$415-million. With administrative and other expenses, total outlays should be \$508-million. To finance the plan, Ontario will get \$168-million from Ottawa, \$309-million in premiums, and the balance from its own government.

The scheme pays doctors 90% of their fees, which are set by their own medical association. Under old private-insurance schemes, the 90% rule had always held good. But now that the entire population is involved, trade unions and other groups are agitating for 100% payment. Meanwhile, doctors try to collect the unpaid 10% from patients, generating some confusion and ill will.

Her Majesty's. In Britain, the National Health Service also generates wrangling among doctors, patients, and health authorities. But the trouble dates back before 1948, the year the health service was set up. Long before that, British medicine had split into three different establishments:

General practitioners, who perform 90% of all medical care but are barred from treating their patients in hospitals.

Hospitals, now old and rundown, which are staffed by high-paid specialists, low-paid juniors, and badly paid nurses.

Local health authorities, county and municipal groups, which run clinics, child welfare, and ambulance services.

British GPs work basically for salaries paid by the health service. Only 20% of them earn income from private practice, too. Eight years ago, thousands of them protested bitterly over their salary levels and threatened to resign from the health service. But since then the rates have been changed. GPs now rank fifth among British salaried professionals, though their salaries are still low by U.S. doctors' standards.

The bitterest rift over pay is in British hospitals. There, specialists who win consulting posts can pull in up to \$25,000 a year, plus extra money from private practice. But there is a limit of 10,000 on the number of specialists who may be employed in the hospitals. Other doctors, just as fully qualified, may wait half their working lives for a consultant's spot to open up while drawing a top salary of just \$6,900 a year.

About 600 British doctors emigrate every year, many of them simply because of frustration over pay. And only about 2,000 new doctors graduate from British medical schools each year. Supply and demand would have gotten hopelessly out of whack years ago, and the National Health Service would probably have broken down, were it not for the 2,000-odd doctors who migrate to Britain each year, mostly from Commonwealth nations.

Even so, one of the hallmarks of the service is constant delay. For health service patients, the waiting time for minor surgery can run to months, even to a year or more.

This is where private health insurance goes to work in Britain. A private patient who is ready to pay is assigned to a different waiting list. He gets one of a fixed number of hospital beds set aside for paying patients. Or he may choose to enter a privately owned clinic.

So, company-paid health insurance is now the mark of executive status in Britain. Some 9,000 companies buy these policies to make sure that their hospitalized executives gets immediate admission, private rooms, telephones, and TV sets. About 2-million Britons hold private policies today compared with just 86,000 when the national system was set up in 1948.

The largest health insurance company in Britain is the British United Provident Association, whose 1969 income was some \$36-million, mostly from group coverage. A typical family premium is \$105 a year.

Northern lights. When Sweden set up its national health plan in 1955, it did not encounter the condemnation by doctors that the British and Canadian plans met when they were started. Some 70% of Swedes were already in various voluntary health insurance schemes and, for doctors, the change largely meant switching from one set of forms to another.

But Sweden's plan, too, has run into problems. There are long waiting lists for surgery, long lineups at clinics, complaints of impersonal treatment at big-city hospitals.

At the root of the Swedish troubles is a worldwide problem: the shortage of medical staff. In some Swedish provinces, hospitals have to close in the summer for staff vacations.

Paperwork is the second bane of the Swedish system. But the government may have an answer. Starting July 1, each patient will pay a fee of \$1.50 to \$2 each time he makes a routine visit to a doctor, hospital, or clinic. Few administrative papers will be filled out for such visits, and the saving in red tape should make the whole system less costly.

BUSINESS PONDERES A NATIONAL HEALTH PLAN

Anyone who thinks the soaring cost of medical care hurts only the consumer should think again. Most corporations that sponsor health plans for their employees are finding them an increasing burden. Business has a sizable stake in health insurance, if only because it is a costly fringe benefit that companies pay to millions of workers.

At New York Telephone Co., for example, workers and their families are covered by Blue Cross, Blue Shield, and an insurance plan for major medical expenses. In three years the total bill has leaped from \$12.2-million in 1967 to an estimated \$18.1-million for the benefit year ending this May. Part of the rise comes from increases in the 92,000-man work force, but costs per employee have jumped 27%.

For New York Telephone, the percentage rise has been even steeper. In 1967, the company paid about half the total bill; this year, it will begin shouldering the entire cost of the package. Says Frederic Schawe, general personnel supervisor: "We are very concerned about the inflation in medical costs."

National plan. Thus, New York Telephone has an "open mind" about a national health insurance plan. And this attitude seems to be shared by other companies. Out of 100 businessmen queried by Business Week, however, only a few were ready to go on the line.

"If what I've been reading about health care in this country today is true, then standing up against a national health plan would be like arguing against God and motherhood," says Gordon R. Scott, Fisher Scientific Co.'s vice-president for personnel administration. "My snap opinion is that a national plan would involve constantly escalating costs. But more important, a national plan would take away an item worth up to a cent an hour that you can now stack on the bargaining table."

Says G. I. Rifendifer, personnel director at Duquesne Light Co.: "I'd be against a national health insurance plan. . . . I think the union, too, would resist losing the benefit they've bargained for. If the government took it away, they'd bargain for a replacement."

Opinions. Medicare's inflationary record has made many others cool to the idea of a wider national plan. Says a West Coast personnel director: "Everything I've seen happen with that program leads me to believe that a national plan would be one great disaster."

But not all comments are negative. A personnel chief at a Midwest utility says: "I was very skeptical about Medicare, but now that it's here I see it works, so I hate to be overly skeptical about a national plan. . . . Besides, I'm not happy with our present private health insurance plan—it's going up 7% a year."

Few of those who were ready to talk backed a federal plan. But some did say that the present system of care and insurance needs reform.

"The whole point is to hold down costs," says a Denver personnel man. "If the present plans can't do it, enactment of a national plan is a sure bet."

FOUR ROADS TO NATIONAL HEALTH INSURANCE

These are the plans now being formulated for presentation to Congress.

Reuther plan

Coverage: Almost everything for almost everyone.

Financing: Social Security taxes and general federal revenues.

Cost control: Rates for medical services to be set locally within guidelines set by Health, Education & Welfare Dept. and outside experts.

Quality control: Guidelines from HEW. Financial incentives for team practice, re-

gional coordination of medical facilities, community health centers, continued medical education. Annual reports from boards representing consumers.

Role of insurance companies: Possibly as fiscal intermediaries; possibly no role.

Aetna plan

Coverage: Poor and uninsurable persons covered by insurance company pool for federally-determined benefits. Catastrophic illness coverage for everyone for costs exceeding state-determined amounts. Employer coverage of part-time, temporary, disabled, and laid-off workers encouraged by income tax credits.

Financing: Federal and state funds plus small payments from low-income patients for federally-determined benefits. Federal grants to medical schools for family care specialties and federal loans for community health care centers.

Cost control: Hospital review committees, physician review committees, local agencies would authorize charges for institutions such as nursing homes on basis of past performance.

Quality control: Same groups as above.

Role of insurance companies: Unchanged.

Javits plan

Coverage: Extension of Medicare to all under 65, in effect paying for 80% of average man's medical costs, 100% for those now under Medicaid.

Financing: Social Security taxes and general federal revenues. Federal grants for construction of family-care clinics, expanded outpatient departments and other ambulatory care facilities.

Cost control: Undecided.

Quality control: Undecided.

Role of insurance companies: Unchanged for uncovered 20% of average man's health costs. Fiscal intermediaries in government program.

AMA plan

Coverage: Everyone.

Financing: Income tax credits for purchase of private health insurance, ranging from 100% credit, worth \$400 for family with adjusted gross income of under \$5,000, to 25% credit, worth \$100 to family with \$10,000 or more. Medical care vouchers for purchase of private health insurance for persons now under Medicaid.

Cost control: Unchanged.

Quality control: Unchanged.

Role of insurance companies: Unchanged.

THE LIBRARY OF CONGRESS,

Washington, D.C., March 6, 1970.

To: Honorable Claiborne Pell.

From: Education and Public Welfare Division.

Subject: Financing aspects of various national health insurance proposals.

This is in reply to a request received from Mr. McKenna of your staff asking the Legislative Reference Service for information regarding the financing mechanisms applicable to the various proposals for national health insurance programs and for the other alternative proposals. The proposals we were asked to review in connection with their financing aspects are the following: the proposal of the Committee for National Health Insurance (the "Reuther Plan"), H.R. 15779 introduced by Rep. Martha Griffiths, the Rockefeller-Javits proposal, H.R. 24 introduced by Rep. John Dingell, the American Medical Association proposal for "Medicredit," H.R. 9835 introduced by Rep. Richard Fulton, the AFL-CIO plan, and the proposal discussed by Rep. Durward Hall. In addition we have included information pertaining to the financing arrangements used to underwrite the costs of the British National Health Service. The financing mechanism proposed for each of these plans is discussed below.

Due to the limitations of time set by your

staff, we are presenting here only a brief statement of the methods of financing suggested under the various plans. We hope to be able to expand in depth upon specific considerations arising in regard to these financing mechanisms at some time in the future.

I. The Reuther proposal formulated by the Committee for National Health Insurance (CNHI)

The Committee for National Health Insurance, founded in November 1968 by Mr. Walter Reuther, President of the UAW, and other interested national organizations, has been actively promoting the idea of a national health insurance program to be created as an integral part of the national social insurance system of Social Security (OASDHI).

Tentatively, the plan assumes that $\frac{2}{3}$ of the resources needed to finance the program would be derived from "payroll" taxes contributed by employers, employees, and self-employed persons, with the remaining $\frac{1}{3}$ coming from general Federal tax revenues. State and local governments would not be required to participate in financing the national health insurance program. The financing mechanism suggested by the CNHI is, in its view, "total, adequate, equitable, and assured" and would, therefore, require no deductibles, coinsurance, or other forms of financial participation by insured persons.

Outlined on October 14, 1969, the "Reuther Plan" would continue to permit employers to assume all or part of the employees' portion of contribution for health insurance purposes. Under this program, funds from appropriate government agencies would be allocated for those special population groups (the poor and marginally employed) who are not covered through the employers' employees financing mechanism. Thus, Medicaid or other special programs of medical assistance for the needy would not be necessary, since health services would be available to all Americans. Medicare for the aged would be integrated into the new program.

II. The Griffiths' Bill (H.R. 15779)

On February 9, 1970, Representative Martha W. Griffiths of Michigan introduced into Congress H.R. 15779, designed to provide a program of national health insurance. The benefits that would become available under the proposed bill would be financed through a "Health Services Fund," created on the books of the Treasury Department to receive contributions from employers, employees, and the Federal government.

Under the Griffiths bill, employers would contribute to the national health insurance program an amount equal to 3% of earnings subject to social security taxes. Employees would provide an amount equal to 1% of covered earnings. The Federal Government would match employers' contributions (3%) by allocating funds from general tax revenues. An additional provision of the bill calls for a cost-sharing, or services co-payment, by recipients of medical services. Certain co-payment amounts would be charged to insured individuals utilizing certain health services. Such co-payment, however, could not exceed \$50 per individual, or \$100 per family in any calendar year. State and local governments would be relieved of health service tax burdens. The bill would eliminate Medicare and Medicaid. Money currently supporting these programs would become available for the national health insurance.

III. Rockefeller-Javits proposal

Governor Nelson Rockefeller has again presented to the New York State legislature his proposal for compulsory health insurance to be financed through an employer-employee-government mechanism. Senator Jacob Javits of New York has indicated he will soon present his own proposals for a nation-wide universal health insurance program which observers believe will incorpo-

rate most of the provisions of the Governor's plan.

Under the Rockefeller-Javits proposals, a program of contributory health insurance would be financed through the combined contributions of the employer and employees not to exceed 4% of the employer's annual payroll. Employee contributions are not to exceed 2% of wages or one half the cost of providing coverage, whichever is the lesser amount. The categories of the unemployed, those on public assistance, and those eligible for medical assistance under existing programs such as Medicaid would have their health insurance purchased for them. Rockefeller's plan would involve State financial participation only in connection with the aforementioned categories of people. Senator Javits' proposal calls for premiums for insurance policies for the poor, medically indigent, and certain unemployed to be paid from a "pool" fund made up of Federal and State contributions.

IV. Dingell bill

Representative John D. Dingell of Michigan has offered various legislative proposals calling for the establishment of a universal health insurance program. The most recent "Dingell Bill" (H.R. 24), introduced on January 1, 1969, proposed a contributory pre-paid insurance program using financing mechanisms similar to those used in the social security program. Representative Dingell recommended that a separate "Personal Health Services Account" be created within the Treasury Department to absorb the necessary funds appropriated to carry out the provisions of a health insurance program.

Sums appropriated to the Account would amount to 4% of state wages. Sums derived from all Federal revenues equal to 3% annual wages estimated to be received during any fiscal year would be deposited in this account. The Account would also be supplied with additional sums equal to the estimated cost of furnishing dental care and home nursing services to beneficiaries, in amounts ranging from $\frac{1}{2}$ of 1% to 1% of all wages. (Any further amounts required to carry out the act are also authorized.) An amount equal to 1% of estimated annual wages would be appropriated and used to establish a reserve for emergency purposes, such as special demands arising in epidemics, disasters, etc.

Since the bill purports to be a health measure rather than a tax measure, the exact methods of financing were not specified in Dingell's proposal. However, the bill is drafted in such a way that it seems to indicate the revenues would come, in the main, from payroll taxes.

V. The AMA proposal—"Medicredit"

Speaking before a meeting of the House Committee on Ways and Means, Russell B. Roth, MD, indicated on November 3, 1969, that the American Medical Association would like to see the Federal Government help defray the costs of voluntary private health insurance through a system of graduated income tax credits. The AMA plan would provide for cash incentives in the form of tax credits based on an individual's Federal income tax liability. Eligibility for tax credits would be limited to those persons whose tax liability was under \$1,000. Tax credits would be graduated on a sliding scale in amounts ranging from 10% to 100% of the cost of the annual health insurance policy premium. In such a plan, the lower the tax liability, the higher the tax credit.

Individuals in the lowest income levels with little or no tax liability would receive "medical care vouchers" or certificates enabling them to purchase insurance from qualified groups or plans. Medicaid would, therefore, become unnecessary and would be eliminated under this program. However, since the AMA plan is specifically designed

for individuals under 65 years of age, Medicare would not be replaced and would remain as is.

VI. The Fulton bill

A plan similar to the AMA "Medicredit" was introduced into Congress on April 2, 1969, by Representative Richard H. Fulton of Tennessee. The Fulton bill, H.R. 9835, is identical to a later proposal sponsored before the Senate by Senator Paul J. Fannin (S. 2705) on July 28, 1969. Like the AMA plan, the Fulton bill concerns itself only with the provision of tax credits for the financing of private voluntary health insurance and does not have the intention of changing the actual delivery system of medical care benefits, as do the Reuther and AFL-CIO proposals.

However, the Fulton bill differs from "Medicredit" in the following ways:

(1) a system of graduated tax credits would be based on adjusted gross income rather than on tax liability.

(2) there would be no ceiling on eligibility for tax credits—individuals at all income levels would be allowed a certain tax credit ranging from 100% credit for families whose income was under \$5,000 to a 25% credit for families with an income of \$10,000 or more.

(3) the maximum amount of credit available under this plan is specified as \$400 for families filing joint returns, \$200 for husbands and wives filing separately, and \$150 for single persons without dependents.

(4) there is no age limit on participation in the plan—those 65 and over could use the tax credits to pay for Medicare premiums.

(5) the Fulton plan specified that if an individual accepts a tax credit, no medical deductions on the standard income tax form would be allowed.

The Fulton bill incorporates the AMA proposal providing for the Federal issuance and financing of medical care vouchers for those individuals whose tax return shows no tax liability or whose liability is less than the specified tax credit.

VII. The AFL-CIO plan

The AFL-CIO plan appears to be essentially an expansion and extension of the Medicare program. It would include all persons and would be financed through payroll taxes but with support also from the Federal Government. Tentatively, the employer would pay $\frac{1}{2}$ of the cost, the employee would pay another third, and the balance would be financed by the Federal Government from its general revenues.

VIII. The proposal of Rep. Durward Hall

Another suggestion regarding the implementation of a national health insurance plan has been put forth by Congressman Durward Hall of Missouri. Representative Hall divides his proposal into two parts—the first, to replace Medicaid; the second, to be implemented at a later, unspecified, date. Under the plan, the lower income group, Title 19 Medicaid recipients, would receive voluntary health insurance coverage for approximately 85% of their health care costs. The balance of health care expenses would be picked up by the States. The second part would cover catastrophic illness and would apply when the family's health care costs exceed a certain percentage of the family income. The financing of both programs would be from general revenues. As far as we know, this proposal has not as yet been detailed in full, and is a resume taken from speeches, news releases, etc.

IX. The British National Health Service

Enacted in 1946 as a comprehensive program of health and medical benefits to all Britons, the National Health Service is financed through exchequer funds (general revenues), rates and exchequer grants (including interest accrued under National Insurance Funds), National Health Service contributions from individuals, and set fees charged the recipient of certain medical services and such items as eyeglasses, drugs, etc.

According to the latest information provided by the British Embassy in Washington, D.C., exchequer funds provide 72.5% of the cost of the program in England and Wales with the following categories providing the remainder of the cost:

- (1) Rates and exchequer grants—12.5%.
- (2) NHS contributions—10.75%.
- (3) Charges for services—4%.

The remaining .25% is derived from "other" sources.

The National Health Services contributions from individuals are based on a weekly flat rate, to which additional graduated contributions are made by employed persons working for wages or salaries. The additional amounts paid by this class of employed persons are shared, in part, by employers on the basis of an established schedule calling for the employee to assume the bulk of additional charge. Self-employed and non-employed persons pay only the weekly flat-rate contribution and are not charged the additional graduated amounts.

KAY CAVALIER.

OUR NATIONAL NONSYSTEM OF HEALTH CARE— A NEED FOR A NEW STRATEGY

Mr. PELL. Mr. President, in the coming weeks the Senate will be considering the appropriations for the Federal Government's major health programs. In the course of that debate we will be, once again, facing the perplexing question of the inadequacies of health care in a nation which is capable of placing men on the moon, but which is not yet capable of delivering adequate health services to its citizens.

I do not believe we will be able to find those answers that will assure us that increased health appropriations will resolve our Nation's crisis unless we consider the significance of those appropriations in the perspective of the changes that need to be made in the methods by which health care is provided to the citizens of this country.

To gain this wide perspective, I believe we must use a systems approach in our analysis of the Nation's health problems.

In order to do this I will first describe what I mean by the term "health care system" and how I would use a systems approach as the means of approaching a solution to our impending health crisis.

The systems approach is a dynamic concept used to describe interrelated organizations or machines which operate together for the purpose of accomplishing common goals. The goal of the health care system of the United States is usually understood by most people to be a long life free of disease and incapacitating or debilitating illness.

Systems theory assumes that there are alternative strategies which can be followed to reach the goals established for the system and that the effectiveness of the various strategies or methods can be analyzed by comparing the output of the system under each strategy. I will first describe what I believe the present health care strategy is, and then I will suggest what I believe is a better alternative strategy.

