United States relative to equal rights for men and women; to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. BELCHER:

H.R. 16856. A bill for relief of M. Sgt. George H. Jennings, Jr.; to the Committee on the Judiciary.

By Mr. GUBSER:

H.R. 16857. A bill for the relief of Soon Ho Yoo; to the Committee on the Judiciary.

By Mr. MORSE:

H.R. 16858. A bill for the relief of Joseph A. Coan; to the Committee on the Judiciary.

By Mr. ROGERS of Florida (by request):

H.R. 16859. A bill for the relief of Uhel D. Polly; to the Committee on the Judiciary.

By Mr. THOMSON of Wisconsin:

H.R. 16860. A bill for the relief of Song Han Kyou; to the Committee on the Judiciary.

MEMORIALS

Under clause 4 of rule XXII,

349. The SPEAKER presented a memorial of the Legislature of the State of South Carolina, relative to insuring continued operation of the U.S. Coast Guard Reserve, which was referred to the Committee on Merchant Marine and Fisheries.

PETITIONS, ETC.

Under clause 1 of rule XXII,

436. The SPEAKER presented a petition of the Florida State Chamber of Commerce, Jacksonville, Fla., relative to designating Cape Kennedy as the operational base for the space shuttle system, which was referred to the Committee on Science and Astronautics.

SENATE—*Wednesday, April 8, 1970*

(Legislative day of Tuesday, April 7, 1970)

The Senate, in executive session, met at 10 o'clock a.m., on the expiration of the recess, and was called to order by Hon. WILLIAM B. SPONG, Jr., a Senator from the State of Virginia.

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

O Thou supreme judge, to whom men and nations are accountable, help us to walk uprightly, to work diligently, to contend fairly, and to judge wisely here that in the final judgment we may not be found wanting. Help us this day and every day to be obedient to conscience, the silent sentinel of the soul, and to be guided by the inner light of Thy truth. May Thy spirit sustain us without blemish or regret to the end. Then in Thy mercy grant us a safe lodging, a holy rest, and peace at the last. Through Him whose name is above every name. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will read a communication to the Senate.

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., April 8, 1970.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. WILLIAM B. SPONG, Jr., a Senator from the State of Virginia, to perform the duties of the Chair during my absence.

RICHARD B. RUSSELL,
President pro tempore.

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

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I may proceed, with the time to be taken equally out of both sides.

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

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.

PROGRAM

Mr. MANSFIELD. Mr. President, for the information of the Senate, there will be a number of votes today—and I ask the distinguished minority leader to confirm this, because we have discussed this matter jointly. After the Carswell nomination is disposed of, the Senate will proceed to the consideration of Calendar No. 761, Senate Joint Resolution 190, a joint resolution to provide for the settlement of the labor dispute between certain carriers by railroad and certain of their employees; and that will be followed, hopefully, after its disposition this afternoon, by Calendar No. 767, S. 3690, a bill to increase the pay of Federal employees.

Mr. SCOTT. Mr. President, will the distinguished majority leader yield?

Mr. MANSFIELD. I am delighted to yield to the Senator from Pennsylvania.

Mr. SCOTT. I should like to point out that today will be one of the most important days in this session of the Senate.

I hope that all Senators and attachés will be particularly careful to be here because, as has been said, we have not only a vote on the confirmation of the nominee to the Supreme Court, but we have also the extremely difficult problem of what to do on settlement of the railroad labor dispute. We also have the Federal employee pay raise bill and that, in turn, will be a prelude to what I hope will be a further carrying out of the agreement reached among the heads of the various postal unions and the administration, whereby, as the first step in the act of good faith, the administration agrees to support the postal pay raise which will be before us today; and, in turn, the administration and the union leaders have agreed that before there shall be any additional pay raise to the postal unions as distinguished from the general pay raise, there will be a tie-in with postal reorganization and reform, which is a very much needed development, in my opinion, and a bonanza, if it is properly structured, in that we can save the budget about $1 billion a year.

Therefore, I think, if we are going to keep the faith all around, it should be remembered that the pay raise bill today, which applies to virtually all Federal employees, is only step No. 1 in a good faith commitment which involves two more steps, a further postal raise, a restructuring of the postal organization into a new kind of unit and, of course, the final phase, how to pay for it. That is the responsibility of the administration and Congress. The President has spoken out on that. We will have our opportunity here to work out the way in which it is to be paid.

Essentially, the money will have to be found for the fiscal 1971 budget, but if certain postal rates are approved later, then other budgets will, more or less, take care of themselves as regards this problem, but there will be a shortage in the fiscal 1971 budget unless we find some way to make it up.

I do thank the majority leader for yielding to me.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent, as in legislative session, that the Journal of the proceedings of Tuesday, April 7, 1970, be approved.

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

SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination of George Harrold Carswell to be an Associate Justice of the Supreme Court of the United States.

Mr. BIBLE. Mr. President, will the Senator from Montana yield?

Mr. MANSFIELD. How much time does the Senator require? Is his speech on Judge Carswell?

Mr. BIBLE. Yes; it will not be too long.

Mr. MANSFIELD. Mr. President, I yield 5 minutes to the Senator from Nevada or, if the Senator needs it, more time.

Mr. BIBLE. I do not know whose time I shall speak on. I believe it will be apparent in a few moments, though.

I think I would ask the Senator from Michigan to allow me 5 minutes to proceed.

Mr. GRIFFIN. Mr. President, I yield 10 minutes to the Senator from Nevada.

The ACTING PRESIDENT pro tem-

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pore. The Senator from Nevada is recognized for 10 minutes.

Mr. BIBLE. Mr. President, as the debate on President Nixon's nomination of Judge G. Harrold Carswell to be an Associate Justice of the Supreme Court nears its end, I want again to state my position on the nomination.

Some time ago, the press in my State of Nevada asked me for a statement. That was on February 17, if my memory serves me correctly. I responded that unless disabling evidence developed bearing on the nominee's judicial qualifications, I intended to vote for confirmation. I expressed the view that Judge Carswell's experience as a trial judge, and his extensive background in the day-to-day application of the law should be genuine assets. I also stated that as a strict constructionist of the law, this nominee would bring needed balance to the deliberations of the Supreme Court.

Generally, I applaud the actions the Supreme Court has taken over the past 20 years to define and effectuate constitutional rights. However, I have long felt, and said so many times, that some of its decisions—particularly in the area of criminal law—have gone too far, and have unnecessarily impeded the processes of law enforcement and criminal justice all across the land. I feel that the addition of a thoughtful conservative is needed to enable the Court to take a more balanced view of this and other problem areas.

Mr. President, I have studied the testimony before the Judiciary Committee, the committee's report—including the individual views—and I have followed both sides of what has been a long and exhaustive debate. In the Senate's best tradition of free and open debate, the nominee's life and work have been spread on the public record and broadcast across the land—as it should be.

I have weighed the evidence. I have carefully evaluated the arguments for and against the nominee, and I came away from the task satisfied that the President's nomination should be confirmed.

On the question of his qualifications, I join those of our colleagues who have pointed out that the Senate has on three prior occasions unanimously confirmed Judge Carswell's appointment as a U.S. attorney, a U.S. district judge, and as a U.S. circuit judge.

In 1953 the nominee was appointed U.S. attorney for the northern district of Florida—with unanimous Senate approval. In 1958, after some 5 years of service in that office, he was appointed U.S. district judge for the northern district of Florida—and was again unanimously confirmed. In June 1969—less than 1 year ago and after some 11 years on the trial bench—he was elevated to his present position on the U.S. Court of Appeals for the Fifth Circuit. Again with the unanimous approval of the Senate.

On each occasion, the nominee's qualifications and record were carefully considered, and on each occasion he received the Senate's unanimous endorsement. At no time was any question raised as to his qualifications, his honesty, or his integrity.

Judge Carswell comes before the Senate on this nomination with the support and full confidence not only of the President of the United States. Eleven of his fellow judges on the Fifth Circuit endorsed his appointment, as have 50 of the 58 active Federal district judges and seven of the retired district judges in the Fifth Circuit. He has been found qualified for appointment by the Standing Committee on the Federal Judiciary of the American Bar Association, and there has been an impressive demonstration of support by attorneys who have practiced regularly in Judge Carswell's court.

Mr. President, these are impressive credentials. I view previous judicial experience as a positive factor in support of any nominee for the Supreme Court. One may certainly disagree with certain of this judge's decisions. Indeed, it would be amazing if a judicial career as extensive as this one raised no disagreement. On the record as a whole, I am satisfied that Judge Carswell is a man of honesty and integrity, and that his 17 years of public service in the law qualifies him to be a member of the Supreme Court.

Throughout my deliberations on this nomination, I have been very much aware that a good deal of the opposition to Judge Carswell has come from those concerned over civil rights. The charge has been made and broadcast across the Nation that this judge is a racist. And the charge has alarmed many thoughtful citizens, including citizens in my State.

I would not be supporting this nomination if I thought there was any substance to this charge. I have felt it to be my obligation to assess equitably all of the evidence of record, and I do not believe Judge Carswell can be fairly considered an extremist or a racist. A conservative and strict constructionist, yes. A racist, no.

These charges apparently had their roots in words spoken more than 20 years ago at a time when segregation was rampant across much of the Nation.

The distinguished Senator from Delaware set this in perspective in his statement last week reminding us that at about the time of the Carswell speech the Senate voted overwhelmingly against desegregation of the Armed Forces. Who today would want his fortunes to depend on that vote? And by the same token, why should this nominee—who has publicly repudiated his words—be vilified at this late date?

I think our colleague hit the mark when he asked how many Members of the Senate have made speeches, cast votes, or done something during the past 25 years that he would not be too proud of today.

Indeed, I have reviewed a number of historical writings in connection with my consideration of this nomination—words spoken or written by Thomas Jefferson, Abraham Lincoln, Theodore Roosevelt, Franklin D. Roosevelt, and Harry S Truman. Based on certain of their utterances, I daresay some might raise a question whether these great Americans would be suitable for appointment to the Court.

I say again, Mr. President, I have carefully weighed the evidence. The case sought to be made against the nominee has been good headline material, but it is not persuasive. In my judgment, the most credible evidence—that provided by his colleagues on the bench and others who have been close to the nominee and his work over the years—effectively rebuts the racist charge. Respected jurists such as Judge Bryan Simpson and Judge Robert A. Ainsworth, Jr., of the Fifth Circuit are acknowledged by opponents of the nomination as eminent constitutional lawyers who have demonstrated that they are judicious men, able to give any man a fair and impartial hearing. Both recommend Judge Carswell very highly. Judge Simpson has described the nominee as a man of "superior intelligence, patience, a warm and generous interest in his fellow man of all races and creeds." In his letter to the Judiciary Committee, Judge Simpson states that Carswell is a man of judgment with an openminded disposition to hear, consider and decide important questions without preconceptions, predilections or prejudices. On the basis of long experience with the nominee and his work, Judge Simpson states that he "always found him—Carswell—to be completely objective and detached in his approach to his judicial duties."

Judge Ainsworth's endorsement is equally laudatory, and the record is replete with many other comparable endorsements by knowledgeable judges and lawyers.

Throughout the debate we have been told repeatedly that the President could have selected any one of a number of better qualified men for this appointment. Many Senators obviously feel this way, and on any given day 100 Senators might well be able to produce 100 different recommendations. However, I think such argument loses sight of the role of the Senate in these matters. It is neither the right nor duty of this body to nominate Supreme Court Justices. That is the right and duty of the President of the United States. Our task is to advise and consent. Certainly, the Senate never hesitates to advise. And we have withheld our consent at times. In my judgment, however, our refusal to consent should never be based on a desire to seek out a nominee more to our liking. Only when we are convinced a nominee is clearly lacking in the required abilities, qualifications, and personal integrity, or when we feel the stature of the High Court is clearly at stake should we take the drastic step of rejecting the President's selection.

The Senate should never become a rubberstamp. I reject out of hand the argument that careful consideration in prolonged Senate debate and rejection of a nominee impinges on the appointing authority of the President. At the same time, I also reject the argument that the Senate's right to advise and consent should be applied in such a manner as to bind the President's selection to the will of the Senate.

We are not here to bargain for another, perhaps better nominee. We are here to consider the qualifications of the present nominee. Our consideration should be directed to the nominee's legal

and judicial qualifications and to his ethical conduct—not to his political or legal philosophy. Only a serious lack of experience and qualifications, or a very damaging breach of ethical conduct, can give grounds for rejecting the nominee.

I have looked very closely without finding these disqualifying elements. I have gone through all of these exercises of judging a man and agonizing as each of us does. In looking at those qualifications, I find nothing that, in my judgment, disqualifies him. I find him qualified, and I fully intend to vote for his confirmation.

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

Mr. BIBLE. I yield.

Mr. GRIFFIN. Mr. President, I commend the distinguished Senator from Nevada for what I think is a very excellent statement.

It was a very thoughtful statement, a well-reasoned statement. And whether one agrees with his conclusions or not, the senior Senator from Nevada has made an excellent contribution to the debate and the dialog.

In doing so, I wanted to comment that he certainly has earned the respect of the Members of the Senate on both sides of the aisle.

Mr. BIBLE. Mr. President, I thank the distinguished Senator from Michigan very much. I want to say that I think we all have to use objective judgments on these matters. We all judge the problems a little differently. However, I do not want the RECORD to show that I always vote on a nonpartisan basis. I have on occasion voted on a strictly partisan basis, and I have been proud to do so. I do draw a line when it comes to judicial nominations. I do not view appointments to our courts as partisan issues.

In this case which involves a man's reputation and the Supreme Court, I am very satisfied with the judgment which I have finally reached. Although I did reach it a little earlier, it has not been disturbed.

I quarrel with no one as to how he reaches his decision.

Mr. GRIFFIN. Mr. President, I yield myself 5 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Michigan is recognized for 5 minutes.

Mr. GRIFFIN. Mr. President, there has been talk in the newspapers and other quarters criticizing some Republicans because they are not supporting their President on what many people see as a political issue.

I think what the distinguished senior Senator from Nevada has just said about the grave responsibility and the role of the Senate in advice and consent on something as important as that of an appointment as a Supreme Court Justice points up that any Senator on either side who would cast his vote on a political basis on something as important as this would not be fulfilling his responsibilities.

Whatever they might do on other legislative issues, legislation can be amended, repealed, or changed.

Certainly, it seems to me that on the nomination of one of the nine justices of the Supreme Court, an independent third branch of the U.S. Government, we have an obligation that cannot have any party loyalty involved on either side of the aisle. I think that is an important consideration. It is a greater obligation than almost any other vote we cast in the Senate, in my humble opinion.

Mr. BIBLE. Mr. President, I appreciate the sentiments of the Senator from Michigan.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, will the Senator yield to me for 3 minutes?

Mr. BAYH. I yield to the Senator from Montana.

The ACTING PRESIDENT pro tempore. The Senator from Montana is recognized.

TRIBUTE TO SENATOR BIBLE

Mr. MANSFIELD. Mr. President, first, may I say that as far as the distinguished senior Senator from Nevada is concerned, he has the affection and respect of all of us on both sides of the aisle. He always votes as he thinks best. He is a man of independent judgment, and I say that would apply to all other Members of this body as well. But at this time I wish to pay special tribute to the Senator from Nevada (Mr. BIBLE).

CRIME IN THE DISTRICT OF COLUMBIA

Mr. MANSFIELD. Mr. President, whatever is done about the nomination of Judge Carswell today, we do hope the courts will enforce the law and that the perpetrators of crime will be punished.

I am sorry to inform the Senate that two of our pages in the last 2 weeks have been assaulted, mugged, and in one instance, robbed. The first would have been robbed if he had not been fleet of foot. He was able to get away. It happened in the vicinity of the Capitol. One of the pages had his clothes torn and lost $10 after being roughed up.

The joint leadership has directed a letter to the U.S. attorney asking for an investigation of these matters because we feel it is encumbent on us to protect those who work here as well as the people of the District of Columbia as a whole.

I think it is a tragedy and a shame that within the shadow of this Nation's Capitol incidents of this kind can be inflicted on youngsters who are far away from home, carryng out responsible duties in relation to the conduct of the Senate.

I intend to see that something is done about it. One of the things I would like to see done right now is for the House to name its conferees—the Senate already has done so—so that the District of Columbia crime bill can be given the most expeditious consideration.

This is not my first confrontation with a situation of this kind because, as the Senate well knows, two Montanans, one a young Marine from Fishtail, Mont., the other Harry Gelsing, from Helena, Mont., both entirely innocent, were gunned down in this capital of the United States of America.

I think it is about time that this question of crime is shifted—shifted away from rhetoric and into action. I think it is about time that the law is enforced, and that criminals are apprehended and that crime is punished. If we go on in this way much longer I think the Republic will stand on very, very shaky foundations.

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

Mr. MANSFIELD. I yield.

Mr. HANSEN. Mr. President, I would like to associate myself with remarks of the distinguished majority leader. I could not agree with him more than I do.

I think it is high time that the Senate and House conferees get together.

Mr. MANSFIELD. The Senate is ready.

Mr. HANSEN. I am well aware of that. I think it is high time that they get together on the District of Columbia crime bill.

I listened to the Martin Agronsky television show a few days ago and I was appalled at the lack of understanding and some lack of interest or enthusiasm for the District of Columbia crime bill. One of the persons on the panel, Carl Rowan, a very distinguished columnist, in my opinion, and a person who is ordinarily well informed on most issues seemed to reflect the feeling that there is some racial bias in this District of Columbia crime bill. Nothing could be further from the truth.

The facts are that most of the victims of crime in the District of Columbia are black people. If the statistics I read are correct, three out of every five persons who are assaulted, robbed, mugged, or otherwise attacked, are black people.

Further, as his comment reflected, I think there is some lack of understanding on that particular issue. He questioned, Why does not the Congress pass a law trying to stamp out crime in Phoenix, Ariz.? To which James Kilpatrick in effect said, precisely for this reason: It happens that the responsibility for law enforcement in the District of Columbia is the exclusive responsibility, and the form of government of the District of Columbia is the responsibility of Congress. That is precisely what the facts are.

To those who try to say that we are getting too tough with too many people—and I refer to civil rightists and the entire group of people who feel that way—all I can say is the victims of these crimes, as the distinguished Senator, my distinguished leader, so well knows, are black people. When I say "my distinguished leader" I do not mean to imply that I am a Democrat; I have great respect for the senior Senator from Montana, and I believe he does an admirable job of laying down the work and laying out the program to control the Senate.

It is in that frame of reference I used the appellation that I did.

It is high time people understood that the good, decent, and law-abiding citizens—and that is about 95 percent of the people in this country—are sick and tired and fed up with the whole breakdown of

law and order. I think part of that responsibility has to be laid at the door of the courts. We have made it possible for every wrongdoer to take advantage of the law, in the way of getting out on bail, being released, being able to recommit crimes, one time after another simply because we have gotten mixed up with a lot of different ideas, and one is that if you are tough on crime you are against black people, and that certainly is not true.

Mr. MANSFIELD. Mr. President, I appreciate the remarks of the distinguished Senator from Wyoming.

Again, I want to reiterate that these youngsters who serve us so well come from long distances, live under unusually difficult circumstances, put in long hours, and I think they are entitled to a good deal of consideration.

I think the law is meant to apply to all people. I do not care what their color happens to be. I do not care what their ethnic background is. And I do not care what their religion may be or the status of their financial condition. This Republic is based on law and on its just application. That means it must apply to all of our citizens equally.

Again I state that the joint leadership has directed a letter to the U.S. attorney asking for a complete investigation of these two incidents, just as there was requested by the Senator from Montana a complete investigation of the Lesnik and Gelsing incidents. As far as the former incident is concerned, the culprits were apprehended, tried, convicted and sentenced. As far as the Gelsing affair is concerned, that investigation is still underway. I hope it, too, is completed with the guilty ones convicted and punished. In short, all criminals must be apprehended and punished and the tools and enough law enforcement officers must be provided for the job. I hope the District crime bill is enacted into law just as soon as possible.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. BAYH. Mr. President, how much time is remaining?

The ACTING PRESIDENT pro tempore. The Senator from Nebraska (Mr. HRUSKA) has 74 minutes remaining and the Senator from Indiana (Mr. BAYH) has 79 minutes remaining.

Mr. HANSEN. Mr. President, will the Senator yield to me?

Mr. GRIFFIN. Mr. President, I yield 10 minutes to the distinguished Senator from Wyoming.

Mr. HANSEN. Mr. President, I would like to express my appreciation to my good friend, the junior Senator from California. We are in executive session in the Committee on Interior and Insular Affairs this morning and I am needed there to try to help resolve some problems that concern the natives of Alaska.

Mr. President, I have but one question to ask today: What is candor? I ask it because perhaps the decision as to whether this body will confirm Judge G. Harrold Carswell for a seat on the Supreme Court rests on whether or not he has been candid in his dealings with the Senate Judiciary Committee.

Webster's new 20th Century Dictionary, published in 1968, says candor is "openness."

As its first definition it refers to "openness of heart; frankness, sincerity, honesty in expressing oneself."

Second, it defines candor as "a disposition to treat others with fairness, freedom from prejudice or disguise."

The question then, regarding the judge is, Did he deal with the committee in the openness of his heart, frankly, with sincerity and honesty?

What are the charges? First, we are told that when Judge Elbert Tuttle decided not to testify on his behalf Judge Carswell should have asked for Judge Tuttle's letter on his behalf to be withdrawn from the Judiciary Committee. But should he have?

After the first unfair and rather scurrilous charge against Judge Carswell made headlines, the fact came out that Judge Carswell was never informed by Judge Tuttle as to why he had decided not to testify. Even more important, it is clear that it was not Judge Carswell's place to seek to have the letter withdrawn. And finally, Judge Tuttle himself did not ask to have it withdrawn. There is no lack of candor here. At most, there is confusion, largely on the part of Judge Tuttle.

The second charge implies that Judge Carswell read in detail the night before he testified, the articles of incorporation of the country club that he helped reorganize. We know now, however, that despite the rumors printed in the Washington Post as fact, this is not the case. Judge Carswell was shown the papers briefly the night before, but in another context. There was no reason for him to look to see how he was identified in them.

Are we to assume that Judge Carswell read the articles of incorporation closely the night before, then came to the committee, knowing it had access to those papers, and deliberately lied to it? It strains the credulity—even of those who might want to believe the worst. It is obvious to any fairminded person that in his testimony Judge Carswell was still searching his memory, still trying to remember just what he had signed 14 years earlier.

Mr. President, in all candor, who here could have done better?

Mr. President, in their efforts to defeat any candidate President Nixon might put forth who does not meet their philosophical standards, the President's political enemies have gone to great lengths to make mountains where no molehill exists.

So the real question we have to ask today is, Where does the lack of candor lie?

Mr. President, I would like to know: Are those who are charging mediocrity being frank, open, forthright?

Are they free from prejudice, free from disguising their real purpose?

Mr. President, are those who are charging racism being candid? Are they disposed to treat Judge Carswell with the same fairness they treat other Members of this body who have been involved in all-white organizations or who have had restrictive covenants on their homes?

Are they being candid, Mr. President? Are they free from prejudice and disguise? Are they frank? Are they sincere?

Mr. President, I cannot answer these questions. But those who seek to deny him a seat on the Supreme Court can.

I would hope, Mr. President, that they would rise to the occasion. I would hope that every Member of this body would observe the kind of candor he demands from Judge Carswell.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. CRANSTON. Mr. President, I yield myself such time as I may need.

There were many, many reasons that led me to the conclusion that I could not support Judge Carswell for the Supreme Court vacancy. It was with regret that I came to that conclusion, for I would like to support the President, I would like to support his nominees, I would like to support a southerner, I would like to support a strict constructionist and a conservative on that Bench, if that is the will of the President in submitting nominations to this body. And I believe he could, with ease, find a southerner, a strict constructionist, a conservative, who could win unanimous, or virtually unanimous, support from this body. But he has failed to do so in the case of Judge Carswell.

Among the many matters that gave me concern in considering this nomination was the record in regard to Judge Carswell's racial views as manifested in his past.

There was the 1948 speech, now not famous, but notorious, expressing his segregationist views and asserting that they would be forever held throughout his life.

I recognize that many men undergo changes. However, the subsequent record shows that Judge Carswell did not undergo any change in regard to those views. There was never any evidence in any facet of his life of any change until he was confronted with that speech in the course of the consideration by the Senate and the country of his qualifications for service on the Supreme Court.

I am greatly disturbed that one part of that evidence of no change in his views shows that while he was U.S. attorney, sworn to uphold the law, he participated in a scheme to avoid the law of the land as laid down by the Supreme Court. That is the golf course incident, where he was an incorporator of a golf course. The story appears on page 352 and page 353 of the hearings held by the Judiciary Committee.

The device of selling a public facility to a private corporation for the purpose of avoiding the integration of that public facility was being used by diehard segregationists throughout the South.

A description of this actual operation makes plain the fact that the private club was a true sham.

The sequence of events were as follows:

First. A public golf course which had been supported by taxpayers' dollars—black and white—was threatened with integration.

Second. A private club was set up in the corporate form—profit or nonprofit.

Third. The city officials sold or leased for $1 the golf course to the private club.

Fourth. At this point the heretofore public facility was now a private club with all the restrictions of a private club.

Fifth. In order to make sure that the private club retained all of the attributes of the previously segregated public facility, the facility was open to all whites and closed to all blacks.

That, I believe, is a fair description of the scheme that Judge Carswell participated in as an incorporator.

Judge Carswell's performance, when quizzed on his part in all this by the Judiciary Committee, was hardly reassuring as to his qualifications and capacity. A study of the facts in the case and the committee transcript can lead to only two conclusions.

The most charitable conclusion is that he has a terrible memory, so terrible that I wonder how he could perform adequately in any court. How, for example, could he sit on the bench and remember the precedents well enough to make a fair and wise ruling in the heat of a trial on the admissibility of evidence? If his memory was so faulty on a matter of vast importance to himself personally, who could rely on his memory on matters of great importance to them personally?

The least charitable conclusion is that he was not candid with the committee, that he was not straightforward about his actual deeds.

Either conclusion adds to the case against Judge Carswell.

The evidence is overwhelming that Judge Carswell is not a man of talent, not a distinguished man who would bring grace and greatness to our highest court. The word "mediocre" has affixed itself so firmly to Judge Carswell, and has become so large a part of the debate over the qualities requisite for service on the Supreme Court, that a constituent of mine, complaining that he cannot get his kids to study any more, says, "I think they are aiming for the Supreme Court."

This morning the Washington Post, in a fine editorial, made this comment:

> For this place, at this time, the court and the nation need not just a run-of-the-mill man, but a very good man, very strong man, a very wise man, a man who has or soon will have widespread respect and admiration, won not so much by the way he votes but by the force of his intellect and his personality.

I have been most disturbed by Judge Carswell's showing of bias and hostility to civil rights attorneys and civil rights litigants while serving as a district court judge.

My staff and I, between us, have spoken personally with 10 civil rights attorneys who appeared before him. They were Shelia Rush Jones, Ted Bowers, Leroy Clark, John Lowenthall, Earl Johnson, Jerome Borstein, James Sanderlin, Reece Marshall, Maurice Rosen, and Tobias Simons. Some are black; some are white.

The overwhelming opinion of these civil rights attorneys—an opinion expressed, in one way or another, by every one of them—is that he demonstrated bias when they were before him on civil rights cases.

They report that he had a reputation among those working on civil rights matters before him in his court of being anticivil rights and antiblack. It was said by many of them that they had the feeling the moment they entered his court that he was prejudiced against them. One of them said it was like being in a court where there were two opposing counsels and no judge present. I believe that the courtroom bias shown by Judge Carswell was violative of canons 5, 10, and 34 of the Canons of Judicial Ethics.

The evidence to the contrary on the matter of his prejudice regarding civil rights is based solely, in the words of President Nixon's letter of March 31, first, on a letter from a World War II shipmate of Judge Carswell; second, on the testimony of one professor; and third, on Judge Carswell's belated repudiation of his own notorious segregation speech.

It is noteworthy that President Nixon did not mention the now discredited letter of Charles F. Wilson. Yet, the Committee on the Judiciary and Senate supporters—including some key supporters of the Judge—at one time in the past based a great part of their case for Judge Carswell on that Wilson letter.

Finally, Mr. President, I should like to read from an article published in this morning's issue of another fine newspaper, the New York Times. The article is entitled "The Hypocrisy of Power," and is written by the eloquent and analytical James Reston. He made the following statements this morning on the editorial page of the New York Times. I shall read two excerpts from his column:

> Behind all the questions of politics, ideologies and personalities in the Carswell case lies the larger issue of public confidence and trust in the institutions of the nation. This is the issue President Nixon overlooked. That trust does not exist now. The authority of the Government, of the church, of the university, and even of the family is under challenge all over the Republic, and men of all ages, stations and persuasions agree that this crisis of confidence is one of the most important and dangerous problems of the age.
>
> The President recognizes it in theory. The Attorney General is determined to restore discipline by every means at his command. The Congress reminds us every day that liberty cannot survive without authority, but the gap between their moral lectures and their political actions is wider than the Mississippi Valley.
>
> The central issue in this country is whether we are to settle our disputes by legal and peaceful means or by illegal coercion and violence; whether our institutions, in short, are to deserve our respect or merely to demand it, without deserving it.
>
> If you doubt that this is the central issue, all you have to do is look around.

Reston concludes his articles as follows:

> If a conservative Administration is not going to earn as well as demand respect for the institutions of America and put up distinguished men for the highest court in the land, who is?

The PRESIDING OFFICER. Who yields time?

Mr. GRIFFIN. Mr. President, I yield 5 minutes to the distinguished Senator from Kansas.

Mr. DOLE. Mr. President, before the debate ends and the voting begins, I would like to say a few kind words about Judge G. Harrold Carswell.

Too often in the last few days the judge's supporters have been so busy defending him against the innuendos, half-truths, and misstatements and misleading conclusions that we have not remembered that there is much merit to the judge, and much to be said in his favor.

Let us first point out that despite the desperate searching and combing of his past for signs of moral turpitude, unethical conduct or racial bias, not one single thing of substance has been found.

Mr. President, Judge Carswell is obviously and beyond a doubt a good man, a good American, an ethical and moral man.

Mr. President, Judge Harrold Carswell has been a lawyer in private practice, a U.S. District Attorney, a Federal circuit judge, and a Federal district judge. He is an experienced man and a competent man and a qualified man, else he would not have been appointed to succeedingly higher positions, else this body would not have confirmed him three times.

Mr. President, Judge Carswell is a patient man and a strong man and a man sure of his own conduct. Only this kind of a man could sit by patiently, quietly and endure the vilification and humiliation some have sought to bring on him in order to further their own aims.

Mr. President, he is a man who believes in the equality of the races.

There is an interesting concept these days that a judge must always rule in favor of a minority, unless he is willing to be judged a racist.

Judge Carswell has resisted that temptation. But he has ruled, for instance, to desegregate Florida's barber shops, he has ruled in favor of civil rights groups on many occasions.

The interesting thing is, he also wrote a letter of strong recommendation for a black attorney, and for this act of ordinary decency and recognition of competence, both he and that attorney have been pilloried and accused of doing something for motives that were less than honest.

Mr. President, I ask, who is better fit to sit on the Supreme Court—the man who wrote the letter of commendation or those who attempt to smear him with it?

Mr. President, Judge Carswell is a decent man, an upright man, a moral man, and a qualified man.

I recognize that at this late hour Judge Carswell's fate is in the balance. We all recognize that perhaps one Member of this body will determine whether or not Judge Carswell will become a member of the U.S. Supreme Court. We recognize the right of Senators to differ. We recognize our responsibility under the Constitution concerning the advice and consent process.

I recognize, as a Republican, that since the inception of the Carswell nomination, the arguments have been about 99 percent political and 1 percent factual; and I would hope that, in the event Judge Carswell's nomination is not confirmed by this body today, President Nixon would withhold any further nominations

until after the November election. Let him take his case to the American people, give them the facts, Republicans and Democrats and independents, and let the American people decide by a referendum in November whether or not the Court should have balance.

The question is no longer G. Harrold Carswell. It has not been G. Harrold Carswell, in this body, for at least a month. The question is how to defeat President Nixon, how to embarrass President Nixon, and above all, and even more importantly in the minds of those liberals who oppose him today on this floor and across the country, is how to prevent having balance on the Supreme Court. They do not want to change the Court. I would add that President Nixon ran on a platform of balancing the Court. He will make that effort today, and he will make it again if necessary. But I would recommend again to the President that if the nomination of G. Harrold Carswell is rejected, he withhold any further nomination until after the November elections.

We have heard a great deal of talk in this Chamber about those who oppose Judge Carswell. We have read, heard, and have seen a lot in the media, because there has been a calculated effort by those who oppose and by many in the liberal press and the media to paint him a racist, a man of mediocre ability, and unfit to sit on the Supreme Court. The facts do not bear it out, but a case has been made. The case has been made day after day on network television. The case has been made day after day in newspapers like the Washington Post and the New York Times. This is their right. As liberals, they have a right to judge a man, to endorse and to recommend anyone they wish without regard to the public interest.

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

Mr. GRIFFIN. I yield the Senator from Kansas 5 additional minutes.

Mr. DOLE. Let me point out a few facts that have not been brought to the attention of the American people. I hearken back to the advertisement which appeared in the Washington Post. One would think the earth had caved in because 457 liberal lawyers and law professors said they opposed Judge Carswell. I would ask the same question the junior Senator from Michigan asked the other day on the floor: I wonder how many of these 457 voted for President Nixon. Perhaps one, perhaps two, perhaps three. Probably none.

But let me go one step further. There are approximately 4,500 law professors in America. There are approximately 300,000 practicing attorneys in America. As I am told, there are 126 practicing attorneys whose names appear in this advertisement which has been widely heralded on this floor as proof that Carswell is unfit. That represents three-tenths of 1 percent—three-tenths of 1 percent—of all the attorneys in America; and I would say—I might be contradicted—that perhaps not one of these voted for President Nixon in November 1968.

Yes, there has been much talk about those who oppose Judge Carswell, but very little attention, unfortunately, in the media about those who support G. Harrold Carswell, about the 57 judges who know him best, who signed a telegram to the President; about the 24 attorneys general who yesterday, in a telegram to the President, indicated their support of G. Harrold Carswell—23 State attorneys general, including the one from Kansas, the one from Vermont, the one from Pennsylvania, the one from Delaware, and others.

Mr. President, I ask unanimous consent to have the telegram printed at this point in the RECORD.

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

WILMINGTON, DEL.,
April 7, 1970.

THE PRESIDENT,
The White House.

DEAR MR. PRESIDENT: A quick telephone survey of the State Attorneys General of the United States reveals that the following support your nomination of Judge Carswell to be a Justice of the Supreme Court of the United States.

Jeffords, Vermont; Woodall, Montana; Johanneson, North Dakota; Blankenship, Oklahoma; Mydland, South Dakota; Turner, Iowa; Summer, Mississippi; Meyer, Nebraska; Dunbar, Colorado; Faircloth, Florida; Brown, Ohio; Bolton, Georgia; Martin, Texas; Frizzel, Kansas; Gallion, Alabama; Nelson, Arizona; Gremillion, Louisiana; Barrett, Wyoming; Buckson, Delaware; Sennett, Pennsylvania; Romney, Utah; Robson, Idaho; and Sendak, Indiana.

Not every Attorney General could be reached on such short notice, however, those who support you by this telegram represent all areas of the United States and both major political parties. 39 Attorneys General were contacted and 11 took no position. Of the 28 who took a position 24 in number or 85 percent support you in this matter.

HON. DAVID P. BUCKSON,
Attorney General, State of Delaware.

Mr. DOLE. So I would say, Mr. President, the die is cast. I am not certain whether the vote will be 51 to 45 or 49 to 48, but I would guess that one of those figures may prevail. In the one event, he will be rejected. In the other event, for the first time in history, the Vice President would decide whether or not a judge sits on the U.S. Supreme Court.

Let me say, in fairness to Judge Carswell, that he has been the subject of heated debate; he has been the subject of innuendo, of half truths, of misstatements. I would hope that when the vote is cast today, the Senate would, upon reflection, recognize the right the President has—yes, with the advice and consent of the Senate—but recognize the right the President has to appoint members of the Supreme Court.

In the event the nomination is rejected, let me repeat that I would suggest to the President that he make no further nomination; that he take his case to the people; that the people decide, perhaps by referendum indirectly in November, whether or not there should be balance on the Court, because that is the question. The question is not the nomination of G. Harrold Carswell, because there is nothing in the record—not one thing in the record—that could lead us to believe his nomination should be rejected.

I yield the remainder of my time.

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

Mr. DOLE. I yield.

Mr. CRANSTON. I will be restrained and not comment on many matters——

Mr. DOLE. The Senator has not been restrained before.

Mr. CRANSTON. I would like to say, on one point, that neither I nor anyone else opposed to Judge Carswell look for a judge who would always rule pro-civil rights. We ask a judge who will judge civil rights cases on their merits, who will not prejudge, but who will enter into the case looking for the facts and for what the law requires him to do. It is our concern that Judge Carswell has a record indicative that he would not do that which leads me and others to oppose him.

Mr. DOLE. That is a fine statement to make as to what we should look for in a Justice, and I certainly share it. I would also say, as a lawyer, that I assume the Senator would also give the judge credit for knowing what the precedents were, what the Supreme Court had ruled, and what may be the law at that time.

I would guess that there are some who do not want a judge—they want a legislator on the U.S. Supreme Court. They want the U.S. Supreme Court to become a supreme legislative body. They do not want a judge. They do not want someone to read the Constitution and interpret it. They want someone to expand it and extend it. That is the issue today.

The PRESIDING OFFICER. Who yields time?

Mr. CRANSTON. If I may, I yield myself whatever time I may need. I should like to continue briefly the colloquy with the Senator from Kansas.

I indicated a number of times in the course of this debate, and so have others opposed to Judge Carswell, that we are quite prepared to support a strict constructionist and a conservative who would be a Justice and not a legislator on the Court.

This leads me to comment upon one other point made by the distinguished Senator from Kansas. I would differ with him in the feeling that if the Carswell nomination is defeated, the President should then wait until after the election to make a new nomination. We should have a full Court. It is my feeling and my hope and my prayer that if the Carswell nomination is rejected—and I also hope and pray that it will be—that the President will then come forward with a nominee I can gladly and wholeheartedly support, a nominee any other Senator can gladly and wholeheartedly support, and that we can resolve the differences which have become so deep, and make plain our desire to support the President and to support a man of quality and capacity for the Court. I believe that he can find a southerner, a strict constructionist, a conservative who fits that description—a man whom I, for one, and others opposed to Judge Carswell could happily support for nomination to the Supreme Court—long before the election.

Mr. DOLE. I happen to believe that there may be such a man. As the Senator from Delaware, Mr. WILLIAMS, said

a week ago, there are better men than those of us who represent our States. There probably are better candidates for the U.S. Supreme Court than Judge Carswell. Perhaps such a man could be found. But I gave my own opinion; it may not have any weight. It seems that we have been a long time without a ninth judge on the Supreme Court. We have had extended debate, if not a filibuster, on the floor of the Senate with reference to Judge Carswell. I would guess the same accusers could dredge up something against the next nominee. Why not wait until after November? Perhaps then there would not be quite the problem we have today in the Senate.

The PRESIDING OFFICER. Who yields time?

Mr. CRANSTON. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time be charged to both sides.

The PRESIDING OFFICER. Is there objection? The Chair hears none and it is so ordered.

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 (Mr. HOLLINGS). Without objection, it is is so ordered.

ORDER FOR ADJOURNMENT UNTIL 10 O'CLOCK 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 PRESIDING OFFICER. Without objection, it is so ordered.

(Later in the day the above order was modified to provide for the Senate to convene at 9:30 a.m. tomorrow.)

ORDER FOR RECOGNITION OF SENATOR THURMOND AND SENATOR TYDINGS TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that after the Chaplain has delivered the prayer, the Senator from South Carolina (Mr. THURMOND) be recognized for not to exceed 25 minutes; and, following that, the Senator from Maryland (Mr. TYDINGS) be recognized for not to exceed 30 minutes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination of George Harrold Carswell to be an Associate Justice of the Supreme Court of the United States.

Mr. HRUSKA. Mr. President, I yield 20 minutes to the Senator from Kentucky (Mr. COOPER).

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 20 minutes.

Mr. COOPER. Mr. President, just over a week ago, I stated publicly that I would vote to confirm Judge Carswell to be an Associate Justice of the Supreme Court. I made the statement after reading the report of the Committee on the Judiciary, the record of the hearings, and some of the opinions which were rendered by Judge Carswell and which were cited in the record which is before the Senate. I came to the conclusion that I would vote for Judge Carswell's confirmation.

Since that time, however, I have been so amazed by the nature of the attacks upon Judge Carswell, which do not reflect the record of the hearings, but made, perhaps, by some persons who have never seen the hearings, let alone read them, that I have felt I could not vote against Judge Carswell without being guilty of the bias and prejudice which has been so freely charged against him.

While it is a late hour, I want to provide as succinctly as I can my reasons for supporting Judge Carswell.

I assume, and I believe, that the primary quality of an appointee to the Supreme Court is integrity and common honesty. I know that an appointee must have judicial competence in addition, and I will address myself to that proposition later, but I assert that the primary attribute of a judge must be his integrity and honesty.

While the cases differ, I announced in the Senate in 1968 that I would vote against Justice Fortas to be Chief Justice and, in 1969, I voted against Judge Haynsworth because I had found in the record concrete, open evidence of their failure to obey the judicial canons of ethics. In sharp contrast, there is no proof in the record to challenge the honesty or ethical conduct of Judge Carswell except the argument—very thin when the facts are closely examined—that he was evasive or attempted to mislead the committee upon his connection with Capital City Country Club transaction.

His basic honesty and integrity as a man and in the trial of cases is attested in the record by judges of the district court, judges of the circuit court of appeals—courts on which he has served—by lawyers, and by outstanding citizens such as former Gov. Leroy Collins, men among whom he has lived and worked.

Mr. President, I ask unanimous consent that there be printed in the RECORD a list of the members of the circuit court of appeals supporting his nomination and a copy of the telegram sent by the district judges of the fifth circuit to the President supporting Judge Carswell.

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

CIRCUIT COURT OF APPEALS JUDGES

Walter Gewen, Griffin Bell, Homer Thornberry, James Coleman, Robert Ainsworth.

David Dyer, Ryan Simpson, Lewis Morgan, Charles Clarke, Joe Ingraham, Warren Jones.

DISTRICT JUDGES OF THE FIFTH CIRCUIT

APRIL 3, 1970.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: The undersigned United States District Judges of the Fifth Circuit endorse your nominee, Circuit Judge Harrold Carswell, as being well qualified to serve as Associate Justice of the Supreme Court.

Respectfully,

Seybourn H. Lynne, Clarence W. Allgood, Frank H. McFadden, Frank M. Johnson, Jr., Daniel H. Thomas, Virgil Pittman, Winston E. Arnow, David L. Middlebrooks, Jr.

Joseph P. Lieb, William A. McRae, Jr., George C. Young, Charles R. Scott, Ben Krentzman, Charles B. Fulton, William O. Mehrtens, C. Clyde Atkins.

Ted Cabot, Joe Eaton, Sidney O. Smith, Jr., Newell Edenfield, Albert J. Henderson, Jr., William A. Bootle, J. Robert Elliott, Alexander A. Lawrence.

Elmer Gordon West, Herbert W. Christenberry, Edward J. Boyle, Sr., Lansing L. Mitchell, James A. Comiskey, Ben C. Dawkins, Jr., Edwin F. Hunter, Jr., Richard J. Putnam.

William C. Keady, Orma R. Smith, William Harold Cox, Dan M. Russell, Jr., Walter L. Nixon, Jr., Joe Ewing Estes, Leo Brewster, Halbert O. Woodward.

Ben C. Connally, Allen B. Hannay, Raynaldo G. Garza, James L. Noel, Jr., Joe J. Fisher, Adrian A. Spears, Dorwin W. Suttle, Jack Roberts.

Ernest Guinn, Guthrie Ferguson Crowe, Harlan H. Grooms, Emett C. Choate, George W. Whitehurst, Frank A. Hooper, T. Whitfield Davidson, Robert E. Thomason, Allen Cox.

Mr. COOPER. These judges, the Florida Bar Association and many lawyers have testified to the committee, to the Senate, and the country that Judge Carswell is a competent judge and they have recommended him for confirmation to the Supreme Court.

Mr. President, I would say at this point that the recommendations of the lawyers and judges who know him, who have been in his court, who have observed his work professionally and who have tested the bias or prejudice or lack of it, must be entitled to weigh and respect unless there is a biased belief in the Senate of the United States and among deans and faculties of law schools against these men, that because they live in the district of Judge Carswell, or because they come from the South, they cannot give a true and unbiased recommendation of Judge Carswell.

No one challenges his lifelong record of integrity, except some members of the Committee on the Judiciary and some members of the bar, deans and faculties of some law schools, who do not know him, and had not practiced before him, with the exception of a miniscule few who testified before the committee.

His lifelong record integrity is important. It stands to support a judge in time of sudden attack. If a judge is basically honest and possesses the integrity which is joined with conscience, it will prevail against the human bias and emotions which test a trial or appellate judge. It sets aside in my mind the efforts to discredit Judge Carswell.

Unable to make a case of unfaithfulness to the Canons of Judicial Ethics which many had ignored in the cases of Fortas and Haynsworth, the fight against him shifted to the arguments that he is not competent to be an Associate Justice of the Supreme Court, that he is prejudiced and biased toward our black citizens and, as I have noted, to the claim of evasiveness before the Judiciary Committee. In the last case, all of the facts adduced in the hearings have

not been stated in the debate by those who oppose him.

As to his competence, he has had more experience, and a very varied experience as a U.S. district attorney, as a trial district judge and as a member of the circuit court of appeals than any judge now sitting on the Supreme Court prior to appointment with the exception of Chief Justice Burger. The record shows that as a district judge he presided in approximately 4,500 cases. About 2,500 were criminal and 2,000 were civil. In a letter to the chairman of the committee, it is stated that 7,000 to 8,000 motions and judgments were ruled upon by Judge Carswell, and it is a fair judgment, I believe, that perhaps one-fourth of these could have been subject to appeal. The fact that only 44 appeals from his decisions were made in 2,500 criminal cases and I understand 63 civil appeals attest to the fact that lawyers who practice before him believe that his decisions were fair and were rooted in the law. Lawyers appeal cases when the presiding judge is recognized as a poor judge, but this was not the case with Judge Carswell.

It is said, and correctly so, that Judge Carswell was reversed in 40 percent of his civil cases, as compared to the average of 20 percent reversals of other judges of the fifth circuit, and that he was reversed in eight decisions of his criminal cases. This is not necessarily conclusive as to his competence considering the large number of cases he tried and considering the evolving status of civil rights law since the Brown decision, and the Civil Rights Acts enacted by the Congress. Do the dissenting opinions of Justices Frankfurter, Holmes, Harlan, and Potter prove them to be mediocre judges? I do not think so.

The views of deans and faculties of law schools are entitled to respect, but they have had little experience in the courts, and in the trial courts where a multiplicity of issues arise.

In the Fifth Judicial District, the overwhelming majority of district judges of the circuit court of appeals, the Florida bar and the appropriate committees of the American Bar Association have believed that his decisions were fair and rooted in the law.

What then stands in the way of his approval? It is a charge that the patently racist speech he made in 1948, at the age of 28, as a candidate for the Georgia Legislature, still directs him and that he is biased and prejudiced. He has repudiated unequivocally this racist statement of 1948. But inquiry has been made, and properly so, whether the prejudice that animated his 1948 speech continues to direct Judge Carswell. I must say, in reading the record, that I have found nothing to support such a claim. The claim itself has been expanded and exaggerated to extremes which are not supported by the facts brought before the Senate.

The chief argument that Judge Carswell is prejudiced, is racially biased, rests upon two propositions. The first concerns his participation in the incorporation of a country club in Tallahassee, Fla., in 1956. The second is that his decisions in cases heard by him, were racially prejudiced.

I shall deal with the country club case first. The dissenting views of committee members and the speeches of his opponents do not lay before the Senate all of the facts concerning the country club case. The Tallahassee Country Club, a private club, was conveyed to the city in the depression years of the thirties.

Under a clause in the deed, it was reconveyed to the private club in 1956, when it was failing financially. The Capital City Country Club, Inc., was formed. A citywide drive was promoted to achieve a membership of 300 to 350. Judge Carswell became a subscriber and was listed as an incorporator and a nominee-director to serve until the club's first annual meeting. Later the property was conveyed to another club—a nonprofit club which Judge Carswell joined in 1963–66 so that his sons could play golf. He resigned from the club in which he had been an incorporator a few months afterward.

The charge is made that Judge Carswell participated in the establishment of the Capital City Country Club for the purpose of excluding black members and circumventing the decisions of the courts. While that may have been the purpose of some, Judge Carswell said again and again that he did not do so and that he never discussed such a purpose with anyone. Former Gov. Leroy Collins, and a former Director of Community Relations—dealing with the problems of minority citizens to which he was appointed, I believe, by the late President Kennedy—and there is no more respected, unbigoted man in our country than Leroy Collins, who became a subscriber like Judge Carswell, and he too testified before the committee that he had no purpose of discrimination in joining the club.

The critics that seemed to abandon the substantive issue of racial discrimination in regard to the country club and quickly shifted to an effort to prove Judge Carswell was evasive, and attempted to mislead the committee about the fact that he was an incorporator of the Capital City Country Club Inc. It is true that Judge Carswell had seen some photostatic copies of papers tendered him by Mr. Charles Horsky and Mr. Ramsey the evening before the commencement of hearings, showing him an incorporator and that his first response to a question by Senator HRUSKA was that he was not an incorporator. But in statement after statement the first day of the hearings and in the first session of the hearings as well as in the second day, Judge Carswell said he was an incorporator, that the records would indicate the position that he held and he asked the committee to place in the record of the hearings the complete records of the country club deed and transaction, and that these official records would accurately describe his complete connection in this matter.

This statement appears on page 49 of the hearing record, when he said to the chairman:

> Judge CARSWELL. Yes, sir; I would like to make this one statement: Whatever the records show about that, of course, is the highest and best evidence. I testified here purely from memory.
>
> No. 1, I had absolutely no discussion with anyone at any time about this matter having anything to do with discriminatory practices, if there were any.
>
> No. 2, what I have to say about the matter is that whatever the records show and whatever capacity it may be listed that I am in, whether it be director, president, incorporator, or potentate, as I tried to suggest earlier, I had no conversations with anyone about any activities of that organization in any manner at all.
>
> Now, what the details of the corporate transactions are as to when one was formed and what name appears on what piece of paper, those records would be the best evidence. I respectfully request that I be afforded the opportunity to get them in the record as fast as they get here, and they are already on the way.

I am rather surprised that none of his opponents in the Judiciary Committee placed in the record the statement I have just read, which Judge Carswell made during the course of these hearings.

Whatever the cause of his first answer before the committee, whether because of confusion between his status in the two clubs, or the desire to await the accurate records which he had requested, I think it absurd to believe that Judge Carswell was consciously and deliberately misleading the committee when the story had been published in the newspapers, when the records were public and published for all to see and when he himself was saying to the committee, that he desired that the complete public documents be placed in the record of the hearing. The documents were placed in the hearing record and they make up a rather voluminous record amounting to 43 pages.

The final charge is that Judge Carswell showed bias in the cases he heard and determined.

I consider the analysis placed in the record by the Senator from Nebraska (Mr. HRUSKA) on pages 311 to 319, the best reasoned and fairest analysis of the civil rights cases tried by Judge Carswell.

I may say that while I have not read all of these opinions, I have read the opinions which have been questioned by those who oppose his nomination. I would agree he was not an innovator or leader in the field of civil rights; yet in fairness to him it must be reported for the record in this debate that:

He was the first to enter orders directing school desegregation in Florida.

He ordered desegregation of a barbershop located in a hotel, and I believe he was the first to enter such orders of such a facility and properly so, following the Civil Rights Act of 1964.

While this case is termed not important by critics, I am informed that it was the first case decided in the United States dealing with a barber shop located in another public facility. I remember that during the debate on the Civil Rights Act of 1964, interpretation was provided that the Civil Rights Act would cover such a facility even if it were located as a part of another building rather than as a separate enterprise. The point is, he was the first who followed that interpretation.

He issued, and without delay, desegregation orders of airport facilities.

In a recent case, *Robinson* v. *Coopwood*, 292 Fed. Supp. 926, he joined in a decision in the circuit court of appeals reversing the decision of the district court and holding under the first and 14th amendments that local officers could not require unreasonable notice—and the notice here was only 1 hour of demonstrations and marches undertaken to protest the denial of civil rights.

Considering his record in the trial of 2,500 criminal cases, in which questions of civil liberties arise constantly, considering the few appeals from his 2,000 civil cases and the full record of his decisions in civil right cases, I do not believe that it can be said that they show an inherent bias or prejudice against the civil rights of minorities.

The PRESIDING OFFICER. The time of the Senator has expired

Mr. COOPER. Mr. President, will the Senator yield to me for 2 additional minutes?

Mr. ALLOTT. I yield 2 minutes to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 2 minutes.

Mr. COOPER. Mr. President, I can only say that I approached this case exactly as I did the Fortas case and the Haynsworth case. I did not announce my decision until after reading the hearings and a great number of the cases cited and reading, if not hearing, the speeches of the chief supporters and opponents of Judge Carswell.

I am aware that his statement in 1948 offends our black fellow citizens as it offends me. But if the spirit is not harbored by him, and I believe the evidence shows that it is not, then, as I said in the commencement of this statement, I would be prejudiced and biased if I should allow anything other than the facts to control and direct my decision to vote for or against Judge Carswell.

It is upon these grounds that I have made my decision to vote for his confirmation.

Mr. CRANSTON. Mr. President, will the Senator yield to me?