If the strategy implicit in the operation of our present day health care system were analyzed, it would be described as an unconscious hospital-oriented strategy based on the premise that health care is a marketable item, that is, the level of health care an individual may receive in great part depends on the amount of money he can spend. The premise is rooted in a *laissez-faire* concept of medical care which predicated the doctor as an individual economic unit who determines his level of income by the level of demand for his services.

I describe the present strategy as hospital-oriented because the hospital is considered the heart of our health care system. In the mind of the average man, the hospital is the

only place where health care takes place. It is the only place where a doctor can provide health care and it is where private and government insurance plans are most likely to provide the largest reimbursement.

I describe the present strategy as unconscious because it is not the result of any conscious decision by any representative body to provide health care in such a manner. Since our present health care system is rooted in a *laissez-faire* concept of medical care, the collective decision-making necessary for the rational planning of our health care system has not been possible until recent years. Consequently, our present health care strategy is the result of the interrelationships of various ad hoc decisions made by many different groups in the fields of health, insurance, finance, and government. Our present strategy has resulted in a nonsystem of health care.

To implement this unconscious hospital-oriented strategy, the United States now spends more money than any other country in the world for health care, 6.5 percent of the gross national product in 1968. Of the \$53 billion spent in 1968, private sources contributed 63 percent, the Federal Government spent 24 percent and the State and local governments expended 13 percent.

From the Federal level, there are three main fiscal inputs into our national health care system which are funneled through 23 separate Federal agencies. First, there is the development of health resources for which the Federal Government spent \$2.8 billion in 1968, second, there is the provision of hospital and medical services for which the Federal Government spent \$10.8 billion in 1968, and third, there is the prevention and control of health problems for which the Federal Government spent \$565 million in 1968.

Having described the present health care strategy and the costs of implementing that strategy, I would now like to outline the results of that strategy and those expenditures, what is known in system terms as the outputs of our health care system.

There is no doubt that the level of health care in the United States, for those of us who can afford it, is the highest and best in the world. Our doctors are highly trained and are among the world's best.

Yet, our Nation, also the first in expenditures for health, ranks 14th among nations in terms of infant mortality and 16th among countries in terms of life expectancy. Between 1958 and 1966, the expectation of a healthy life at age 65 increased only by a scant 4 of a year to 13.5 years after the age of 65 in the United States.

In 1963, the last year for those figures, an estimated 6.2 million man-years were lost from the U.S. economy through illness. In 1968, in the health care system there was a shortage of 145,000 nurses, 52,000 physicians and 9,000 dentists in the United States.

Between 1958 and 1966 physicians' fees have risen 38 percent and hospital daily service charges have risen 100 percent. According to the Department of Health, Education, and Welfare, medical costs are now rising at more than double the increase in the cost of living. Physicians' fees are now increasing at 6 percent a year. Daily hospital costs which average \$70 today are expected to be \$100 a day within 3 years.

Besides the low ranking the United States receives according to international health indicators, the impact the present hospital-oriented and market determinative health care system of the United States is even more shocking when nonquantitative reports such as the Kerner Commission report are examined and the relationship of our health crisis to the problems of the cities, of race, and inflation become more evident.

In its analysis of the root causes of civil disturbances, the Kerner Commission said:

"The residents of the racial ghetto are significantly less healthy than most other Americans. They suffer from higher mortality rates, higher incidences of major diseases and lower availability and utilization of medical services."

In its study of the relationship of hunger and income, the Senate Select Committee on Nutrition and Human Needs, of which I am a member, said in its interim report that "clinical validated malnutrition exists in serious proportions in the United States and is a particularly acute problem among infants and pre-school and school children from low-income families. Malnutrition is both a major cause and a common result of ill health." Witnesses before the committee also suggested that there is a correlation between slow learners in school and the incidence of ill health in schoolchildren.

The effect of the present high cost hospital care and income focused strategy of the health care system on its accessibility to the lower middle class and the poor has been strikingly outlined by statistics developed by the Government.

For example, during 1963 and 1964, while 54 percent of children under 17 years of age in families whose income was in excess of \$10,000 had at least one general physical examination, only 16 percent of those children under 17 years of age with family incomes of less than \$2,000, had such a routine checkup. More than 20 percent of the people in families with incomes under \$3,000 have never visited a dentist as compared to 7.2 percent of those in families with incomes of \$10,000 who have never visited a dentist.

While to this point I have painted a somewhat depressing picture of the health care system in the United States, this does not mean that I do not believe that improvements cannot be made. I believe progress can be made if the Congress is willing to replace our present nonsystem of health care with a national system of health care based on a new strategy.

I believe we must develop a new strategy of health care capable of providing a floor of basic health care for all our people regardless of income.

Each citizen of this bountiful country should have a right to a minimum standard of health care. Reasonable health care should not be a function of the vicissitudes of the marketplace. It should not be dependent on the socio-economic conditions of the consumer. We must work to abolish the great disparities in the standards of health care that are now evident in the United States.

I believe a new strategy should be considered which emphasizes the preventive aspects of health care rather than the curative aspects of health care. Our present health system provides excellent care for the patient only after he has reached the hospital bed. A hundred dollars a day in a hospital is too expensive a way of providing health care. A strategy should be developed based on diagnostic and neighborhood health centers which allow for the preventive treatment of illness before hospitalization is required. People should be encouraged to have periodic checkups and the medical profession should attempt to find the time needed to provide those checkups.

Unfortunately, the majority of existing private and public health insurance plans do not create an incentive in their plans for preventive care, nor is there adequate medical personnel available to give the level of preventive care needed today. Both Government and private health insurance plans usually pay the largest amount of reimbursement for hospital care rather than ambulatory care.

The experience of the Kaiser plan in California, which provides coverage for adequate

preventive care is further evidence of the necessity of following a strategy based on ambulatory care rather than hospital care. The age adjusted utilization rates for Kaiser hospitals have been more than 30 percent below the average for California hospitals and the rise in expenditures for Kaiser hospitals has been considerably below the national average.

The experience of health care plans in two foreign countries also suggest changes which might be considered in our present health strategy. Under the old Chinese system of care, the doctor was not paid for his services unless the patient recovered. While I would not favor implementing such a drastic system, I think a new health care strategy should include some consideration for the development of incentives for doctors to provide quicker, more effective, and less costly health services.

Perhaps the health insurance companies could give doctors a bonus payment for patients who spend less bedridden time than is normal for their particular illness or perhaps the Government could pay doctors to take midcareer courses designed to update them with new discoveries and more effective ways of delivery health care.

The experience of the Australian plan suggests another consideration. In Australia, the costs of catastrophic illnesses are covered by a national plan. In the development of a new health strategy, I would suggest that consideration should be given, not only to the provisions of preventive care, but also to the coverage of the astronomical costs that are incurred as the result of a catastrophic illness or accident.

The final characteristic of the new strategy I suggest would be strong adherence to comprehensive health planning for localities, regions and the Nation. The health care system can no longer be managed as a cottage industry. Allocation of our limited health resources must be made in a rational manner according to where the need exists not where the dollar has the greatest pull. We must have a conscious and a coordinated health care strategy.

The implementation of the national health system's strategy, which I propose will place a heavy burden on the Congress for new legislation. It will require legislation for the following purposes:

First, to provide a health care floor for all Americans. I see no other alternative for the future than a universal health insurance plan for the United States. Such a universal health plan would provide financial coverage for a minimum floor of preventive care such as multiphasic screening. At a maximum it might also provide some form of protection against the high costs of catastrophic illnesses. While there are a number of financing arrangements that could be considered, I would hope that the national insurance plan finally proposed would be paid for by some sort of taxing structure with the Federal Government picking up the health insurance premiums for the very poor. I am not sure whether such a plan would be best administered by the Government like the medicare and medicaid programs or by non-profit bodies such as Blue Cross, but I believe the Congress should begin in 1970 an investigation into possible alternative national health insurance measures.

For, I do know that, if expensive operations such as organ transplants are to become more widely available, if high-cost medical technology like kidney dialysis machines are going to become available to the people who need them, if a basic level of health care is to become part of the normal expectation of all our citizens—as is the expectation of a basic level of education, and police and fire protection, some form of a national health care system such as I suggest must be developed.

Second, I think greater authority should be given to State, regional, and national planning mechanisms, such as those that were established in Rhode Island and other States under the partnership for health legislation. Where comprehensive health plans have been developed, I believe Federal health funds should be spent only in conformance with those plans. I look to changes in the Federal health facilities construction programs which would not allow Federal expenditures to be made in violation of State comprehensive health plans. I look to changes in the hospital and long-term care facilities reimbursement formulas under the medicare and the medicaid programs which would prevent reimbursements to health facilities not in conformance with State plans. I hope that these are changes that both the Finance Committee and the Labor and Public Welfare Committee will consider.

Third, I believe a greater effort must be made to increase the supply of health manpower. This requires us to fully fund the health manpower programs.

Money to increase our country's supply of health manpower is in no way an inflationary pressure. As a matter of fact, by reducing the gap between the supply and demand for health manpower, expenditures for health manpower programs provide a deflationary pressure in the long run.

The development of health manpower requires many years of education. Our failure to act this year to reduce the health manpower shortage will make it even more difficult to fill that gap in future years. There are few other investments for which the Federal dollar can receive a greater return than health manpower programs. If we are to have a universal health coverage in the future, we must make the investments today to provide the manpower needed to operate such a system.

Fourth, a national health system means that steps will have to be taken to coordinate the Federal Government's 23 health programs under one Federal official and establish a Council of Health Advisers, similar to the Council of Economic Advisers, as Senator Ribicoff has ably suggested.

I am hopeful that the actions we take on the health appropriations bill and on the many extensions of health authorizations which will be required in the coming year will represent the initial consideration of the new health strategy I propose.

While I realize that the changes I suggest will demand many hours of work by the Congress, I believe that the seriousness of our national health crisis justifies such actions.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Bartlett, one of its reading clerks, announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 15628. An act to amend the Foreign Military Sales Act;

H.R. 15998. An act to authorize the disposal of Surinam-type metallurgical grade bauxite from the national stockpile and the supplemental stockpile;

H.R. 16289. An act to authorize the disposal of natural Ceylon amorphous lump graphite from the national stockpile and the supplemental stockpile;

H.R. 16290. An act to authorize the disposal of refractory grade chromite from the national stockpile and the supplemental stockpile;

H.R. 16291. An act to authorize the disposal of chrysotile asbestos from the national stockpile and the supplemental stockpile;

H.R. 16292. An act to authorize the disposal of corundum from the national stockpile;

H.R. 16295. An act to authorize the disposal of natural grade manganese ore from the national stockpile and the supplemental stockpile; and

H.R. 16297. An act to authorize the disposal of molybdenum from the national stockpile.

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (S. 2593) to amend the Immigration and Nationality Act to facilitate the entry of certain nonimmigrants into the United States, and for other purposes.

HOUSE BILLS REFERRED OR PLACED ON THE CALENDAR

The following bills were severally read twice by their titles and referred or placed on the calendar, as indicated:

H.R. 15628. An act to amend the Foreign Military Sales Act; to the committee on Foreign Relations.

H.R. 15998. An act to authorize the disposal of Surinam-type metallurgical grade bauxite from the national stockpile and the supplemental stockpile;

H.R. 16289. An act to authorize the disposal of natural Ceylon amorphous lump graphite from the national stockpile and the supplemental stockpile;

H.R. 16290. An act to authorize the disposal of refractory grade chromite from the national stockpile and the supplemental stockpile;

H.R. 16291. An act to authorize the disposal of chrysotile asbestos from the national stockpile and the supplemental stockpile;

H.R. 16292. An act to authorize the disposal of corundum from the national stockpile;

H.R. 16295. An act to authorize the disposal of natural grade manganese ore from the national stockpile and the supplemental stockpile; and

H.R. 16297. An act to authorize the disposal of molybdenum from the national stockpile, placed on the calendar.

THE NEED FOR AN INFORMATIONAL BANK, USING THE SYSTEMS APPROACH

Mr. PELL. Mr. President, the previous remarks bring to mind the difficulty we in Congress have in securing specific information and facts when we are considering proposed legislation.

We in the Subcommittee on Education have been caught short several times by not having available, the tables needed, the specific application of a bill as it affects different States, and the general material necessary for the orderly process of legislation.

I have seen this in connection with the conference report we are working on today. For several days, the senior Senator from New York has made the suggestion that we ought to have a State-by-State breakdown, yet the shortage of staff on the Hill, and the unwillingness, or the lack of cooperation from the executive branch, makes it very hard to get the figures.

I would hope that serious consideration would be given by the Committee on Rules and Administration, by Congress, and by the Senate, to the establishment of an information bank of our own, through the use of computers, utilizes to the full

the systems approach. If this is done we will no longer be dependent, as we are now, upon the executive branch for information. Information which is usually furnished to us swiftly when it is in support of their objective, but not so quickly or with as much alacrity when it is not in support of their objective.

(At this point Mr. BYRD of Virginia took the chair as Presiding Officer.)

TEXTILE AGREEMENT WITH JAPAN

Mr. JAVITS. Mr. President, on February 10, I reported to the Senate on my recent trip to Japan. My purpose was to put before the Senate my conclusions, after talking to Japanese Government and business leaders, with regard to two areas of greatest importance to both countries: Asian security problems and trade relations. I also made suggestions looking toward a fair and practical solution to a problem which threatens seriously to affect not only our relations with Japan, but also our entire trade and economic posture in the world: The problem of textile imports.

Others have also made highly constructive proposals and in this regard for example, I do not believe that the remarks of the Honorable WILBUR MILLS on January 27, 1969, have been taken nearly seriously enough.

In the month that has now passed, it is clear that negotiations remain at an impasse and that the climate for them has worsened. The American Textile Manufacturers Institute has passed a resolution calling for the breaking off of negotiations and for quotas to be fixed by law. Senator THURMOND has introduced a bill to this effect, appealing for bipartisan support. Trade unions affected by imports have called a 1-day strike. Members of the House of Representatives have notified their Japanese counterparts that they intend to seek a legislative remedy. And, angry words have been exchanged between U.S. officials and officials of the Common Market over this issue.

The public statements of Japanese textile company officials on the other hand, indicate a serious misreading of the U.S. congressional mood.

It is clear that this issue is not only affecting our political and economic relationships with Japan, but also with the European Common Market. This issue will also affect the fate in the Congress of the President's trade bill which will have a profound effect upon our trade relations for years to come; and it will affect, too, the administration's proposal for a generalized preferences scheme with the less-developed countries that has not, as of yet, been sent to the Congress. A solution to the textile problem could contribute immeasurably to more harmonious relations internationally and to the prospects of successful passage of this important legislation at home.

Japanese textile interests should be under no illusion that the U.S. Congress if it becomes convinced of Japanese immovability on this matter, can and probably will pass quota legislation on tex-

tiles—whether or not desirable. The American textile industry and the labor unions involved in the manufacture of textile products and apparel, on the other hand, used to be fully cognizant of the difficulty of passing legislation that would offer to the textile industry, alone. We have been warned of a "Christmas tree" of protectionist amendments to the trade bill, and there is certainly evidence of pressure for special protection from other industries which are alleged to be suffering from a similar sudden impact of competition from imports. Such a movement could bring on a trade war and set back the world's economy by decades.

I think my credentials in this entitle me to speak, as I have been on the side of liberal trade for over 20 years, all the time that I have been in public life.

I remain convinced that a mutually satisfactory compromise remains practicable—particularly if the counsel of the "wise men" in the United States and Japan prevails on this issue. And let us not overlook the fact that there are many groups on both sides of the Pacific who today are working for just such a compromise. But I am concerned that their wisdom and counsel may not prevail as hardening of positions continue to be buttressed by the continuing deadlock. Time, in this instance, is not on the side of reason—and a reasonable settlement.

When I reviewed the situation last February 10, I concluded that "as the Japanese have been delinquent in recognizing that trade must be a two-way street where one side should not enjoy a \$1 billion-plus surplus, perhaps U.S. negotiators have not sufficiently realized that negotiations to be fruitful must also encompass give and take." More than a month has passed and what has happened since is not encouraging.

I find the Japanese aide memoire of March 9, 1970, unfortunate—the text of the aide memoire is said to have appeared in the Japanese press, and earlier this week parts of it were quoted in a Senate speech. United States and Japan almost as soon as it was delivered. This diplomatic note has caused much disappointment and yes, even chagrin, in the United States. It reportedly is said to contain formidable language declaring that the Government of Japan can implement export restraints solely on a selective basis, for those items which are subject to serious or threat of serious injury caused by increased imports, and upon obtaining the consent of the domestic industries concerned in Japan and also of other major exporting countries. The tone of the reported note leads me to the conclusion that the next move on this complicated chess board now rests with Japan.

I have previously stated that I hold no brief for Japan's rigidity in the fields of nontariff barriers to trade and liberalization of capital investment there. This same rigidity should not carry the day on the textile question. During my visit to Tokyo, I stated clearly that by maintaining such restrictive policies in the nontariff barrier and investment area, Japan was jeopardizing the whole world

trading pattern. Today, the stakes in the textile issue are even greater since they involve United States-Japanese political relations as well. If Japan does not move now and make a serious counteroffer, I am concerned that with the passage of time, the chances of a compromise solution will be gravely diminished.

And for those in the United States who are playing the game of all or nothing, it seems clear that Japan will not liberalize if the effort is made to demand only a rigid comprehensive quota system. It also seems clear that the world would read and regard such a step as a shift toward protectionism on the part of the United States. This would strengthen the challenge of protectionism throughout the world—the same challenge shown by those attempting to maintain the common agricultural policy of the European Common Market on its present disruptive course.

The time is now ripe for the responsible political leaders in the United States and Japan who must make the overall determination as to the national interest of their countries, as distinct from regional or special interests, actively to involve themselves in this issue and to make a textile agreement. I call on both governments to avoid perpetuating a meaningless semantic impasse and move to the practical and pragmatic task of hammering out an agreement before our time runs out. The hot line between Japan and Washington should be activated, and it is up to Japan's leadership to make or authorize the next call.

S. 3636—INTRODUCTION OF THE HIGHER EDUCATION OPPORTUNITY ACT OF 1970

Mr. JAVITS. Mr. President, I introduce on behalf of the administration, for myself and the Senator from Colorado (Mr. DOMINICK), the Higher Education Opportunity Act of 1970. This measure is the implementation of the President's message on higher education of March 19, which I had the honor of introducing as the ranking member of the Committee on Labor and Public Welfare.

This measure, with authorizations for 5 years, has as a principal objective the reform of the present system of federally financed student aid. As the President indicated in his message:

No qualified student who wants to go to college should be barred by lack of money.

The bill creates a National Student Loan Association to provide a secondary market for student loan paper from banks and institutions of higher education, thus increasing the accessibility of loans for students.

It recognizes the increased costs of a college education—tuition fees up 16 percent in the past year—by raising the amount of money a student can borrow with a Federal guarantee from \$1,500 to \$2,500.

It also extends the payback period from 10 to 20 years, without any repayment period.

Under this new student aid program, Federal funds will be concentrated on students from families under \$10,000 an-

nual income. A student will now be able to assemble a package of grants and subsidized loans sufficient to give him the educational buying power of a student from a family earning \$10,000, thus focusing the available resources of the Federal Government on the students most in need.

Another principal provision of the bill is the establishment of a National Foundation for Higher Education to foster excellence, innovation, and reform. Modeled along the lines of the National Science Foundation and with an authorization of \$200 million for its first year, the new Foundation would provide project grants to postsecondary institutions for new quality programs and ideas as well as funding projects in public service education, community service, law school clinical experience, international education, language development and networks for knowledge, all programs presently authorized—but insufficiently funded in the past—without the limitations imposed by narrow categories.

With college costs and enrollments mounting each year and existing resources bending under the strain, it becomes increasingly necessary to utilize new means for educating a greater number of students at reasonable cost while at the same time strengthening the quality of education. This proposal should be explored in this light.

The new foundation could also be helpful in sustaining the Nation's private colleges which are being increasingly pressed by higher costs. As the minority members of the Senate Committee on Labor and Public Welfare noted in their report on the Higher Education Act of 1968:

We are particularly concerned also with the future of our Nation's private colleges, now comprising 30% of all enrollment, whose growth is not keeping pace with that of higher education.

The provisions in the tax reform bill recently enacted by the Congress to encourage private donations to colleges and universities shows the congressional recognition of the need for sustaining such institutions which include among them the most illustrious in the Nation and among the most illustrious in the world.

In another principal title of the bill, the proposed career education program, funded at \$100 million for its first year, recognizes the importance of community and junior colleges offering less than a 4-year course of study. It also recognizes the need to prepare more young people for meaningful careers in positions requiring postsecondary training but less than 4 years of college. This could be particularly helpful in fields with critical manpower shortages, such as engineering technicians, draftsmen, dental hygienists, occupational therapy assistants, psychiatric aides, practical nurses and medical therapists.

Other titles of the bill deal with developing institutions, college library assistance, interest subsidies for construction of higher education facilities and extension of the Education Professions Development Act, with technical amendments.

I ask unanimous consent that a sum-

mary of the major provisions of the bill be printed in the RECORD, and I send the bill to the desk for appropriate reference.

The PRESIDING OFFICER (Mr. BYRD of Virginia). The bill will be received and appropriately referred, and, without objection, the summary will be printed in the RECORD as requested.

The bill (S. 3636) to extend and amend the Higher Education Act of 1965, and for other purposes, introduced by Mr. JAVITS (for himself and Mr. DOMINICK), was received, read twice by its title, and referred to the Committee on Labor and Public Welfare.

The summary, presented by Mr. JAVITS, is as follows:

SUMMARY OF MAJOR PROVISIONS OF HIGHER EDUCATION OPPORTUNITY ACT OF 1970

TITLE I. NATIONAL FOUNDATION FOR HIGHER EDUCATION

Establishes National Foundation with board and director, appointed by the President.

Authorizes the Foundation to make grants to institutions for innovation, reform, and the encouragement of educational quality.

Authorizes funding of projects in public service education, community service, law school clinical experience, international education, language development, and networks for knowledge, repealing existing authorities for those programs.

Transfers the administration of NDEA Title IV graduate fellowships to the Foundation.

TITLE II. COLLEGE LIBRARY ASSISTANCE

Focuses library assistance on institutions with exceptional need and repeals existing basic grant authority.

TITLE III. DEVELOPING INSTITUTIONS

Extends existing program, with technical amendments.

TITLE IV. STUDENT FINANCIAL ASSISTANCE

Establishes the National Student Loan Association to provide a secondary market for student loan paper from banks and institutions of higher education.

Removes interest ceiling on subsidized student loans, raises annual maximum loan from \$1500 to \$2500, and extends maximum repayment period from 10 to 20 years.

Targets Federal grants and subsidized loans on students from families of less than \$10,000, providing these students with at least the same ability to pay as a student from a family earning \$10,000 a year.

TITLE V. EDUCATION PROFESSIONS DEVELOPMENT

Extends existing program, with technical amendments.

TITLE VI. INTEREST SUBSIDY FOR CONSTRUCTION OF HIGHER EDUCATION FACILITIES

Limits Federal construction support to interest subsidies, repealing existing grant and direct loan authority.

TITLE VII. CAREER EDUCATION

Establishes a program of formula grants to States for additional costs incident to the development of post-secondary programs which provide career training for critically-needed skills.

Mr. PELL. Mr. President, I am delighted to have the bill introduced, and I am so glad that the senior Senator from New York, who takes such a leading role in the whole field of education, is doing so.

I would hope we could have hearings before long on this subject. As the Senator knows, we have already had 1 day of hearings. I am delighted that the administration has firmed up its thoughts.

I would hope that in any hearings we would particularly focus on the problem posed by the fact that the lowest quarter of the population, economically speaking, furnishes one-seventh of the students, as distinguished from the top quarter.

I am sure these figures do not reflect the borrowing power available and not being utilized in this country.

I am glad to see the administration proposal. I would hope that we could give some serious thought to my idea of working out some means of granting those students aid that they would receive as a matter of right without relationship to any other factor, if they are in good standing in college or wish to be in one, that would be the difference between the income tax the students pay, or their parents pay if they are carried as dependents, based upon \$1,200 a year.

By doing that, it would mean that those students who come from poor families and do not have to pay any income taxes at all would receive the full benefit. If they come from that portion of America called middle America, with incomes of perhaps \$8,000 or \$10,000 a year, and paying taxes of perhaps \$5,000 a year, they would receive a grant of \$600 or \$700.

This could mean the difference between youngsters going to college and not going to college.

I hope that this bill will be given serious consideration as soon as we catch our breath and get through with the primary and secondary education bills.

Mr. JAVITS. Mr. President, I am very grateful for the statement of the distinguished Senator from Rhode Island. I assure him that his views will not be overlooked. I know the President will be grateful to the Senator for the fine spirit of cooperation he has shown in this and any other matter related to education.

The Senator from Rhode Island has given support which is not only bipartisan, but also unpartisan, in its approach to the whole problem of education.

Mr. PELL. Mr. President, I thank my friend, the Senator from New York, for his comments. I will continue to try to cooperate in this regard.

We have a great need in the Senate for statistical information. I would hope that the executive branch of the Government would be as responsive as possible to giving us the statistical information we need.

It takes too long to get the information at present.

Mr. JAVITS. Mr. President, I will do my utmost in that regard. I am very cognizant of the requirements, and I shall join in requesting the information.

I believe the fine attitude the Senator shows generally will help in that regard and will make people work harder than they have to get the information.

Mr. PELL. I understand the statistical section of HEW might be small. It might have to be enlarged, but that is up to the executive branch.

Mr. JAVITS. Mr. President, if they have to be beefed up, I will do my utmost to see that that is done.

MINORITY GROUP EMPLOYEES IN STATE EMPLOYMENT SECURITY AGENCIES

Mr. JAVITS. Mr. President, I am pleased to report that the Secretary of Labor has today issued a policy statement which encourages State employment security agencies to hire more minority group employees for their staffs.

General Administration letter No. 1367 establishes this policy to insure that all employment security offices can effectively provide comprehensive manpower services. If the employment security agencies are to successfully fulfill this role in the communities served and with private employers, the agencies must themselves be models of equal employment opportunity.

With the emergence of employability development as a major component of manpower services, it is of primary importance that employment security staff members have an intimate knowledge of the local community and disadvantaged clients whom they serve. The ability to understand clients served is a fundamental qualification for persons employed in these public contact positions.

The Secretary of Labor has stated:

It is the policy of the Manpower Administration that the Employment Security agencies should employ such numbers of workers from minority groups as will assure that all agencies and offices can operate effectively in responding to the manpower and employment needs of the community being served.

I understand from the Department that Federal standards will be published in the near future and all State employment security agencies will be asked to submit detailed plans for:

First, making any necessary changes in agency personnel policies and practices, including job restructuring;

Second, working in cooperation with the merit system agency to assure that their policies and practices insure full equality of opportunity; and

Third, dealing with anticipated problems.

The upgrading of current minority staff is an important element of the total effort. In almost all State agencies, minorities are underrepresented in the higher level jobs.

This policy is in accord with legislation which I introduced earlier, the Manpower Training Act. The Manpower Training Act is designed to decentralize and simplify the delivery of manpower training services to the people who most need them. Since strong reliance would be placed upon the State employment security agencies under the Manpower Training Act, the new policy statement will increase the effectiveness of the Nation's manpower training programs.

As one who has fought hard and long for minority opportunities through the establishment of the Equal Employment Opportunities Commission and other Federal initiatives, and most recently for opportunities for minorities in the construction trades, I am particularly pleased that the concept of full opportunities for minorities will be implemented in this crucial area, where minority involvement will have a "multi-

plier" effect, since minorities can best bridge the gap between the "system" and those that have been excluded from it.

I, therefore, congratulate the Secretary of Labor for his enunciation of a policy which must be adopted by the States without reservation if the employment security system is to grow and increase its services to the disadvantaged. Effective response to the manpower and employment needs of the community it serves must be the hallmark of the State Employment Security System.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Chair recognizes the Senator from Alabama.

EXTENSION OF PROGRAMS OF ASSISTANCE FOR ELEMENTARY AND SECONDARY EDUCATION—CONFERENCE REPORT

The Senate resumed the consideration of the report of the committee of conference on disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 514) to extend programs of assistance for elementary and secondary education, and for other purposes.

Mr. ALLEN. Mr. President, at this time we are considering the conference report of the managers from the two Houses with respect to differences between the two Houses on the matter of the Elementary-Secondary School Amendments Act.

Some 2 or 3 weeks ago we were discussing the Voting Rights Act, and amendments to it, and the junior Senator from Alabama participated to some degree in that discussion. It was pointed out to him, however, that if the debate on the Voting Rights Act was concluded, we would get to the matter of confirming the nomination to the U.S. Supreme Court of Judge G. Harrold Carswell. With that thought in mind, the debate was allowed to be concluded.

We went into executive session and discussed for some days the matter of the confirmation of Judge Carswell.

The junior Senator from Alabama certainly recognizes the eminent fairness and wisdom of the majority leader, and his right to control the flow of legislation in this Chamber, but the Senate was in executive session, and a conference report is a legislative matter. The conference was not a privileged matter, as it would have been, had we been in legislative session. The matter was called up, and has now become the pending business before the Senate.

An effort was made earlier today to obtain the setting of a definite date for voting on the present pending business, the conference report having to do with the Stennis amendment. The junior Senator from Alabama objected to the setting of a time for a vote on the con-

ference report unless it was tied in with an agreement for setting a time for voting on the Carswell nomination. So the junior Senator from Alabama stands ready and willing at any time, including today, to vote on both of these issues, the matter of the conference report on the Stennis amendment—and I think that is probably the best way to identify it—and the matter in executive session of the confirmation of the nomination of Judge Carswell to be an Associate Justice of the U.S. Supreme Court.

The Carswell nomination was under discussion in the Senate when the matter was withdrawn from the Senate and the conference report on the Stennis amendment substituted in lieu thereof. So the junior Senator from Alabama would suggest that it is the opposition to the Carswell nomination that is responsible for the extended discussion that is being carried on at this time.

The junior Senator from Alabama would be happy to agree to, and would be hopeful that, later on in the afternoon, an agreement will be reached, setting a definite date for voting on both of these issues.

I think it might be observed by just a casual glance that the opposition to the Carswell nomination, by and large, with some notable exceptions, are the opponents of the Stennis amendment and as such, of course, are the proponents of the adoption of the conference report.

I believe that later on, before the matter of agreeing to the conference report is voted upon, a motion will be made to send the report back to the conference committee, either with definite instructions or with general instructions, seeking to do a better job, a more effective job, of carrying into effect the expressed wishes of the United States Senate with regard to the Stennis amendment.

The Stennis amendment was adopted by the Senate in a great and all too rare exhibition of statesmanship, when it expressed as being the policy of the United States, in establishing guidelines and criteria for dealing with segregation in the public schools of the United States, that a uniform policy throughout the country would be adopted.

Mr. President, I am unwilling to accept as final a Federal policy, with respect to the public school system of this Nation, that allows or permits or encourages or fosters the existence of segregation in northern public schools and at the same time demands a crash program of desegregation in the public schools of the South.

Mr. President, the Stennis amendment was a short amendment, but it expressed what the Senate felt should be the public policy of this country with respect to the public schools of our Nation. It said that in dealing with the condition of segregation by race, whether de jure or de facto in the schools of the local educational agencies of any State, the guidelines and criteria shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation.

Why is it necessary for the Congress to declare this policy? For the very simple reason that the Department of Health,

Education, and Welfare recognizes two types or styles or conditions of segregation—de jure segregation which they say is segregation that resulted from operation of law or official government action or policy which has been held to be unconstitutional, and de facto segregation, which in many instances is much greater and exists to much greater extent in the big cities of the North than it does in the South. HEW takes the position that the latter is not unconstitutional, and that they are going to have two different policies, one with respect to de jure segregation and another with respect to de facto segregation.

The Stennis amendment merely states, in effect that there will be one uniform policy dealing with segregation—that we are one Nation under God, indivisible, with liberty and justice for all, that all peoples in this country are entitled to have the same rule applied with respect to them, and that we are not going to have one rule for the North and another rule for the South.

The distinguished Senator from Mississippi (Mr. STENNIS) stated on the floor of the Senate that he would be willing to abide by any uniform policy that the people of the North would be willing to abide by with respect to segregation and desegregation. Name the policy. Set the policy. Set a policy that sections outside of the South are willing to abide by, and the citizens of the South will accept that policy and observe it.

I was very much interested in some of the debate that took place in connection with the Stennis amendment. There was one distinguished Senator, who is not in the Chamber at the moment, who said, "We could not stand to have a uniform rule. We could not stand to have, in our area, the same policy applied to our schools as is applied to the southern schools." He said, "It would take the whole Army to enforce any such uniform policy in areas outside the South."

So that is the attitude that some adopt, that they could not live under the uniform policy if the policy with respect to de jure segregation were applied in the North with respect to de facto segregation.

Mr. President, another reason that I feel that the matter should go back to conference is to give our managers on the part of the Senate an opportunity to negotiate further with the managers on the part of the House, and see if they cannot come back with a proviso and plan that is more in conformity with the express wishes of the Senate.

Mr. President, the amendment which the conferees tacked on to the Stennis amendment is found in section 2(b) of the report. After defining the policy that shall be uniform throughout the country, the conference report has this amazing proviso:

Such uniformity refers to one policy applied uniformly to de jure segregation wherever found, and such other policy—

An entirely different policy—
as may be provided pursuant to law applied uniformly to de facto segregation wherever found.

So, instead of having one uniform policy throughout the country, the confer-

ence report provides for two policies, both of which the conferees say are uniform—one uniform with respect to de jure segregation and the other uniform with respect to de facto segregation.

Mr. President, this provision, section 2(b) in the conference report. What the conferees apparently did was to substitute their language for the language in the bill as it passed the Senate, and the Senate amendment comes out as section 2(a). The language is exactly the Stennis amendment down to that point. But then they added the section 2(b), which changes it 180 degrees, so that instead of having one policy with respect to de jure segregation and the same policy with respect to de facto segregation, they say, "No, we are going to have two uniform policies."

Mr. President, that just belies the very definition of "uniform." The word "uniform" is based on the Latin word for "one." So it implies one policy, a uniform policy. The word "uniform" cannot apply to a splinter policy, one part going all the way North and the other, headed 180 degrees in the opposite direction, for the South.

In other words, the so-called uniform de jure segregation policy would be the policy that is headed toward the South; the so-called uniform de facto segregation policy would be the policy headed toward the North.

That does just exactly the opposite from what the Senate voted that it wanted to do. It wanted a uniform plan for the entire country, a plan that would give equal protection of the law to every citizen, North and South, whatever that policy is. We said, "Figure out whatever policy you want that is in accordance with the Supreme Court decision, but make the policy uniform, apply it North and apply it South." That is all the Stennis amendment seeks to do.

But the conferees, for all their will-
ingness—and I am sure they tried hard, because each and every one of them is an honorable man. Every one of the conferees worked hard, to get the Senate version agreed upon by the House of Representatives. I feel confident that they did. The distinguished Senator from Rhode Island (Mr. PELL), I am sure, worked tirelessly in favor of getting the Senate position adopted. I admire and respect him and have the highest confidence in him. The distinguished Senator from New Jersey (Mr. WILLIAMS), I am sure, also worked hard to get the Stennis amendment agreed to, just as the Senate passed it. The Senator from Massachusetts (Mr. KENNEDY), I am sure, put forth his best efforts to get the Senate version providing for uniformity of application of whatever policy the Federal Government decides upon. I am sure he worked hard on that. I am sorry the distinguished Senator from Minnesota (Mr. MONDALE) is not here, because I wanted to pay particular tribute to his fairness and the objective manner I am sure he used in going into this problem and working with the conferees, and pointing out to them that it would not be proper for the conferees to turn their backs completely on the Senate enactment, and it would not be proper to change,

by 180 degrees, the course that the Senate had set. I am sure that they worked hard for the Senate version.

I am sure that the distinguished Senator from Missouri (Mr. EAGLETON) worked hard. I noted on yesterday that the Senator from Missouri engaged in what the distinguished Senator from Rhode Island referred to as a scenario with him for building up the record on this matter. I am sure that the Senator from Missouri also tried to carry out the will of the Senate in this regard.

I do not see the distinguished Senator from Indiana on this list of conferees. I am wondering how he kept off this list of conferees. He does not seem to be here.

But the distinguished Senator from New York (Mr. JAVITS) was one of the conferees, and in all sincerity I do say that I am advised that he did make an impassioned plea for the adoption of the Senate version of the amendment.

Also, I am sure that the distinguished Senator from Pennsylvania (Mr. SCHWEIKER) worked hard for the Senate version.

But I believe that our distinguished conferees should be asked to go back and seek an additional audience with the House managers.

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

Mr. ALLEN. I am delighted to yield.

Mr. PELL. I really did not catch the full tenor, as I should have, of the Senator's words; but, as the chairman of the Senate conferees, I must take exception to any thought that the Senate conferees did not fight vigorously for the Stennis amendment.

Also, I would remind the Senator that there is more in the bill than this one amendment. As chairman of the Subcommittee on Education, I am proud of this bill as one of the best that I think has come out in a long time.

Speaking with regard to the entire bill and specifically with regard to the Stennis amendment, I think we came back with more bacon than many other conferences.

I recall, incidentally, that the Senator from Mississippi did a great job as chairman of the Senate delegation in the conference with the House on the defense appropriations, when the liberals had various amendments adopted on the Senate side. Senator STENNIS fought hard for those. He brought back about half—a little less, a little more. There never was any question of impugning the vigor with which Senator STENNIS fought.

I am very struck by the fact that those who are basically traditionalists and believe in the system of conferees doing their best for the Senate now question whether these conferees in fact carried out the will of the Senate.

I recall that the one Member of the House conferees, who was most for the Stennis amendment, was particularly struck, and said so in the conference a couple of times, that we in the Senate were fighting for that amendment.