Mr. COOPER. I yield to the Senator from California on his time.

Mr. CRANSTON. I wish to say that I differ with the Senator only with great reluctance because he is one of the most admired and respected Members of this body. That admiration and respect is held on both sides of the aisle, and I would add my personal affection for the truly great Senator from Kentucky.

I was distressed when I read in the newspapers that Senator COOPER had taken the position he has taken in this matter, primarily because in his statement the Senator said that no questions had been raised regarding violations of the Canons of Judicial Ethics. I wonder if the Senator was aware that I had raised questions in that regard?

Mr. COOPER. I did not hear the Senator.

Mr. CRANSTON. I wondered if the Senator was aware that I had raised questions of violations of the Canons of Judicial Ethics by Judge Carswell.

Mr. COOPER. I read of the Senator's concern about a letter written in support of Judge Carswell by Mr. Charles Wilson, a lawyer now in the employ of the Government. If the Senator has raised questions specifically about violations of certain canons, I would like him to tell me what they are.

Mr. CRANSTON. Canons 5, 10, and 34 of the Canons of Judicial Ethics say, among other things, that a judge should be temperate, attentive, patient, impartial, and courteous to counsel, especially to those who are young and inexperienced.

Quite apart from the matter of the letter from Charles F. Wilson, my staff or I talked with 10 civil rights attorneys, black and white, who appeared in Judge Carswell's court in Florida. All 10 recounted to me experiences in his court tantamount to—and I charge they amount to—violations of the Canons of Judicial Ethics.

Among other things, these 10 people unanimously told me or my staff that Judge Carswell had paid no attention to them, that he seemed to have prejudged their cases, that he turned his back on them when they were presenting their cases, that he lost his temper, and that his voice rose. One told me that he felt he was not in a court where there was a judge present, but where he was facing two attorneys who were on the other side.

It would seem to me to be very plain that this raises very serious questions in regard to the judicial conduct required by the Canons of Judicial Ethics. I am sure the Senator agrees with me that ethics relate not only to money matters, as in the case of Judge Haynsworth, they relate to other matters and touch upon other interests.

No money matter has been brought to the Senate's attention in terms of any negative charges regarding Judge Carswell, but ethical questions relating to other matters have come to the attention of the Senate. They have certainly come to the attention of the Senator from California.

These ethical questions do not necessarily reach Judge Carswell's decisions in civil rights cases. My comments—indeed my judgment—goes directly to the behavior of Judge Carswell while on the bench or in chambers when civil rights matters were before him.

Mr. COOPER. Let me respond to the distinguished Senator by saying I agree with him fully that questions of conduct are not related solely to money matters. But I must say money matters are very important. But to get to the question of the Senator from California, I have read the statements——

Mr. CRANSTON. Mr. President, may I understand that the time of the Senator from Kentucky is being charged to his side, as he asked that my time be charged to my side?

Mr. COOPER. Yes.

I have read the statements in the record dealing with those charges. I believe at least four witnesses testified to the fact that Judge Carswell was not courteous to them; more that he was rude and oppressive to them. It is very interesting that one witness testified that Judge Carswell granted the relief he sought for his clients but continued to say he just did not like Judge Carswell. As to the others the Senator has interviewed, I would have to consider their testimony, and give to it the weight it properly should have, in relation to the fact that dozens of lawyers and judges testified personally, or through their associates that Judge Carswell was courteous and fair to lawyers and litigants before him.

The American Bar Association Committee, after its investigation, testified to and approved Judge Carswell's competence, integrity, and judicial temperament. Judicial temperament, of course, would concern directly the question of conduct, demeanor, and fairness on the bench, and also lack of bias and prejudices.

Mr. TYDINGS. Mr. President, will the Senator yield on that point?

Mr. COOPER. Yes, in just a minute. One other point: One lawyer addressed a letter to the committee which is in the record. I think it is one of the most sensible and reasonable ones bearing on the Senator's point. He said that at times Judge Carswell showed irritation, but the irritation arose when these lawyers continued to persist in raising questions on legal points upon which he had ruled.

Lawyers know that is a common occurrence particularly by very aggressive lawyers before the court.

I have practiced in the Federal district courts and before the circuit courts of appeals. I have observed judges who seemed to be discourteous to lawyers, to district attorneys, and officers of the court, but they were not actually discourteous but strict judges.

I considered after reading the evidence, that the charges have slight weight as bearing upon his judicial temperament. One would have to strain at the record in this case to find a reason to attack Judge Carswell's judicial temperament and, as I have said, his integrity.

The PRESIDING OFFICER. Who yields time?

Mr. TYDINGS. Mr. President, will the Senator yield to me, on our time?

Mr. COOPER. Yes. I yield.

Mr. TYDINGS. I would like to ask the Senator from Kentucky, since he mentioned the American Bar Association committee, whether or not he was present in the Chamber about a week and a half ago when three of us, including the Senator from Massachusetts (Mr. BROOKE) and the Senator from Maryland (Mr. MATHIAS), engaged in a colloquy about the mechanics of the American Bar Association endorsement.

Mr. COOPER. Yes.

Mr. TYDINGS. Was the Senater here?

Mr. COOPER. I was not in the Chamber. I read the RECORD. I would know the procedures even if I had not read it.

Mr. TYDINGS. Does the Senator realize that the American Bar Association Committee, for reasons with which I am not familiar, gave their endorsement or approval not only before reading the record, but before hearing any of the testimony of those who testified in the hearings before the Senate Judiciary Committee? Does the Senator know that?

Mr. COOPER. Yes; I know that, and

then I know that later, after the hearings were concluded, the committee affirmed its first recommendation.

Mr. TYDINGS. Does the Senator know that the full testimony of John Lowenthal, professor of law at Rutgers, who was one of those attorneys involved in civil rights cases before Judge Carswell, was not before the American Bar Association Committee when they gave their original endorsement?

Mr. COOPER. No; I do not know that.

Mr. TYDINGS. Does the Senator know that he asked them for 1 day to make a complete written statement, and they would not even wait for him?

Mr. COOPER. I do not know what occurred between the Bar Association Committee and Mr. Lowenthal. He testified before the Senate committee and I know that it is reported in the hearings that the American Bar Committee interviewed leading lawyers who had practiced before Judge Carswell, and were acquainted with him.

Mr. TYDINGS. Certainly, the leading lawyers, the blue ribbon lawyers in the top law firms. But they did not interview any of the lawyers who had represented poor clients, or black clients, or civil rights clients before Judge Carswell.

How does the Senator account for the fact that we have a telegram here, signed by 35 black lawyers in the State of Florida, two of whom were judges, one a former assistant U.S. attorney, and one a former assistant attorney general of the State of Florida, who stated that they were steadfastly opposed to the Carswell nomination because of his antagonistic attitude toward black and civil rights litigants? What sort of analysis is that of the American Bar Association?

Mr. COOPER. The Senator is challenging their analysis, and I am sure there is some merit to what he says. The committee ought not to make a decision until the records were closed. But the committee did make a second decision confirming its first recommendation. Does the Senator know whether any of the lawyers he has referred to tried cases before Judge Carswell?

Mr. TYDINGS. I have statements in here from seven Florida lawyers who tried cases before him, and from two who are now judges.

Mr. COOPER. How many?

Mr. TYDINGS. Seven. The point is, the American Bar Association checked with the top lawyers of the top firms who appeared before Judge Carswell, without any type of examination in depth, and once the ABA Committee was on record, without having heard the testimony, they did not have enough courage to reverse themselves.

Does the distinguished Senator realize that in the Florida State law school in Judge Carswell's own hometown, a majority of the full-time faculty said he was unfit to go on the Supreme Court? How could the American Bar Association ignore the law school in his own hometown?

Mr. COOPER. The Senator will have to address his question to the American Bar Association.

Mr. TYDINGS. I was just pointing out that the American Bar Association endorsement, does not have much weight, because of the manner in which it was derived.

Mr. COOPER. As the committee was required to give an opinion as to his competence, his integrity and his judicial temperament, does the Senator say that they were dishonest in what they said about him?

Mr. TYDINGS. I say that their judgment was poor, that their examination was incomplete, and that they could not possibly render a fair decision, without examining the facts and interviewing counsel who appeared before him, other than a few lawyers from the top law firms.

As the distinguished Senator well knows, having been a judge and a practicing lawyer himself, in every community there are certain lawyers who are, generally speaking, at the top of the bar association social echelon.

But when you consider a man for the the Supreme Court, you ought to consider more than just the word of one or two lawyers or one or two judges who sit with him. How is it that the American Bar Association Committee did not even bother to interview Judge Tuttle, the former chief judge of his circuit? Why did they not call him before their committee when they reviewed their decision?

Mr. COOPER. I do not know. Perhaps they——

Mr. TYDINGS. I mean, he is the distinguished former chief judge of the circuit, a distinguished former chairman of the Georgia State Republican Committee, a fair man. How is it they did not call on Judge Wisdom?

Mr. COOPER. As to the Senator's rhetorical questions, let me say this, and I can make my case: The Senator can ask why did they not call X, Y, and Z from now until 1 o'clock, but the record shows that the American Bar Association Committee did—now, listen to me, please, because it is in the record—that its members did inquire of lawyers in Florida who practiced before him and knew his record. In addition, there are a number of statements in this record written by lawyers saying that they have been in his court when civil rights cases were being tried, and they found him unbiased and fair toward clients and litigants.

Let me finish please. Furthermore—Judge Carswell's opponents did not comment in their speeches in the Senate on the full record. I believe in fairness that the whole story should be told. There was no comment on the critic's part that Professor Moore, one of the distinguished teachers at Yale Law School, or Professor Ladd, a former dean of the Iowa Law School, had worked with Judge Carswell in the establishment of an integrated law school at Florida State University. Both said he was unprejudiced and unbaised. The Senator did not report this to the Senate.

Mr. TYDINGS. But neither of them had ever tried a case before him.

Mr. COOPER. His critics did not place in the RECORD the full facts, and I think they should have.

One further statement, and I shall close. It is my understanding from the CONGRESSIONAL RECORD—and I do not say these things personally, becasue I respect the judgment and the motivations of the Senator from Maryland and of Senators who oppose Judge Carswell—the Senator from Indiana (Mr. BAYH) had written the president of the Florida Bar Association, Mr. Mark——

Mr. TYDINGS. Mr. Hulsey.

Mr. COOPER. Mark Hulsey, Jr., a man the Senator from Maryland said was one of the finest lawyers in this country.

Mr. TYDINGS. He is; and he is a personal friend of mine.

Mr. COOPER. And asked Mr. Hulsey to comment on the various civil rights cases that Judge Carswell had tried, and upon his judicial temperament. The Senator from Indiana did not put the response of his inquiry in the RECORD.

Mr. TYDINGS. The testimony of Mr. Hulsey is to be found right here in the hearings transcript.

Mr. COOPER. Oh, his testimony is in the hearings, but the Senator from Indiana who had written Mr. Hulsey, did not place the answer in the RECORD.

Mr. President, I ask unanimous consent that Mr. Hulsey's reply of February 17, to Senator BAYH, which had previously been placed in the CONGRESSIONAL RECORD by the distinguished senior Senator from Florida (Mr. HOLLINGS) be included in the RECORD at this point.

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

THE FLORIDA BAR,
OFFICE OF THE PRESIDENT,
Jacksonville, Fla., February 17, 1970.

Re nomination of Judges G. Harrold Carswell for Associate Justice of the U.S. Supreme Court.

Hon. BIRCH BAYH,
U.S. Senator,
Washington, D.C.

DEAR BIRCH: I regret that an unexpected travel schedule has prevented an earlier reply to your letter of February 3, 1970.

You have asked for my rebuttal on the statement made on behalf of the National Conference of Black Lawyers and the testimony of Professor William Van Alstyne. While it is now probably moot, I hope it will give you cause to reflect again on the entire subject and vote to confirm Judge Carswell when the matter is considered by the full Senate.

As I indicated to you earlier, it is certainly ironic that Judge Carswell is charged with being a racist. My experience with him and his reputation in the Northern District of Florida are just to the contrary.

The statment made by the National Conference of Black Lawyers is replete with mistaken assumptions and premises. It argues rather than states facts. Understandably, the National Conference would have difficulty in being objective.

The testimony of Professor Van Alstyne is a different matter. His credentials are impressive. Conspicuous by its absence is his lack of trial practice. Professors are qualified to critique. Appellate decisions but it takes the trial lawyer to evaluate the trial Judge. Professor Van Alstyne expected your committee to give his criticism of Judge Carswell greater weight because he supported Judge Haynsworth. Apparently, he did not appreciate the difference between the atmosphere in the trial arena and the serene Appellate Court.

No useful purpose will be served by a complete rehash of the various causes cited. In passing, however, I will comment on them:

1. *Due* v. *Tallahassee*. The real issue in this

case was when is a summary judgment proper and also what states grounds for relief under the Civil Rights Act.

2. *Singleton* v. *Board*. This mootness issue was scarcely raised below. The issue boiled down to credibility. A trial judge who saw the parties thought one way, the Appellate Court disagreed.

3. *Dawkins* v. *Green*. The District Court found there was no material issue of fact to be resolved and granted summary judgment. The Circuit Court disagreed.

4. *Steele* v. *Board*. This case was remanded because of a new decision, *U.S. and Linda Stout* v. *Jefferson County Board of Education*, rendered by the Fifth Circuit *after* the District Court Order.

5. *Augustus* v. *Board*. The Fifth Circuit Court of Appeals held it was error to grant a motion to strike the allegations relating to the assignment of teachers, principals and other school personnel because this was not a matter that had "no possible relation to the controversy". The Circuit Court also stated that:

"In the exercise of its discretion, however, the district court may well decide to postpone the consideration and determination of that question until the desegregation of the pupils has either been accomplished or has made substantial progress."

Thus, it appears that the Circuit Court recognized that the issue of assignment of school personnel was not one that must be decided immediately, it was only an issue that must not be disposed of by a motion to strike.

Professor Van Alstyne did mention the *Brooks* and *Pinkney* cases as being favorable to civil rights plaintiffs. Other civil rights cases where the Judge's action was sustained include:

Robinson v. Coopwood, 415 F. 2d 1377 (1969).

Baxter v. Parker, 281 F. Supp. (1968).

Steele v. Taft (July 19, 1965).

Ball v. Yarborough, 281 F. 2d 789.

Knowles v. Board of Instruction of Leon County, 405 F. 2d 1206.

Presley v. City of Monticello, 395 F. 2d 675.

Professor Van Alstyne said he did not know Judge Carswell. Perhaps if he had known him in Tallahassee, had heard him cursed, had listened to the harassing telephone calls and practiced law in his Court, he would not have been so quick to condemn him.

I appreciate very much your asking for my comment. Please call on me again if I may be of service to you.

Sincerely yours,

MARK HULSEY, Jr.

Mr. TYDINGS. The Senator from Maryland introduced Mr. Hulsey to the committee.

Mr. COOPER. I close by saying that in my view, the complete record, and these cases do not support the critical statements that have been made by the opposition, statements which have been repeated in the news media, and they had the right to repeat them, and use them in editorials.

Mr. TYDINGS. Will the Senator yield for one further question?

Mr. COOPER. I yield.

Mr. TYDINGS. I would like to ask the Senator another question.

If the Senator had been a member of the Committee on the Judiciary, and had been initially predisposed to be neutral——

Mr. COOPER. I have been neutral.

Mr. TYDINGS. Had he had a personal friend of his who was the president of the Florida bar, whom he introduced, as I introduced Mr. Hulsey, and that friend testified in favor of Mr. Carswell, and then late one afternoon the Senator had had a young lawyer working for the Department of Justice come down to see him and give him the following set of facts, I ask the Senator whether he could maintain that neutral position.

This was the situation: I had never heard of the young lawyer, and had never set eyes on him. He was a graduate of a major law school in the East. As a matter of fact, he was on the board of editors of that school's law review.

While awaiting the bar examination results, he served as a law clerk to various lawyers who were serving in the South on a voluntary basis, generally for 7 days or 2 weeks, to defend voter registration workers who were being arrested for various reasons and who were being harrassed in various areas of some States, including northern Florida.

The young lawyer then proceeded to tell me of his first experience with Judge Carswell. Bear in mind, now, that up to that date I was neutral.

He said that his first case was one involving some seven or eight voter registration workers who were engaged in registering black sharecroppers in the vicinity of Tallahassee. Of the group, a majority were Floridians and blacks.

The particular case in issue involved a farm, unposted, located on a public road. The aunt of one of the registration volunteers lived on the farm. The voter registration workers went on the farm, endeavoring to register the black sharecroppers——

Mr. COOPER. Is this case not in the record?

Mr. TYDINGS. Some of it, but not the circumstances involved. What I want to get across to the Senator is the fact that this Justice Department man, risking his job, came to me and told me a story. I want to relate it all to the Senator and ask how, after hearing this and then bringing in the witnesses and having them testify, the Senator could, in my position or any other neutral position, not feel that Judge Carswell was completely lacking in judicial temperament.

The story is one that was not unusual in that time period. The manager of the farm accosted the workers and inquired why the young workers were on private property. They said it was not posted. They offered to get off. But they were not allowed to get off. They were arrested.

When they went before the local court, the local court refused to permit them out-of-State counsel. Finally, they were thrown into jail, where their physical well-being was threatened.

The young law clerk, Mr. Knopf, worked some 12 or 14 hours on a writ of habeas corpus petition to get them their just due—namely, to get them released and brought before Judge Carswell's court.

The Senator knows what a writ of habeas corpus is. If Senator X is being held by somebody improperly, or a Member of the House of Commons has been thrown into the Tower of London improperly or if anyone were incarcerated illegally, each would have the right to file the writ and expect to be released by court order. But that is not what happened in Judge Carswell's court. He turned down that long, well-prepared writ of habeas corpus and told the young man he had to find another special forum. Finally, he found the forum, and when he prepared his paper, he was told it did not have as much material as the original one. Then he was brought into the judge's chambers.

The bar association committee would not wait 1 day to get his statement. What is Mr. Knopf's recollection? The judge was so belligerent, so outspoken in his hostility to voter registration drives and out-of-State lawyers representing the workers, that Mr. Knopf was fearful he was going to be thrown into jail. The judge said, "I'm not going to honor your case. I'm not going to hear you. You don't have a case."

Finally, they prevailed upon him to sign a writ of habeas corpus. And what does the judge do? He immediately remands the case back to the local court, denies them the right of a hearing, denies them a stay pending appeal. When the sheriff releases the workers, he immediately throws them back into jail.

How can any fair-minded lawyer, on the basis of that sort of testimony, stay neutral, I ask the Senator?

The PRESIDING OFFICER. Who yields time?

Mr. COOPER. May I have 2 minutes?

I will answer the rhetorical question. The Senator has painted a very vivid and dramatic picture of wrongdoing. I have read the account in the record. But the Senator does not finish the record. The end of this story is that Judge Carswell granted the relief asked for, and the action was later approved by the courts.

Mr. TYDINGS. That is not the end of it.

Mr. COOPER. It is the end of it.

Mr. TYDINGS. He signed the writ of habeas corpus——

Mr. COOPER. I yield to the Senator from Tennessee.

Mr. BAKER. Mr. President, a point of order. Will the Chair inform me who has the floor?

Mr. COOPER. I yield to the Senator from Tennessee. I know other Senators wish to speak.

I have studied the Senator's rhetorical questions, and they are in the record. People have hung on these statements—some hearsay, some of them contradicted—as reasons for being against this nominee.

Mr. HRUSKA. Mr. President, I yield 3 additional minutes to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. BAKER. Mr. President, do I correctly understand that the Senator from Kentucky has yielded to the Senator from Tennessee?

Mr. COOPER. Yes.

The PRESIDING OFFICER. The Senator from Kentucky has the floor.

Mr. COOPER. I yield to the Senator from Tennessee.

Mr. BAKER. Mr. President, I thank the Senator from Kentucky for yielding so that I may do two things.

First, I wish to praise him for an eloquent statement in defense of the nomination of Judge Carswell to the Supreme

Court of the United States, and to point out that it is more than just the ordinary observations of any of us who are peers in this group on a Presidential nomination. The statement comes from one who, as the Senator from Maryland has pointed out, is universally respected in this body, who has been a distinguished attorney in the Commonwealth of Kentucky, who has been a jurist of that State and an active trial judge, who has been in the forefront of Republicanism in the South, in Kentucky, and in surrounding States and areas, and who was educated in the East, who has a wide vision of all the issues that confront this troubled Nation and have confronted it since virtually after the close of the Civil War.

I commend him on his scholarly approach to his determination of how his vote will be cast on this issue.

Then I observe, Mr. President, that in the last 20 minutes or so prior to my putting this point of order, it has been impossible for me to tell who had the floor and to determine whether or not the debate was on this record or upon representations allegedly made to the Senator from Maryland. I do not know.

I make a second point: I was in the vanguard, in the forefront, of those who opposed the nomination of Justice Fortas to become Chief Justice of the United States. I stood on this floor long hours and long days opposing that nomination on the ground of the Justice's insensitivity to financial matters, to the canons of legal ethics, to his judicial career, pointing out the inadequacy, in my view, of the observations of the American Bar Association about Justice Fortas. I must comment, in closing, that I do not recall that the Senator from Maryland had any such caustic and critical remarks to make about the American Bar Association's review procedures at the time we were trying to prevent the nomination of Justice Fortas. I ask only for equal treatment at this time.

I thank the Senator from Kentucky for yielding.

Mr. COOPER. I want to say, as I said before, that my judgment is based on the record.

Before I close, I would like to say that as a border State representative, and as one who before he came here was a lawyer and a judge in a small community, that we dealt with civil rights matters before they became urgent throughout the country.

I am very glad that throughout those years I have voted and have done everything I could to insure the equal rights of all our citizens before I came to the Senate and during my service here. But I do not want to be biased or prejudiced against another man against the nominee unless there is cause for such bias. I have not found it in the facts in the record. I yield the floor.

Mr. CRANSTON. I yield 1 minute to the Senator from Maryland.

Mr. TYDINGS. Mr. President, first on the point raised by the Senator from Tennessee with respect to whether or not I was critical of the American Bar Association review of the Fortas nomination, the Senator will see in the RECORD that several evenings ago, in a colloquy with Senator COOPER, I pointed out that I think the American Bar Association's procedures in respect to Judge Fortas' nomination were as weak as they were with respect to the Carswell nomination. I do not think the American Bar Association should endorse candidates for the Supreme Court of the United States unless they perfect their procedures so that they examine completely the record of the nominees in the same manner in which they examine the records of nominees for the district and circuit courts.

Mr. BAKER. If the Senator will yield, since he made particular reference to me, I will comment that I agree with him. I think the American Bar Association has not done an especially good job in reviewing this nomination.

My point is that at the time of the Fortas nomination—not in this debate, but at the time of the Fortas debate—I heard no such criticism of the American Bar Association by so many who supported Justice Fortas, including the distinguished Senator from Maryland.

Mr. TYDINGS. I might add, we were never able to vote on Mr. Justice Fortas because the filibuster was successful.

Mr. BAKER. I must point out that we debated the issue for 22 days.

Mr. TYDINGS. Yes, we debated.

Mr. BAKER. So there was no shortage of time to have brought up that point.

Mr. TYDINGS. As to the point made by the distinguished Senator from Kentucky (Mr. COOPER), let me say that my quarrel with the conduct of Judge Carswell was his refusal, at the time Judge Carswell finally signed the writ of habeas corpus, to allow these young men, these workers, to be released from jail. Instead, he immediately remanded the case to the State court at once on his own motion, without any request from the State, without notice, without a hearing, and without granting a stay pending an appeal. He remanded it at once, so that the sheriff could arrest the young men and put them right back in jail. He denied them even the right to a hearing on the issue of the remand. That is what is so patently unfair and, in my judgment, so biased and prejudiced.

Mr. President, I yield the floor.

Mr. CRANSTON. Mr. President, I suggest the absence of a quorum with the time to be taken out of both sides equally.

The PRESIDING OFFICER (Mr. RIBICOFF). Without objection, it is so ordered; and the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ALLOTT. 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. HRUSKA. Mr. President, I yield 10 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 10 minutes.

Mr. ALLOTT. Mr. President, a roll call of members of the Supreme Court who have distinguished themselves on the bench would show that many were the subject of attack when nominated to compare with that launched against the nomination of George Harrold Carswell to be a Justice of the U.S. Supreme Court.

My remarks will be directed to two of these objections as to his qualifications.

The first is that in a portion of a speech which he gave about 21 years ago, while running as a candidate for the Georgia State Legislature, he is quoted as stating that segregation of the races is proper. On this point, Judge Carswell has already stated specifically that he renounces the words themselves, and the thoughts they represent, as abhorrent.

Another basis for opposition is that he is not of that greatness of stature required of a Supreme Court Justice, and that his opinion writing is "pedestrian."

Such objections are not new in our history. Many nominees with such a background have served with distinction and honor, and have made important contributions to the Court's history and development.

A notable example is John Marshall Harlan, who sat on the Court from 1877 to 1911. He was the object of an attack on his integrity which parallels that made on Judge Carswell. As a younger man, Harlan had been a slaveholder, an opponent of the Emancipation Proclamation, a bitter foe of the Civil War Amendments and a severe critic of Federal civil rights legislation. In running for Congress in 1859, at the age of 26, Harlan campaigned as a devoted defender of property rights in slaves, supported the Dred Scott decision, and expressed the view that Congress had the authority and should pass laws for the protection of slave owners in the territories. In 1863, at the age of 30, Harlan ran for Attorney General of the State of Kentucky on a platform which included the defense of slavery. As Attorney General of the State, he took positions which reflected his convictions and political views about Negroes. Harlan was, moreover, violently opposed to the 13th amendment and urged his State not to ratify it.

However, beginning in 1871, at the age of 38, Harlan began to change his political views. About this time, he moved from the Democratic Party to the Republican Party, becoming that party's candidate for Governor. In his campaign, he championed the war amendments whose ratification he had once opposed, and gave his support to Negro civil rights. Because of this shift in views, Harlan came under fire from his former democratic associates who branded him as a "political weathercock," and charged that he was advocating "social equality" between whites and Negroes. Harlan denied this charge during the campaign, asserting that "social equality can never exist between the two races in Kentucky." He said that while he favored full legal equality of Negroes with whites, distinctions had to be drawn. In this connection, he expressed the view that in the public schools it was obviously "right and proper" to keep "white and blacks separate."

In 1877, President Hayes looked for a successor to Justice David Davis who had resigned from the Court to become U.S. Senator from Illinois. Hayes, determined

to appoint a "southern man," selected Harlan and sent his name to the Senate. In the hearings on his suitability, it was said that a man who opposed all the late constitutional amendments would be dangerous to trust on the Bench. It was also claimed that Harlan was a political opportunist, and there were other allegations challenging his integrity. The Senate Judiciary Committee was troubled as to whether Harlan's prior statements would impair his fidelity to the war amendments and the Reconstruction Acts of Congress. Finally, after his nomination had remained in committee for 41 days, it was reported favorably, and Harlan was confirmed by the Senate.[1]

This was the same Harlan who dissented from the "separate but equal" doctrine established in *Plessy* v. *Ferguson*, 163 U.S. 537 (1896), and it was this dissent which the Supreme Court, in effect, adopted in 1954 in the school segregation cases—particularly the Brown against Board of Education case.

Speaking in 1896, Justice Harlan said:

> Our Constitution is color-blind and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. . . . The arbitrary separation of citizens on the basis of race . . . is a badge of servitude wholly inconsistent with the civil freedom and the equality before the law established by the Constitution. It cannot be justified upon any legal grounds. (163 U.S. at 559, 562.)

As has been pointed out in the debate, the nomination of John J. Parker to the Supreme Court in 1930 also involved an incident such as has been raised respecting Judge Carswell's nomination.

There were, it may be recalled, two main objections to Judge Parker's appointment. One is better known—his so-called "red jacket" or "yellow dog" contract decision, from which it was claimed that he betrayed a judicial bias in favor of powerful corporations and against union organization. The other principal objection to him came from the National Association for the Advancement of Colored People. It was alleged that when Judge Parker ran for Governor of North Carolina in 1920, he said:

> The participation of the Negro in politics is a source of evil and danger to both races and is not desired by the wise men in either race or by the Republican Party of North Carolina.[2]

Walter White, for the NAACP, declared that Judge Parker's statement was an "open, shameless flouting of the 14th and 15th amendments of the Federal Constitution," and that no man who entertained such ideas "is fitted to occupy a place on the bench of the United States Supreme Court."[3]

The Senate Judiciary Committee reported the nomination adversely. The Senate, after lengthy debate, voted against confirmation, 41 to 39. In this case, the Negro opposition was based on a single speech made by Judge Parker when he was about 30 years old in the midst of a political campaign conducted about 10 years prior to the nomination. As the Senate debates showed such opposition was well organized, 72 Cong. Rec. 8337–8339 (May 5, 1930)—as it has been here. Here, as in the case of Judge Haynsworth, there has been a well organized campaign to smear and besmirch the character and integrity of a man. Although Judge Parker went to great lengths to show that he never intended to deny the individual Negro any of his civil rights, and that his statement, taken out of context, had been grossly misinterpreted, apparently this single incident was enough to swing a few crucial votes against him, losing the confirmation.

If there was any single decision respecting a nomination to the Supreme Court which the Senate was later to regret, it was its rejection of Judge Parker. For years thereafter, he continued to serve with highest distinction as chief judge of the Court of Appeals for the Fourth Circuit. In many cases, he defended justly and impartially the black man's rights as the Constitution and the laws of Congress intended. I do not think that this body would want to repeat the grievous mistake which it made 40 years ago. A similar injustice would have deprived the Nation of the distinguished services of John Marshall Harlan.

I believe that this body has recently made a mistake comparable to the rejection of Judge Parker; and I am referring to the nomination of Judge Clement Haynsworth.

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

Mr. HRUSKA. Mr. President, I yield 3 additional minutes to the Senator from Colorado.

Mr. ALLOTT. Mr. President, another major objection to Judge Carswell's nomination to the Supreme Court is that his opinions do not reflect sufficient legal scholarship and insight to suggest that he is qualified to sit on the Court—in short, that his opinions are too "pedestrian," and that he displays no great talent for expounding the law.

Mr. President, I want to say this about "pedestrian" opinions and about court opinions. I certainly would not, if I were a judge, feel in the least downgraded if the Supreme Court, as it has been constituted in the last 10 years, reversed me many times.

I have seen Senators stand on the floor of the Senate, and I have read magazine and news editorials from people who have no legal background, but who talk about the mediocrity of this man's decisions and talk about the pedestrian quality of his ability.

No one is better qualified to evaluate a judge's ability than are the judges with whom he sits or the great preponderance of the lawyers who appear before him.

It is not difficult to find a dissatisfied lawyer who has lost a case and is willing to say anything about the judge who tried it. So, the remarks made on the floor a while ago about the dissatisfied lawyers who have appeared before him carry no weight with this lawyer who practiced law for 25 years before he came to the U.S. Senate. I know courts and I know lawyers and I know the great emotion that can arise from these conflicts.

Some seem to think that ability depends more upon flowery language than upon clear thought and the ability to analyze the Constitution and to analyze the precedents—an ability which has unfortunately been lost in the Supreme Court in the last 10 years.

All of these qualities go to make a great Justice of the Supreme Court.

> Greatness in the law is not a standardized quality, nor are the elements that combine it.

Some judges may excel in analysis; some in a view forcefully expressed over a long period on the bench; some may speak with brilliance; some may reflect special experience in a given field; some may write incisively and with unusual clarity; as Chief Justice Fuller described Justice Lamar's contributions, some are "especially valuable at the conference table"; and some, like Chief Justice Taft, may leave their mark in modernizing the judicial machinery.

Further, there is a tremendous diversity in writing style, not only among the nine Justices in any one term but in the marked changes displayed by their opinions over a period of years. There are a few exceptions to be sure—such as those opinions written by Cardozo, Holmes, or Frankfurter, but these are rare, by no means true of the vast majority of Justices whose performance has also been rated highly in retrospect.

Significantly, no one has suggested that Judge Carswell shirks his work, or that he lacks industry or that his opinions are unclear. These are exceedingly important attributes of a Justice on the Court.

Rather it is said that his opinions lack the luster, the literary polish, perhaps the scholarly analysis which mark the writing of some judges.

Here again, history demonstrates how unfair such an objection can be.

One case that comes to mind, in particular, is David Davis, who was nominated to the Supreme Court by President Lincoln in 1862. Davis had played an important role in Lincoln's campaign strategy in 1860, and remained close at hand as his adviser. His appointment was viewed as a reward for his service. Davis was a modest man, however, and harbored doubts about his fitness for the Supreme Court Bench. On his arrival in Washington, he admitted to his wife:

> Writing opinions will come hard to me. I don't write with facility.[4]

Yet in a few years, it was Davis who was to write the landmark decision for a unanimous Court in Ex Parte Milligan, 4 Wall. 2 (1866), that even in wartime Congress lacked the power to provide military trials for civilians in areas where the civil courts were still func-

[1] See, Document, *The Appointment of Mr. Justice Harlan*, 29 Ind. L. J. 46 (1953); Westin, *John Marshall Harlan and the Constitutional Rights of Negroes: The Transformation of a Southerner*, 66 Yale L. J. 637 (1957).

[2] Harris, *The Advice and Consent of the Senate* (1953), p. 129.

[3] *Ibid.*

[4] *The Justices of the United States Supreme Court* (Friedman & Israel, Editors), Vol. II, p. 1048 (1969).

tioning. In this decision Justice Davis wrote (4 Wall. at 120–121):

> The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances.

Now it may be granted that some legal scholars might describe this unadorned language as "pedestrian"; others, on the other hand, might view the same language as undeniably forceful. But for a man who did not write with facility, this was the kind of blunt language that marked out plainly the rights of our citizens, in war and in peace, when the constitutional guarantees of indictment and jury trial were involved.

Another example may be cited. It is Morrison R. Waite, seventh Chief Justice of the United States. It has been said of him:

> Most agree on the 'mediocrity' of his talents, his commonplace style of expression, and his limited legal experience.[5]

Yet, it is also said that "this quiet, dutiful Justice, who drew up more than a thousand opinions in 14 years on the Court, may have created a body of law with deeper ultimate effects than that of more spectacular incumbents whose views and personalities have taken the fancy of publicists and reformers from time to time." Ibid. It was this Justice—who had been dubbed with "mediocrity"—that Harlan Fiske Stone later described as "the greatest Chief Justice after Taney." Ibid. Now what were the qualities he displayed in his writing? Merely "clarity, succinctness and directness." Id., 1244. We could use other Justices of this caliber on the Court today so that those who read an opinion can readily understand what it means.

So, too, speaking of Justice Brewer, who served on the Court from 1890–1910, it has been said that "the literary caliber of his writings was often pedestrian and the ideas conventional, but the sheer stream of output" placed "his productivity somewhere near the top of Supreme Court Justices."[6] It was Justice Brewer's opinion for a unanimous Court in 1895 in the *Debs* case (158 U.S. 564) that laid down principles that still control in protecting the public against the obstruction of interstate commerce and the free passage of the U.S. mails.

On the basis of these precedents, I challenge Senators to predict with any assurance what history will record as a "pedestrian" opinion. We need only take stock of our own manner of speaking and writing to realize that there is no one way to expound a position—and this is as true in this Chamber as it is in the courtroom. Flowery language may have its place. It is no prerequisite to sound judicial thought and decision.

Many other cases may be cited to prove the point that objections such as I have just discussed respecting Judge Carswell's fitness for the position of Justice are wholly unworthy of our consideration.

Finally, I may recall Justice Holmes' opening passage in his great work, The Common Law, where he said:

> The life of the law has not been logic; it has been experience.

So, too, as we in this Senate body now prepare to vote on Judge Carswell's nomination, we will do well to consider the Nation's long experience with other Justices whose decisions are now the law of the land. On the basis of this experience, we may properly cast our vote in favor of Judge Carswell's nomination.

Mr. President, I urge the Senate not to make the mistake that has already been made once in the last year, not to make the mistake that was made with Justice Parker, but to confirm Judge Carswell, who, I think, will make an outstanding Justice without any of the prejudices that some Senators on the floor of the Senate and the people in the news media and other places have attributed to him. He will make a great Justice.

Mr. HRUSKA. Mr. President, I believe that more time remains on the other side. I suggest that perhaps some time might be taken at this time by the opponents.

Mr. BAYH. Mr. President, I yield 3 minutes to the distinguished Senator from New York.

Mr. JAVITS. Mr. President, as we come to the close of this debate, one thing we know very well, and that is that the arguments which have been made from the highest quarters that the Senate's responsibility are somewhat less than that of the President, have fallen on deaf ears, because in the debate they stated that the merits of Judge Carswell are made on this record and made with reference to the segregationist speech in 1948, but that he has the ability to rate a Supreme Court judgeship.

I deeply felt that when this question was raised by the President in his letter to the Senator from Ohio (Mr. SAXBE) and by our minority leader who quite properly desired to make every argument that he thought was pertinent on his side of the case that what should be our responsibility under the Constittuion and under the prerogative of the Senate was being attacked.

I think this is critically important to the future of our country. The fact is that we do have a right, in my judgment, to judge the capacity of Judge Carswell.

At the very least, in my judgment, the defense does not try to tell us anything about the fact that he is a judge of unusual ability. They tell us that he may turn out to be a judge like Justice Black. However, I do not think we ought to be called upon to do this on the basis of a record supported so very completely by legal scholars and judges, by liberal as well as conservative members of the bar.

To me, the most single impressive piece of evidence of this question of competence, quite apart from the other issue which has been raised, is the eloquent and moving statement of Bruce Bromley, Samuel I. Rosenman, Francis Plimpton, and Bathuel Webster, of the New York bar—four of the most eminent lawyers in the country—backed by 450 distinguished lawyers and the heads of law schools of the United States.

They say in their statement:

> We believe that, in the exercise of that duty, the Senate should confirm an appointment to the Supreme Court only if the nominee is of outstanding competence and superior ability. Judge Carswell does not, in our opinion, meet that test.

That seems to me to be ample basis for any Senator of the United States to vote against confirmation.

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

Mr. BAYH. Mr. President, I yield 1 additional minute to the Senator from New York.

Mr. JAVITS. Mr. President, this is a great aspect of the making of a President, as far as the President of my party is concerned. If this nomination is turned down, it will be the second of the two nominations for the same position which will have been rejected.

The fact that this is not any retaliatory activity on our part is made very clear by the way we acted on the nomination of Justice Burger.

We have the right to consider every nomination that is sent to us until we get one that is worthy of being a Supreme Court Justice.

It is my judgment that that kind of action on the part of the Senate will make a better President. Also, the Senate will have asserted its constitutional authority and its prerogative.

For that reason, I hope that the Senate will reject the nomination.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH. Mr. President, I yield 10 minutes to the Senator from Illinois.

Mr. PERCY. Mr. President, if I were to vote "aye" for the confirmation of Judge Carswell as an Associate Justice of the Supreme Court, it would go against the grain of many things that I have worked and fought for throughout my lifetime.

When we consider a man's qualification to assume this high office. It has been said that if a man does not have compassion by the age of 21 and if a man does not have wisdom by the age of 50, there is not much hope. This must be especially true when we consider a man's qualification to assume this high office.

I think that in this case it is our responsibility to look deeply into the life of the man who is a nominee of the President and determine whether in our individual judgment we can see fit to

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[5] *The Justices of the United States Supreme Court, supra*, p. 1243.

[6] *Id.*, at p. 1520.

Justice Brewer, writing in his best "Pedestrian" style, said in the *Debs* case (158 U.S. at 598–599):

> A most earnest and eloquent appeal was made to us in eulogy of the heroic spirit of those who threw up their employment, and gave up their means of earning a livelihood, not in defence of their own rights, but in sympathy for and to assist others whom they believed to be wronged. We yield to none in our admiration of any act of heroism or self-sacrifice, but we may be permitted to add that it is a lesson which cannot be learned too soon or too thoroughly that under this government of and by the people the means of redress of all wrongs are through the courts and at the ballot box, and that no wrong, real or fancied, carries with it legal warrant to invite as a means of redress the cooperation of a mob, with its accompanyings acts of violence.

confirm his nomination to the Supreme Court.

Mr. President, first of all, I simply cannot lightly dismiss the speech that was given on August 13, 1948, by G. Harrold Carswell. I simply cannot dismiss this speech as the rash words of a young man because I think at the age of 28 it is time we be held accountable for our thoughts and words. After all, G. Harrold Carswell by that date had served in the U.S. Navy leaving the service as a lieutenant senior grade. He had returned to his home, he was a practicing lawyer, he was married, and he was the head of his family. He had had the opportunity in the Navy to see that men must fight and die together, whether they be black or whether they be white, side by side, when fighting for the freedom of all of our people. He had worked under an Executive order issued by the President of the United States to remove discrimination in the armed services.

Yet, he went back to his home community apparently feeling that it was all right for men in the Navy to fight and die together, black and white, but it apparently was not all right to go back home and work together and have equal opportunity for gainful employment. To fight for freedom for all the people was all right, but to fight for the right to have a job and to have equal employment opportunities apparently was not all right. Because in his speech of August 13, 1948, at the age of 28, when he was a candidate for the State legislature of the State of Georgia, G. Harrold Carswell looked upon equal opportunities in this way: he considered a fair employment practices commission a "foolish measure," not to be tolerated by him as a candidate for the State legislature; he considered civil rights programs as "civil wrongs programs," and he said that he would yield to no man in white supremacy, and that he "shall always be so governed."

Let me quote some of his exact words from the speech that he gave to the American Legion and that he caused to be reprinted in a Georgia newspaper:

> Foremost among the raging controversies in America today is the great crisis over the so-called Civil Rights Program. Better be called, "Civil-Wrongs Program."
>
> I am a Southerner by ancestry, birth, training, inclination, belief and practice. I believe that segregation of the races is proper and the only practical and correct way of life in our states. I have always so believed, and I shall always so act. I shall be the last to submit to any attempt on the part of anyone to break down and to weaken this firmly established policy of our people.
>
> If my own brother were to advocate such a program, I would be compelled to take issue with and to oppose him to the limits of my ability.
>
> I yield to no man as a fellow candidate, or as a fellow citizen, in the firm, vigorous belief in the principles of white supremacy, and I shall always be so governed.

Mr. President, if this speech had been given with the same sentiments expressed about the Jews, or about the Catholics, or about Protestants, there is no question in my mind that the Department of Justice, if they had known of the speech never would have dared to put forward this G. Harrold Carswell name as a nominee for the Supreme Court. Yet those words were said about blacks, about Negroes. The Attorney General said that it is unfortunate that because of it Judge Carswell is criticized. The Attorney General excused this speech because of its being given in the heat of a political campaign. I think it was unfortunate the speech was ever given. I think it is unfortunate that the Justice Department in its research on this nominee did not discover the speech. I think it unfortunate we could ever take so cynical an attitude that we could excuse anything that is said because it is said in the heat of a political campaign. A political campaign is the forum where potential public servants are saying what they stand for and believe in, and by what standard they will be judged. Judge Carswell just simply cannot duck the impact of those words. I simply cannot forget them, as much as I have tried. Millions of Americans will never be able to forget them, and they will look, of course, at his words, actions, and decisions to see whether or not in the intervening years his has repudiated these racist sentiments.

It would have been a much different story if we could have found words by which he denounced what he had said before or by his subsequent pattern of actions he clearly showed he has renounced what he once held so dearly. But I cannot find such words and I cannot find such a pattern of action until, as a candidate for nomination to the Supreme Court he was confronted with the speech and, of course, then he denounced the speech, as he should have.

I cannot support the nominee because of several other reasons. I cannot support him because of the times in which we are living. I believe we have today a crisis of confidence in American institutions, and our first order of priority at every level of government should be to restore confidence in the established great institutions of this country.

If Judge Carswell were confirmed I think it would not contribute to confidence in our institutions. The extremists are saying that the system is not working, that the institutions are stacked and rigged, and that you do not have a chance if you are black, or underprivileged if you are not backed by powerful and well financed interests.

If we were to put a man with this stain on his record on the Supreme Court, we simply hand a hatchet to those extremists who are trying to wreck the system, a hatchet which undercuts the ground of those who have begged and pleaded with minorities all over the country to have faith in the system and to work with the system, that the system is responsive, fair, and just.

We must understand that the problem of the moderate leadership is to try to convince people to seek justice in the courts and not on the streets. I am fearful that if affirmative action were taken today, we would be adding one more piece of ammunition to those who say the system is not working.

Furthermore, I feel excellence in leadership is required in all three branches of Government—the executive, the legislative, and the judicial. I think there are certain standards that must be established for Associate Justices of the Supreme Court and these include wisdom, compassion, and understanding.

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

Mr. PERCY. Mr. President, will the Senator yield me 3 additional minutes?

Mr. BAYH. I yield 3 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. PERCY. Mr. President, these standards include wisdom, compassion, and understanding. The standards must also include, in my judgment, superior scholarship, legal distinction, and adherence to the principle that justice and equality before the law is guaranteed to all Americans. I find Judge Carswell to be deficient in meeting these reasonable and imperative standards.

Lastly, the responsibility of the Senate has been the subject of considerable discussion. It deserves mention here as I explain my position. I think the President has aptly put it when, in a discussion with him about Judge Haynsworth, he said, and rightly so, "A Senator has the responsibility to vote his own conscience and his own judgment."

We have that responsibility, particularly in confirming nominees to a third branch of government, the judiciary. The electorate has control over the executive and the legislative branches of Government. Those two branches through combined efforts appoint and confirm the judiciary in the federal system. We, the President and 100 Senators, have the power to put a man on the Court for life. We must take that power exceedingly seriously. It is in lieu of the votes of tens of millions of citizens whose decisions elect the other two branches. We in the Senate must vote our own conscience and judgment, exercising our judgment in light of all the new information we have which was not available to the Department of Justice or the President at the time of their nomination.

Mr. President, it is not a matter of liberalism or conservatism with me and I am sure it is not with my colleagues who feel as I do. We had no question or problem in confirming Chief Justice Burger and we will not have in the future when someone else is nominated to the Court who does not present to the country and the Senate the problems that this nomination does.

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

Mr. BAYH. Mr. President, I yield 1 additional minute to the Senator from Illinois.

Mr. PERCY. Mr. President, we must look at the pattern of personal decisions of G. Harrold Carswell, including his Tallahassee golf course decision. In my own birth city of Pensacola, Fla., the preceding year, an order by the court had been issued against it to desegregate the municipal golf course. Following this, various attempts to circumvent or subvert the law were made throughout the South. Yet, G. Harrold Carswell, at a time when he was U.S. attorney, sworn to uphold the Constitution and the law of the land, participated as a shareholder and director in a scheme which would keep segregated the municipal golf course of Tallahassee.

When I look at his decisions as a Federal district judge in voting rights cases, in writ of habeas corpus cases, in school desegregation cases, and the number of reversals he has had time after time, many unanimously, by the court of appeals I can only say thank heaven for the process of appeal and reversal that put justice to work in place of the decisions that were rendered by Judge Carswell.

For these reasons I cannot vote, and it is with great reluctance that I say I cannot vote, to confirm the nomination of Judge Carswell. It is with great reluctance because the Nation can ill afford the Fortas, Haynsworth, Carswell succession; reluctance because the man himself must have suffered in the light of the debate over his nomination; reluctance in opposing the President, the leader of my own party. Yet the final test must always be what a man believes is right in his own judgment and in his own conscience. I have concluded that I cannot vote for Judge Carswell. To do so would be to betray my own convictions.

Mr. BAYH. Mr. President, I yield 3 minutes to the distinguished Senator from Idaho (Mr. CHURCH).

Mr. CHURCH. Mr. President, the Senate is about to pass judgment on the appointment of Judge Carswell to the Supreme Court of the United States. I think it is altogether fitting that we reflect for a moment upon the moving tribute of one of the supreme jurists of our time, Judge Learned Hand, himself a man who did not suffer mediocrities gladly, paid to Mr. Justice Cardozo shortly after Justice Cardozo's death in 1938. Of Cardozo, Judge Hand wrote:

> In all this I have not told you what qualities made it possible for him to find just that compromise between the letter and the spirit that so constantly guided him to safety. I have not told you, because I do not know. It was wisdom: and like most wisdom, his ran beyond the reasons which he gave for it. And what is wisdom—that gift of God which the great prophets of his race exalted? I do not know; like you, I know it when I see it, but I cannot tell of what it is composed. One ingredient I think I do know: the wise man is the detached man. By that I mean more than detached from his grosser interests—his advancement and his gain. Many of us can be that—I dare to believe that most judges can be, and are, I am thinking of something far more subtly interfused. Our convictions, our outlook, the whole makeup of our thinking, which we cannot help bringing up to the decision of every question, is the creature of our past; and into our past have been woven all sorts of frustrated ambitions with their envies, and of hopes of preferment with their corruptions, which, long since forgotten, still determine our conclusions. A wise man is one exempt from the handicap of such a past; he is a runner stripped for the race; he can weigh the conflicting factors of his problem without always finding himself in one scale or the other. Cardozo was such a man; his gentle nature had in it no acquisitiveness; he did not use himself as a measure of value; the secret of his humor—a precious gift that he did not wear upon his sleeve—lay in his ability to get outside of himself, and look back. Yet from this self-effacement came a power greater than the power of him who ruleth a city. He was wise because his spirit was uncontaminated, because he knew no violence, or hatred, or envy, or jealousy, or ill will. I believe that it was this purity that chiefly made him the judge we so much revere; more than his learning, his acuteness, and his fabulous industry. In this America of ours where the passion for publicity is a disease, and where swarms of foolish, tawdry moths dash with rapture into its consuming fire, it was a rare good fortune that brought to such eminence a man so reserved, so unassuming, so retiring, so gracious to high and low, and so serene. He is gone, and while the west is still lighted with his radiance, it is well for us to pause and take count of our own coarser selves. He has a lesson to teach us if we care to stop and learn; a lesson quite at variance with most that we practice, and much that we profess.

The PRESIDING OFFICER. Who yields time?

Mr. HRUSKA. Mr. President, I yield 5 minutes to the Senator from Florida (Mr. HOLLAND).

Mr. HOLLAND. Mr. President, as one who, for years in his early political life, supported the poll tax and later saw its inequities and did as much as any American to do away with it, I cannot agree with the Senator from Illinois and others who do not think a young man can, as he gains a little stature, change his mind. I could not be here to try to deceive my brother Senators. I think this young man is a fine young man, a good judge, a clean one, and not a racist.

I note the statement of Mr. Mark Hulsey, president of our bar association, in a very recent letter, in which he states:

> As I indicated to you earlier, it is certainly ironic that Judge Carswell is charged with being a racist. My experience with him and his reputation in the Northern District of Florida are just to the contrary.

Then he goes on to say:

> Professor Van Alstyne said he did not know Judge Carswell. Perhaps if he had known him in Tallahassee, had heard him cursed, had listened to the harassing telephone calls and practiced law in his Court, he would not have been so quick to condemn him.

In addition to Mr. Hulsey, the present president of the Florida State bar, the record shows that the following recent, former presidents of the State bar are actively supporting Judge Carswell, namely: Mr. Marshall Criser, of West Palm Beach; Mr. Delbridge L. Gibbs, of Jacksonville; Mr. Fletcher G. Rush, of Orlando; Mr. J. Lewis Hall, of Tallahassee. Furthermore, the record shows a tremendous endorsement of Judge Carswell by numerous sitting judges in Florida as follows:

First. All members of our Florida State Supreme Court.

Second. All members of the District Court of Appeals for the Northern District of Florida and other individual members of the two other district courts of appeals.

Third. A large number of our circuit judges. I placed in the RECORD myself the endorsement of Judge Carswell by 38 of our Florida circuit judges and my colleague, Senator GURNEY, has placed others in the RECORD.

Fourth. Both of the sitting Federal district judges of the Northern District of Florida and all six sitting Federal district judges of the Southern District of Florida.

Fifth. Also appearing in the printed RECORD is the endorsement by the Governor and all six of the statewide elected cabinet members of Florida.

Sixth. The endorsement of 50 sitting Federal district judges in the entire fifth judicial circuit of the Nation, including the six States of Texas, Louisiana, Mississippi, Alabama, Georgia, and Florida, and seven of the retired district judges of that area.

Seventh. The endorsement of the present eminent deans of the law schools of Florida State University at Tallahassee, and of the University of Florida at Gainesville, as well as the endorsement of the eminent former dean of the law school at FSU, Dr. Mason H. Ladd, who was formerly the dean at Iowa State Law School.

Eighth. The endorsement of 11 of the sitting associates of Judge Carswell on the circuit court of appeals.

All of these men whom I have mentioned, most of whom sit in high judicial positions, know Judge Carswell and know him well, just as the two Senators from Florida know him well.

The question which will soon be submitted to the Senate on the confirmation of Judge Carswell will give to all Senators the opportunity to show whether they have confidence in sitting judges and other high officials who know Judge Carswell well and in many instances intimately, and in their brother Senators who are members of the Senate Judiciary Committee and had the chance to see Judge Carswell, hear him, and appraise his answers to their questions.

I am sure, also, the fact that former Gov. Leroy Collins of Florida, who is known throughout the Nation as being anything but a racist, testified as to his support of Judge Carswell and as to his conviction based upon intimate knowledge and association of years with Judge Carswell that Judge Carswell is not a racist.

I note in the record strong statements made by the Senator from Indiana (Mr. BAYH), and the Senator from Maryland (Mr. TYDINGS), as to their estimate of Governor Collins. I will note them briefly.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HOLLAND. I ask for 1 more minute.

Mr. HRUSKA. I yield the Senator from Florida 1 additional minute.

Mr. HOLLAND. Senator BAYH stated:

> I would like to say for the record . . . that of all the public servants I have had the good fortune to become familiar with, I know of no man I respect more than the witness who is presently before us.