Questioning the vigor with which the Senate conferees pressed is simply not correct. I know that the Senator from Mississippi, who has been in conferences, has not expressed this thought.

When I did not get all I wanted in my gas warfare proposal or one of my disarmament proposals in the conference on the defense bill, and the Senator from Mississippi came back—one thing was dropped, if my recollection is correct, and something else was not—the slightest thought did not go through my mind of either questioning the vigor with which he fought or that I should say, "Let's send it back to conference," or "Maybe one of us should have been on the conference."

When one raises these questions, it goes to one of the fundamental questions in the Senate. If this is the question, and the vigor with which we fought these measures is impugned, then, I think that whenever measures are handled by other committees and we feel the conferees are not in sympathy with them and voted against them and we doubt their vigor, we should say that those who voted for the amendment should be on the conference. I think this would set a whole new premise in the Senate, and I am not sure it would be correct.

I can assure the Senator that we fought vigorously.

Mr. ALLEN. I will say to the distinguished Senator that I said nothing to the contrary. I said that the distinguished Senator did fight hard for the amendment.

Mr. PELL. Every Senator in the conference did. This is my point.

Mr. ALLEN. I was naming them when the Senator interrupted. I certainly meant to cast no reflection on the distinguished Senator from Rhode Island for his efforts in the matter. All that the junior Senator from Alabama was suggesting was that it might be possible to go back to conference, have the matter recommitted to conference, and to point out to the members of the House Conference Committee team that this conference report does not comply with the expressed wishes and views of the Senate after it debated for several weeks with regard to this very proposal.

Mr. PELL. It is absolutely the prerogative of the Senate to send us back. I have told the Senator from Mississippi that if we are sent back with instructions, we are sent back with instructions. But I do think that that approach is a different approach. But if the approach is at all on the basis that the battle was not fought vigorously, then I think we are opening up a Pandora's box.

I know that the Senator from Mississippi recalls the defense bill to which I referred. I do not think that one of the so-called liberals ever criticized him in the slightest for not coming back with a whole barrel of pork—just the opposite, we were trying to cut the pork—for coming back with less than we passed. Naturally, if we had again brought the thing to a vote and had said, "Go back with instructions," the Senator would have gone back with instructions.

I have noticed in the last couple of days of this debate that several times quite an issue has been made of who the conferees are and who has approved and who has not. If this is the case and if this is one of the lines of argument here, then I, as one Senator, want to serve notice, if this is valid, that when-

ever an amendment is agreed to and Senators who are conferees did not agree to it, we who have agreed to it in the Senate have a right to be on the conference; and I do not really think that is the case.

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

Mr. ALLEN. I want to state at this point that I assure the distinguished Senator from Rhode Island that I intended no reflection on the distinguished Senator.

Mr. PELL. I realize that.

Mr. ALLEN. I was merely suggesting that if the matter is re-referred to the conference, it could be pointed out that this does not comply with the wishes of the Senate.

Mr. PELL. If the Senator will forgive me, he mentioned his curiosity that the Senator from Indiana was not on the conference.

Mr. ALLEN. Yes.

Mr. PELL. The reason for that is that he was not on the committee. The other Senators were on the committee.

Mr. ALLEN. I yield to the Senator from Mississippi.

Mr. STENNIS. I thank the Senator for yielding. I asked him to yield at this point because the Senator from Rhode Island referred to a bill we had in the Senate last year, of which I was floor manager, and we went to conference. He had two very constructive amendments and suggestions. He handled them well on the floor, and we did the best we could for them in conference. I appreciate his remarks.

I can see, too, that this is a big bill, and it is a sensitive subject—if I may use a mild term. I can see that debate would build up somewhat in the mind of one who was handling the bill, after all the struggle and the endless days. I have had the same experience.

But so far as the Senator from Alabama is concerned, I say to the Senator from Rhode Island that I have been sitting here all the time, and my interpretation is that the remarks of the Senator from Alabama were quite complimentary to the conferees. He called the Senator from Rhode Island by name, to start with, and paid special compliment to the Senator. During part of the time, the Senator from Rhode Island had to be out of the Chamber. I have heard all that the Senator from Alabama has said.

I thought it was complimentary. I took the allusion to the Senator from Indiana to be a kind of jest. The Senator from Indiana has a sense of humor about him that we like. I know that I do. I thought that was done in jest. But, I say, this debate has been rugged at times. We have talked about a 180 degree angle. But I do not believe anyone impugns the motives of Senators. I say that because I have a feeling about this thing, I think, from the standpoint of the Senator from Rhode Island. I have appreciated every word the Senator from Alabama said. I alluded yesterday briefly to the fact that the House conferees, being vigorous for their position, just waited it out. They are a very skillful group of people, as we all know. I believe that the tone of the debate was complimentary to the conferees.

I thank both Senators from Rhode Island and Alabama for yielding to me.

(At this point Mr. CRANSTON took the chair as Presiding Officer.)

Mr. ALLEN. Mr. President, another reason why I feel it would be well to send this measure back to conference is that at the time the conference report was drafted and returned to the respective Houses, the message of the President of the United States dealing with the subject of segregation and desegregation had not been made public.

It occurs to the Senator from Alabama that the conferees might take this message from the President, which he states is going to be the policy of the executive department with respect to the matter of desegregation. Possibly, it would be in order, or it would be capable of being accomplished, that some of the ideas and thoughts advanced by the President of the United States might be incorporated in the amendment proposed by the conference committee.

That is another reason, in the judgment of the Senator from Alabama, why it would be well for the conference report to be recommitted to the conference committee for the purpose of considering its actions, in light of the message from the President of the United States.

Now, Mr. President, I would like to point out, and I would like to have the comments of the distinguished Senator from Rhode Island after I have made this suggestion, that I see a serious danger in subsection (b) of getting the Federal public school policy and the actions of the school boards resulting from it in such a state so that there will be no integration at all in this country. I feel that the distinguished Senator from Rhode Island would not like to see that take place.

Subsection (b) provides for a uniform policy with respect to de jure segregation, and a uniform policy with respect to de facto segregation.

As the President pointed out, and as we all were aware, the Supreme Court has not ruled de facto segregation to be unconstitutional.

Now to apply, then, the present policy in this Nation to the segregation as it exists outside the South which, by and large, is held to be de facto, that would foster that type of segregation and it would be protected. If the application of the de jure policy, one of demanding immediate desegregation, if the segregated systems—if there be any—if they should all comply with the desegregation mandate of the Supreme Court, and comply to such an extent that there were no more segregated systems in the country, all systems outside of the South having desegregated—of course, we still have segregation in the North—but the desegregated school systems in the South, if they would then re-segregate as a result of changing neighborhood patterns, so that we would have segregation again in the South, this time protected by the de facto rule—this uniform de facto rule, provided by the amendment—we then would have de facto segregation all over the country and no integration. I do not believe that the distinguished Senator

from Rhode Island would like to see that take place.

Mr. PELL. The Senator is absolutely correct. I would not like to see it take place, although from a legal viewpoint, while I might not like to see it happen, it could well happen under either section (b) to which the Senator referred in the conference report, or under some of the statements in the President's message to Congress on school integration that was sent up yesterday.

In this connection, section (b) of the conference reported Stennis amendment is similar in concept to what the President said in his message. This is the reason, I would imagine, why some thought was given to the idea, with the President's message in mind, that perhaps one way to resolve the problem we are here discussing would be the elimination of the whole provision. For the President, has moved directly along the lines of the Senate's wishes.

Mr. ALLEN. Mr. President, I would point out to the distinguished Senator that even if the provision is to be eliminated, the only way that could be done would be to send it back to conference. So that he would have to vote to send it back to conference before he could get it eliminated. The Senator either has to take the conference report, including the whole bill, or send it back.

Mr. PELL. That is correct. When, in the conference, suggestion was made that it be eliminated, the Senate's wishes were obviously not to do so. We sought to retain the amendment and while the clothing we dressed it in may not be pleasing to the parents of the child, we do feel that the child itself is the same. The President's message is very much along this line. Both the President and the conference sought to accept the fact that, for the time being, the courts have made a distinction between de jure and de facto segregation. I hope the day will come when there is no difference, but the applicable law does recognize a difference due to the cause of each. I do not mean that there is an analogy here. I am not a lawyer; but I am reminded of the fact that, if a man is killed, the law recognizes there is a difference between manslaughter which is accidental, and murder which is when it is intentional. De facto is the same. The man is dead.

And I would say in this discussion that, although segregation exists in two types, either way it is wrong. However, for the moment, the courts which do guide us have ruled that one is more wrong than the other, just as murder is a felony and manslaughter can be a misdemeanor.

The day may soon come when both kinds of segregation are declared to be equally wrong. In the meantime, the President has accepted the present view in his message.

Mr. ALLEN. Mr. President, the amendment the committee added does put a shelter or an umbrella around or over de facto segregation as it exists in the North, does it not?

Mr. PELL. It does. And as the Senator pointed out, if de facto segregation develops in the South from living patterns, the growth of suburbia, and things of that sort, both the President's message

and the bill as it came from the conference would permit it to exist.

The Senator from Alabama asked me earlier if I would like to have that happen. The answer is "No."

Mr. ALLEN. Would it be better to have a Federal school policy that is seeking desegregation of both types of segregation rather than to have creeping de facto segregation eating in on the de jure segregation with the possibility that segregation will again be the order for the entire Nation?

Mr. PELL. That would be correct. Nevertheless a statement of policy is not law. And the Stennis amendment is in the form of a statement of policy. The basic law has to be changed or interpreted by the Supreme Court.

Mr. ALLEN. If that be true, why would the distinguished Senator mind adopting the Stennis amendment as such, if it is not law and it does not mean anything, why not adopt it?

Mr. PELL. Mr. President, I was opposed to the amendment in the Senate and I supported it in conference. Personally, I think it would have been advisable to have it remain, as adopted because the original policy change signaled by it to the administration was accomplished at the time of passage in February. And I do not think much more signaling was necessary. I think partly as a result of that signaling, we received the President's message.

Mr. ALLEN. It would occur to the Senator from Alabama that possibly the Senator from Rhode Island and the Senator from Alabama are cast in somewhat unfamiliar roles. The Senator from Rhode Island is advocating a policy that would protect segregation. The Senator from Alabama is saying, "Let's apply up North the same desegregation policies that are applied in the South." But the Senator from Rhode Island does not want that.

Mr. PELL. The Senator is absolutely correct. I perhaps sound somewhat inconsistent but we must look to the cause of the condition. In this connection, would the Senator like to sponsor some tightening up of the civil rights legislation? That would be the way to approach the matter.

Mr. ALLEN. We are seeking by the Stennis amendment to provide a uniform system, whereas the Senator from Rhode Island wants de facto segregation to continue in the North but the de jure segregation would be desegregated in the South.

Mr. PELL. It is not that I want to do this.

Mr. ALLEN. That is what the Senator is advocating, whether he wants to do so, or not.

Mr. PELL. I am advocating that different kinds of segregation be handled in the same way, wherever they occur.

Mr. ALLEN. Mr. President, I ask the Senator, is it segregation that is wrong or is it the means that have been used that result in segregation?

Mr. PELL. Both.

Mr. ALLEN. Is segregation wrong?

Mr. PELL. Absolutely. And the wrong is compounded because of the means.

Mr. ALLEN. Why is the Senator un-

willing to do it by means of the Stennis amendment?

Mr. PELL. I sought to do it in the conference.

Mr. ALLEN. But the Senator from Alabama would respectfully point out to the Senator from Rhode Island that the conferees came out with a provision that would protect de facto segregation in the North but attack de jure segregation in the South.

If segregation is wrong, why is it not wrong in the North as well as in the South?

Mr. PELL. I think the Senator is a lawyer and realizes what the amendment does better than I do. It neither protects nor attacks segregation in the North or the South. It simply says that the two kinds of segregation must be treated alike, wherever they occur.

Mr. ALLEN. Not the two kinds, but each separate kind. That is a far cry from the single, uniform rule that is provided by the Stennis amendment.

Mr. PELL. Perhaps, if the Stennis amendment did indeed accomplish that end.

Mr. ALLEN. It surprises the junior Senator from Alabama to find the distinguished Senator from Rhode Island advocating then a policy that does protect and foster segregation in the North when, by his own statement he says that segregation is wrong.

Mr. PELL. I do not advocate any kind of segregation. I am saying that one type is presently permitted by the courts. And that is a fact. When the time comes that it is not protected, I will say hurray. But for the moment, this is the fact.

Mr. ALLEN. The Stennis amendment would apply the same desegregation rule throughout the country, would it not, so that if it is a Federal policy to attack segregation, then would not the Stennis amendment point out that the segregation in the North should be attacked or desegregated?

Mr. PELL. Mr. President, the problem is, as the Senator knows, that the Civil Rights Act—I think it is title VI—applies only to de jure segregation. So, if it is all put together, the effect would presumably be that there would be no enforcement at all. We have to interpret the statement of policy in light of what is presently within the terms of reference of the law.

Mr. ALLEN. I am glad the Senator mentioned the Civil Rights Act. The junior Senator from Alabama inquired soon after he came to Washington of the Secretary of the Department of Health, Education, and Welfare why it was if the Civil Rights Act of 1964 and if the appropriation bill for the Department of HEW in 1968 provided that funds provided by the appropriation bill should not be used to require busing, the closing of schools, or requiring any child to go to any school not the choice of his parents in order to overcome racial imbalance, this very thing was being done.

The junior Senator from Alabama asked the Secretary, "Why is it in the face of that that your department is getting up plans that it submits to the court to require the busing of students 10, 20, or 30 miles, the closing in my

State of \$100 million worth of schools, and the denial of the freedom of choice to students to go to the schools of their choice? Why is it you are doing that in the face of this express provision of law?"

His answer was that those provisions just applied in the case of de facto segregation, that the phrase "racial imbalance" was synonymous with de facto segregation. So, it was found that the provision of law would offer protection to de facto segregation and prevent busing for the purpose of knocking down de facto segregation and prevent the closing of schools to desegregate de facto segregation, and prevent the denial of freedom of choice to knock down de facto segregation.

So we found that HEW was using these two standards. That is one of the first objections the Senator from Alabama has to this phrase; that whereas now HEW is carrying out its policy, it is a policy of protecting de facto segregation and attempting and succeeding by punitive means to do away with de jure segregation. That is the policy of HEW, whereas if the conference report is agreed to as is, it would write into law this dual policy. That is what the Senator from Alabama objects to.

This is far worse than if the conference had thrown out the Stennis amendment because the Stennis amendment provides for uniform policy. The conference report strikes down that uniform policy and sets up two policies that it calls uniform under separate conditions, but it proceeds to write that into law and it will have the force of a legal enactment of Congress; whereas if nothing is done that would be a policy that could be reversed through methods other than repeal of the statute itself.

So it does seem to the junior Senator from Alabama that there is an ample reason for sending the conference report back to conference and let it consider what it wants to do in light of the recommendations of the President.

Now, Mr. President, as I have pointed out in colloquy with the distinguished Senator from Rhode Island, section (b) of section II does have the effect of perpetuating segregation in the North or in areas outside of the South, whereas the Stennis amendment called for one uniform policy dealing with both types of segregation. The Stennis amendment took the position that whether segregation is good or bad, whether it is to be attacked by the Federal Government, whether desegregation is to be sought with respect to segregation, let that decision be a decision that will apply to the entire country and not build up some sort of legal fiction about segregation having resulted from operation of law or statutes calling for a dual system.

There have been no legal dual systems in the country since 1954. Prior to that time a dual system was legal and it was constitutional. As soon as the Brown decision was handed down that ended the legality of the dual system. It also forbade a State from fostering segregation. It knocked down the dual system. We have not had a dual system by law since

1954. I have some interesting figures here.

Mr. STENNIS. Mr. President, will the Senator yield to me for a series of questions?

Mr. ALLEN. I yield.

Mr. STENNIS. Mr. President, the Senator made reference to so-called de jure segregation. He has made reference also to what has been presented by those who are proposing we adopt something that would be a protection for segregation generally outside the South.

Does the Senator know—and I am sure he is familiar with it to a degree—that a great number of these States outside the South are States that for a long time have had laws on their books regarding segregation of the races for their public schools, and some of those statutes required separate schools and others permitted it; and that a great part of their history at the time their communities were growing up shows that they were influenced by those statutes as much as was done in the South? Will the Senator develop that thought? I refer to the State of Indiana and even the State of New York, and a number of States like that.

Mr. ALLEN. I appreciate the Senator's question. During the debate on the Stennis amendment the junior Senator from Alabama had printed in the RECORD a list of States which at one time had had a statute providing for the dual system and these States were some 44 or 45 in number. So nearly all of the States outside the South did have the statutes and, of course, if the Supreme Court took the position that there never could be erased the harmful effect of a statute, then the segregation that exists in those States should also be de jure segregation.

Mr. STENNIS. Is it not a fact of life that those statutes contributed, at least in part, and in substantial part, to the so-called housing patterns now that are used as an exemption basis?

Mr. ALLEN. Yes, although it has always been my thought that the schools were put where the people were rather than the people being put where the schools are.

Mr. STENNIS. That is true, but New York, for instance, until 1938, I think it was, still had a statute that permitted separate schools.

Mr. ALLEN. The Senator is correct.

Mr. STENNIS. Indiana had a statute as late as about 1950—maybe a few years later—that permitted and at one time required separate schools. My real point is, How do they exempt those States, without exempting the South, from their rules?

Mr. ALLEN. That is something the Senator from Alabama does not understand, either.

Mr. STENNIS. Still they claim exemptions for their States under their rules, do they not?

Mr. ALLEN. Yes. The Senator from Alabama would like to point out that until 1954 the dual systems and any statutes regarding the dual systems were not unconstitutional.

Mr. STENNIS. As a matter of fact, those statutes were firmly and expressly held to be legal.

Mr. ALLEN. Yes.

Mr. STENNIS. Those laws requiring segregation of the races were upheld as late as 1928, in a unanimous opinion written by Chief Justice of the United States Taft, a former President of the United States, who was presiding. Is that not true?

Mr. ALLEN. Yes, that is correct.

Mr. STENNIS. So if there is any opprobrium attached to any State that once had such laws, certainly they were under the scrutiny of the Supreme Court of the United States all that time, and they were repeatedly held to be valid until, of course, 1954.

Mr. ALLEN. Yes. I would like to point out to the Senator that some of the housing patterns came about as a result of the requirements of the Federal Housing Administration.

Mr. STENNIS. Yes.

Mr. ALLEN. The Senator knows that before the Federal Housing Administration would insure a proposed FHA loan, they would check the title, see if there were restrictions in that subdivision, and if there were, it was a matter of routine to put the racial covenant in the FHA approved loan, forbidding minority groups from residing in that particular area. So the Government itself has contributed to the housing pattern.

Mr. STENNIS. I am not condemning those areas or States that had those conditions. I only want to point out that we are not supposed to be condemned and have a permanent condemnation placed upon us for conditions that were legal and valid and so declared by the Supreme Court, conditions that existed in other areas that now claim immunity from having had those laws.