Senator TYDINGS said:

> Gov. Leroy Collins of Florida, in my judgment, is one of the great public servants of this generation. I would like for the record to make that comment for my brother members of this committee . . . "My every experience with Governor Collins has shown me that he is a man of the highest integrity and, a great American."

And Governor Collins says, based on his longtime record, which certainly is not that of a racist, that Judge Carswell is known to him to be not a racist. It will be interesting to see whether my brethren

from Indiana and Maryland show by their votes their intimate confidence in Governor Collins, as expressed in the record from which I have quoted.

Mr. President, speaking for myself, I simply say that I hope the Senate will, in its judgment, confirm the appointment of Judge Carswell, whom I believe to be eminently qualified and a decent, humane, commonsense American.

The PRESIDING OFFICER. Who yields time?

Mr. HRUSKA. Mr. President, I yield 1 minute to the Senator from Iowa.

Mr. MILLER. Mr. President, in today's New York Times there appears a letter to the editor written by Francis William O'Brien, professor of constitutional law, of Rockford College.

Mr. O'Brien refers to the criticism against Judge Carswell, and recalls similar criticism in the case of the late Louis Brandeis, nominated by Woodrow Wilson in January 1916 and confirmed after several weeks of debate.

He points out that the New York Sun wrote that Brandeis was "utterly and even ridiculously unfit." The New York press called the nomination "an insult to members of the Supreme Court." A petition signed by 55 Bostonians, including the president of Harvard University, asserted they did not believe Mr. Brandeis had the judicial temperament and capacity which should be required of a judge of the Supreme Court. The American Bar Association charged that the "reputation, character, and professional career" of the nominee proves he is "not a fit person to be a member of the Supreme Court."

Nevertheless, Mr. Justice Brandeis was confirmed by the Senate and served with great distinction for 21 years. I think this is a good time to point this out.

I ask unanimous consent that the entire letter be printed in the RECORD.

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

CRITICS OF COURT CHOICE

TO THE EDITOR:

The criticism leveled against Judge Carswell recalls that made against Louis Brandeis, nominated by Woodrow Wilson in January 1916, and confirmed several weeks later after much bitter debate. The New York Sun wrote that Brendeis was "utterly and even ridiculously unfit." The New York Press called the nomination "an insult to members of the Supreme Court." Opposition was also voiced by The Boston Transcript and The New York Times.

Former President Taft, Chief Justice from 1921 to 1930, suffered "a fearful shock" in learning of the Brandeis nomination.

A petition signed by "Fifty-five Bostonians" urged the Senate to reject Brandeis. The distinguished list included A. Lawrence Lowell, President of Harvard, and Charles Francis Adams.

Among other objections, the petitioners asserted that they did not "believe that Mr. Brandeis has the judicial temperament and capacity which should be required in a judge of the Supreme Court" and that his "reputation as a lawyer is such that he has not the confidence of the people."

The American Bar Association lent its lungs to the swelling chorus of dissent. "A painful duty," the lawyers lamented, compelled them to charge that "the reputation, character and professional career" of the nominee proves that he is "not a fit person to be a member of the Supreme Court." Among those who signed this petition were seven past presidents of the Bar Association.

In spite of such formidable opposition, Brandeis won confirmation and served for 21 years on the high tribunal. Many knowledgeable students of the Court would rank him alongside of the two or three most distinguished Justices of this century.

FRANCIS WILLIAM O'BRIEN.

Mr. HATFIELD. Mr. President, in a short time, I shall vote against the nomination of Judge G. Harrold Carswell to the Supreme Court. I do this as a result of my study of the hearing record, my listening to and participation in debate here on the Senate floor, my discussions with my colleagues, and my consultation with others interested in this matter. I also have discussed this in conversations with my constituents in Oregon.

When I sent a message to the President, asking that he withdraw the nomination, I did so in hope that he would avoid this divisive vote today. In my opinion, the Court, and the entire judicial process, suffers as a result of this vote.

As is sometimes the case with matters of great public interest before this body, the particular question—as each of us sees it—gets obscured in rhetoric. Supporters and opponents both fill the air with innuendo, inference, and allusion. When this is viewed by our constituents, the Senate gains nothing in the eyes of the country when it strays from the pertinent points regarding Supreme Court nominations.

Currently, we are in a time unique in our country's history. Questions are being raised regarding our basic institutions, and our judicial system has been subjected to new pressures, with which it was not designed to cope. Recent events in Chicago and New York are evidence of these strains, and we must focus our attention on shoring up our judicial system in all respects.

These unique times require men uniquely qualified for service in the U.S. Supreme Court. Nominees must represent the best that is within our judicial system. Certainly there are conservative judges and strict constructionists who fulfill the requirement of excellence.

In this issue, a central concern should be the Supreme Court as an institution. The old adage, "without purse or sword," means that the Court must stand alone, and that the public is the guardian of its sanctity. The responsibility of the Senate should be to guard against unwarranted attacks on the Court, be they from those who think it too "liberal," or from those who see it as "irrelevant," in the jargon of the far left. We should not give ammunition to those who fault our judicial system.

We should examine a nominee in this light: first, considering only the pertinent questions, and second, not adding to the discord already directed at the Court.

I have said this as a prelude to my comments regarding the Carswell nomination.

I ask unanimous consent that, at that point in my remarks, a copy of my message to the President be printed, for it sets out my basic reasons for opposing the Carswell nomination.

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

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I shall vote yes on the motion to recommit the nomination of Judge Carswell to the Judiciary Committee and I am prepared at this point to vote the nomination up or down.

I write you as one of your early supporters for the Presidential nomination and as one who has remained publicly uncommitted on Judge Carswell. I write also as reflecting my own evaluation of the mood of the Senate and the thinking of many of my close colleagues.

You and I share the common goal of restoring the needed balance to the Supreme Court. We share a common concern about the need to restore confidence in our entire judicial process. I was a strong supporter of Chief Justice Warren Burger and would welcome the nomination of a man of his stature.

I stand ready to support a nominee from any geographical area of the country. Just as every section should be open for consideration for an appointment, so should any nominee represent the best in professional excellence and personal integrity. There are men within the Southern States who represent these composite traits and who do justice to the best and to the future of that region.

As I spoke very recently with my constituents and with many others from throughout the country, I have become more deeply concerned with the crisis of confidence that confronts our governmental process. In all such discussions I continually urge the full utilization of our constitutional and judicial process in seeking the orderly redress of grievances. Yet, the name of G. Harrold Carswell has become a symbol of the despair, distrust, and disillusionment that beguiles our admonitions to work peacefully within our democratic institutions.

You and I share the commitment to promote a national reconciliation between the polarized factions in our land. We can do no better than to give our words the ring of authenticity by granting to our institutions the assurance of complete credibility.

Therefore, I respectfully urge you to withdraw the nomination of G. Harrold Carswell.

Sincerely,

MARK O. HATFIELD.

Mr. HATFIELD. Mr. President, to those who say that Judge Carswell has been victimized, I say only that a judge's reversal rate, compared to that of his fellow judges from his judicial circuit, stands alone, without comment from his supporters or opponents.

To those who say we need a conservative judge on the Court, I merely ask that he be one of the best conservatives in the country. We owe this much to the institution of the Supreme Court.

To those who say that Judge Carswell has no racial prejudices, I ask that they improve on their past demonstrations on this floor to show that he professes the degree of racial tolerance needed on the highest court in the land. I share the sentiments of some of my colleagues that he appears to have shown no demonstrable change from his earlier derogatory statements. We owe this much to those who have relied on unbiased courts for the redress of their grievances.

To those who say that the Senate

would oppose any southerner, I say let us examine the best that the South offers, and not merely consider the present nominee as the best from that geographic area. As I have said earlier, just as any geographical area should be eligible for consideration, so should that nominee represent that which is best from that area. We owe this much to the new, emerging South we all respect.

To those who say this is a partisan issue, and that Republicans always should support the President, I say that the U.S. Supreme Court is not a partisan arm of the Government. It is a coequal branch with this body, the legislative, and with the executive. Partisan politics should not be considered, either in support or opposition of a nominee. We owe this much to our country.

Those in the executive and legislative branches of our Government are involved in decisionmaking for relatively short times, and are subject to periodic review by the electorate. A Supreme Court Justice, however, is appointed for life, and his influence can be far reaching and long lasting.

In conclusion, let me issue a plea to all who follow this matter. This would include the administration, the entire Senate, and the country as a whole.

Let us consider nominees who represent the best in our judicial system. Let us consider men from any philosophical viewpoint and from any geographical area. Let us consider the merits alone, and not enter the rhetoric race. Let us focus instead on the central issue: Is he the best qualified person to sit on the highest court in the land? And how will he affect the stature of the highest court in the land?

As I have stated earlier, the Carswell nomination has become a symbol of the despair, distrust, and disillusionment that beguiles our admonitions to work peacefully within our democratic institutions. The Supreme Court symbolizes the hope of justice through due process of law. It is the embodiment of the trust which our Nation places in the effectiveness of our judicial system. It must symbolize to all Americans, therefore, the highest and the very best that our democratic system has to offer. It deserves unmatched excellence in its nominees. If our judicial system is to be worthy of the respect and support which is essential for it to function, then it must be led by those individuals who can best represent these ideals. It is the responsibility of this body to insure that our courts are worthy of such faith.

Mr. MATHIAS. Mr. President, the Republican Party has contributed to the quality of service on the Supreme Court through respected men, such as William Howard Taft, Charles Evans Hughes, and Oliver Wendell Holmes. The State of Maryland has contributed to the quality of service on the Supreme Court through respected men such as Thomas Johnson and Roger Brooke Taney. The excellence to which these men aspired and, in large measure attained, must, of necessity, be a benchmark in considering appointments to the Supreme Court. To acquiesce in a lesser standard of quality would be unfaithful to the present, unfair to the future, and a reproach to the past.

In the current debate there has been some question as to the constitutional limit of senatorial discretion in the confirmation of Justices to the Supreme Court. Alexander Hamilton commented on this question in the Federalist No. 76 when he said:

> To what purpose then require the cooperation of the Senate? I answer that the necessity of their concurrence would have a powerful, though in general a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to preventing the appointment of unfit characters.

Thereafter enumerating the possible reasons by which a President might be tempted to make an unsuitable appointment. It is notable that throughout most of the 20th century the Senate's exercise of its duty of confirmation has been, as Hamilton predicted, "a silent operation." On only 13 previous occasions in this century has there been enough controversy to require a rollcall vote in the Senate on appointments to the Supreme Court and on only two of those occasions has the nominee been rejected. I wish with all my heart that in the instant case the Senate could passively concur and that this would be "a silent operation." The nature of the case and the nature of the times will not permit the Senate to be silent and it should not be silent.

To the President the Constitution gives the power of nomination. To the President and the Senate, it gives the power of appointment. Between nomination and appointment lies the key phrase, advice and consent. The Senate, basing its response on investigation and debate, shall give its advice on the nominee and shall consent—or withhold the same—to the appointment.

The Senate is thus forced to address itself to that quality of the nomination which Alexander Hamilton has characterized as "fitness."

As I observed in the report of the Senate Judiciary Committee on the nomination of Judge Carswell, I regret to see decisions of a sitting judge scrutinized individually so that there would be some apparent invasion of the principle of judicial independence. I do not, however, feel that the Senate either can or should be precluded from a broad overview of a nominee's judicial record as one of the factors in ascertaining "fitness." It has been pointed out during this debate that over half of the opinions rendered by Judge Carswell which were subject to appellate review were reversed. While there might be considerations which could be used to explain this high rate of judicial error, they seem inadequate when it is considered that Judge Carswell's rate of judicial error is more than twice as high as that of the average U.S. district court judge. While such a relatively high rate of judicial error may be tolerated at lower court levels where further appeal provides a remedy, it is a rate of error which casts considerable doubt upon the appropriateness of his nomination to the Court of last resort.

I have studied some of Judge Carswell's opinions and conclude that many of them can be considered routine and unexceptional. This would be expected from the calendar of a U.S. district court judge. In fairness and candor, it must be said that most of Judge Carswell's opinions which are available in published form cannot be considered to be incorrect. None of them, however, seem to belong in the great tradition of Anglo-American jurisprudence in which judges over the years have contributed to the growth and understanding of the law. Some of them are marked by basic errors. I am appending hereafter a memorandum prepared at my request which sets forth some of the illustrative cases which emphasize these points; and I ask unanimous consent that the memorandum be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. MATHIAS. There is a scholarly side of the law and there is a human side of the law. I hope that I am not blind to either. In an attempt to make some judgment on both aspects of Judge Carswell's fitness, I requested an opportunity to meet and talk with him. This request was made to the Justice Department and to others who were vitally interested in Judge Carswell's nomination. I regret that this request was not acknowledged until less than 24 hours before the vote.

I am not insensitive to the impact of this vote on Judge Carswell as a man. I am very much aware of the sentiments of many American who would like to see Judge Carswell appointed to the Court in spite of the misgivings that I have enunciated. I feel very deeply the obligation that I owe to the President of the United States to respect his judgment and his leadership. It is, therefore, with a very deep sense of sadness that I feel that my oath as a Member of the U.S. Senate requires me to vote against confirmation of G. Harrold Carswell to be an Associate Justice of the Supreme Court.

EXHIBIT 1

MEMORANDUM

To begin with, there is a series of cases in which Judge Carswell refuses to grant hearings on habeas corpus petitions in the face of federal statutes and higher judicial authority to the contrary. The case of *Harris v. Wainwright*, 399 F.2d 142 (5th Cir. 1968) is reasonably typical.

In that case, the indigent petitioner had a past record of mental illness serious enough to warrant commitment. He sought to attack his state court conviction collaterally on the ground, *inter alia*, that he had been incompetent to stand trial at the time of his conviction. (There had been no pre-trial psychiatric examination, despite petitioner's history.) He brought his first collateral attack in the state courts; he was not represented by counsel at this proceeding, nor was he himself produced. The court simply denied the petition.

He then sought federal habeas in Judge Carswell's court. Carswell did not even appoint counsel to represent this indigent, mentally ill petitioner. He did not order a hearing, as required by federal statute (28 U.S.C. § 2255). He simply denied the petition summarily, stating that petitioner had been represented by "able" counsel at trial and that "the alleged constitutional defect simply does not exist."

The Court of Appeals unanimously reversed and remanded to the district court to reexamine the issue. The Court of Appeals held that defendant's allegations of incompetency raised a federal constitutional issue, which Carswell should have known, since he had relied on that rule to the detriment of another petitioner in a prior case, *U.S. v. Levy*, 232 F. Supp. 661 (1964). Very similar cases are *Meadows* v. *United States*, 282 F.2d 942 (1960) (claim of incompetency by a petitioner previously discharged by the Army as a psychoneurotic) and *Dickey v. United States*, 345 F.2d 508 (1965) (claim of incompetency by petitioner alleging a previous head injury). These repeated denials without hearing by Carswell in very similar cases followed by unanimous reversals backed by Supreme Court authority suggest a persistent determination to refuse hearings without any apparent legal basis.

In a similar vein, see *Barnes v. Florida*, 402 F.2d 63 (1968) where Judge Carswell denied a writ of habeas corpus without a hearing despite allegations of coercion of a guilty plea and inadequacy of counsel (whom petitioner allegedly saw for only a few minutes prior to trial). Judge Carswell was unanimously reversed by the Court of Appeals. Still another case is *Baker v. Wainwright*, 391 F.2d 248 (1968) where a petition for habeas corpus was again denied without hearing despite an allegation that petitioner was not granted counsel on appeal in a criminal case. Again, the Court of Appeals reversed, citing a Supreme Court decision, *Entsminger v. Iowa*, 386 U.S. 748 (1966) where the Court declared: *"As we have held again and again* an indigent defendant is entitled to the appointment of counsel on his first appeal."

This section states: "Unless the motion and files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall . . . grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. . . ."

Judge Carswell seems very quick to denominate cases as "frivolous". Such language permeates a number of his opinions. In a recent case, for example, he denied bail pending appeal in a free-speech, contempt case. No indication was adduced that petitioners were dangerous, but Carswell apparently thought the bail issue was frivolous. He was reversed and directed to grant bail by a unanimous per curiam opinion, *Dawkins v. Crevasse*, 391 F. 2d 921 (5th Cir. 1968).

The fact that some of Judge Carswell's criminal law decisions have not been reversed does not indicate that they were correct. A significant number of them may not have been appealed because Carswell has made it difficult to effect an appeal. When Carswell rules against an indigent petitioner, he often denies him the right to proceed further in forma pauperis; see *e.g., Baxter v. State of Florida*, 295 F. Supp. 1164; he does not appoint counsel; and he frequently denies bail. To be sure, the Court of Appeals can—and sometimes does—reverse these orders; but a great many indigent petitioners simply cannot overcome these hurdles and get the case up for review.

Judge Carswell's unwillingness to apply the law in a manner favorable to criminal defendants seeking their freedom can be contrasted with his reluctnace to limit an employer by enjoining future violations of the Fair Labor Standards Act. Despite past violations and what the Court of Appeals described as "a history . . . of delay and obstruction to the investigation of reliance on spurious legal defenses, Judge Carswell denied an injuction, *Mitchell v. Blanchard*, 168 F. Supp. 689. This decision was reversed unanimously, 727 F.2d 574, and the order denying the injuction was declared "not supportable."

In quite a different field of law, one might refer to *Polar Ice Cream v. Andrews*, 208 F. Supp. 899 (1962), *reversed* 375 U.S. 361 (1964). That case involved a Florida regulation of the supply and distribution of milk. The challenged regulations required that a Florida company like Polar pay to his local Florida suppliers the premium Class I price of 61¢ for all Class I milk which Polar sold in his Pensacola market, regardless of where he bought the milk, provided that the local Florida suppliers could provide him with the amounts he needed. The effect of the regulation was to make it uneconomical for Polar to pay the premium price for milk from out-of-state producers so long as such milk could be purchased from his local Florida suppliers. Instead, out-of-state producers could only sell to Polar for the less-remunerative uses at prices which apparently would not even cover their costs of production. Polar challenged the regulations as constituting a burden on interstate commerce by, in effect, limiting out-of-state producers from competing for the lucrative Class I business in Polar's Florida market.

Judge Carswell upheld the Florida regulations. He first announced a general standard of highly dubious applicability to a case such as the one before him: i.e., "in order to justify a pronouncement that a legislative act is unconstitutional the case must be so clear as to be free from doubt." He then declared—in very general, conclusory terms—that the regulations did not burden interstate commerce. Nowhere in his opinion is there any appreciation of the actual economic effects of the regulations and their impact on the feasibility of interstate sales to Polar.

The Supreme Court reversed unanimously, finding that the burden on commerce was clearly evident. In reaching the result, the Court declared that the principles laid down in an earlier Supreme Court case, *Baldwin v. Seelig*, 294 U.S. 511 (1935): "justify, indeed require, invalidation as a burden on interstate commerce." Judge Carswell had dismissed the *Baldwin* case because the surface facts were different without recognizing that the *principle* set forth in *Baldwin* (and other cases) seemed plainly applicable to overturn the Florida regulations. Leaving aside the enunciation of a seemingly erroneous legal standard, Judge Carswell's opinion reveals, not a difference of policy or philosophy, but a failure to probe beneath the surface to expose the underlying principles of existing precedents and the economic effects of regulatory schemes such as those in the *Polar* case. In this connection, one might also note another regulatory case decided by Judge Carswell and reversed on appeal, *First National Bank v. Dickinson*, 274 F. Supp. 449, reversed, 400 F. 2d 548, affirmed, 90 S. Ct. 337 (1969).

In *John P. Maguire Co.* v. *Herzog*, 2 CCH Bankruptcy Law Rep. ¶ 63,355 (5th Cir. 1970), an officer of insolvent corporation used some of its assets to prefer corporate creditors to whom he was also personally liable by indorsement or guaranty. Thereafter, the corporation filed petition for an arrangement under Chapter XI of the Bankruptcy Act and the officer went into straight bankruptcy and received a discharge. Another of the corporation's 175 creditors then sued the corporate officer for misappropriation of corporate assets, contending that his claim was exempt from the bankruptcy discharge by an exception in the Bankruptcy Act for debts "created by his . . . misappropriation . . . while acting as an officer." In an opinion by Carswell the creditor's claim was ruled within the exception. There was no indication that Judge Carswell realized the full import of his ruling. Instead of preserving a corporate asset for the benefit of corporate creditors, he ruled that the act of the corporate officer in preferring some corporate creditors entitled another corporate creditor to prefer himself. In reaching this seemingly odd and unprecedented result, there was no inquiry into whether the exception should be available only to the corporation or its liquidator rather than to a single corporate creditor. There was no inquiry into whether Ga. Code Ann. § 22-709 upon which the action is based (and which forbids officers of insolvent corporation to use their powers for obtaining personal preference or advantage) should be available only to the corporation or its liquidator. In fact, there was not even a reference to the Georgia statute in the opinion.

In *Dawkins* v. *Green*, 285 F. Supp. 772 (1968), *reversed*, 412 F. 2d 644 (1969), Judge Carswell gave summary judgment to defendants, before any evidence was heard. The plaintiffs in this action had sought to enjoin certain defendant public officials from enforcing criminal statutes against the plaintiffs, alleging that the defendants were acting in bad faith, in that they were using the machinery of the criminal law in order to punish plaintiffs for their exercise of First Amendment rights. In moving for summary judgment, defendants filed affidavits, setting forth various facts, but on the critical issue of "bad faith," the officials simply denied so acting. Carswell's grant of summary judgment pointed to these affidavits and emphasized that plaintiffs had not filed counter-affidavits. Carswell's ruling seems plainly wrong. As the Court of Appeals pointed out in unanimously reversing him, summary judgment cannot be based on affidavits containing conclusory assertions that simply repeat the pleadings. This procedural doctrine is universally applied in the federal courts. For a similar case, see *Due* v. *Tallahassee Theatres*, 333 F. 2d 630 (1964) where Judge Carswell is again reversed by a unanimous Court of Appeals.

Running through these procedural cases as well as the criminal law—habeas corpus opinions is a tendency to dismiss cases summarily without giving adequate opportunity to explore the facts of the case. Similar tendencies exist in tort cases where Judge Carswell is reversed for resolving as matters of law issues that should have been submitted to the jury as questions of fact. See *Shirey* v. *L. & W. R.R.*, 213 F. Supp. 574 (1963), reversed 327 F. 2d 549 (1964); *Atlanta & S.A.B. R.R.* v. *Chilean Nitrate Sales Corp.*, 277 F. Supp. 242 (1967), reversed, 415 F. 2d 393 (1969).

The PRESIDING OFFICER. Who yields time?

Mr. HRUSKA. Mr. President, how much time remains on either side?

The PRESIDING OFFICER. The Senator from Nebraska has 5 minutes remaining, and the Senator from Indiana has 12.

Mr. BAYH. Mr. President, I yield myself 8 minutes.

Mr. KENNEDY. Mr. President, could we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. BAYH. Mr. President, on the 26th of March I received a letter that had been written 3 days earlier by Arthur E. Sutherland, who was a law clerk of the late Honorable Oliver Wendell Holmes. At that time, as some of us might remember, they were not called clerks, they were called secretaries. But I thought that it would be appropriate to share the contents of this letter with the Senate, because of the message it conveys, at this particular moment in our decisionmaking progress. It reads:

DEAR SENATOR BAYH: Some friends have suggested to me that an expression of opinion concerning the appointment of Judge Harrold Carswell to the Supreme Court, might appropriately be made by former Secretaries of Justices of that Court. As such a Secretaryship, for Justice Oliver Wendell

Holmes, Jr., was my high privilege in 1927–1928, I write this letter.

I admit to just a slight tremor in my voice when I realize that here is a man who was the clerk to Justice Oliver Wendell Holmes in the year of the birth of the Senator from Indiana—some time ago.

Mr. Sutherland continues:

While I am reluctant to express an adverse opinion concerning any member of the federal judiciary, I feel obligated in good conscience to say that I consider Judge Carswell's appointment a regrettable mistake.

The country is entitled to see chosen for its Supreme Court the best prospective Justice to be found on the American Bench or among other American lawyers. On the evidence before the Senate Judge Carswell unfortunately falls short of that rank. His appointment should not be confirmed.

Respectfully yours,

ARTHUR E. SUTHERLAND,

Member of the Law Faculty, Harvard University, Cambridge, Mass.

Investigation shows, Mr. President, that in addition to the facts related in the letter, here is a man almost 70 years of age, a man who is a member of the Republican Party, and a man who can easily be considered a distinguished and highly reputable conservative legal mind. I have read this letter, here in the final moments of the debate, because it seems to me that it symbolizes, really, a voice from the past, describing the past greatness of our country, a past greatness which all too many of our younger citizens have overlooked and do not fully appreciate.

Today, the past, indeed, is prolog; and there is not a Member of this body who is not reminded all too often how tenuous the present is.

Mr. KENNEDY. Mr. President, the Senate is not in order.

The PRESIDING OFFICER (Mr. RIBICOFF). The Senate will be in order. The Senator from Indiana will suspend. Senators will please take their seats. Conversations will cease in the Chamber. Senators will please cease their conversations and take their seats.

The Senator may proceed.

Mr. BAYH. Today indeed is a tenuous moment for each and every one of us. Each of us in this body has a rare privilege that, in my judgment, cannot be surpassed, in our efforts and our opportunities to serve our country, and I think it is this call that compels us to risk the rigors of political life.

The unique thing about this great opportunity to serve in the U.S. Senate is the fact that, as great as this responsibility, this honor, and this opportunity are, and as long as we may serve in this body, seldom does the vote of one Senator or the effort of one individual Member of the U.S. Senate directly affect the outcome of the broad scope of history. Opportunities for individual contribution to the common destiny are really rare.

Today we have such an opportunity. Today we have the opportunity, not just to vote for ourselves, not just to vote for the Senate, but, in deed, we have the opportunity to speak for future generations, and to set them an example.

Today we have the opportunity to tell our children and their children that the advice and consent responsibility given to us by our Founding Fathers nearly two centuries ago still has meaning today. It is just that—a responsibility, which the U.S. Senate is not going to shirk. We have the opportunity, and will accept it, of reminding our children that their forefathers had courage, just as ours did. We have the opportunity to say what we believe is important—not just for the Senate and the Court, but for the country.

Perhaps the greatest opportunity of all, which surpasses the duty that we have as Senators to shore up the advice and consent provisions and responsibilities that are ours, is the opportunity we have to speak to the young and to the old, to all ages, so eloquently described by the Senator from Illinois a moment ago—to speak to those across this country who are asking questions that cause one to have deep concern about the future stability of this country. I ask anyone who wants a capsulization of this problem to look, in the recent issue of Newsweek, at an article written by Stewart Alsop which deals forthrightly with this question. The article states that it is not overly dramatic to suggest that America is at a crossroads, because increasingly large numbers of our young people are wondering if our society has what it takes. Do we have the courage? Do we have the determination that we are going to make tomorrow a little better than it is today?

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

Mr. BAYH. I yield myself 2 additional minutes.