Mr. ALLEN. It would be the opinion of the junior Senator from Alabama that we have served this penalty period, and if any penalty should ever have been attached to us—which the junior Senator from Alabama does not feel should be the case, but if we should be penalized—and the segregation of the schools in our areas classed as the evil type of segregation, whereas the segregation in the North is, shall I say, benign segregation, then I feel, if any such penalty is to be attached to us, we have gone through that period and our segregation should be typed as de facto, as well.

Many of our areas and many of our communities are completely changing their character. Areas in the cities and in rural places that have been integrated are changing to being all of one type or the other. When we go through this period of resegregation, as I pointed out to the distinguished Senator from Rhode Island, we will be under this umbrella of de facto segregation and protected by that umbrella.

As the President pointed out, it has not been declared unconstitutional. So if we in the South get to the point where our segregation is de facto and is protected, as is de facto segregation in the North, then we are going to have to have, I suppose, the result of having school systems where there is practically no integration, because, as the Senator has pointed out in his speeches in the past,

many of the schools in Chicago and Gary, Ind., are 99 percent of a minority race, which is far out of proportion to the ratio between whites and blacks in those States or areas.

So, if we follow subsection (b), which is sought to be grafted onto the amendment of the Senator from Mississippi, to its logical conclusion, we are going to find that de facto segregation is legal, is protected and sheltered in the North, and if the segregation that applies in the South—and there is mighty little of it in the South at this time—changes, through desegregation and then resegregation, and then becomes de facto segregation, we would be out of reach of the law or the desegregation requirement, as well, and there would be no desegregation in the country, which I do not believe the advocates of subsection (b) understand or desire. But that is a very real and present danger.

Mr. STENNIS. I have said for some time that it looked to me like when this matter got close enough to the larger cities beyond the South, they would go looking for a way to change their rules; and I believe that is exactly what we are seeing done now. When we reach that point—and it will take some time for these changes to come about—and then resegregation sets in, which it will in some areas, I hope they do not change the rules again, then, and go back to putting us through another process. But I think by that time it will be realized that the people as a whole, black and white, do not want this enforced police power integration, enforced and sustained, when the costs—not money cost, but cost in emotions, cost in freedom, and other costs—are too great.

I want to direct the Senator's attention to another point. We are hearing in their argument—and it is made in good faith—that this segregation outside the South cannot be reached because it is not illegal, or at least has not been declared to be illegal by the Supreme Court of the United States. The Senator is a lawyer and has been keeping up with these cases. I think he knows that at least four times that question was presented to the Supreme Court of the United States from Courts of Appeals in districts outside the South, and each time the Court declined to hear the case on its merits and render a decision. Is that correct?

Mr. ALLEN. That is my understanding.

Mr. STENNIS. The real question, then, is: Is not this question before us now purely a congressional question, a legislative question? It does not interfere with the Court. It does not restrict the Court. It does not impede the Court in any way. It does not relate to the enforcement of any decrees of the Court.

The amendment the Senate adopted 5 weeks ago relates solely to money—Federal aid to schools.

Mr. ALLEN. That is right.

Mr. STENNIS. And the administration of that money by HEW.

Mr. ALLEN. Yes.

Mr. STENNIS. That is the whole story. This amendment just provides that HEW shall apply a uniform policy; that is, it is the policy of the Congress that HEW, in allotting this money over the Nation,

will apply a uniform policy regarding segregation in the schools.

Mr. ALLEN. Yes.

Mr. STENNIS. That is the substance of it.

Mr. ALLEN. Yes.

Mr. STENNIS. It has nothing to do with a court case or what a court has said or not said. Is that right?

Mr. ALLEN. That is right. It is merely exercising our right under the Constitution to legislate.

Mr. STENNIS. And it is the sole power of the Congress to appropriate money.

Mr. ALLEN. Yes.

Mr. STENNIS. No other branch under our system can appropriate money.

Mr. ALLEN. Yes.

Mr. STENNIS. Of course, the President has a right to veto an appropriation bill, but he cannot originate it.

Mr. ALLEN. That is correct.

Mr. STENNIS. So after all, this is purely a congressional matter, for congressional decision, and the argument that the courts have not done this or have not done that is not even relevant, as I see it.

I thank the Senator for yielding.

Mr. ALLEN. I thank the distinguished Senator from Mississippi for his questions, and for the light that his comments have shed upon the question now before the Senate.

Mr. President, all that the Stennis amendment seeks to do is to provide equal protection of the law for all citizens in this entire Nation, and it does that by setting up this uniform rule that the distinguished Senator from Mississippi has referred to. The proponents of the Stennis amendment come in asking for equal protection of the laws.

Equal protection of the laws; we hear that term used a great deal here on the floor of the Senate. And why should not this great problem, this great issue, be handled with one uniform policy, applying throughout the entire country? The Senate, by a vote of 56 to 36, endorsed that principle that we should have one uniform policy.

An amendment was sought to be added to the Stennis amendment by the distinguished senior Senator from Pennsylvania (Mr. SCOTT). It was in two parts, as I recall. The first part provided that the Federal policy with respect to segregation, or desegregation, would be uniformly applied in all areas of the Nation where segregation had been ruled to be unconstitutional. So section (b) is a mere rewrite of the first section of the Scott amendment to the Stennis amendment. That amendment was voted down by the Senate; and yet we see it come back in the conference report.

The Scott amendment, providing that desegregation policies would be applied uniformly in those areas of the country where segregation had been ruled unconstitutional, took into account, of course, that the only area where the Supreme Court has declared segregation in our public schools to be unconstitutional is the South; therefore, all the Scott amendment—or that phase of it; there is another phase to which I shall allude in a moment—said was that desegregation policies shall be applied uni-

formly in the South. Well, all that means is uniform desegregation everywhere in the South. It made no reference whatsoever to areas outside the South.

This section (b) goes on and sets up this other policy: "Such uniformity refers to one policy applied uniformly to de jure segregation wherever found, and such other policy"—which is different, or the words would not be "such other policy." If they had wanted to say "the same policy," they would have said "the same policy."

Such other policy as may be provided pursuant to law applied uniformly to de facto segregation wherever found.

So this is just a rewrite of the old Scott amendment—or the Scott old amendment, it might be better to say.

The second phase of the Scott amendment provided that there would be no busing for the purpose of overcoming racial imbalance. Well, that has been a part of nearly every HEW or Civil Rights Act that has been passed since 1964, and it did not mean a thing in the world as to de jure segregation, because it has been held to apply just to de facto segregation. So all that could have said was that there would be no busing in areas outside the South.

Well, that was hardly a change of any great degree. It just restated what has been enacted time and time again by the Congress. But the conference report calls on the Senate to approve and give its endorsement to provisions that are 180 degrees removed from the provisions of the Stennis amendment, because it provides two separate policies. The Senator from Mississippi, in proposing the Stennis amendment, took a statesmanlike view. He did not ask for special treatment in the areas of the South. He did not ask that desegregation stop in the South. He just said:

Whatever policy you decide on, whatever is the Federal policy on this subject, apply it uniformly.

Mr. President, the question that is somewhat difficult for the junior Senator from Alabama to answer and to reconcile is why it is that the Senators who favor the conference report, the Senators who favor a dual policy, a policy calling for immediate desegregation in the South and protection of segregation in the North, if they say, as the distinguished Senator from Rhode Island said, that segregation is bad, as they do under section (b), why do they freeze segregation into the law? If segregation is bad, it is bad no matter whether it is in the North or the South. But yet section (b), which the conference committee added—which completely emasculates the Stennis amendment; there is no doubt about that, and every Senator knows it—fosters, protects, encourages, and freezes into the law segregation in the North.

I have some interesting figures on that, which I used in the debate on the Stennis amendment. According to the figures of HEW, 91.7 percent of the Negroes in Alabama attend schools that are majority black. These same figures show that in the city of Los Angeles, 95.3 percent of Negroes attend majority black schools.

In Newark, N.J., 97.9 percent of the

Negroes attend schools that are majority black.

In Gary, Ind., 96.9 percent of Negroes attend majority black schools.

So they take the position that they do not want to proceed against de facto segregation—leave that alone; that is all right; that is fine—and let us go out and get this de jure segregation. There is more segregation in many areas outside the South than there is in many sections of the South. I cannot understand why the Senators who favor protecting de facto segregation are so anxious to attack and desegregate de jure segregation in the South. If desegregation is good for the South, it ought to be good for the North.

It would occur to the junior Senator from Alabama that the black constituency of such Senators as the Senator from Pennsylvania (Mr. Scott) might wonder why the distinguished Senator is willing to see segregation frozen into Philadelphia and other big cities of Pennsylvania. How is he able to convince them that segregation is good up North and is bad down South?

That is what subsection (b) would suggest that we do. Let us treat them differently. Let us have one rule pointing southward and another rule pointing northward. Yes, let us foster and encourage, by inaction, segregation in the North.

Mr. President, I am proud of the attitude of the people in the South in complying with the mandates of the courts. I am proud of the good faith efforts that the people of Alabama and the South have given to complying with the desegregation mandates of the courts, while at the same time all they have to do is to look northward, and not one single thing is being done up North to rid the northern areas of the evils of segregation in the public school systems up North. Our people would like to see a uniform policy. If you are going to have massive efforts to desegregate, fine. We have been living with that down South for quite some time. If you are going to have that, though, let us have it up North, too. If you are going to tolerate or foster or encourage segregation up North, the same rule ought to apply down South.

We are a State, one of the 50 States, and are proud to be a State. We observed our 150th anniversary as a State back in December. We are proud of our statehood. We are proud of our Constitution. We want to see it applied equally. We want to see equal rights under the law.

We have heard much in recent years, all through the years, "Well, you fellows down South, get right with us in other areas. You—all come along and conform." We have conformed. Now we want to see the other areas of the country conform to the same standard that has been set for us. Do not just say, "Segregation is bad down South; we want to get rid of it; but it is good for the North. We are going to protect it." It will take the whole Army, as one Senator said, to enforce the Stennis amendment if an all-out effort is made to put into effect in the North what the people of the South have been putting up with.

Mr. President, I would like to point out again what the junior Senator from Alabama suggested to the distinguished Senator from Rhode Island about the dangers, from his point of view, inherent in section (b). That has to do with de facto segregation—northern style segregation, shall we say—being protected in areas outside the South, and the statement of the President says: No Federal action against de facto segregation. But we are going to protect and foster de facto segregation that exists in many cases to such an extent that there are many, many, many all-black schools in the big cities of the country. We are going to protect that segregation. We are going to permit that. No move will be made against it. But we are going to desegregate down South.

So there are two rules: to desegregate in the South; to continue segregating in the North.

I have an interesting fact that I should like to read. I do not have any prepared remarks. I hope that Senators will forgive me if I ramble somewhat. I do have a number of copies of some of the speeches I made during the debate on the Stennis amendment. When I reach the point where I shall stop talking off the cuff, I shall probably have several hours of discussion here. But I would rather talk about these thoughts as they come to me.

Segregation is vanishing in the South. It is vanishing because our people are making good-faith efforts to end segregation.

What is the case up North? What is the case in the State of New York? Someone sent me an editorial broadcast by a New York radio station which referred to booklets published by the regents of the University of the State of New York. The first one is dated January 1968; the other is dated December 1969, pretty well up to date.

One paragraph in the booklet published in 1968 is headed "Problem Growth." It reads, in part, as follows:

Despite the determined, significant accomplishments of many in education, the growth of the problem has outstripped the efforts to deal with it. Racial imbalance within school districts is increasing in both suburban and urban communities.

That, Mr. President, in the face of hundreds and hundreds of school districts in the South that have been desegregating all the time. I believe I noticed figures in the President's message saying that in the last year the number of desegregated districts had increased from 600 to 1,200. The number more than doubled last year. That doubling was practically all done in the South. I continue to read:

Racial census reports show that between 1961 and 1966 in the 41 school districts with the highest percentage of Negro pupils, exclusive of New York City—

I would hazard the guess that it was probably a higher percentage in New York City than out in the State—the number of elementary schools with more than 50 percent Negroes increased from

60 to 72. The number with more than 90 percent Negro pupils increased from 25 to 33.

Racial isolation among school districts is also increasing. In this same period the percentage of Negro pupils in one suburban district rose to 82 and in another to 71. In three districts, the percentage surpassed 50. Then in December 1969, there was a review of the revised studies of the one taken some 2 years before, a restatement of policy in which it was stated that the efforts of the State of New York to eliminate segregation and speed integration must be increased. Racial social class isolation in the public schools has increased substantially during the past 2 years despite efforts to eliminate it.

Thus, Mr. President, that is what we say in the South, that the school districts desegregated there have doubled in the last year; whereas in the State of New York, segregation has increased dramatically. But the subsection (b) protects, shelters, puts an umbrella over this type of de facto segregation. We are not going to proceed against it.

So going on with my hypothetical case, showing the dangers inherent in section (b) and pointing out that the Federal policy as it exists now and as it would be frozen into the law under the conference committee report is one of protecting and favoring de facto segregation as it exists outside the South. But the same Federal policy—the two-pronged Federal policy—calls for immediate desegregation of the public schools in the South.

Now, Mr. President, is that equal protection of the laws? Is it fair? Is it equal? Does it protect at all the public schools of the South?

The Negro citizens of the South, a substantial number, if not a full majority of them, prefer their own neighborhood schools. I am happy that the President in his message spoke of using the neighborhood school as the base in matters having to do with the public schools of the country.

That is another reason we feel that the conference committee should consider its report in light of the President's suggestion. I feel that, if the Chief Executive of the Nation makes some suggestions, made after the conference committee made its report, there should be little opposition to sending that report back, so that the report can be considered in the light of the President's message.

The black citizens of Alabama and the South support the neighborhood schools. They are proud of them. I have had numerous complaints registered with me on the demand by the Department of HEW that the black schools be closed. They have school pride, a fine building, a fine band, a cafeteria which is used for community meetings. They have a good school spirit with some of the best bands in the country and fine football teams.

They do not want their schools closed. But we have had \$100 million worth of schools ordered closed in Alabama.

Now, Mr. President, if the public schools of the South become completely desegregated to the full satisfaction and

approval by HEW and of the Supreme Court mandate and then the process of changing residence patterns begins to take place—as it took place in the great city of Washington where I understand the schools are about 95 percent black—if the process of resegregation takes place and the schools become completely segregated again, that would not be because of the dual system that the South had prior to 1954, and which were legal up to then.

That could not be laid at the door of the laws providing for a dual system of segregation, then, and resegregation would have to be considered *de facto* segregation.

Mr. President, if we have a complete desegregation of public schools in Alabama and the South, so complete that it meets the approval of HEW and meets the approval of the Federal court and meets the approval of the Supreme Court, and then if, over a space of months or years those systems by a change in residence patterns because of a flight to the suburbs, as has taken place in Washington, those systems become segregated again, if they become resegregated, then since they did not result from any State law providing for a dual system, they would come under the *de facto* segregation protected by subsection (b).

So, then we would have nothing in the entire country but *de facto* segregation. The Supreme Court still has not ruled on it. The President said they are not going to proceed against *de facto* segregation. Then we would have *de facto* segregation in the North and *de facto* segregation in the South. Would everyone be happy then?

That, I give warning, is the logical and reasonable expectation and conclusion to be reached as the probable consequence of the passage of section (b) recognizing the two systems.

Mr. President, the decision of the Supreme Court in 1954, in *Brown* against Board of Education, held that any segregated school was unequal. They were unequal schools and the States had to stop maintaining a segregated school system. It did not say anything about forced integration.

The Supreme Court has changed 180 degrees also. They first started out saying that the State could not force segregation in its public schools. They have now changed that to where they say the State has got to force integration. That is a change of 180 degrees, exactly the change that has taken place here in the conference committee report as compared with the action of the Senate.

It would occur to the junior Senator from Alabama, following the reasoning of the Warren court that segregation is unlawful and that a segregated school is unequal, how then can the proponents of the conference committee report, the proponents of the dual system of Federal policy, say they are affording equal protection of the laws to the boys and girls of their States who are required to go to a segregated school in the North?

That is the worst sort of legal reasoning to say that just because the South at one time had separate school systems, their type of segregation is unlawful, but

the segregation in the North that came about by reason of residence patterns is not.

We are going to find down South some *de facto* segregation. We are going to find resegregation of our schools.

I would much prefer to see a uniform policy apply throughout the country than to have two different systems.

The President has spoken of bringing us together. We can be brought together better, it seems to me, by a uniform plan providing equal treatment for everyone.

How are we going to bring people together when we have two different ways of treating people? It hardly seems fair to the junior Senator from Alabama.

I believe that the proponents of this measure are going to go home and discover what the people really want. I am glad this thing is being carried over until after the Easter recess. I believe that when the proponents of this measure go home, their people who want to see the public schools of the South desegregated will, when they find out what is going on in the Senate, suggest to some of their Senators, "If you are going to be for desegregating those southern schools, why can you not be for desegregating these northern schools as the Stennis amendment would do?"

I believe they will find that the people back home want to see a uniform application of the law. And I do hope that the distinguished Senators who do advocate the conference committee report will analyze their position and see if it does not present a danger to the whole country in a matter of years, ending up with *de facto* segregation which they seek to protect.

They say, "Do not interfere with it. The Stennis amendment might interfere with our segregation up North. We want to keep that. Let us confine our efforts to our whipping boys down South. Let us keep on beating on them. Leave our conditions up here just as they are. Sweep them under the rug. Do not mention them. Keep on protecting them because it might take a whole army to enforce that type policy up North." That was stated by one of the distinguished Senators in the debate on the Stennis amendment.

Mr. President, I do not have any desire to monopolize the floor for the rest of the afternoon. I saw the distinguished majority leader come into the Chamber. It may be that some sort of an agreement can be reached with respect to voting on the conference committee report or some preliminary maneuver, but working on to the conclusion of the report, provided agreement is reached with respect to taking final action to vote on its merits on the nomination of Judge Carswell.

I say, as a matter of equity and fairness, that it is only right that these matters be handled together because the nomination of Judge Carswell to be an Associate Justice of the Supreme Court was under consideration in the Senate as the pending question when the distinguished majority leader, whom I admire and respect, and who has a right to control the flow of business and the flow

of legislation up to a point, put in the conference committee report and made it the pending business.

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

Mr. ALLEN. I am delighted to yield to the Senator from Louisiana.

Mr. LONG. I do not wish to reflect at all on anyone, but I think this statement should be in the record. I think it illustrates a problem that is common to all of us; that is, that those who live in glass houses should not throw bricks.

There have been a lot of calls here about the fact that Judge Carswell had a share of stock in a country club or some such thing.

I see that one of our colleagues, who has opposed Judge Carswell and has taken the position that Judge Carswell is a racist, was once in an all-white fraternity which barred people of other races from participating.

I regret that the Senator from Indiana is not here at the moment, but he can comment on this when he hears about it.

I have before me an article whose headline reads: "BAYH Once in All White Group." The article states that as late as 1961 this fraternity at Purdue University limited membership to white Christian males. Not only were Negroes not permitted to join, but, according to the article—

In 1961 the national fraternity withdrew its charter of the Stanford University Chapter when the local organization accepted 4 Jewish students as members.