It seems to me, Mr. President, that in addition to determining who is going to sit on the Supreme Court of the United States, we have the opportunity with this vote to say to the prophets of doom who say that America is about to tumble of its own weight that this system still is, in the words of Abraham Lincoln, the best last hope of all mankind. We have the opportunity to say that this Senate and this country is still seeking excellence, to say that a better America will be the result of our combined efforts.

We have the opportunity to say, in a very personal way, that we are determined to demand the best of ourselves and the best of this body. We are now in a position of saying to the members of our respective parties, whoever they may be, whether at the precinct level or on the highest rung of the ladder, that we want to do better, that we want to make this great Nation, as great as it is, even better tomorrow.

Mr. President, I think the Senate will make the right determination. We will then have the opportunity to get the best man we can find, the best conservative, the best strict constructionist, the best Southerner, and in the future the best Northerner, the best Westerner, the best man who can make the greatest contribution on the highest judicial bench, the court of last resort for each American citizen.

The VICE PRESIDENT. Who yields time?

Mr. DOLE. What time remains, Mr. President?

The VICE PRESIDENT. Five minutes.

Mr. DOLE. Do the opponents have any time remaining?

The VICE PRESIDENT. They have 2 minutes remaining. Who yields time?

Mr. BAYH. I yield the remainder of my time to the distinguished Senator from Massachusetts.

The VICE PRESIDENT. The Senator from Massachusetts is recognized.

Mr. BROOKE. Mr. President, we are now just some 8 minutes before the vote will be taken on this very important matter. I do not know that any more arguments on either side of this issue can be made at this late hour. I think that all of our colleagues, Democrat and Republican, conservative and liberal, have studied the record and have made their decision. Frankly, I do not think that anything that I may say or that anyone else may say at this late hour will change any of the votes of any other Members of this body.

I believe I should say that in making this decision, all of us remembered our great responsibility in the matter of advice and consent to the President's nomination for the Supreme Court of the United States. Many arguments have been made about the qualifications, about credibility, about racial views, and about a myriad of other things concerning this man. I have spoken out in opposition to him. It is somewhat of an unnatural role for me, because all my lifetime I have preferred to be for something rather than against something. It is a very painful duty for me to be so strongly opposed to this man's nomination. I do not know him. I have no personal animosity against him. I wish him well and his family well.

The VICE PRESIDENT. The time of the Senator has expired.

Mr. HRUSKA. Mr. President, I yield the balance of the 5 minutes to the Senator from Kansas.

The VICE PRESIDENT. The Senator from Kansas is recognized for 5 minutes.

Mr. MURPHY. Mr. President, may we have order?

The VICE PRESIDENT. The Senate will be in order.

Mr. DOLE. Mr. President, this is the Court of last resort for G. Harrold Carswell. This is the end of an ordeal for G. Harrold Carswell. It has been said day after day in this Chamber, judge him by today's standards and judge us not at all. That has been the message loud and clear day after day.

The Senator from Indiana stated the opponents argument a few minutes ago. He said we should confirm the best man we can find. I would remind the Senator from Indiana the power to nominate still resides with the President of the United States, whether he be Republican or Democrat—a power that, of course, the Senate should not take lightly. We have a great responsibility in the advice and consent process. But today—in fact, in a few minutes—we will decide the fate of Judge G. Harrold Carswell.

I would guess that whatever the Senate may do, Judge Carswell will survive. Whatever the Senate may do, our country, of course, will survive, and President Nixon will survive.

But let me say a word to my fellow Republicans, because I believe that the

issue now is approximately 99 percent politics and 1 percent factual. This is the second nomination we are considering for this vacancy in a matter of months. First, the Haynsworth nomination was rejected. He was insensitive. Now we are told Judge Carswell is mediocre and a racist. But let me say, with all the earnestness I can muster, as a junior Member of this body, the fate of G. Harrold Carswell does not rest on the other side of the aisle. The fate of G. Harrold Carswell rests on this side of the aisle. We will make the decision as our votes will make the difference.

I would remind my Republican friends—I quarrel with no one; I question no one's motives—but remind my friends on this side that Richard Nixon was elected President in November 1968, and that with that election came the right and duty to nominate Justices of the Supreme Court. That right has been once denied; perhaps soon twice denied, we have the responsibility, as Republicans; it is our responsibility, not the responsibility of the Senator from Indiana—and I do not question his motives. Let me repeat, in conclusion if this nomination should be rejected, I suggest to the President of the United States take his case to the people and that he leave the seat vacant until November. It may be easier to change the Senate than the U.S. Supreme Court—in fact it may be a prerequisite.

The VICE PRESIDENT. Who yields time

Mr. DOLE. I yield back the remainder of my time.

Mr. MANSFIELD. Mr. President, I respectfully request that the Sergeant at Arms be directed to clear the Chamber of all excess personnel, which does not include Representatives from the other body, fellow parliamentarians from France, I believe, or attachés who have official business on the floor.

Mr. SCOTT. Mr. President, I ask unanimous consent that the attachés attached to my office may be permitted to remain who have business in the Chamber.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. BAYH. Mr. President, I make a similar request relative to my staff.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. McCLELLAN. Mr. President, if exceptions are to be made, let us have exceptions for all the staff. I ask unanimous consent that any staff member of any Senator who is present in the Chamber may be permitted to remain on the floor. [Laughter.]

Mr. MANSFIELD. Mr. President, I object.

The VICE PRESIDENT. Objection is heard.

Pursuant to the unanimous consent request, the Chamber will be cleared of all unnecessary personnel, except those mentioned in the unanimous-consent agreement.

The Sergeant at Arms is directed to carry out this order.

The Chair would mention to the galleries that, due to the tremendous interest in this vote, there will probably be great attention on the part of everyone to follow it closely. The Chair would caution the galleries, please, to be courteous and let the vote proceed without demonstrations.

The question is, Will the Senate advise and consent to the nomination of Judge G. Harrold Carswell to be an Associate Justice of the Supreme Court of the United States?

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON) is necesarily absent.

I further announce that the Senator from Rhode Island (Mr. PELL) is absent on official business.

On this vote, the Senator from Rhode Island (Mr. PELL) is paired with the Senator from Utah (Mr. BENNETT). If present and voting, the Senator from Rhode Island would vote "nay" and the Senator from Utah would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT) is absent on official business as observer at the meeting of the Asian Development Bank in Korea.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness and, if present and voting, would vote "yea."

On this vote, the Senator from Utah (Mr. BENNETT) is paired with the Senator from Rhode Island (Mr. PELL). If present and voting, the Senator from Utah would vote "yea" and the Senator from Rhode Island would vote "nay."

The yeas and nays resulted—yeas 45, nays 51, as follows:

[No. 122 Ex.]

YEAS—45

Aiken	Ellender	Murphy
Allen	Ervin	Pearson
Allott	Fannin	Randolph
Baker	Goldwater	Russell
Bellmon	Griffin	Saxbe
Bible	Gurney	Scott
Boggs	Hansen	Smith, Ill.
Byrd, Va.	Holland	Sparkman
Byrd, W. Va.	Hollings	Stennis
Cooper	Hruska	Stevens
Cotton	Jordan, N.C.	Talmadge
Curtis	Jordan, Idaho	Thurmond
Dole	Long	Tower
Dominick	McClellan	Williams, Del.
Eastland	Miller	Young, N. Dak.

NAYS—51

Bayh	Hartke	Moss
Brooke	Hatfield	Muskie
Burdick	Hughes	Nelson
Cannon	Inouye	Packwood
Case	Jackson	Pastore
Church	Javits	Percy
Cook	Kennedy	Prouty
Cranston	Magnuson	Proxmire
Dodd	Mansfield	Ribicoff
Eagleton	Mathias	Schweiker
Fong	McCarthy	Smith, Maine
Fulbright	McGee	Spong
Goodell	McGovern	Symington
Gore	McIntyre	Tydings
Gravel	Metcalf	Williams, N.J.
Harris	Mondale	Yarborough
Hart	Montoya	Young, Ohio

NOT VOTING—4

Anderson	Mundt
Bennett	Pell

The VICE PRESIDENT. On this question, the vote is 45 yeas and 51 nays. The nomination is not agreed to.

[Loud demonstrations in the galleries.]

Mr. MANSFIELD. Mr. President, if there are any further demonstrations in the galleries, I shall ask that the galleries be cleared.

Mr. CURTIS. Mr. President, I ask that the galleries be cleared.

The VICE PRESIDENT. The galleries will be cleared. The Sergeant at Arms will enforce the order.

Mr. MANSFIELD. Mr. President, I ask that the Chamber be cleared of all unnecessary personnel.

The VICE PRESIDENT. The Chamber will be cleared. The Sergeant at Arms is instructed to carry out the order. The galleries will be cleared.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the action of the Senate.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. CURTIS. Mr. President, I suggest that the galleries be cleared.

The VICE PRESIDENT. The Sergeant at Arms has been instructed to clear the galleries and the floor of all unnecessary personnel.

Mr. MANSFIELD. Mr. President, I wish to take this opportunity to thank each and every Member of this body on both sides of the aisle who contributed to the consideration of this nomination. Those who were in the forefront particularly may be singled out for their forthright and forceful presentations. I speak of those on both sides of the issue.

Notable, for example, was the effort of the distinguished Senator from Nebraska (Mr. HRUSKA). Clearly, he demonstrated the same strong and able advocacy on this matter that has characterized his many years of public service. The Senator from Mississippi (Mr. EASTLAND), the able and distinguished chairman of the committee and the rest of the members of the Committee on the Judiciary all handled themselves in such a manner as to assure a debate of the highest order.

The Senator from Indiana, the Senator from Massachusetts (Mr. BROOKE), the Senators from Michigan (Mr. HART and Mr. GRIFFIN), the Senator from Kansas (Mr. DOLE), the Senator from Florida (Mr. GURNEY), and many others deserve the highest commendation of the Senate. Their cooperative efforts were responsible for providing such a high-level discussion. We are most grateful.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into legislative session.

The VICE PRESIDENT. Without objection, it is so ordered.

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 bill (S. 980) to provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States, and for other purposes, with amendments, in which it requested the concurrence of the Senate.

The message also announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 15349. An act to amend the Railway Labor Act in order to change the number of carrier representatives and labor organization representatives on the National Railroad Adjustment Board, and for other purposes;

H.R. 15374. An act to amend section 355 of the Revised Statutes, as amended, concerning approval by the Attorney General of the title to lands acquired for or on behalf of the United States, and for other purposes; and

H.R. 15733. An act to amend the Railroad Retirement Act of 1937 to provide a temporary 15 per centum increase in annuities, to change for a temporary period the method of computing interest on investments of the railroad retirement accounts, and for other purposes.

ENROLLED BILLS SIGNED

The message further announced that the Speaker had affixed his signature to the following enrolled bills, and they were signed by the Vice President:

S. 2363. An act to confer United States citizenship posthumously upon Lance Corporal Andre L. Knoppert;

S. 2595. An act to amend the Agricultural Act of 1949 with regard to the use of dairy products, and for other purposes; and

H.R. 514. An act to extend programs of assistance for elementary and secondary education, and for other purposes.

HOUSE BILLS REFERRED

The following bills were each read twice by their titles and referred, as indicated:

H.R. 15374. An act to amend section 355 of the Revised Statutes, as amended, concerning approval by the Attorney General of the title to lands acquired for or on behalf of the United States, and for other purposes; and to the Committee on the Judiciary.

H.R. 15733. An act to amend the Railroad Retirement Act of 1937 to provide a temporary 15 per centum increase in annuities, to change for a temporary period the method of computing interest on investments of the railroad retirement accounts, and for other purposes; to the Committee on Commerce.

THE CURRENT RAILWAY LABOR-MANAGEMENT DISPUTE

The Senate resumed the consideration of the joint resolution (S.J. Res. 190) to provide for the settlement of the labor dispute between certain carriers by railroad and certain of their employees.

ORDER OF BUSINESS

Mr. RUSSELL. Mr. President, may we have order?

The VICE PRESIDENT. The Senate will be in order. The Sergeant at Arms will clear the floor of all unnecessary personnel.

Mr. BYRD of West Virginia. Mr. President, I ask that the floor be cleared of all attachés.

The VICE PRESIDENT. The Chair directs the Sergeant at Arms to clear the floor of all attachés.

Mr. BYRD of West Virginia. And that there be no exception.

The VICE PRESIDENT. The Chair directs the Sergeant at Arms that there will be no exception to the order to clear the floor of all attachés.

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

The PRESIDING OFFICER (Mr. Gravel). 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.

RECESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a brief recess for the purpose of awaiting the arrival of the distinguished Senator from Alabama (Mr. SPARKMAN), who will introduce our guests. In the meantime, we will have an opportunity to meet our parliamentary colleagues from the Senate of France.

Mr. SCOTT. M. le President, d'accord.

The PRESIDING OFFICER. Is there objection? The Chair hears no objection and it is so ordered.

At 1 o'clock and 22 minutes p.m. the Senate took a recess until 1:25 p.m.

Thereupon the Senate reassembled when called to order by the Presiding Officer (Mr. GRAVEL).

The PRESIDING OFFICER. The Chair recognizes the Senator from Montana.

Mr. MANSFIELD. Mr. President, I yield to the distinguished Senator from Alabama (Mr. SPARKMAN).

The PRESIDING OFFICER. The Senator from Alabama is recognized.

VISIT TO THE SENATE BY MEMBERS OF THE DELEGATION FOR ECONOMIC AFFAIRS AND PLANNING OF THE FRENCH SENATE

Mr. SPARKMAN. Mr. President, we have a distinguished group visiting us today in the Capital City. They are going to have lunch with us in the Committee on Foreign Relations in a few minutes. They have been visiting in the Chamber and they were here during the time that the rollcall vote was taken, so they have seen the Senate in action.

These gentlemen are Senator Gaston Pams, Senator Maurice Sambron, Senator Robert Laurens, Senator Raoul Vadepied, Senator Jean Errecart, Senator Michel Chauty, Senator Guy Schmaus, and Senator Pierre Le Marios. We are delighted to have these gentlemen with us.

[Applause, Senators rising.]

Mr. SPARKMAN. Mr. President, I ask unanimous consent to have printed in the RECORD at this point, a brief biographical sketch of each of these gentlemen.

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

BIOGRAPHIC NOTES ON THE MEMBERS OF THE DELEGATION FOR ECONOMIC AFFAIRS AND PLANNING OF THE FRENCH SENATE

GASTON PAMS—CHIEF OF THE DELEGATION

Senator of Pyrénées Orientales (Gauche Démocratique).

Chairman of the Civil Aviation Budget Committee.

General Counsellor of Pyrénées Orientales.

Born on November 22, 1918 (Mr. Pams is an agriculturist). He has been elected to Senate in 1959, reelected in 1965. Mr. Pams is the Mayor of Argelès-sur-Mer.

MAURICE SAMBRON

Senator of Loire Atlantique (Républicain Indépendant).

Vice-President of the General Council of Loire Atlantique.

Born on July 22, 1898 (Mr. Sambron is an industrialist). He has been elected in 1965 and is now Vice-President of the Chamber of Commerce of Saint-Nazaire. Mr. Sambron is the Mayor of Pont-Chateau (Loire-Atlantique).

ROBERT LAURENS

Senator of l'Aveyron (Républicain Indépendant).

Born on September 27, 1910 in Lacroix-Barreze (Aveyron). (Mr. Laurens is an agriculturist). A deputy of the National Assembly from 1951 to 1955 he has been elected to the Senate in 1956. He is the Mayor of Lacroix-Barreze.

ROAUL VADEPIED

Senator of Mayenne (Union centriste des Démocrates de Progrès).

General Counsellor of Mayenne.

Born on July 7, 1908 in Chatres-la-Foret (Mayenne). (Mr. Vadepied is an agriculturist). He has been elected in September 1965 and is the Mayor of Evron.

JEAN ERRECART

Senator of Pyrénées Orientales (Union centriste des Démocrates de Progrès).

General Counsellor of Pyrénées Orientales.

Born on July 1909 in Orègue (Basses-Pyrénées). (Mr. Errecart is an agriculturist). He has been elected in 1958, 1959 and reelected in 1965. A former member of the Second Constituent Assembly. A former member of the National Assembly (1946–1951). He is the former Vice-President of the General Council of Pyrénées Orientales (1955) and the Mayor of Orègues.

MICHEL CHAUTY

Senator of Loire-Atlantique (Unaffiliated).

General Counsellor of Loire-Atlantique.

Born on February 1, 1924 in Cholet (Loire-Atlantique). (Mr. Chauty is a salesman). He has been elected in September 1965 and is the Mayor of Saint-Herblain.

GUY SCHMAUS

Senator of Hauts-de-Seine (Communist).

Born on July 7, 1932 in Paris (Mr. Schmaus is a metal worker). He has been elected in 1968.

PIERRE LE MAROIS

Secretary of the Delegation, member of the Senate Administrative Staff.

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

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

NOMINATION OF JUDGE CARSWELL—THE CONSTITUTIONALLY MANDATED FUNCTION OF THE SENATE TO ADVISE AND CONSENT

Mr. BAKER. Mr. President, the Senate has now worked its will on the question of the nomination of Judge G. Harrold Carswell to the Supreme Court. As I have previously indicated, I chose to support the nomination because I believe that Judge Carswell would have

served ably and fairly as a member of the High Court.

I am sure that all of us who chose to support Judge Carswell regret that a broader consensus could not have emerged in support of the nomination. I am just as sure that those who felt compelled to oppose Judge Carswell regret that they had to do so.

As we all are aware, four of the last five nominations to the Supreme Court that have been submitted to the Senate by Presidents Johnson and Nixon have become embroiled in serious controversy, and the Senate has failed to confirm each of these nominations.

Throughout this period of time there has been considerable discussion as to the role of the Senate in the performance of its constitutionally mandated function to advise and consent. Dispute has arisen with regard to the limits of authority of the Senate in confirming or rejecting a nomination of the President. Clearly the responsibility for formation of a third coequal branch of our Government is a responsibility shared by both the executive and legislative branches.

But a serious question remains concerning the role of the Senate vis-a-vis the President. I believe it would be most appropriate and helpful for those of us in this body to reflect on these questions. Accordingly, I expect to make my own views known in the very near future and am hopeful a number of my colleagues will join in a discussion of the question as to what is the responsibility and the duty of the Senate in the matter of advice and consent. I believe the importance to the Republic is too great and the significance of the nomination yet to be made is too important to us and to the country to continue to flounder in a sea of uncertainty.

As to our role, I believe that now is the time for a colloquy on the propriety, the quality, and the extent of the jurisdiction of the Senate in advice and consent on nominations of this sort, and I hope that such a colloquy will occur before the next nomination is submitted to this body by the President of the United States. In a word, I hope we will set the ground rules before the next distinguished jurist is submitted to our tender mercies.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield on that point, without losing his right to the floor?

Mr. BAKER. I yield.

Mr. BYRD of West Virginia. Mr. President, today I have sent the following telegram to the President of the United States:

> Do not yield one centimeter in your desire to nominate strict constructionists to the U.S. Supreme Court and other Federal courts. You have pledged to the American people that you would seek to restore a balanced view to the Supreme Court and it has twice been demonstrated that there are those who are zealously determined that you will not fulfill that pledge. They no longer can dictate the President's choice, but they have twice successfully used the Senate to frustrate the will of the President and the people.
>
> The people of America indicated their support of your approach to this matter in 1968 and they will tire of seeing frustrated your efforts to restructure the Supreme Court philosophically.
>
> The people know what the real gut issue is, to wit, a moving away from the activism of the Warren court and a return to judicial reasoning based on strict construction of the Constitution and the laws.
>
> ROBERT C. BYRD,
> *U.S. Senator.*

I thank the Senator for yielding.

Mr. BAKER. I thank the Senator from West Virginia.

Mr. McGEE. Mr. President, will the Senator yield for 1 minute to me on that same point?

Mr. BAKER. I yield.

Mr. McGEE. Because of charges floating around on all sides about politics or regionalism on this matter, as one Senator who did vote against the nomination of Judge Carswell, I hope the President does not decide against nominating a conservative, Southern, strict-constructionist, Republican. I think it is important that the President exercise his prerogative to nominate a man like that for the High Court. I think the real issue here was that it was felt there were stronger judges who met those criteria in the South than this particular nominee—a very fine man, but not of the stature that the times would seem to require.

Mr. BAKER. I am most grateful for the remarks of the distinguished Senator from Wyoming.

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

Mr. BAKER. I yield.

Mr. AIKEN. Am I to understand that the Senator from Wyoming can suggest now a candidate for the Supreme Court from the South?

Mr. McGEE. The question is, Could any of us suggest a nominee from the South?

Mr. TYDINGS. Mr. President, will the Senator yield on that point?

Mr. BAKER. Mr. President, a point of order. May I inquire who has the floor?

The PRESIDING OFFICER. The Senator from Tennessee has the floor.

Mr. McGEE. Mr. President, I thought I had been yielded to. Did I do violence to that?

Mr. BAKER. No; I inquired only so that I might more fully understand. I yielded to the Senator from Vermont, who, I think, completed his inquiry. I am happy to yield to the Senator from Wyoming, and then to the Senator from Maryland, but I wanted to make sure, because I have a few additional remarks to make.

Mr. McGEE. The Senator from Vermont had propounded a question to me. I have just recently returned from a trip to Louisiana where Judge Ainsworth was highly recommended to me. Others have suggested Judge Wisdom. I do not know. I am not a jurist. Therefore, I do not range through the professional trade. I just think it important that the President should have the freedom to adhere to a nomination of a very conservative stripe to go on the Supreme Bench, but we think there must be a man of higher caliber than this nominee.

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

Mr. BAKER. I yield.

Mr. TYDINGS. That same question arose in the Judiciary Committee and has arisen on the floor of the Senate. The answer is that there are a great many distinguished lawyers and judges in the South who have unquestioned ability, competency, and judicial temperament, men such as Judge Ainsworth and Judge Wisdom of Louisiana, Judge Tuttle of Georgia, Judge Johnson of Alabama, Judge Stephen O'Connell, former chief justice of the State of Florida and now chancellor of the University of Florida, Judge Simpson of Florida, Judge Hoffman of Virginia, Judge Craven of North Carolina, and our own Senator SAM ERVIN of North Carolina.

Judge Carswell does not even compare with men of such stature and ability.

If I may use an analogy, if one's son or child were merely undergoing a physical examination, that person would not be overly concerned with which doctor is to examine the child; but if his child were dying and were undergoing surgery, he would want the best doctor available. The Supreme Court is the last court of review in this country. We want the best men on that Court, whether he is a Northerner, a Southerner, a Vermonter, or a Marylander, wherever he is from. There are many conservative jurists—who qualify for the Court. Judge Carswell does not.

I hope I have responded to the Senator from Vermont.

Mr. AIKEN. Mr. President, I am very sorry I did not have at least one of these names earlier, but I never was able to get one that would be satisfactory to certain people from the North. Apparently, men like Judge Carswell are good enough to be judges or officials in the South, but they are not fit to be judges or officials in certain parts of the North. Judge Carswell was good enough for Dogpatch, but not good enough for Gotham.

Mr. BAKER. I thank my colleague. I do not wish to be unduly facetious when I say I am reassured to know that the Senator from Maryland has given us a list of distinguished Southern jurists whom he would appoint to be Justices of the Supreme Court; I am happy to know that if one of those gentlemen were to be appointed to the Supreme Court of the United States by the man who was elected President, the fair inference given just a minute ago was that the Senator from Maryland would vote to confirm that nomination. I will certainly keep that in mind if I am queried by the President on further nominations, which I doubt that I will be.

Mr. TYDINGS. Does the Senator recall that when a Governor of Mississippi was appointed to fill a position on the circuit court and he was opposed by civil rights groups, that the Senator from Maryland not only spoke for the nominee in committee but spoke for him on the floor of the Senate and voted for him, because he was a man of ability and fairness?

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

Mr. BAKER. I am glad to yield.

Mr. AIKEN. Did the Senator from Maryland support or oppose the nomina-

tion of Judge Carswell when he was up for approval a year ago?

Mr. TYDINGS. Unfortunately, that was not a rollcall vote.

Mr. AIKEN. Or has he just found out all these things about him?

Mr. TYDINGS. To be candid, the Senator from Maryland was not at the hearing of the Judiciary Committee nor was he present in the subcommittee of the Judiciary Committee to hear testimony on Judge Carswell's nomination. I think the nomination went through by a "no objection" procedure. The Senator from Maryland took no position on Judge Carswell before. My first real knowledge of Judge Carswell came in the Judiciary Committee hearings.

I think the Senator's point is well made: Why did not the Senator from Maryland or why did not the Judiciary Committee examine the qualifications of Judge Carswell carefully when he was nominated to the fifth circuit? That is a question which I cannot answer. I think it is a question that the members of the Judiciary Committee ought to face up to.

Mr. AIKEN. I believe he was approved three times by the U.S. Senate for a judgeship. I will not take any more time. It just seemed to me like the attitude was, "well, he is good enough for the South, but he would not be a good judge for the North."

Mr. BAKER. Mr. President, I have said it once before in the 3½ years since I have been here. I did it then with great trepidation. I am not sure I was right to do it then, but I am going to say it again. I came to this body with the belief that no distinction was made between peers and equals as between Senators from the North and Senators from the South. I have been rapidly coming to the conclusion that this is not always the case. I begin to think that notwithstanding my consistent support for significant civil rights matters, often at great political cost to me, I am, first of all, a "Southerner" just as Justice Carswell was.

We speak of minority groups in the United States, and my sympathy is boundless for them and their deprivations, but may I point out that, in the jargon of present politics, if we want to avoid "polarization," for goodness' sake, let us not go to the point of polarizing 70 million Southerners by encouraging in them the belief that they are not first-class citizens of this country.

I agree that some grounds can be found for the Carswell controversy, as suggested by the Senator from Maryland. I want to believe and do believe that opponents were not motivated by malice and were motivated only by the results of searching scrutiny of this nominee. I agree that every single one of my colleagues here is motivated by the highest principles in judging whether he will cast his vote for or against the nomination of a given nominee. I agree that each is willing to consider these things on the basis of the merits rather than partisan politics. I will stake them to all those things, and still the danger signal that by our action and conduct, whether we mean it or not, we are polarizing one-third of the population of these United States into the belief that there is an anti-Southern bias in the U.S. Senate.

I do not believe there is, but I counsel my colleagues, in good faith and good conscience, to guard against that just as much as they guard against the selection of an unfit man for the Supreme Court of the United States; because if we do not, we will be foreordained to relive the bitterness of the last 100 years.

Mr. JAVITS. Mr. President, will the Senator yield for a housekeeping request?

Mr. RUSSELL. Mr. President, I would like to ask the Senator a question.

Mr. BAKER. I yield to the Senator from Georgia.

Mr. RUSSELL. I merely want to say I do not believe all the people of the South believe they are treated equally in the U.S. Senate. I cannot agree with the Senator's assumption as to that. I would like to see whatever evidence he can produce to show that they are.

Mr. BAKER. Mr. President, I am afraid I did not phrase my remarks accurately then, because what I meant to say was, even assuming that that was the case, even assuming that there is no partisan politics, even assuming that there is no anti-southern bias, even assuming there is no retention of a Civil War attitude toward the South—even assuming all these things, even granting all of these things, in good faith, to all of my colleagues, there is still growing up the feeling in the country that there is an anti-southern bias, and believe me, as I stand here under my oath as a Senator, I warn my colleagues that it may be the most dangerous thing we confront in the United States today, with 70 million people concerned about this very fact.

Mr. MANSFIELD. Mr. President, can we get on with the pending business? I cannot see what good comes from post mortems. We do have some important legislation, including legislation managed by the Senator from Wyoming, in addition to the pending resolution. The vote has been cast.

Mr. BAKER. Mr. President, with deference to my majority leader, may I simply say this: I had finished my brief remarks, consisting of a page and nine lines, before going on to another subject, and other Senators had engaged me in colloquy.

Mr. McGEE. Mr. President, will the Senator yield me 2 minutes? I will take this out of my pay bill time.

Mr. MANSFIELD. Very well.

Mr. BAKER. In my statement, I pointed out that I hold no malice for any person who voted either way in this matter. I yield to the Senator from Wyoming.

Mr. McGEE. I thank my colleague, and I want to reemphasize what he has just said about the importance of avoiding situations resulting from any actions of this body which might contribute to isolating any section of the country. I think it is desperately important that we not contribute to that, but I think that is probably a two-way street, in one sense: I think the burden is on all of us to make sure that we keep this thing level, and in balance, and nonsectional, and the extent to which we may be convinced that sectional differences still exist ought to move us to work even harder to remove such distinctions.

I think that is the real point. It is going to take all of us; it is not going to take just the Northerners to try to slow down on that. It is going to take all the Senators in this body. I might add, if the candidate today had come from Detroit or San Francisco or Seattle, it would not have affected my vote. I think the issue still ought to be the need of the Bench, and the President ought to have his conservative southern Republican judge on the Supreme Court.

Mr. BAKER. Mr. President, I intend to say just this, and yield no further on this point, in the interest of time——

Mr. RUSSELL. Mr. President, I think the President will be a bear for punishment if he appoints another southern conservative, although I hope he does.

Mr. BAKER. May I repeat, just for the sake of clarity on this subject, I have no criticism of any Senator for voting against Harrold Carswell. I have no criticism of any Member of this body who felt he should not be confirmed. That was not the purpose of my remarks. The purpose of my remarks was that we are charged with many responsibilities, and one of them should be to avoid the appearance that there was an antisouthern bias against the confirmation of Judge Carswell.

THE NIXON DOMESTIC POLICY

Mr. BAKER. Mr. President, on March 9 Mr. Bryce N. Harlow, counselor to the President, addressed the Congressional City Conference of the National League of Cities on the domestic policy and program of President Nixon. The well stated remarks of Mr. Harlow discuss in some detail the history of the Federal-State-local government interrelationship. He also analyzes the wisdom of and need for the domestic program submitted to the Congress by the President.

A major part of the President's program is the proposal for enactment of Federal revenue sharing. I introduced the legislation submitted by the President on September 23 of last year and was joined in cosponsorship by 33 other Members of this body. As Mr. Harlow indicated in his remarks before the National League of Cities, this measure is now languishing in committee.

On March 24 I had the opportunity to discuss the concept of revenue sharing before the National Association of Counties Legislative Conference. I stated at that time that I am firmly convinced that a majority of both Houses of Congress favor enactment of this proposal and would vote accordingly. Unfortunately no hearings have to this date been scheduled before either the Ways and Means Committee or the Finance Committee.

I believe that when over one-third of the Members of this body join in cosponsorship of major legislative proposal, fundamental fairness requires that the measure be taken up and the Senate allowed to work its will. For this reason I call upon the distinguished chairman of

the Finance Committee (Mr. LONG) to initiate hearings on the revenue sharing proposal which was submitted by President Nixon and which I introduced over 6 months ago along with 33 other Senators.

I ask unanimous consent that the remarks of Mr. Harlow to the National League of Cities and my statement before the National Association of Counties be reprinted in full at this point in the RECORD.

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

REMARKS BY BRYCE N. HARLOW, COUNSELOR TO THE PRESIDENT, NATIONAL LEAGUE OF CITIES, CONGRESSIONAL CITY CONFERENCE, WASHINGTON HILTON HOTEL, MONDAY, MARCH 9, 1970

Mayor Curran, Mayor Lugar, other distinguished mayors, councilmen, and other officials, last August 8, President Nixon, just back from abroad, presented on national television some radically new proposals.

They concerned how government should deliver its services.

They also concerned the sharing of those responsibilities among federal, state and local governments.

The President told us why he took this unusual step. He said:

"I have chosen to do so . . . because these proposals call for public decisions of the first importance; because they represent a fundamental change in the Nation's approach to one of its most pressing social problems; and because, quite deliberately, they also represent the first major reversal of the trend toward ever more centralization of government in Washington, D.C. After a third of a century of power flowing from the people and the states to Washington it is time for a New Federalism in which power, funds and responsibility wil. flow from Washington to the states and to the people."

And that—by request of your League—is my subject this morning. Let's call it, "President Nixon's New Federalism."

Now, I have been around a long time—certainly long enough to learn that despite all the histrionics I can muster, merely by mentioning one of the least titillating expressions of all time, "federalism," I have probably turned off 90 percent of this audience.

The issue of federalism has been trotted out in every political campaign since Delaware joined the Union. It has been turned upside down, inside out, rejuvenated, discarded, praised and criticized so many times that hardly anyone cares to hear any more about it. And yet, it is a subject about which virtually everyone, and especially mayors and councilmen, profoundly DO care, or surely *ought* to care.

The only reason I might aspire to piquing your interest is your hope that somewhere I might touch on answers to one or two of the three questions about which you high professionals care the most.

These questions:

(1) How much federal money can your cities get?

(2) Exactly when will the check arrive?

(3) Through how many hands in national and state governments must the check go before it reaches your treasury?

Well, I do hope at least to insinuate answers to one or two of these questions. But, to find them I fear you'll have to sift carefully through a good deal of verbiage yet to come.

One other general comment.

My wisdom about the primary elements of the topic under discussion falls some short of awesome. Therefore, I will not lecture on the crisis of the cities, in which you so critically participate, or catalogue the bewildering variety of federal grants-in-aid, or attempt to unravel the complexities of the present federal interrelationships. Neither will I attempt a grim assessment of the eroding tax bases upon which many of your governmental entities precariously totter. These stories you know far better than I—and, if not, I am determined not to be the first to break the sad news that the Federal Santa Claus has lost his credit card. I figure it is hard enough as it is to get good men and women like you to take on the heavy burdens of mayors and city councilmen.

What I do propose to discuss is what I fancy I know a little about—and that's what the President believes about "New Federalism," what has formed the basis for Administration philosophy on the subject, and what we envisage for the future of federalism.

Necessarily this discussion must be political in the best sense of the word. *Necessarily*, I say, because a *"new"* federalism has to mean changing the structure of the different levels of government—hardly an easy task inasmuch as each is responsible to an electorate, and none is changeable unless the elected leadership urges it and the electorate consents.

To evaluate this "New Federalism" and its prospects, let's first recall the political events that brought us to where we presently are.

For a half-century the dominant trend has been to escalate the responsibility of the central government. There are many reasons why. One is the crushing national demands of this era—four wars and a terrible depression. Clearly, only the central government could adequately respond. Another was the federal progressive income tax. As you folks painfully know, this pre-empted much of the effective taxing power, and with it governing power, from states and cities to the central government.

Also along the way there was a greatly heightened sense of social responsibility among Americans. There was a growing feeling that some government—most felt it had to be the central government—should do more to attack these problems. At the same time, a national furor over civil rights undermined reliance on state action because of the fear that Governor X of State Y might deal unfairly with blacks and other minorities. And so, we all grew accustomed, if not addicted, to the idea that the more important the problem, the more it required national action. Gifted persons who might well have applied their energies to other levels of government flocked to the central burst of activity, at once strengthening the national and weakening the state and local. The combination of such factors created a driving physical and emotional force for centralism and this exploded finally into dozens of massive new national action programs midway through the 1960's.

Now let's divert a moment to recall what this powerful trend did to partisan political activity.

One great strength of our two-party system, you know, is that one party instinctively and invariably ferrets out weaknesses in the other party's key issue. Both parties then polarize their differences, and then to our common delight we fight it out.

In the period I am now traversing the Democratic Party, by and large, took the side of accelerating the activities of the central government. Republicans, generally, were by instinct and philosophy skeptical of more government action at any level and stood for leaving most responsibilities with the states and localities. As I am poignantly aware, Democrats dominated the Executive and legislative branches of the national government for most of this era, largely, I suppose, because they had the favored political posture on federalism for those times. Centralism was what the people wanted. And they got it in spades!

But times and people do change. Just as central government activity was peaking in the mid-1960's, reaction set in. Again, there were several reasons.

For one thing, the central establishment just couldn't do all the tasks assigned to it. And dealing with it became discouragingly frustrating. The bureaucracy began to swallow initiative poured in from the top, inhibit that bubbling up from below, and to distort much of what little emerged.

Most of all, the national government simply got bloated. Many of the most ardent centralists came to feel oppressed and even endangered by the federal frankenstein. After a while "power to the people" became a new rallying cry.

And so came a new examination. People found that many of the old reasons for bad mouthing state and local action didn't wash well anymore. State and local governments had expanded their services, too. Even during the era of centralism they had proved their resourcefulness. A framework of federal and state civil rights laws reduced the concern that state and local services might be delivered in a discriminatory way.

Finally, state and local officials, watching federally collected revenues pour into the national coffers each year while state and local tax bases eroded, put aside internecine squabbling. In effect, you folks ganged up on the national establishment to get back some money and with it some decision-making authority.

In part because of this changing attitude toward responsibility among our governments, the American people in 1968 elected a President and a party which had with some consistency over the years expressed a skepticism toward increased central action and a preference for state and local action.

Now, I am not claiming that all Democrats are monarchists or that Republicans are always patsies for governors, mayors and councilmen. The fact is, as all of us know, early proposals for federal revenue sharing came from Democrats as well as Republicans. Also, some of the best studies on the need for overhauling grants-in-aid have been conducted by Democratic chairmen of Congressional committees.

What I fondly hope I *have* done, though, is to review the interaction of the attitudes of the major political parties with the coursing currents of federalism during the last four decades. I have done this for the purpose of making an important political, but not partisan, point—the point that President Nixon's election made fundamental changes in the federal structure at least possible, if not likely. I say this for two reasons: first, because public opinion and good reasoning demand it; and second, our new President believes in and comes from the party identified with the emerging shape of what we call New Federalism.

Against this background let's evaluate how well the President's proposals can translate expectations into action.

The President's address of last August 8 outlined a broad four-part program of reform. These were conceived together, and I stress that they are designed to support one another. They were:

(1) *Revenue sharing*—this, to provide fiscal relief for hard-pressed state and local governments confronting the necessity for frequent and often painful tax increases;

(2) *Family Assistance Program*—this, to replace the failing welfare programs with a national system for aiding low-income families with children;

(3) *Reform of Manpower Training Programs*—this, to permit establishment of comprehensive state and local programs oriented to the needs of their clients.

(4) *Redirection of OEO*—this, to maximize

its great potential for social program innovation.

I will not elaborate now on these proposals. I understand they are to be fully discussed with you this afternoon by the Cabinet officers directly concerned.

But here's the point—from these proposals and other Administration actions these first 14 months emerge three unifying ideas as to the future of federalism:

(1) *Pragmatic decentralism*—This will be the direction of our attitude toward federalism. Our domestice policy rejects the centralist dogma that for so long has run so strongly. Difficult though it will be, our thrust will be to lead the nation in a new direction which will give greater attention to the role that states, cities and counties can plan, actually play, and *ought* to play in meeting public needs. This "pragmatic decentralism" focuses primarily upon the delivery question; namely, how best to deliver the public services which the citizen requires of his various government. Revenue sharing is the keystone of our effort to apply this policy immediately.

The second thematic idea is concentration on basic system reform—In a message to Congress last October 13, setting out his legislative program, the President said:

"We were elected to initiate an era of change. We intend to begin a decade of government reforms such as this nation has not witnessed in half a century . . . If ours is not to become an age of revolution then it must become an age of reform. That is the watchword of this Administration: Reform."

The fact is, we have launched a host of massive reforms in areas for which the central government holds the major responsibility. Examples are welfare reform, draft reform, tax reform, postal reform, manpower reform, reform of the entire grant-in-aid system. For the big things the national government must do, we are determined to step up in a big way and do a big job; for areas primarily the responsibility of state and local governments, we will deliberately take a subordinate role.

The third unifying idea is more effective implementation of government policy. This is the business of improved management and tighter coordination of government activities. Success here determines whether our good intentions can in fact lead to good results. Very shortly—before this week is out—you will see an important new initiative in this area.

For President Nixon, I assure you that "New Federalism" will continue to have top priority. There will be continuing encouragement of "pragmatic decentralism." There will be more executive action and legislative proposals for broad reform of the central government. There will be continuing improvement of its management. Already the President has appealed to the nation on national television and conducted cabinet meetings outside of Washington in an effort to highlight his proposals. He has personally appealed to the governors to get hard behind revenue sharing which now languishes before the Congress. He directed me to make the same personal appeal to you today.

My guess is that Congress is likely to respond favorably though slowly to the President's major proposals. Welfare reform is even now beginning to move through the House of Representatives. Revenue-sharing seems still to be on the back burner, but it will be tough on Congress to ignore or reject this idea whose time has clearly come.

I think we should all understand that, if the President's program is approved substantially as proposed, it will very powerfully influence intergovernmental finances even during the next five years. In this period, the Administration's welfare reform, food stamp, revenue sharing and public transportation proposals *alone* are designed to channel some $50 *billion* into meeting needs of the poor and alleviating the fiscal crunch on state and local governments.

Finally, the public debate about federalism in the 1970's ought to take on a different character. There should be more agreement about which big national problems require big central government efforts. One reason is, there should be a greater inclination to allocate to state and local governments a decision-making role for activities that do not demand a primary central effort.

Also, public awareness is bound to grow that there is a limit to the number of tax dollars which citizens are willing to devote to governmental action. In 1929 government expenditures at national, state and local levels came to about 10 percent of the dollar value of the nation's production. This fraction rose to about 20 percent in 1940, to about 30 percent in 1960, and is about 35 percent this year. President Nixon has expressed his concern about moving a much higher percentage of our nation's output into the hands of governmental tax collectors.

A limit on federal resources will force a more discriminating attitude toward priorities, and it cannot help but devolve more responsibility upon the private sector. And while we may find more agreement about the responsibilities of the national government, we may be in for very extended discussions about the proper allocation of responsibilities between state and local governments. This discussion will intensify as "pragmatic decentralism" pours added resources and added responsibility from the national level into levels closer to the people.

At least for the time being, I sense broad agreement among the major political parties and among representatives of the various layers of our federalism about the major themes of President Nixon's "New Federalism." Working together, I believe—and I do hope you also believe—that we will successfully remodel our governments to meet the exciting requirements of the 1970's.

REMARKS OF SENATOR HOWARD H. BAKER AT THE NATIONAL ASSOCIATION OF COUNTIES LEGISLATIVE CONFERENCE ON MARCH 24, 1970

I appreciate very much the opportunity to discuss the concept of federal revenue sharing, a subject in which I have been interested since I first ran for political office several years ago. I believe that I can accurately state that we may—and I emphasize the word "may"—be at that point in time when the Congress will move to enact this proposal. This hope has arisen primarily for two reasons. First, and of great significance, was the agreement reached by governors, mayors and county officials in late 1969 on the question of assuring cities and counties an adequate portion of revenue sharing funds by agreeing to a guaranteed state pass through provision.

Second, and of equal importance, was the fulfillment of the commitment made by President Nixon during his campaign by including the concept of revenue sharing within his new federalism program and by sending to the Congress the requisite legislation. On September 23 I introduced the Administration's proposal and was joined in cosponsorship by 33 other Senators.

Without going into great detail on the particulars of this legislation I will recite briefly its major elements. The amount of monies to be shared will be a stated percentage of personal taxable income with one sixth of one percent to be authorized for fiscal year 1971. The rate will escalate until it reaches one percent of personal taxable income for fiscal year 1976 providing a yield of approximately $5 billion per year. The funds will be distributed from the federal Treasury to the 50 states and the District of Columbia with each state receiving an amount based on its share of the national population adjusted by the state's own revenue effort. While the distribution will be primarily on the basis of population, the net result of the application of the state distribution formula to available funds will provide some premium to those states that exercise their best efforts to provide for their own requirements and also some premium to those states that have a greater fiscal need.

A portion of the money allocated to each state will be required to be distributed to all general purpose local governments, including cities, counties, and townships. The amount passed through in each state will be the percentage of total local government general revenues to the sum of all state and local general revenues. The amount which an individual unit of general local government will receive is that percentage of the total local share that its own revenues bear to the total of all local general revenues in the state.

Finally, the states and their localities will be given complete freedom in the use of their revenue shares except for the usual public auditing, accounting and reporting requirements on all public funds. In other words, this will be money with no strings attached and may be used as operating capital or for whatever purpose local officials so desire.

There have been two basic points raised in opposition to the enactment of revenue sharing. First, it has been said that the responsibility for spending revenues should not be separated from the responsibility for raising them. While this has been a basic philosophical tenet of our country which cannot be completely rejected, I believe that for the most part the fair implication of its application to revenue sharing is that those who advance it simply do not trust state and local government officials to spend the money as wisely as can those of us in Washington. To the extent that this is their argument, I reject it. While I am not certain that all of the money will be used wisely, neither am I certain that all direct federal spending, or indeed that all private expenditure, is sensible.

I do believe that the ultimate amounts that the Congress will be willing to appropriate for revenue sharing will depend on how effectively the funds are used. This is one of the major reasons that we have a reporting requirement in the bill, so that Treasury can keep the Congress informed as to where the money is going. The ultimate success of revenue sharing, therefore, will depend on the ability of state and local governments to make the most efficient and judicious use of these funds. I for one am convinced that the potential and ability for effective management of social and public systems are extremely high at the local level.

The second argument advanced against the enactment of this concept is that no major new spending program should be instigated in a tight budget period. Of course, I think all would recognize some validity in this argument. I point out, however, as I have said, that this program begins very nominally with only one sixth of one percent, or about $500 million being authorized for fiscal year 1971. Further, President Nixon's budget message recommends a postponement of the first payment because of our budgetary and inflationary problems.

At the same time I think that the Congress must recognize that the fiscal argument for revenue sharing is compelling. State and local governments are confronted with an unrelenting fiscal pressure with no letup envisioned. For this reason I strongly urge the enactment of this concept and the enactment now.

I am firmly convinced that a considerable majority of both houses of Congress favor enactment of this proposal and would vote accordingly. I am less sure that a majority of the members of the House Ways and

Means Committee and the Senate Finance Committee, particularly the chairmen and ranking members, are of a similar view. If revenue sharing is to become a reality in 1970, then clearly a major effort and commitment from county officials is an absolute necessity. I urge you to call upon your Congressmen and Senators and to exert your best efforts with enthusiasm to obtain passage of this proposal.

THE CURRENT RAILWAY LABOR-MANAGEMENT DISPUTE

The Senate continued with the consideration of the joint resolution (S.J. Res. 190) to provide for the settlement of the labor dispute between certain carriers by railroad and certain of their employees.

Mr. JAVITS. I ask unanimous consent that staff assistants be permitted on the Senate floor during the consideration of the railroad resolution.

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

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on the pending joint resolution.

The yeas and nays were ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. JAVITS. Mr. President, I ask that the attachés on both sides of the aisle notify the Members, who they think might be interested, that this matter is now before the Senate, and could be acted upon quite quickly, that there will be a rollcall vote, and there will also be at least one amendment proposed by the manager of the bill.

The PRESIDING OFFICER. The attachés will do so.

Mr. JAVITS. And that it may result in some discussion. Any Senator who wishes to debate it should be apprised of the fact that it may move very quickly.

Mr. President, I am also advised that members of the staffs of Senators who may desire their assistance on the floor are still being barred from the floor. There is no reason for it now, so I ask unanimous consent that, at the request of any Senator to the appropriate officials of the Senate, such staff members of the Senator whom he requires to assist him may be admitted to the floor.

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

Mr. JAVITS. Mr. President, we are all now aware of what our situation is. We face an imminent railroad strike on April 11, 1970, at midnight, this Friday, unless the parties come to an agreement regarding the new terms and conditions of employment which will be retroactive to January 1, 1969, as that is the date upon which such an understanding must take effect. If they cannot come to an agreement, Congress must act, based upon the principle which it has already adopted, that the country must be able to operate.

In short, if a strike cannot be avoided by agreement of the parties, it must be forestalled by national action. The reason is the same as that which motivated us roughly 37 days ago in adopting a resolution, Senate Joint Resolution 180, which stayed a strike for that period of time.

Mr. President, may I say, first and foremost, that it should be very gratifying to the country that that resolution was complied with to the letter by the parties; that there was neither a strike nor a lockout; but that, as honorable Americans interested in the future of the whole relationship between labor and management and their relationship to the United States, the will of Congress, approved by the President, was carried out. I am very hopeful that, with the same spirit, exactly that will happen as a result of this resolution and that whatever we decide finally here and in the House and is signed by the President, if it calls for the men to continue on the job, establishing terms and conditions of employment, they will do so. To me, that is the most critical aspect of the subject under discussion.

The factual situation, to which I would like to refer briefly, carries over almost exactly as it did from the action we took in adopting the first resolution. The parties have discussed the matter between them. An effort has been made by the Department of Labor to mediate subsequent to the action of Congress, but we have had no luck in that, and the 37 days are about to expire. The previous resolution became law on March 5, 1970, and expires at midnight Friday. We are just about where we were on March 5 in respect of settlement. So a brief repetition of the facts should suffice as we have gone over them before.

The parties negotiated, as of January 1, 1969, for some 15 months and were unable in all that time to arrive at a binding agreement. The parties to the negotiation were four so-called shop craft unions: the machinists, the electrical workers, the boilermakers, and the sheet metal workers union. The membership of these unions employed on the railroads is, in round figures, 48,000, of which the sheet metal workers have 6,000. That is to be compared with the total employment on the railroads of the United States of approximately 600,000. So it is to be understood that this kind of strike could affect a vastly greater number of employees than have been the parties to this negotiation.

Mr. President, the negotiators for the parties did agree, and on December 4, 1969, signed a memorandum of understanding. In the case of the Sheet Metal Workers Union as well as in the case of the other three unions this agreement was subject to ratification by the membership. A vote was duly taken of its membership, and the agreement was rejected by a vote of approximately 2,200 to 1,200. That is an important figure, because the point has been made time and time again that, based upon the rejection by roughly 2,200 sheet metal workers, the whole railroad system of the United States may very well be tied up.

I might say parenthetically, as the ranking minority member of the Committee on Labor and Public Welfare, that this is a very serious reflection upon the inadequacy of the laws of the United States to cope with national emergency situations created by strikes or lockouts, an inadequacy to which I have called attention many times in legislation submitted, in pointing out the imminence of crisis or the danger of crisis, and the fact that we are naked in terms of preparation for it. Yet, this situation has persisted to this day, and here is a very dramatic, a very vivid illustration of what can happen.

The memorandum of understanding of December 4, 1969, gave certain increases in compensation to the workers, and an excellent summary of those provisions is contained at page 17 of the committee's report, including retroactive increases in pay going back as far as July 1, 1969. It had a very special provision regarding what was called a particular work rule, an incidental work rule. For the information of the Senate, the work rule dealt with who does the work upon a job in a "running repair" location which involves the other crafts—for example, electrical work or machinist's work—if, incidentally, it involves sheet metal workers. Is it done by the particular craft doing the main job, or must the sheet metal worker be called in? Heretofore, the latter was the case. Under the new memorandum of agreement, the former would be the case.

An effort was made to compensate the parties in order to deal with this incidental work rule. The method of compensation chosen was—though it was not marked for that purpose and should not be considered a condition in any way—but, in any case, it appears that a 17-cent-per-hour increase over the pattern given to members of other unions was the quid pro quo to getting this buttoned up.

Mr. President, as I said earlier, it was not approved, and therefore did not take effect; and the reason for failure to ratify, we were informed in the testimony, was this very work rule.

On February 19, 1970, a date which I ask the Senate to keep in mind since it is involved in an amendment to be offered later, the three unions which had ratified the agreement offered to enter into it without the Sheet Metalworkers. The railroads, however, refused. As is now well known, the unions called a strike for March 6, 1970. The strike call was preceded by legal proceedings, as this matter was thrown into court by virtue of the proposal of the shop craft unions to strike one or more railroads, on a sectional basis, rather than all the railroads. That concept was enjoined, both as to a strike and a lockout—that is, some railroads being struck and others locking out the workers—by the U.S. District Court for the District of Columbia, which finally issued an injunction on March 2 against a partial strike—that is, a strike of a selected carrier. As a result, a national strike call was put into effect by these unions; and unless we had acted, which we did on March 5—or, at least, it was signed on March 5—the strike would have taken effect.

Under these circumstances, the President, on March 4, 1970, asked the Congress for immediate action. His proposal,

which was introduced by the Senator from Michigan (Mr. GRIFFIN) as Senate Joint Resolution 178, and which is embodied in the resolution which is now before us, was to make effective the so-called memorandum of understanding which had been agreed to by the negotiators for all sides on December 4, 1969, and ratified by a majority of all the employees concerned, although not the membership of the sheet-metal workers. Naturally, many Members of the Senate were reluctant to take such drastic action on 1 day's notice.

Accordingly, on March 5, 1970, the Committee on Labor and Public Welfare reported out, and the Senate passed a resolution extending the status quo for an additional 37 days, until April 11, 1970. The purpose of that law was twofold. First, to give the parties additional time to attempt to settle their dispute voluntarily; and second, to give us more time to study the President's proposal as well as other possible legislation to end the dispute and protect the Nation.

Unfortunately, the parties have still not been able to resolve their dispute. Neither the Department of Labor, nor the able chairman of the House Interstate and Foreign Commerce Committee have been able to get the parties together. So it is now necessary for us to act once again to protect the Nation.

The Committee on Labor and Public Welfare has, of course, given the most careful consideration to what is the best course of action for us to follow at this juncture. One point which emerged clearly from our hearings and which has guided the committee in reporting the resolution now before us is the necessity for avoiding any further delay in finally resolving this controversy.

The current dispute had its genesis 17 months ago in November 1968, when the four shopcraft unions served notices under section 6 of the Railway Labor Act for contract changes to become effective January 1, 1969. At a hearing on April 2, 1970, representatives of the administration, the carriers and the employees were emphatic in urging the committee not to delay final resolution of the dispute any further. They informed us, and I certainly have no reason to doubt it, that the patience of the employees has simply worn to the breaking point during the past 15 months. At this point, the employees have coming to them about $500 in back pay alone. It was the unanimous opinion of the witnesses that any further delay in resolving the dispute, to permit further negotiations or arbitration of the controversy, would result in widespread wildcat strikes or other action that would paralyze the railroad systems of the country.