Mr. President, the article refers to 1961. There has been reference to the present nominee being a member of a country club in 1956, which much predated the 1961 action of the Purdue fraternity group.

I think it might be appropriate to place this article in the RECORD. If the Senator wishes to object to it, it would be all right with me to strike it out. It is a matter of public record, and the article speaks for itself.

Does the Senator have any objection if I put it in the RECORD?

Mr. ALLEN. I believe I will object at this time. I am somewhat shocked and grieved and saddened by this disclosure. I do not believe this is the time to place it in the RECORD.

Mr. LONG. I will leave the article on my desk. If the Senator from Indiana wants to comment on it, he may. I will just leave it here.

If I might further impose on the time of the Senator, for some time I have wanted to make a speech about a change of rules in the Senate. Now that the germaneness period has expired, I would very much hope I might be able to make my speech, because I have four amendments that I think would be helpful to improve the efficiency and expedite the proceedings of the Senate.

May I ask whether the Senator will yield to me during the next 15 or 30 minutes so that I may obtain recognition? I have a double-spaced speech which is about 16 pages in length.

Mr. ALLEN. I was just concluding my remarks and would then have suggested the absence of a quorum. Then the Senator from Louisiana could seek recog-

dition, because I intend to yield the floor. I was just summing up the situation with regard to the unanimous-consent proposal.

Mr. LONG. If the Senator would be so kind, I could make my speech during the time that would be taken for the quorum call. I would be happy to suggest the absence of a quorum. The Senator from New York also wants to be recognized for a few minutes.

Mr. ALLEN. Would the Senator allow me 2 minutes to conclude my remarks?

Mr. LONG. Yes. I appreciate very much the Senator's very kind courtesy.

Mr. ALLEN. Mr. President, I was speaking with respect to the unanimous consent proposal, and I was pointing out that the Carswell nomination was under consideration in the Senate when the conference report supplanted it as the pending business.

Mr. PELL. Mr. President, will the Senator yield at that point?

Mr. ALLEN. I yield.

Mr. PELL. I think the RECORD should show that under the rules of the Senate the conference report was privileged and that there was no choice in the matter.

Mr. ALLEN. I am glad the Senator mentioned that, because the junior Senator from Alabama was not going to mention it. The Senator from Rhode Island is I believe, in error in feeling that the report was privileged, because we were in executive session at the time, and the report, being a legislative matter, it would have no privilege; it would have taken the vote of the Senate to change over to the other business.

Mr. PELL. I stand corrected. Undoubtedly the Senator has studied the rule. I thought it was a privileged matter.

Mr. ALLEN. I am glad the Senator asked the question.

Mr. President, the junior Senator from Alabama is ready and willing to vote on the conference report and on the nomination of Judge Carswell, and at any time the two are linked together and a time certain set for final votes on both matters, with preliminary motions leading up to that final vote to be in order; but the time for final votes being set, the junior Senator from Alabama is ready and willing and anxious to vote.

I yield the floor.

Mr. SCHWEIKER. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the Senator from Texas (Mr. Tower) concerning the Stennis amendment to the education bill.

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

STATEMENT BY SENATOR TOWER

I commend our conferees on the presentation that they made concerning the Senate version of the Education Amendment bill. From what I understand, they presented our position forthrightly and with competence. However, I am concerned about the failure to retain intact the Stennis Amendment which would require equal enforcement of the HEW guidelines in all areas of the nation.

The debate on the Stennis Amendment was one of the most enlightening that we have had here in some time. Senators from every part of the Nation, representing every shade of political philosophy, united to stand for the proposition that everywhere the law

which spread over a two-day period on this shall be applied equally. Both the debate, issue alone, and the vote, which was an overwhelming 56-36 in favor of the amendment, strongly demonstrated that this amendment should have been preserved. I do not fault the conferees for not being able at this time to fulfill this command of the Senate, for I understand fully the realities of the situation. However, the Senate spoke very decisively on this issue; I support the effort to send the bill back to Conference with binding instructions that the Stennis Amendment must be kept in the bill in the language originally approved by the Senate.

Again, I have rarely seen the Senate speak so clearly on any issue. After the length of debate that we had here, there was not a shadow of doubt in the mind of any Senator as to what the Amendment meant and what the feeling of the Senate was. In all good conscience, we must now send the measure back to conference to make certain that this most important issue is maintained. I have not the slightest doubt that if the matter were submitted to the House directly for a vote, that the Senate position would be upheld. Let us now proceed to ask the House to act affirmatively on this matter.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4148) to amend the Federal Water Pollution Control Act, as amended, and for other purposes.

The message also announced that the House had agreed to the following concurrent resolutions:

S. Con. Res. 47. Concurrent resolution authorizing the printing of the report of the proceedings of the forty-fourth biennial meeting of the Convention of American Instructors of the Deaf as a Senate document;

S. Con. Res. 50. Concurrent resolution authorizing the printing of additional copies of the 1969 report of the Senate Special Subcommittee on Indian Education (S. Rept. 91-501);

S. Con. Res. 52. Concurrent resolution authorizing the printing of a compilation of the hearings, reports, and committee prints of the Senate Subcommittee on National Security and International Operations entitled "Planning-Programing-Budgeting";

S. Con. Res. 53. Concurrent resolution authorizing the printing of the National Estuarine Pollution Study as a Senate document; and

S. Con. Res. 55. Concurrent resolution authorizing the printing of additional copies of Senate Report 91-617, entitled "Organized Crime Control Act of 1969."

The message further announced that the House had agreed to a concurrent resolution (H. Con. Res. 559) directing the Clerk of the House with regard to enrolling the title of the bill, H.R. 4148, in which it requested the concurrence of the Senate.

SENATE RESOLUTION 377 THROUGH SENATE RESOLUTION 380—SUBMISSION OF PROPOSED CHANGES IN SENATE RULES

Mr. LONG. Mr. President, from the point of view of anyone who has ever worked in a State legislature, the U.S. Senate is inexcusably inefficient.

True, much can be said about the thoroughness with which our committees develop the facts. Much can be said in favor of the freedom of debate which exists here on the Senate floor. Nevertheless, there is not the slightest doubt in mind that this Senate could meet half as many days and do every bit as good a job as it does.

I am one of those who have advocated free debate in this body. I have resisted efforts to change the rules to make it easier to shut off debate. In some respects, the right to filibuster accounts for about 1 month out of the average Congress. I am one of those who has argued that this is not too high a price to pay to preserve the freedom of debate that we enjoy here.

Beyond the right to filibuster, there are a great number of matters which make the Senate inefficient that cannot be justified by any logic under the sun.

I am submitting some proposed changes of the rules to help to do something about some of the needless inefficiencies and waste of time in this body. If the Senate will act favorably upon as many as one-third of my suggestions, then I will offer at least as many more as I am offering now.

The first inexcusable waste of time in this body is the fact that a committee can be prevented from meeting while the Senate is in session although a majority of Senators are perfectly content that the committee meet. During much of a Congress, particularly during the early months of a first session, there is little to be done on the Senate floor because the major bills are being considered in the committees which are holding hearings and executive sessions. Yet, during this period, any Member who wishes to impede the progress of a bill which he opposes may leave a standing objection with the leadership on his side of the aisle and any motion that the committee be permitted to meet during the session of the Senate will be objected to by the leadership on his side of the aisle. True, a committee can be permitted to meet by a majority vote of the Senate, but the motion is debatable.

The Senator seeking to delay consideration of the bill need only suggest the absence of a quorum, thereby delaying the Senate for perhaps 20 minutes while the leadership prevails upon 51 men to enter the Chamber. Thereafter, the Senator seeking to delay legislation can discuss the matter for a while, then he can suggest the absence of a quorum again. By this time, the men who had entered the Chamber will have disappeared and it will take another 20 minutes to muster another quorum.

With the greatest of ease, a Senator can continue to discuss his reasons for objecting to the meeting of the committee with the result that the motion never comes to a vote and the committee is without the right to meet. The ridiculousness of this situation is farcical. So long as a quorum is present in the Senate or, for that matter, until it has been determined that no quorum is present, it is beyond the power of anyone to compel the presence of any Senator in the Chamber. He can go anywhere he wants to go or do anything his heart desires, provided it does not violate the

general laws affecting all situations, and no one can stop him. He can visit with friends; he can attend meetings downtown; he can stay at home; sleep all day; spend his time on the golf links; go to the picture show; visit the United Nations—or the burlesque for that matter—go to the ball game; exercise in the gym; attend a meeting of the Students for a Democratic Society or a convention of the Daughters of the American Revolution. He can do anything under the sun except attend a meeting to advance the consideration of legislation—which is one of his prime duties.

He can do anything that is his duty or anything that is not his duty. He need not even be in Washington or anywhere near Washington. But he is forbidden to attend the meeting of a committee to consider or to advance a piece of legislation even though the Senate may have instructed his committee to report this measure and may have placed a time limit on them.

If the committee should insist on meeting without consent of the Senate then the person who opposes the meeting has a right to insist that the Government not pay any of the clerical or stenographic expenses of the committee session. And, indeed, the stage has been set for dilatory action to prevent the measure from being considered because the committee met in violation of the rules of the Senate.

Accordingly, Mr. President, I am submitting a proposal (S. Res. 377) that committees of the Senate be permitted to meet unless they have been forbidden to meet by a majority vote of the Senate.

My proposal provides that a motion that committees be denied the right to meet shall be decided without debate. The importance of requiring that the motion that a committee should not be permitted to meet be put in this fashion is that the party seeking to delay matters by suggesting the absence of a quorum would have it beyond his power to prevent a committee from meeting during this period of time that 51 Senators were on their way to the Senate floor. The measure which I am proposing would not confront any effective leadership or any effective majority leader with a problem. Whenever he wished to require the presence of all Senators, he should have little difficulty in persuading a majority of Senators to vote that a committee could not meet.

In the event that a majority of Senators preferred to permit a committee to meet, there is no reason why the committee should not be permitted to meet even if it should incur the displeasure of a majority leader.

Those who are unfamiliar with the proceedings of the U.S. Senate should be aware of the fact that during most of the time that the Senate is in session there are no more than 15 Senators on the Senate floor. The number of Senators required to order a rollcall vote of the yeas and nays varies from 11 to 20, depending upon the number of Senators who were present at the previous quorum call or at the previous rollcall.

A considerable amount of delay in the Senate can be justified only on the theory that the public is unaware of the fact

that the average Senator spends very little of his time on the Senate floor and that the public must be misled to think it is otherwise. Those who work for the Senate know that Senators do most of their work in their offices, committee rooms, and the various meeting rooms around the Capitol. In most cases, the average Senator hears very little of the debate that transpires. After a Senator has been in this body for 2 years, he has heard most of the issues discussed and he knows how he would like to vote on most of them. When he has served a full term, he has usually heard most of the issues discussed two or three times. He has voted upon most of the issues that he will be called upon to vote on at least once and, sometimes, two or three times.

Senators just do not waste much time listening to arguments they have heard before, particularly if it is an argument with which they do not agree. It is to maintain a false image that there are 51 or even 99 Senators present, hanging on every word the speaker is saying, that we do some things which waste a great deal of time. If we could keep a log to show how many Senators were present, in fact, it would save a great deal of the Senators' time.

But I am not seeking to do this because it would embarrass me, if not all of us. I only seek to bring about enough efficiency in the Senate so that it can do 6 months' work in 8 months, rather than in 12.

My second proposed change of the rules—Senate Resolution 378—would provide that once a quorum has been determined to be present, it would not be necessary to call the roll when the Presiding Officer can look across the Chamber and count 50 other Senators present. A procedure of this type is part of the Rules of the House of Representatives. Many times during the course of a Congress, a Senator will suggest the absence of a quorum merely to be dilatory. Many times I have witnessed a case where as many as 90 Senators would be present and a Senator would suggest the absence of a quorum, particularly for the purpose of delay. When the word was passed that he was intending to be dilatory, Senators would begin to depart from the Chamber and, by the time the Clerk had completed the call of the roll, there would be no more than a dozen Senators in the Chamber. By the time the Senator had been talking for 20 minutes there would be less than four Senators in the Chamber. I would not deny the right of a Senator to delay the Senate by engaging in debate. Many times, however, the Senator who is delaying the measure has so little knowledge of the subject that he is not even in a position to discuss it intelligently.

If one would delay the Senate when the overwhelming majority of the Senate are present, he should at least have to go the trouble of talking and speaking to the subject itself. He should not be permitted to impede Senate action by suggestion that a quorum is not present when anyone, at a glance, can tell that a quorum is clearly present in the Chamber.

If Senators are going to engage in a filibuster they should at least have to

stand and speak. They should not be permitted to filibuster from their seats.

This second change of the rules which I am proposing has an additional advantage when the Senate is anxious to vote. If a Senator proposes an amendment particularly for the purpose of being dilatory, it is within the power of the Presiding Officer to recognize the majority leader, or some other Senator who is anxious to get on with the business, and that Senator may move to lay the amendment on the table. Under a rule in Jefferson's Manual, a Senator is entitled to make only two speeches on a given subject during a legislative day. If the Senate will keep a quorum present, then the Senator seeking to delay matters can be denied the right to speak on amendments with the result that he must direct his debate to the bill itself. In this fashion, a single Senator would be incapable of delaying the Senate more than 36 hours if the Senate were so determined that it was willing to continue its sessions around the clock. Even if two Senators were determined to prevent the Senate from voting they could hardly impede the Senate more than 4 days without the help of others. This is about as long as two Senators should be permitted to delay the others.

The proposed change which I am suggesting here would help to avoid other needless delay.

Under the rules, a rollcall vote may be had and the vote of each Senator recorded whenever a Senator so requests and one-fifth of the Senate supports his request. Many times the Senate does not care to have a rollcall vote on an amendment because to do so will take anywhere from 6 to 20 minutes where there are at the desk perhaps 100 amendments which have little or no support and Senators are tired from long sessions on a particular measure. They would, many times, prefer not to have a yea-and-nay vote. Under the present rules, the sponsor of the amendment can always have a yea-and-nay vote by simply being sufficiently dilatory that Senators would rather accord him a rollcall than to suffer the delay that it would otherwise cause them. Where a quorum is present, under the rule I am proposing, a majority leader—or manager of the bill—could bring the matter to a quick decision by obtaining recognition, asking for a brief limitation on debate and, failing to obtain the same, moving to lay the amendment on the table. Under the existing rules, a Senator who might have only his own vote in favor of his amendment could suggest the absence of a quorum. When the roll had been called and a quorum determined to be present he can then suggest the absence of a quorum again. That is how he can do it now. Upon being informed that no business had transpired since the previous quorum, he then need only appeal from the ruling of the Chair and, upon being voted down by the Senate, it would then be in order to suggest the absence of a quorum again. In this fashion, a single Senator, without the support of anyone else, can keep the clerk calling the roll all night long without the necessity of even making a speech in support of his position. This is a ridiculous situation.

So long as we retain these archaic rules, I reserve to myself the right to take full advantage of them.

Like everyone else in government, I have but one complaint—that I have so little influence. Like everyone else, I am convinced that everything which is wrong about this Government could be corrected if everyone would do exactly as I think they should do. I am sure that every President and most Senators who have served here for 20 years have probably shared or come near sharing that view.

But a legislative body must find ways to permit the majority view to prevail and, as I have said before, the Senate is inexcusably inefficient, in according a small minority, sometimes a minority of merely one, the right to so greatly impede a majority of 99 percent.

What I am suggesting would still permit a single Senator to delay the Senate for a long time—a day or even two days at a time—and a lot longer than that if anyone agreed with him sufficiently to do anything about it.

A third proposed change of the rules which I am offering—Senate Resolution 379—would provide that, when a rollcall vote is taken, a Senator entering the Chamber within 5 minutes after the result has been announced could be recorded as voting—provided it did not change the result. If the result would be changed then a motion to reconsider would be in order, as indeed it would be under the present rules. This should reduce the time for the average rollcall from 15 minutes to about 10.

The only argument that occurs to me against this proposal is that it might hurt attendance on the floor. This argument I would answer: There is nothing that anyone can do that would hurt attendance on the floor. Most of the time there is no Senator on the floor anyway except one who is making the speech, one who is caught in the chair of the Presiding Officer, and two who have been recruited to protect the majority and minority leaders and their rights on the floor. To that number should be added two, or perhaps three others waiting their turns to speak or to insert something in the RECORD.

It may be precarious to say what I am going to say next, but Senators know this is true: on most rollcall votes the majority of the Senators come into the Chamber without having heard what was said immediately prior to the vote. They inquire of someone in whom they have confidence what the vote is all about, decide how they want to vote, and proceed to do so with no more than 60 seconds of explanation although the matter may have been the subject of several hours of debate. Obviously, the measures have been much better considered than this statement would indicate. Consideration within the legislative committees has been much more thorough. Senators on both sides have undertaken to acquaint others with their views over luncheon tables or by buttonholing them on the floor or in the cloakroom. Even so, the suggestion that anything is to be gained by continuing the present method—if indeed it be a method at all—of

obtaining a required number of Senators to be present at the moment of the vote in order to be recorded has nothing to offer.

As a matter of fact, it will help to improve attendance in the Senate to know that Senators can expect something to happen if they will stick around for a while, rather than the present situation which guarantees that nothing will happen at any time soon, with the result that Senators find it more productive to spend their time somewhere other than on the floor of the Senate. There is a better prospect of something happening if a Senator is on the floor when the Senate is not wasting its time calling the role or stalling to prevent announcing the result of a vote while waiting for someone in the gym to finish his shower, don his clothes, and rush to the floor. It is amusing how one ridiculous system leads to another. One of the reasons it takes so long to muster a quorum or to complete a rollcall is that some Senators are in the gym getting their daily exercise. The reason they must get that exercise while the Senate is in session is that it takes so long to ever get anything done that the Senate stays in session long hours and practically all year long. The fact that it takes so long to bring a matter to a vote on the Senate floor is the largest single reason why 80 percent of the Senators are not on the floor except when a rollcall vote is being taken.

A fourth proposed change of the rule which I am offering—Senate Resolution 380—is that when a Senator has agreed to accord another Senator a live pair, both Senators should be recorded as voting rather than having both of them recorded as not voting. This proposed change of the rule would not in any way affect the fact that 51 Senators must be present and voting in order for the vote to be effective. Beyond that fact, it serves no purpose to require that a Senator be present in the Chamber in order for his vote to be recorded, so long as the Senator is well aware of what he is voting on and why.

I can recall occasions when we have hauled dying men into this Chamber on stretchers. For example, when Matt Neely, of West Virginia, was on his deathbed, he was carried into this Chamber to cast a vote in favor of the Democrats organizing the Senate. Everyone who ever knew Matt Neely knew that he was as partisan a Democrat as the Good Lord ever provided to his green earth; nothing on this side of Heaven could prevent him from voting with the Democrats to organize the Senate. No one could have had the least doubt how he wanted to vote. Why need we have hauled him into this body, particularly as one of the kind Senators on the other side of the aisle would have been willing to accord him a pair? In fact, how could our Republican friends have declined to have granted Matt Neely a pair when not to do so would have only produced the scene of this man being carried in on a stretcher. Yet, we still insist on a ridiculous rule which says that even though a man well knows how he wants to be recorded, when he is absent from the Chamber for whatever reason he

must be recorded as absent and not voting unless he can persuade someone to respect his position to the extent that that man would decline to vote in order to give the absent member a pair. The pair then is the only means we have to reflect what the true will of the Senate would be if all Senators were respected as representatives of their State rather than what the vote would be if a man dying in a hospital or attending his daughter's wedding were denied the right to have his views reflected on the rollcall. The adoption of the four changes of the rules that I have suggested would not make the Senate an efficient body although it would take us a considerable way in that direction.

The fact that a man giving a pair may also be recorded as present and not voting is adequate excuse for declining to give a pair. This in turn is cause for the party leaders to seek to delay the conclusion of the rollcall until more of their troops are present.

If these should be agreed to, however, it will encourage other Senators to suggest other changes in the rules—indeed, it would encourage this Senator to suggest other changes until we no longer need apologize to the public that we have not discovered the 20th century.

If we will improve our procedures in about a dozen ways along this line, there is absolutely no reason why we cannot do a better job and complete our job in 6 or 7 months, leaving us anywhere from 5 to 6 months during which we can visit and live among the people whom we represent. This will make us reflect more truly their needs and their purposes instead of reading Washington newspapers—good though they may be—and absorbing the Washington point of view until we reflect that point of view rather than the point of view of those who sent us here. We would be better representatives of our people because we would understand their needs and desires much better and they will understand us better.

From a reading of the rules of the Senate one can see, beyond any peradventure of doubt, that these rules predate the invention of the telephone. Indeed, they predate the United States. They had their origin in British parliamentary practice and in Jefferson's Manual, which itself was derived from British practice. When the rules of the Senate were first written it made sense that a Senator should not vote if he were not present. Any proposed measure might be amended or changed during the consideration of the measure; the Senator might not have heard the arguments, facts may be presented which he had not considered. It may very well be that someone with his interests at heart, such as his clerk, knowing all of these facts, would urge him to change his position had he come rushing from his horse up the Senate steps, panting, with his hat in his hand.

Nowadays we have a telephone. While we have yet to install a loudspeaker or pipe the debate into offices of Senators, as we certainly should do, at least a Senator's administrative assistant can sit in the gallery hearing every word that is said, advise his boss of the arguments

and help him decide how he wants to be recorded. In the committees, we are well aware of the telephones.

If I might say a word of pride about the Senate Committee on Finance, long before I became chairman of that very fine committee, it was the practice to break a tie by calling absent Senators over the phone and inquire how they would want to vote. I recall that during the Eisenhower administration I was speaking to a convention of the local governing bodies of Louisiana, which in that State is known as the Police Juries. During the course of my speech I was called from the speaker's platform and informed that the Committee on Finance had reached a tie vote on the question of whether the Reciprocal Trade Act, recommended by President Eisenhower, was to be a 3- or a 5-year act. I replied that I would like to be recorded in support of the President for a 5-year act and, thereby, determined the outcome of the decision from 1,100 miles away.

Our current procedure in that same committee is to call a Senator, and when Senators so request, we will permit the Senator on one side of the issue to listen in on an extension and a Senator on another side of the issue to listen in on another extension. Each can explain why they think the Senator should vote on their side and then his vote will be recorded if he wishes it.

In at least one other respect the Senate has learned that there is such a thing as a telephone. Just off this Chamber there is a President's Room which is there in order that the President could have it available to consult with legislative leaders on the last day of a session to assure that matters which he deemed vital were not left undecided when the Senate adjourned sine die. Only once in the 20 years I have been a Senator has a President used the room and then only for the ceremonial signing of the Civil Rights Act of 1964. The reason that the room is no longer used for its intended purpose is that Alexander Graham Bell invented the telephone. Nowadays, the leadership on both sides of the aisle goes to the office of the Secretary of the Senate and informs the President that the Senate has concluded its business when we are ready to adjourn sine die, unless the President should object.

There are other things that should be done to modernize the Senate of the United States. We should have an electric voting machine behind the Presiding Officer's desk with buttons on every Senator's desk and a board with red and green lights beside every Senator's name as is the case in most of the State legislatures. Senators of the United States are so reluctant to even permit a machine to be installed that I am not pressing for it at this time. If I am successful in achieving some of these things which common-sense dictates, then I shall, at some future time, risk shocking some Senators by suggesting that we at least try the method of voting which has proved so successful in State legislatures that none of them would consider changing back to the old system.

When one suggests that we should use a voting machine, he is confronted with

all sorts of questions for fear that the machine might not fit into our outdated practices. On that score I would only suggest that we should acquire the machine first and then learn how to use it. Like an automobile or a pocket in one's pants, it is so convenient that if one has it he will use it. The only way to keep one from using it is not to have it. I would suggest to Senators, for example, if we had the machine here, could we not agree that, with a rule to permit an absent Senator to be recorded 5 minutes after the vote is announced, and after we had agreed to vote at a moment certain, such as at 10 minutes after 5, might we not save the time of the Senate by using a machine? Better yet, suppose after having agreed to vote at a time certain—reserving Senators the right to be recorded for another 5 minutes—a vote was taken and 100 Senators were present and voting, observing 100 Senators in their seats, could we not then agree that a motion to reconsider and a motion to lay on the table could be taken by the machine? Under our present procedure when a motion is voted and a motion to reconsider is made, it is customary that a motion is then made to lay the motion to recommit on the table.

If this motion is defeated, then the motion to reconsider is taken. If this motion should carry, then the motion on the original question is again voted. Under present procedure, even with everyone present and anxious to vote, these three votes could take 45 minutes. Why should they not be disposed of in 3 minutes, or perhaps 1 minute?

When I was a boy, 12 years of age, I witnessed the sessions of the State Senate of Louisiana prior to the installation of a voting machine in the senate. The house of representatives at that time had a machine and I found myself wondering how long it would take for those old fuddy-duddies in the State senate to wake up to the fact that they, too, needed a machine. Subsequently, it was my privilege to serve as minute clerk when the senate of only 39 men operated with a voting machine. I found myself wondering how that body ever got by prior to the installation of the machine, especially with the large amount of work that was to be done in a 60-day session. When I came to Washington, my administrative assistant, who had worked for two previous Louisiana Senators, told me that I would change my mind about the necessity of a voting machine in the Senate. Yet, every year that I have been here, I have been more convinced than ever that it is utterly ridiculous that we should not have a voting machine.

I well recall the fight over the proposal for public financing of presidential campaigns. The votes were about equally divided. My side won every second critical vote, and the fight lasted for more than a month while first one side and then the other dragged its feet, seeking to bring more of its troops back into town.

This is a sorry way to decide such an important question. It makes better sense to find out how every Senator feels about an issue and let the majority prevail.

The Congressional Quarterly and the

press generally have ways to learn how every Senator feels about a matter and who it is—if anybody—truly wants to abstain and remain unrecorded. If newspapers, magazines, radio, and television can do it, why cannot we?

I can think of some reasons why some might think otherwise, but those reasons do not deserve to be explained because they reflect no credit upon the individual or upon the Senate. Any such reason unworthy of being publicly stated should not prevail in this body. I am talking about the individual who might find it to his advantage to be against such release for such reason as not wanting to be on record, for example, on a public issue.

If we will improve our procedures in about a dozen ways along the lines that I have suggested, there is absolutely no reason why we cannot do a better job and complete our work in 6 or 7 months, leaving us anywhere from 5 or 6 months, during which we can visit and live among the people whom we represent. This will make us reflect more truly their needs and their purposes instead of reading Washington newspapers—good though they may be—and absorbing the Washington point of view until we reflect that point of view rather than the point of view of those who sent us here. We would be better representatives of our people because we would understand their needs and desires much better and they will understand us better.

I ask unanimous consent that I may submit at this point the various changes of the rules that I have suggested.

The PRESIDING OFFICER (Mr. SCHWEIKER). The resolutions will be received and appropriately referred.

The resolutions (S. Res. 377 through S. Res. 380), which read as follows, were referred to the Committee on Rules and Administration:

S. RES. 377

Resolved, That paragraph 5 of rule XXV of the Standing Rules of the Senate is amended to read as follows:

"5. Any committee may sit while the Senate is in session until (1) the conclusion of the morning hour, or (2) the Senate has proceeded to the consideration of unfinished business, pending business, or any other business except private bills and the routine morning business, which ever occurs earlier. Any committee may sit thereafter while the Senate is in session unless the Senate has agreed to a motion to forbid such action by one or more such committees during a designated period of time. Any such motion shall be decided without debate. When any such motion has been agreed to, it may be rescinded by a motion agreed to by majority vote of the Senate. Any such motion to rescind shall be decided without debate."

S. RES. 378

Resolved, That paragraphs 2 and 3 of rule V of the Standing Rules of the Senate are amended to read as follows:

"2. On the first occasion during a daily session of the Senate on which a question is raised by any Senator as to the presence of a quorum, the Presiding Officer shall forthwith direct the Secretary to call the roll and shall announce the result. On any subsequent occasion during a daily session of the Senate on which such a question is raised, the presence or absence of a quorum shall be determined in the following manner. If the Presiding Officer believes that a quorum

is present, he shall count the Senators present without a call of the roll, and shall announce the result of his count. If the Presiding Officer does not believe that a quorum is present, or if his count of the Senators present does not disclose the presence of a quorum, he shall forthwith direct the Secretary to call the roll and shall announce the result. Proceedings taken under this paragraph shall be without debate.

"3. Whenever it shall be ascertained pursuant to paragraph 2 that a quorum is not present, a majority of the Senators present may direct the Sergeant at Arms to request, and, when necessary, to compel the attendance of the absent Senators, which order shall be determined without debate; and pending its execution, and until a quorum shall be present, no debate nor motion, except to adjourn, shall be in order."

S. RES. 379

Resolved, That paragraph 1 of rule XII of the Standing Rules of the Senate is amended to read as follows:

"1. When the yeas and nays are ordered, the names of Senators shall be called alphabetically; and each Senator shall, without debate, declare his assent or dissent to the question, unless excused by the Senate. Except as provided by this paragraph, no Senator shall be permitted to vote after the decision shall have been announced by the Presiding Officer, but may for sufficient reasons, with unanimous consent, change or withdraw his vote. Within a period of five minutes after the announcement of a decision taken by the Senate by the yeas and nays, any Senator who was absent during the voting shall be entitled to state the vote which he would have cast if he had been present and to request that such vote be recorded as having been so cast. At the end of that period, the Presiding Officer shall determine without debate and announce whether the decision so taken by the Senate would be changed by the recording of all votes of absent Senators so requested during that period. If the Presiding Officer determines that the decision of the Senate would not be changed by the recording of all votes so requested by Senators who were absent, all such votes shall be recorded as having been cast during the yeas and nays vote. If the Presiding Officer determines that the decision of the Senate would be changed by the recording of all votes so requested by Senators who were absent, none of the votes of the Senators who were absent shall be recorded as having been cast. No motion to suspend this rule shall be in order, nor shall the Presiding Officer entertain any request to suspend it by unanimous consent."

S. RES. 380

Resolved, That rule XII of the Standing Rules of the Senate is amended by adding at the end thereof the following new paragraph:

"4. When the yeas and nays are ordered upon any measure or matter, and a Senator who is present has entered into a pair upon that measure or matter with a Senator who is absent, the vote of each Senator who is a party to the pair shall be recorded upon request made by the Senator who is present when his name is called. No absent Senator shall be counted as present in determining whether a quorum is present."

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. 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.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the Senate by Mr. Geisler, one of his secretaries.

MANPOWER REPORT—MESSAGE FROM THE PRESIDENT

The ACTING PRESIDENT pro tempore (Mr. METCALF) 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 Labor and Public Welfare:

To the Congress of the United States:

This first Manpower Report of my Administration recounts the major developments in employment and unemployment during 1969 and the progress we made in that year in reshaping and strengthening existing manpower programs. The report also discusses the contributions of manpower programs to the country's crucial economic objectives—controlling inflation and limiting and mitigating any rise in unemployment.

Despite the significant advances described in this report, our experience during this past year has substantiated what I said last August when I proposed a new Manpower Training Act. I said then that the inefficiencies inherent in the present patchwork of manpower programs were intolerable and that a new legislative approach to manpower problems was in order. I proposed specific reforms at that time and I take this opportunity to urge, once again, their prompt enactment.

Other important topics treated in this Manpower Report include the need for improvements in our Unemployment Insurance system and for fundamental reform of our welfare system. Clearly, these institutions require basic reform if we are to be effective in preventing as well as relieving poverty. I again ask the Congress to act in these significant areas.

Full opportunity for all citizens remains a central goal for this Nation. To achieve that goal will require exceptionally well-constructed and well-administered manpower programs. We have made much progress toward that end in the last year, progress which is detailed in this document. But there is still a great deal to do—and this report is especially valuable because it clarifies and underscores these challenges.

RICHARD NIXON.

The WHITE HOUSE, March 25, 1970.

FEDERAL WATER POLLUTION CONTROL ACT

Mr. BYRD of West Virginia. Mr. President, as in legislative session, I ask the Chair to lay before the Senate a message from the House of Representatives on House Concurrent Resolution 559.

The PRESIDING OFFICER. The Chair lays before the Senate House Concurrent Resolution 559 which the clerk will state.

The legislative clerk read as follows:

H. CON. RES. 559

Resolved, That in the enrollment of the bill H.R. 4148, the Clerk of the House of Representatives is authorized and directed to enroll the title so as to read: "An Act to amend the Federal Water Pollution Control Act, as amended, and for other purposes."

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the resolution.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, House Concurrent Resolution 559 was considered and agreed to.

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill 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.

FEDERAL NATIONAL MORTGAGE ASSOCIATION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the nomination on the Executive Calendar under "New Report."

The PRESIDING OFFICER. The nomination will be stated.

The LEGISLATIVE CLERK. Allan Oakley Hunter, of California, to be president of the Federal National Mortgage Association.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

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

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

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AIR TRAFFIC CONTROLLERS WORK STOPPAGE

Mr. JAVITS. Mr. President, I wish to say a word about another work stoppage by Government workers; namely, the air

traffic controllers, who have pretty much tied up air traffic to New York and, indeed, in other areas across the land.

This is a most unfortunate development in the continuing controversy which has raged between the Professional Air Traffic Controllers Association, called PATCO and the FAA.

Clearly, the stoppage is illegal and cannot be condoned.

The controllers should return to work immediately.

Today's work stoppage is the culmination of many months of rigidity and bitterness and, indeed, some ineptitude in the handling of this dispute by both sides. PATCO and FAA.

Several weeks ago, on the eve of a threatened stoppage, at my suggestion, the parties agreed to call in a Federal mediator to help them resolve their differences.

Regrettably, both sides appear to have so limited the mediator's functions as to make it impossible for him to offer any meaningful help in resolving the controversy.

I believe that, in the public interest—bearing in mind that I first believe that the controllers must return to work—a full-scale inquiry into the conduct of all parties to this dispute and the grievances which have been expressed by the air traffic controllers themselves—many of which grievances are, in fact, justified—should be undertaken by the congressional committees concerned with our air transportation system.

Congress and the public are entitled to a full explanation of the circumstances which have led up to the crisis in the air transportation field which is now facing us.

I believe such an inquiry will show that the work stoppage today could have been avoided by reasonable measures had the parties to the dispute acted providently.

Mr. President, I also believe that this work stoppage and the postal strike, which still goes on in New York, indicates that there is something radically wrong with our system of dealing with Government employee grievances. A way must be found to achieve better communication between Government agencies and the representatives of their employees, as well as better bargaining techniques calculated to avoid rigidity on either side.

Continuance of the present policy can only lead to a tragic polarization of feeling between the Government and its employees and ultimately to the use of troops—which I understand was necessary but could have been avoided—or other drastic measures in public employee labor disputes such as prosecutions under the penal law, which would further embitter the situation.

No country can stand extensive labor disputes and work stoppages against the Government. We should be vigilant to prevent matters from getting to that pass.

I deeply believe our procedures are very archaic in this matter. I think the President is trying to improve them. But they do not begin to do the job.

I think the postal strike and the work stoppage by the air traffic controllers are of sufficient severity that Congress

should get on top of them now. I hope that we will get to work on the matter.

I urge the air traffic controllers to come back to work. I think that is their best course, having made their point and having called attention in many respects to their grievances which, as I say, are quite justified.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

THE CARSWELL NOMINATION

Mr. HART. Mr. President, the legislative voice of the city of Detroit is its common council. It has voiced its position with respect to the pending nomination to the Supreme Court of Judge Carswell.

It would be a mistake for me to attempt to elaborate on that expression. It speaks to the point and concludes that the nomination should be opposed.

I think this position of the common council reflects the feeling of the great majority of the people of the city of Detroit.

For the information of all Senators, and I hope with some persuasive effects, I ask unanimous consent that the resolution of the common council which was sent over the signature of George C. Edwards, its city clerk, be printed in the RECORD.

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

RESOLUTION OF THE CITY OF DETROIT
MARCH 12, 1970
(By Councilman Ravitz)

Whereas, In 1948, G. Harrold Carswell spoke in favor of racial segregation and thought so highly of his speech that he had it published in his weekly newspaper, and

Whereas, In 1956, Judge Carswell helped organize a group to buy the Tallahassee Municipal Golf Course to convert it to a private club that would bar black people, and

Whereas, In 1966 Judge Carswell participated in a land sale with a restrictive racial covenant in it, even though the Supreme Court had outlawed such covenants in 1954, and

Whereas, Countless distinguished attorneys have testified that Judge Carswell has exhibited his hostility to them and to the cause of civil rights for their advocacy of these rights, and

Whereas, Numerous legal scholars from all over the country have declared in writing that Judge Carswell's level of legal competence is far below the standards acceptable for the United States Supreme Court;

Now, Therefore, Be It Resolved, That the Common Council call upon U.S. Senators Hart and Griffin to vote against confirmation of the nomination of Judge Carswell when the matter is brought to the floor of the Senate, and

Be It Further Resolved, That copies of this resolution be sent promptly to the two Senators from Michigan and to the President of the United States.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, if I may have the attention of the Senate, I am about to propound a unanimous-consent request. I wish to do it personally, so that I will make sure that all the corners are covered, and if I am not doing so, I will be called to account.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that upon completion of the Senate's business on Tuesday next, the Senate recess in legislative session until 12 o'clock noon on Wednesday, April 1, 1970; and further, that immediately after the prayer, the conference report on H.R. 514 be placed before the Senate, and the debate thereon be limited to 4 hours, to be equally divided and controlled by the Senator from Rhode Island (Mr. PELL) and the Senator from Mississippi (Mr. STENNIS) or whomsoever they shall designate; and that the vote on the Stennis motion to recommit the conference report occur at 4 p.m.

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

Mr. MANSFIELD. I yield.
Mr. PELL. Did the Senator mean that there was to be a vote on the Stennis amendment at 4 p.m.?

Mr. MANSFIELD. On the Stennis motion; and that after that is disposed of, and not to exceed 1 hour later, there be a vote on the conference report.

The PRESIDING OFFICER (Mr. SCHWEIKER). The Chair would state that the conference report is not open to amendment, and no amendment could be voted on.

Mr. MANSFIELD. I was referring to the motion of the Senator from Mississippi to recommit; and that after that is disposed of, there be a vote on the conference report itself within 1 hour thereafter.

Mr. ALLEN. If it is still pending.
Mr. MANSFIELD. Yes, if it is still pending.

The PRESIDING OFFICER. The Chair would state—will the Senator finish his statement?

Mr. MANSFIELD. That is the statement. Up to that point, is it understood?

Mr. JAVITS. Mr. President, one other point if the Senator will yield. It is understood that the Stennis motion to recommit will be concerned with the so-called Stennis amendment?

Mr. STENNIS. That is correct, Mr. President. May I ask the majority leader a question at this point?

Mr. MANSFIELD. Yes.
Mr. STENNIS. If the Senator will yield to me.

Mr. MANSFIELD. Yes, indeed.
Mr. STENNIS. I just stated that the motion the Senator from Mississippi has in mind would be on the amendment referred to by the Senator from New York.

I have in mind, now, a general motion to recommit generally, without assigning all the reasons. There may be others who would want to be more specific.

It has been agreed, as I understand, that they would have a chance to offer that if there is either an amendment to my motion or another motion to recommit. Say, it refers to section (c). I want that clearly understood—that no one else is cut off and that some time be allowed.

Mr. JAVITS. Mr. President, the intention of the majority leader—and he will correct me if I am wrong—is that when the 1 hour debate has expired after the vote on the Stennis motion to recommit, concerned with the Stennis amendment—however he may phrase it—that during that hour if he or Senator PELL yields time, or even without time, another Member might make a motion to recommit. That will then be voted on immediately before the vote up or down on the conference report. Assuming that the conference report still survives, it will be voted on up or down within 1 hour after—that is, when the 1 hour expires—after the first vote on the Stennis motion.

Mr. MANSFIELD. I concur completely with the Senator from New York's explanation.

Mr. JAVITS. Is that all right with the Parliamentarian?

The PRESIDING OFFICER. The Chair would ask if the motion to recommit with instructions is solely limited to the Stennis amendment.

Mr. JAVITS. As I understand it, the parties on the other side, Senator STENNIS included, say that the first motion which we will face within 4 hours after 12 o'clock on Wednesday will be a motion to recommit, with instructions, or some motion regarding the Stennis amendment. The Senator then says that in the succeeding hour after that is voted on, assuming that the conference report is still before us, there may be other motions to recommit also regarding the Stennis amendment; whatever there is will then be voted on immediately before the vote up or down.

Mr. GRIFFIN. It need not be limited to the Stennis amendment.

Mr. JAVITS. It need not. I will accept that. Any other motion to recommit will then come between the time of voting on the Stennis amendment and 1 hour thereafter.

As I understand the parliamentary rule, it must be voted on after the time has expired—to wit, 1 hour—and immediately thereafter the unanimous-consent request calls for a vote, up or down, on the conference report, assuming that it is still before us.

Mr. MANSFIELD. That is correct.

The PRESIDING OFFICER. Is there objection?

Mr. STENNIS. Reserving the right to object, it seems to me that the time for debate on any of the motions to recommit, in addition to the general one I alluded to, should come before the beginning of this 1-hour debate on the conference report as a whole. It was a bill. So if some time will be allowed—

Mr. MANSFIELD. The time would be under the control of the Senator from Mississippi and the Senator from Rhode Island.

Mr. STENNIS. There are only 2 hours in all for each side. Suppose we might have—I do not know whether we will, but suppose we might have three or four proposals, motions to recommit, with a specific instruction. It would take more than the 2 hours for each side, perhaps.

Mr. MANSFIELD. How about 6 hours, and we will come in at 10 o'clock?

Mr. STENNIS. That would be all right, just so that there is enough time to argue them. I do not want to delay.

Mr. JAVITS. Six hours is fine.

Mr. MANSFIELD. I change the request so that the time to be divided before the vote at 4 o'clock will be 6 hours equally divided.

Mr. JAVITS. We will come in at 10 a.m. and vote at 4 p.m. on the Stennis amendment.

The PRESIDING OFFICER. Will the Senator from Montana restate the last point?

Mr. MANSFIELD. I just changed the hours to be allocated from 4 to 6 hours, the rest of the proposal to remain as is.

Mr. GRIFFIN. And to come in at 10 o'clock.

Mr. MANSFIELD. That is implied. We will get to that specific request later.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. ALLEN. Reserving the right to object, I think there is more to come, and I would like to hear the rest of it.

The PRESIDING OFFICER. The Senator will proceed.

Mr. HOLLAND. Mr. President, reserving the right to object—and I shall not object—unless I misunderstand the situation, I understood that the unanimous-consent agreement would also fix a time for the vote on the Carswell nomination.

Mr. MANSFIELD. I am getting to that.

The PRESIDING OFFICER. The Chair just stated that the Senator was to proceed with the whole package.

Mr. HOLLAND. I understand that the Presiding Officer was about to put the question on the package up to now.

The PRESIDING OFFICER. The Chair amended that.

Mr. HOLLAND. I thank the Presiding Officer.

Mr. MANSFIELD (continuing). That upon the completion of the Senate's business on Friday, April 3, 1970, the Senate recess, in executive session, until 10 a.m., Monday, April 6, 1970; that immediately after the prayer on Monday, April 6, the Chair will place before the Senate the nomination of G. Harrold Carswell. At that time, if such a motion has not previously been offered—that is, during the previous week—the Senator from Indiana (Mr. BAYH) or his designee will move that the nomination of G. Harrold Carswell be recommitted to the Judiciary Committee; that the debate on that motion on Monday, April 6, will be limited to 3 hours, to be equally divided between

and controlled by the mover of the motion and the Senator from Nebraska (Mr. HRUSKA) or whomsoever they may designate.

Further, that the vote on the motion to recommit will occur at 1 p.m., Monday, April 6, 1970—the Senate convening that day at 10 o'clock—or as soon thereafter, as a motion to table the recommitment motion is disposed of, if such a motion to table is made; that if the motion to recommit the nomination on Monday, April 6, 1970, at 1 p.m., does not prevail, or the motion to table the recommitment motion does prevail then the vote on the confirmation of the nomination of G. Harrold Carswell will occur at 1 p.m. on Wednesday, April 8, 1970.

Mr. SCOTT. Following 3 hours of debate.

Mr. MANSFIELD. Following 3 hours of debate.

Mr. BROOKE. Mr. President, will the Senator yield for a question?

Mr. MANSFIELD. I yield.

Mr. BROOKE. Would there be an opportunity for a motion to table on Wednesday?

Mr. MANSFIELD. Yes, indeed.

Mr. BROOKE. Would that be written into the consent agreement, as well?

Mr. MANSFIELD. That motion, may I say, always is in order.

Mr. BROOKE. We have spelled it out on Monday, and I think we ought to be able to spell it out on Wednesday.

Mr. HRUSKA. Mr. President, it is not my information that a motion to table would always be in order if there is a unanimous-consent agreement to vote at a time specific, and I should like to have some information on that from the Chair.

The PRESIDING OFFICER. The Senator from Nebraska is correct, that normally the situation would preclude a motion to table. But the way the question was stated, the agreement does include a motion to table as a possibility.

Mr. HRUSKA. And when would that motion to table be eligible?

The PRESIDING OFFICER. At 1 o'clock after debate.

Mr. HRUSKA. At the conclusion of the debate?

The PRESIDING OFFICER. That is correct.

Mr. HRUSKA. To be followed by a vote on the nomination proper, depending upon the outcome of the vote?

Mr. MANSFIELD. That is correct.

Mr. BROOKE. Mr. President, I am asking the majority leader if that will be written in the unanimous-consent agreement.

Mr. MANSFIELD. We will be glad to write it in, to make sure, and I add it to the unanimous-consent request.

The PRESIDING OFFICER. Is there objection?

Mr. BAYH. Mr. President, I reserve the right to object.

Mr. ALLEN. Mr. President, I reserve the right to object.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. ALLEN. Mr. President, I want to

commend the distinguished majority leader for reconciling the irreconcilable and coming up with this request, which seems to meet with general approval. I would like to inquire as to what the pending business will be before the Senate if the agreement is made.

Mr. MANSFIELD. We will go back on the Carswell nomination. I daresay there will be little speaking on that, but the Senate will then proceed to the consideration of the stockpile bills, the extension of Hill-Burton, the rural telephone bill, and other measures. There is plenty to occupy the attention of the Senate.

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

The unanimous-consent agreements, later reduced to writing, are as follows:

UNANIMOUS-CONSENT AGREEMENT

Ordered, that effective after the prayer on Wednesday, April 1, 1970 (with the Senate convening in legislative session at 10 a.m.), further debate on the conference report on H.R. 514, primary and secondary education, be limited to six hours with the time to be equally divided and controlled by the Senator from Rhode Island (Mr. PELL) and the Senator from Mississippi (Mr. STENNIS), after which the Senate will immediately proceed to vote on the Stennis motion to recommit, with or without instructions. After the vote on the Stennis motion there will be an hour of debate on adoption of the report should the Stennis motion fall with the time to be equally divided and controlled by the Senator from Rhode Island (Mr. PELL) and the Senator from Mississippi (Mr. STENNIS), following which any other motions to recommit with or without instructions if offered will be voted on without further debate, to be followed by a vote on the adoption of the conference report if it has not otherwise been disposed of.

UNANIMOUS CONSENT AGREEMENT

Ordered, that effective on Monday, April 6, 1970, (with the Senate convening in executive session at 10 a.m.) further debate on the nomination of G. Harrold Carswell to be Associate Justice of the United States Supreme Court, with the pending question on the motion of the Senator from Indiana (Mr. Bayh), to recommit the nomination to the Committee on the Judiciary, be limited to three hours to be equally divided and controlled by the Senator from Indiana (Mr. Bayh) and the Senator from Nebraska (Mr. Hruska), or whomever they may designate, with the vote coming at 1 o'clock, or following a vote on a motion to table the motion to recommit if such a motion should first be offered. Following the above vote or votes the Senate will proceed to vote on the confirmation of the nomination at 1 o'clock on April 8, 1970, or following the vote on a motion to table the nomination should such motion be made, and if the nomination is still before the Senate.

ORDER FOR ADJOURNMENT FROM TUESDAY, MARCH 31, TO WEDNESDAY, APRIL 1, 1970, AT 10 A.M.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of business on Tuesday, March 31, 1970, the Senate stand in adjournment until 10 o'clock a.m. on Wednesday next, April 1, 1970.

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

ORDER FOR ADJOURNMENT FROM FRIDAY, APRIL 3, 1970, UNTIL 10 O'CLOCK A.M. THE FOLLOWING MONDAY, APRIL 6, 1970

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of business on Friday next, April 3, 1970, the Senate stand in adjournment until 10 o'clock a.m. the following Monday, April 6, 1970.

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

ORDER FOR ADJOURNMENT FROM TUESDAY, APRIL 7, 1970, UNTIL WEDNESDAY, APRIL 8, 1970, AT 10 A.M.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of business on Tuesday, April 7, 1970, a week from this Tuesday, the Senate stand in adjournment until 10 o'clock the next morning, Wednesday, April 8, 1970.

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

Mr. BAYH. Mr. President, reserving the right to object—and I shall not object—I should like for the RECORD to show that I hope the majority leader's request for coming in at 10 a.m. tomorrow morning does not rely on the need to move to the second order of business alluded to in the last part of the unanimous-consent request.

Mr. MANSFIELD. Well, time and the Senate will tell.

All I can say is thanks.

ORDER FOR RECOGNITION OF SENATOR YOUNG OF OHIO TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senator from Missouri (Mr. EAGLETON) completes his remarks tomorrow, the Senator from Ohio (Mr. YOUNG) be recognized for not to exceed 15 minutes.

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

PROGRAM

Mr. SCOTT. Mr. President, will the Senator from Montana yield?

Mr. MANSFIELD. I yield.

Mr. SCOTT. It is my understanding that no rollcall votes are planned for tomorrow, or for Tuesday next. Would that be the understanding of the majority leader?

Mr. MANSFIELD. Not necessarily, because there are a number of stockpile bills—16, I believe. There is also the question of the Hill-Burton extension, and the question of the rural telephone extension. If the appropriate Members are here, it is possible that there would be votes on these measures.

I see the distinguished Senator from Delaware (Mr. WILLIAMS) is in the Chamber. He has a vital interest in the

stockpile bills and has served notice that he has an amendment to offer to each of those bills. If appropriate Senators are on the floor, we would like to take them up and get them out of the way.

Mr. WILLIAMS of Delaware. Let me say to the distinguished majority leader that there will be some votes on those bills.

Mr. MANSFIELD. It all depends, but it appears that there will be no postal legislation this week. The conferees are meeting, and the possibility that we would have had to remain in session over the two-day recess I think has been negated because of that fact.

Mr. SCOTT. I thank the majority leader.

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President I ask unanimous consent that on tomorrow, following the two special orders previously alluded to, there be a brief period for the transaction of routine morning business.

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

ORDER FOR LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS ON TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that during the period for the transaction of routine morning business on tomorrow, statements therein be limited to 3 minutes.

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

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER FOR RECOGNITION OF SENATOR AIKEN TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on tomorrow, at the conclusion of the remarks by the able Senator from Ohio (Mr. YOUNG), the able senior Senator from Vermont (Mr. AIKEN) be recognized for not to exceed 30 minutes, prior to the period for the transaction of routine morning business.

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

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The 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.

ADJOURNMENT UNTIL 10 A.M.
TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in adjournment until 10 o'clock tomorrow morning.

The motion was agreed to; and (at 5 o'clock and 9 minutes p.m.) the Senate

adjourned until tomorrow, Thursday, March 26, 1970, at 10 a.m.

CONFIRMATION

Executive nominations confirmed by the Senate March 25, 1970:

FEDERAL NATIONAL MORTGAGE ASSOCIATION
Allan Oakley Hunter, of California, to be President of the Federal National Mortgage Association.

HOUSE OF REPRESENTATIVES—Wednesday, March, 25, 1970

The House met at 12 o'clock noon.

Rev. W. Christopher Hobgood, First Christian Church, Alexandria, Va., offered the following prayer:

Almighty God, we beseech guidance on this Hall. Here wars have been declared, peace celebrated, accomplishments recognized, and the Nation's directions have taken form.

Remind us that we harm history by not recognizing the purpose of the past, and do greater harm by not seeing our opportunities today.

In this land of promise, make us good stewards of the natural world; workers for justice; advocates of the day when "swords will become plowshares"; persons committed to excellence of ideal.

Bless the women and men who shape legislation here, with wisdom to know right and compassion to see every person as precious.

That peace and hope may be central so that all may be free to celebrate life's goodness, we dedicate today in this great House. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4148) entitled "An act to amend the Federal Water Pollution Control Act, as amended, and for other purposes."

THE PRESIDENTIAL MESSAGE ON DESEGREGATION—THE SAME OLD STORY

(Mr. FLOWERS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FLOWERS. Mr. Speaker, as far as I am concerned, the much-publicized Presidential message on desegregation simply amounted to a rehash of the same old story. While showing some real fancy footwork and trying to be all things to all people, I am afraid that what the President has really done is add his support to the dual standard and unequal treatment for the South that had already been established by the Supreme Court and HEW.

From the statement we can only con-

clude that freedom of choice is the law of the land everywhere but in the South. Forced busing is undesirable everywhere but in the South. The neighborhood school concept is good for everybody except us in the South and by engaging in rhetoric about the de facto and de jure differences in the origin of any segregation in education, the President is really saying to the North, East, and West that you can go ahead with yours the way it always has been but we are going to keep putting pressure on the South.

I do not know how this message will be received by others but I, for one, have just about had enough of this playing politics with our schools. We are either going to have a single national policy with single national standards or we are not, and they are not going to fool me with this cute distinction of what segregation is founded on neighborhood housing patterns and what began as a matter of law.

PROVIDING FUNDS FOR COMMITTEE ON AGRICULTURE

Mr. HAYS. Mr. Speaker, by direction of the Committee on House Administration, I submit a privileged report (Rept. No. 91-944) on the resolution (H. Res. 583) to provide additional funds for the Committee on Agriculture, and ask for immediate consideration of the resolution.

The Clerk read the resolution, as follows:

H. RES. 583

Resolved, That effective December 1, 1969, the further expenses of conducting the studies and investigations authorized by H. Res. 127, Ninety-first Congress, incurred by the Committee on Agriculture, acting as a whole or by subcommittee, not to exceed an additional \$100,000, including expenditures for the employment of accountants, experts, investigators, attorneys, and clerical, stenographic, and other assistants, shall be paid out of the contingent fund of the House, on vouchers authorized by such committee, signed by the chairman of such committee, and approved by the Committee on House Administration.

SEC. 2. The official committee reporters may be used at all hearings, if not otherwise officially engaged.

SEC. 3. No part of the funds authorized by this resolution shall be available for expenditure in connection with the study or investigation of any subject which is being investigated for the same purpose by any other committee of the House, and the Chairman of the Committee on Agriculture shall furnish the Committee on House Administration information with respect to any study or investigation intended to be financed from such funds.

SEC. 4. Funds authorized by this resolution shall be expended pursuant to regulations

established by the Committee on House Administration under existing law.

With the following committee amendment:

On page 1, line 1, strike out the following: "effective December 1, 1969."

The committee amendment was agreed to.

The resolution was agreed to.
A motion to reconsider was laid on the table.

PROVIDING FUNDS FOR COMMITTEE ON SCIENCE AND ASTRONAUTICS

Mr. HAYS. Mr. Speaker, by direction of the Committee on House Administration, I submit a privileged report (Rept. No. 91-945) on the resolution (H. Res. 649) to provide funds for the further expenses for the studies, investigations, and inquiries authorized by House Resolution 192, and ask for immediate consideration of the resolution.

The Clerk read the resolution, as follows:

H. RES. 649

Resolved, That the further expenses for the studies, investigations, and inquiries authorized by H. Res. 192, incurred by the Committee on Science and Astronautics, acting as a whole or as a duly authorized subcommittee, not to exceed \$400,000, including expenditures for employment, travel, and subsistence of attorneys, experts, and consultants (including personnel of the Library of Congress performing services on reimbursable detail) and clerical, stenographic, and other assistants, shall be paid out of the contingent fund of the House on vouchers authorized by such committee, signed by the chairman of such committee, and approved by the Committee on House Administration.

SEC. 2. No part of the funds authorized by this resolution shall be available for expenditure in connection with the study or investigation of any subject which is being investigated for the same purpose by any other committee of the House, and the chairman of the Committee on Science and Astronautics shall furnish the Committee on House Administration information with respect to any study or investigation intended to be financed from such funds.

SEC. 3. Funds authorized by this resolution shall be expended pursuant to regulations established by the Committee on House Administration under existing law.

With the following committee amendment:

On page 1, line 5, strike out \$400,000 and insert in lieu thereof \$350,000.

The committee amendment was agreed to.

The resolution was agreed to.
A motion to reconsider was laid on the table.