Notwithstanding this testimony at the hearing on April 2, 1970, and in executive session on April 6, 1970, the committee did explore most thoroughly the possibility of some form of arbitration or mediation to finality of the dispute along the lines of the law enacted to settle the 1967 shopcraft dispute. It was the unanimous opinion of the committee that the type of arbitration or mediation to finality provided for in 1967 to resolve labor disputes on the railroads was not appropriate for this particular dispute.

The Senate is entitled to know our reasons.

First, this is not at all like the customary labor-management dispute. Three of the unions involved and the railroads are perfectly satisfied with the memorandum of understanding and have no wish to jeopardize their rights under it. It is only the fourth union, the sheet metal workers, which is concerned about the incidental work rule. It was brought out most clearly in the hearings before the committee that the incidental work rule was the quid pro quo for the payment of an additional 17 cents in wages by the carriers. Since the work rule applied to all the workers, although it perhaps affected the sheet metal workers most adversely and the 17 cents was likewise payable to all the workers, it would have been most unfair to the railroads to permit the agreement to go into effect for the three unions which had ratified, and submit the work rule issue to arbitration, insofar as the fourth union was concerned. On the other hand, a proposal to arbitrate the work rule and the 17-cent increase, even prospectively, insofar as all four unions were concerned, was completely unacceptable to the three unions which had ratified the memorandum of understanding, since they did not wish to jeopardize their right to receive any part of the additional 17-cent increase.

Second, following the same procedures used in 1967 would have, at the very least, involved some further delay in the workers receiving increases due to them. As I have noted above, we were strongly advised by all the parties concerned that the patience of the workers has already worn to the breaking point, and that if any further delay occurred before the agreement was implemented, it would be impossible to prevent widespread wildcat strikes and other forms of employee action which would have resulted in paralyzing the country's railroad system. Under these circumstances, the parties advised that it was necessary for us to promptly enact some substantive resolution to resolve the dispute.

Third, and what finally turned out to be the decisive reason before the committee was that new notices under section 6 of the Railway Act may be served as early as September 1, 1970, for changes to become effective on or after January 1, 1970. Thus, in a few months, the whole package would be subject to renegotiation.

Under the circumstances, the committee came to the conclusion that it was fruitless to resolve the idea of arbitration or mediation to finality, and made clear that that was the main point upon which it based its views by writing into the resolution an additional "Whereas" which I should like to read to the Senate, because it is important as bearing upon this question:

> Whereas, the memorandum of understanding, dated December 4, 1969, permits the service of notices or proposals for changes under the Railway Labor Act on September 1, 1970, to become effective on or after January 1, 1971;

So that the date is so imminent that, as I say, it is fruitless to us to proceed in any other way.

Also, to the same point, we took into consideration the fact that the parties should be free to negotiate prospectively about anything, including the very matter which was settled for this particular time, until the end of this year, in the memorandum of understanding.

So, we wrote as follows in the report:

> In recommending this legislation, the committee is not in any way passing on the merits of the dispute over the incidental work rule. The committee's sole concern has been to avert the catastrophe which would shortly ensue if a nationwide railroad strike were permitted to occur. In that connection, the committee was advised by representatives of the administration, of the railroads, and of the three shop craft unions which have ratified the memorandum of understanding that any further delay in resolving this controversy would be most undesirable.

These reasons led the committee, unanimously, to reject arbitration, or simply a further delay in the resolution of this dispute, and to embrace the President's proposal to put into effect the memorandum of understanding, as agreed to by the negotiators for all the parties on December 4, 1969. Needless to say, no member of the committee is entirely pleased with this approach. It does require the sheet-metal workers to accept a proposal which its membership has refused to accept.

In that connection, I want to emphasize that in reporting out this resolution, the committee has taken no position whatever on the merits of the dispute on the incidental work rule. I myself suggested that provision for a study of the work rule be included in the resolution, in order to help the parties in their future negotiations concerning it. By an 8-to-7 vote the committee rejected my proposal. Those who voted against it did not do so because of views on the merits of the work rule, but simply because they did not wish to inject the Government prematurely into the next round of negotiations. That next round will begin in September 1970, and the record should be clear that the parties at that time will be free to reexamine the work rule issue, as well as any other matters with a view to making changes, effective on or after January 1, 1971.

Hence, this resolution, although it does mandate an agreement against the wishes of the sheet-metal workers, can properly be regarded as a short-term measure.

Mr. President, I need not go over the facts and figures as to the national paralysis effect of a railroad strike in this country. It would be manifested in a very few days. And the national economy would tend to decelerate very quickly and might grind to a halt. It certainly would be very badly damaging.

Mr. President, I ask unanimous consent that the letter under date of March 4, 1970, from the Secretary of Transportation to the chairman of the Committee on Labor and Public Welfare concerning the details of the issuance of an emergency order be printed in the RECORD together with the analysis of the Chairman of the Council of Economic Advisers,

similarly addressed, dated March 3, 1970.

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

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., March 4, 1970.

Hon. RALPH W. YARBOROUGH,
Chairman, Committee on Labor and Public Welfare, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing in support of the President's proposal, which is presently before your Committee, to avert the nationwide stoppage of rail service which is threatened to begin after midnight tonight.

As Secretary of Transportation, I am particularly concerned about the profoundly harmful impact such a stoppage would have on public health and welfare, on the defense effort, and on the national economy.

Other modes of transportation can hardly assume more than a small fraction of the transportation capability provided by the nation's rail network. With our country so dependent on rail service, a nationwide stoppage would affect virtually every segment of the economy.

A nationwide stoppage would leave more than 50,000 communities without rail service. Immediately affected would be bulk movements of perishables and other foodstuffs, intercity and commuter passenger service, major chemical industries and coal mining. If the stoppage continues for more than a few days, the impact would spread to the entire auto industry, construction, grain elevators, paper mills, and defense-oriented industries. Water purification and sewage processing could be seriously hampered because of the growing lack of chemicals normally carried by rail.

Rail transportation is an integral part of the industrial production process. A nationwide stoppage of rail service would have a spreading or cumulative effect greater than the immediate impact on particular industries which rely heavily on rail service. Coal is an example. Three-fourths of all coal moves by rail and is used not only for personal consumption and export, but is used also by producers of electrical energy and other commodities such as iron, steel, and other metals, and stone and clay products. These in turn are used in the production of other goods such as automobiles and most manufactured products.

This spreading effect would lead to a decline in Gross National Product of over 13 percent within 30 days, according to an estimate by the Council of Economic Advisors. This figure is nearly four times the quarter-to-quarter drop in Gross National Product during the 1957–58 recession. It is estimated that six to seven million persons would become unemployed within 30 days of a nationwide stoppage of rail service.

At my request, the Federal Railroad Administrator has assembled the following data, which illustrate clearly the importance of the railroads to our economy and the impact which cessation of rail service would have.

OVERVIEW OF RAILROAD IMPORTANCE

American railroads operate 210,000 miles of line serving more than 50,000 communities. During 1968, the rail system moved over 755 billion ton-miles of freight—approximately 41 percent of the total intercity freight movement. Over 13 billion passenger miles were provided in 1968—about 9.2 percent of the total passenger movement by common carriers. Rail commuter lines, concentrated in New York, Philadelphia, Boston, Chicago, and San Francisco, serve some 600,000 commuters daily. Transportation services performed by the railroads in 1968 produced $10.8 billion in gross revenues, moved 28,231,000 freight car loads, and transported 295,600,000 passengers.

The economics of transportation make railroads the most important mode in the movement of high density, bulk commodities such as coal, grain, ore, and lumber. Most agriculture products are heavily dependent on rail transportation; and manufactured goods rely on it to a significant degree. In areas without access to water transportation, rail is the only economically feasible alternative for the movement of bulk traffic. The percentage of major commodities moving by rail are:

	Percent
Coal	73
Northwest grains	68
North Central grains	75
Lumber	84
Cotton bales	73
Auto bodies—parts	90
Hogs	90

DETAILED IMPACT DATA

1. Railroad industry

600,000 employees affected.

1,820,000 freight cars stopped including *some 360,000 under load en route*, 600,000 empties en route, 350,000 placed for loading, 350,000 placed for unloading and balance setting empty.

30 million dollar loss in revenues daily.

2. Rail passenger service

Intercity.—311,600 daily revenue passengers.

Commuters.—Work day ridership—illustrations:

Chicago	350,000
New York	522,000
Boston	32,000
Philadelphia	250,000
San Francisco	23,000

3. Defense shipments

815 carloads originated daily or 49.5% of total Defense freight volume including:

150 cars of munitions.

Specialized rail car shipments of Titan III, Minuteman, Polaris missiles.

159 cars of bulk, high octane fuel.

Nuclear movements in shielded containers and depressed flat cars.

Military-owned flat cars ("force in readiness" and "strike command").

25 cars of sulphuric acid.

4. Mail

775 carloads originated daily including:

215 cars, 560 Piggyback.

90% of bulk mail originating daily including 75 million pieces of various types of second and third class publications and small catalogs and small packages.

Two million parcels in regular parcel post service.

5. Agriculture

Manufactured food equals 10% of total daily rail tonnage movements (140,000,000 tons) (annual).

Unmanufactured food equals 12% of daily total rail tonnage movements (168,000,000 tons) (annual).

Only two-three day supply of perishables, fruits and meat on hand.

Trapping of 10,000 cars of refrigerated shipments and 200 cars of livestock.

6. Minerals

Suspension of rail movement would cut off almost all supply of primary aluminum, copper, lead and zinc.

Would cut off 68% of all coal going to electric power utilities.

75% of all coal going to coke and gas plants.

79% of all coal going to industrial plants.

7. State of Alaska

Would cut 80% of interline traffic received via water from American railroads.

Including 20 cars of perishables per day.

Including 60 cars of construction supplies per day.

In summary, Mr. Chairman, I believe these data confirm the President's judgment that a nationwide stoppage of rail service must not be permitted to take place. I urge the Congress to take prompt and favorable action on the President's proposal.

Sincerely,

JOHN A. VOLPE.

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS,
Washington, March 3, 1970.

Hon. RALPH YARBOROUGH,
Chairman, Committee on Labor and Public Welfare, U.S. Senate, Washington, D.C.

DEAR SENATOR YARBOROUGH: The impact of the threatened railroad strike can be divided into effects on broad economic aggregates and impacts on selective sectors of the economy most dependent upon rail transportation. Most of the data presented here represent rough estimates, but the order of magnitude is believed to be reasonable. Source data used in the preparation of this letter were obtained from Government agency reports on the economic impacts of a possible rail strike and from telephone conversations with agency representatives.

I. OVERALL IMPACT

In view of the nature of our national transportation system, the economic impact of a nationwide rail strike, however short in duration, would be of serious proportions. The railroads in 1968 produced $10.8 billion in gross revenues, moved 28,231,000 freight carloads and transported 295,600,000 passengers. Railroads accounted for 41 percent of total intercity freight movement and 9.2 percent of total passenger movements by common carrier.

The proposed rail strike would immobilize 8,820,000 freight cars, including 600,000 empties enroute, 350,000 under load enroute, 350,000 placed for loading, 350,000 placed for unloading, and the balance sitting empty.[1]

(a) Impact on employment

We estimated that a total of 1.5 million persons would be unemployed by the end of the first week. The railroads are directly responsible for the employment of approximately 600,000 employes. In addition to these, by the end of the first week an additional 600,000 people employed in mining would be out of work and approximately 300,000 in other related industries. By the end of one month, the Federal Railroad Administration estimates the rail strike could idle up to six million people.

(b) Impact on GNP

Our current estimate of GNP for the fourth quarter of 1969 is $952 billion. GNP would be reduced at an annual rate of approximately $12 to $15 billion in the first week of a strike. A rough estimate of the impact of the strike on GNP by the end of the fourth week is between $50 and $60 billion. (These data are all at annual rates.)

(c) Impact on external trade

The impact of the strike on external trade would be serious. Most of our exports of chemicals, automobiles, and heavy machinery are transported to dockside by rail. All of our coal and grain is shipped by rail. A prolonged strike could have lasting effects on the balance of payments if unfulfilled foreign coal contracts led foreign customers to look favorably upon alternative sources of supply.

II. SECTORAL IMPACTS

The impact of the threatened railroad strike is serious in some areas.

1. Agriculture

Most food and feed products now operate in a "pipeline system." Therefore, a rail strike would have an immediate impact. For example, chain stores maintain a 2–3 day sup-

[1] Source: Federal Railroad Administration.

ply of fresh vegetables and meat. They maintain a two-week supply of manufactured goods in the warehouse and a one-week supply in the store. This assumes a normal buying pattern and not hoarding, which could result from a strike.

On the other hand, livestock and milk are shipped almost entirely by truck. About two-thirds of the fresh fruit and vegetables travel by truck. USDA shipments of food for school lunch programs and welfare programs would be severely curtailed because they are handled mostly by rail on a continuing buy-ship type of pipeline operation. In 1969, the equivalent of about 110 rail carloads were shipped each day.

Livestock feeders, dairy and poultry men carry about one week's supply of feed grains. About 60–70 percent of the feed grains are currently shipped by rail. The percentage of feed grain shipped by rail would be considerably greater for the northeast and western states. Grain processors normally carry an inventory sufficient to last 3–4 days, then shutdowns would occur.

The export market for grain would be severely affected after 8–10 days. Loses in export markets are hard to recover because customers may develop other long-term contracts.

The possibility of substitution with other modes of transportation is not promising. Air freight is of little significance at the present time. Water carriers book shipments several months in advance and are presently frozen in except for the lower Mississippi. Trucks are about at capacity on the west coast where rail is crucial. Currently there are about 100,000 refrigerated freight cars to be replaced.

2. Public Welfare

Public welfare would be threatened by a railroad strike in several ways. Food shortages that would appear almost immediately are discussed as part of the strike's impact on agriculture. In addition to these, we may identify the following:

(*a*) Potentially most disruptive is the effect on the electric power industry which derives over 50% of its energy from coal. Much of this coal is carried by rail. There are probably substantial inventories of coal at power plants, but there are 21 utility systems providing about 40 percent of the Nation's power requirements that would have seriously low supplies in less than 60 days, some in less than thirty.

(*b*) In 1968, an average of approximately 700,000 people availed themselves of commuter rail services daily. These commuters are located in five cities: New York, Chicago, Philadelphia, Boston, and San Francisco. This would add considerably to traffic congestion problems in these cities.

(*c*) *Mail*: On the average 800 carloads of materials originate daily from the Post Office Department. This includes 90 percent of all bulk mail, two million parcels in regular parcel post service, and 2,500 catalogues.

3. Mining

There exists very sparse coal storage facilities at the mines. Since most shipments are made by rail, within one week it is expected that a rail strike would halt production and idle workers in the coal mining and coal handling industries. Due to numerous work stoppages last year, production lags demand, and coal users have lower than normal inventories. The impact of a stoppage in coal mining could be felt rapidly by user industries. Similar storage conditions exist in other extractive industries and it is believed they would also be seriously affected within one week.

4. Copper fabricated products

An estimated 95 percent of refined copper is shipped by railroad. Copper fabricators currently maintain inventories of 2 to 8 days due to the price of merchant copper and the short supply of producer copper. Copper fabricators would then cease operating within one week to ten days.

5. Steel mill products

Approximately 50 percent of total steel products are shipped to consumers by rail. Little of this output could be diverted to trucks and in view of the limited storage capacity available it seems unlikely that production could continue for more than two weeks after the beginning of the strike.

6. Automobiles

The automobile manufacturing industry is dependent on railroads at several stages of its operations. Large volumes of raw materials are shipped by rail. More than half of all completed vehicles and a large volume of parts and subassemblies is also shipped by rail. It is believed that automobile production would be affected almost immediately and that within two weeks automobile plants would begin to cease operations.

7. Basic chemicals

The most important products in this category are chlorine and alum, used widely in water purification. Inventories of 30 days are usually maintained but frequently these fall to 10 days or less. Most of the volume of these chemicals is shipped by rail but it is feasible to substitute truck delivery if available.

The remainder of the industry is closely woven together. Many chemicals are used in the production of other chemicals and since over 60 percent of the product is shipped by rail it is believed that the industry would be seriously affected within one month.

8. Textile mill products

The industry is dependent upon a continuing supply of chemicals, manmade fibers and cotton. These products will become unavailable within two to three weeks after the beginning of a rail strike.

III. ALTERNATIVES

According to the best estimates that we have been able to make, no more than 10 percent of the volume currently shipped by rail could be diverted to other modes. In specific instances where handling requirements can be met only by the railroads, no shipments of output would be possible.

Sincerely,

PAUL W. MCCRACKEN.

Mr. JAVITS. Mr. President, the joint resolution we bring to the Senate is under all the circumstances the most reasonable course for Congress to pursue at this time to protect the Nation and to resolve this dispute.

It has the support of the administration and of the three unions which have ratified the memorandum of understanding.

While I know that the sheet metal workers are understandably unhappy with it, any other proposal would make either the carriers or the other three unions just as unhappy and unsatisfied.

It just is not possible to do something which will be pleasing to all parties in the dispute.

We have made the Hobson's choice, and that is to put into effect the memorandum of understanding actually agreed to by the negotiators for all parties—including the unions—which has been ratified by an overwhelming majority of the employees concerned, and jurisdically by three of the four unions, which I urge the Senate to approve at this time.

This is especially true in view of the short time in which this memorandum will have effect.

Mr. President, finally there are two points which the chairman of the committee and the committee asked me to report on. And I report as an agent of the committee for the reason that I am the ranking minority member and this is an administration measure, brought in essentially by the administration, and it is my duty to handle it on the floor, as I am doing.

We have been discussing one aspect of this resolution which has caused us a little concern. And in due course, the managers of the bill on both sides will submit to the Senate—although it is not a committee amendment—what we believe represents a fair resolution of an item of difficulty which has arisen respecting the resolution.

We will submit to the Senate an amendment to the resolution which will deal with this subject. The subject, Mr. President, is the issue of retroactivity of 7 cents an hour provided in the memorandum of understanding to which I have referred.

This 7 cents an hour, as stated in item 3(d) of the memorandum of understanding summary contained on page 17 of the committee report, reads as follows:

Effective as of the date of notification of ratification of the agreement, 7 cents per hour applicable to mechanics only.

The date of notification actually given by the three unions which did formally ratify it was December 17, 1969.

Our resolution, although it was not the subject of any material debate, eliminates that issue of retroactivity and provides that the date of enactment of this resolution—which we have before the Senate—shall be deemed to be the date of notification of the ratification as used in the memorandum of understanding. In other words, when the President of the United States signs the resolution, the 7 cents an hour will take effect. Technically and legally, that is sustainable because it is a fact that the carriers and the unions bargained for this increase based upon ratification and the taking effect of the so-called incidental work rule. The rule has not taken effect. And therefore the carriers have the right to say, "We are not going to pay anything until it takes effect."

On the other hand, the unions have the right to argue that they did everything in good faith that they were supposed to do and that along toward the middle of February when the matter had to be thrown into court, and from then on they could have, if they were desirous of doing it, gone out on strike. Also, on February 19, 1970, the three unions which ratified the agreement offered to enter into it without the participation of the Sheet Metal Workers.

We have discussed the matter. The Senator from West Virginia (Mr. RANDOLPH), the manager of the bill on the majority side, the Senator from Wisconsin (Mr. NELSON), who took an interest in the problem, other members of the committee and I have discussed the problem.

We have come to the conclusion that the fair way to resolve the matter is to let the issue of retroactivity take effect at the time the matter was out of the

hands of the parties, and that date is February 19, 1970, shortly after it was first thrown into court, and when the three unions which had previously ratified offered to enter into the agreement without the Sheet Metal Workers.

From the point of view of rough justice, that would split it about 50–50 on one side and the other. I think that is the fair way to resolve the matter.

We hope very much that this will be accepted by the workers and the carriers and the other parties concerned. And we have reason to believe that it will be.

After the opening statement is made by the Senator from West Virginia (Mr. RANDOLPH), I will offer the amendment.

Mr. President, I am prepared to yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. RANDOLPH. Mr. President, I join the able ranking minority member of the Labor and Public Welfare Committee in bringing this legislation to the Senate.

As the ranking majority member of the committee, I endorse personally and officially the factual and excellent statement of the Senator from New York.

I think it is important for me to underscore, not only as the Senator indicated, the unanimity within the committee, but also to call attention to the fact that the committee is composed of 10 Democrats and seven Republicans, and that all members participated in the rollcall on the unanimous recommendation to send this legislation to the Senate for discussion and determination today.

Mr. President, I believe it is important also to emphasize that all of the members of the Committee on Labor and Public Welfare believe in collective bargaining. For, in one way or another all of them have so stated. What we are doing today is not violence to the concept of collective bargaining; rather, this measure is an effort by the Senate and the House to join in providing the seemingly most feasible and equitable solution to keep the rail system of the United States in operation. This country's rail system provides direct employment for approximately 600,000 persons. It is, therefore, along with waterways transportation, the mode of transportation in this country which moves to a greater degree the high-density bulk commodities from one point of this country to another.

Mr. President, I think of this matter of the importance of the continuing operation of the railroads as being of paramount importance to the well-being of the people and the economy of this Nation. I know that stoppage of rail operations would bring catastrophic consequences to the State of West Virginia.

Nationally, and in my home State, these consequences would strike hard at both labor and management and at governments at all levels. Our largest West Virginia product, bituminous coal, principally is moved by rail, and this is true of all coal-producing States. In fact, over 73 percent of the coal produced is shipped by rail. Consequently, a shutdown of the mining industry in the State of West Virginia, resulting from an inoperative rail system, would be tragic for even a few days.

I refer to the comment included in our report on page 11 under the classification of "Mining." It is stated:

> There exists very sparse coal storage facilities at the mines.

This is true, and I know it personally.

> Since most shipments are made by rail . . . it is expected that a rail strike would halt production and idle workers in the coal mining and coal handling industries. Due to numerous work stoppages last year, production lags demand, and coal users have lower than normal inventories. The impact of a stoppage in coal mining could be felt rapidly by user industries. Similar storage conditions exist in other extractive industries and it is believed they would also be seriously affected within one week.

Perhaps one would say I speak from a provincial standpoint, but I do not really address this problem provincially, because the coal moves to the eastern markets, such as those in New York and New Jersey, and to Midwestern and Great Lakes areas. It is vitally important to the continuance of a sustained economy in our metropolitan areas that coal be available there to help sustain their huge energy requirements—especially as relates to electricity.

In West Virginia alone, upward to 40,000 coal miners would be made unemployed alone, with the many railroaders who would be idled. Not only would the mines cease to produce within hours after our rail systems ceased to operate, but steel and chemicals would also be nonproducing industries, too, within a short period. This, of course, would cause a deterioration of our economy, adversely affecting business and commerce.

This, Mr. President, is my comment in reference to the importance of the rail industry not only to the Nation, but particularly, as I have indicated, in the State of West Virginia.

As the able Senator from New York has said, three shop craft unions with total membership of approximately 42,000 ratified the agreement. The Sheet Metal Workers International Union, with approximately 6,000 workers who are members of that organization, did not ratify. However, it is important for us to realize that even though the Senate committee unanimously brought this resolution to the floor, it is not a weakening of the process of collective bargaining. It is a recognition by responsible men within the Committee on Labor and Public Welfare, regardless of party, of the collective bargaining results achieved, in spite of the refusal of a small segment to agree—a very small segment. We have an obligation to the people of the United States to see that our country is not placed in a straitjacket by the demands and the recalcitrance of a few.

From the standpoint of the 10 majority members of the committee and the seven minority members of the committee there was unanimity on this point. So, I do not speak of division as to party because there is a bipartisan support for the measure which is the pending business. It is significant that Senate Joint Resolution 190 has been reported by the Senator from New York (Mr. JAVITS). With the problems that could affect our economy by a strike at midnight tonight, there is every reason to believe that the Senate will support this resolution overwhelmingly. I trust the rollcall will be unanimous.

Mr. JAVITS. Mr. President, I am very appreciative, both personally and as one who reported the bill at the direction of the committee, for the splendid analysis of the situation by the distinguished Senator from West Virginia (Mr. RANDOLPH), and the tremendous help he has been in endeavoring to resolve this dispute, using his enormous influence in the industrial field concerned, to bring about a settlement and viewing this, as he has already said, as a last resort with no alternative open to us.

Mr. President, I am about to propose the amendment I have described. Before I do so I wish to suggest the absence of a quorum. Again I would urge attachés of the Senate to advise Members we will have a vote very shortly, that we will have third reading very shortly, and that this is the time for them to be here if they wish to propose any amendments or engage in debate on the floor of the Senate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. JAVITS. Mr. President, on behalf of myself, the Senator from West Virginia (Mr. RANDOLPH), and the chairman of our committee, the Senator from Texas (Mr. YARBOROUGH), I offer an amendment, which I send to the desk.

The PRESIDING OFFICER. The clerk will state the amendment.

The BILL CLERK. The Senator from New York, for himself and Senators RANDOLPH and YARBOROUGH, proposes an amendment on page 3, lines 4 and 5, to strike "the date of enactment of this resolution" and insert "February 19, 1970."

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

Mr. JAVITS. I yield.

Mr. MANSFIELD. What is the date stricken?

Mr. JAVITS. The date stricken is the date of enactment of the resolution. This amendment gives a little retroactivity. I might say it deals with an item of 7 cents an hour for mechanics. The retroactivity was supposed to be back to the middle of December 1969, but because of the situation in which the parties found themselves, this could not take effect.

The committee version eliminated retroactivity. As we felt the fault was not that of all the workers, but that what had happened was due to a small number of the workers, relatively speaking, we thought the best thing to do was to split the difference, which we have done.

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

Mr. JAVITS. I yield.

Mr. MANSFIELD. It is my understanding that the three unions which had agreed previously, as far as they were concerned, had their retroactivity for back pay go a little farther.

Mr. JAVITS. There are various items of pay which go back farther, but the particular 7-cent item to which I referred would have been effective from the middle of December, if this agreement could have been consummated. We also thought it unwise to try to differentiate between the three other unions and the sheetmetal workers union. We thought it would create hard feeling and undue complications.

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

Mr. JAVITS. I yield.

Mr. RANDOLPH. The Senator has mentioned the 7-cent item. I think the record should show that the cost of the retroactive feature offered in the amendment will be only approximately $180,000 to the rail industry.

Mr. JAVITS. I would wish to say only that we are talking about an order of magnitude. We did our best to ascertain that figure. It is in that order of magnitude, according to the best the staff could ascertain it, but we would not wish to be bound by that figure. I do this without committing any party, which could walk out in the next 5 minutes and denounce me, or anybody else. We have checked around. Generally speaking, it seems a fair disposition of what could be a new controversy among the parties, as far as mention of them is concerned, both on the carriers' side and the workers' side. For that reason we commend it to the Senate.

Mr. President, I have no requests for time on the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. GRIFFIN. Mr. President, I am very sorry that I just came on the floor. I wish I had been on the floor to hear the explanation of the Senator from New York, but I am a little at a loss to understand why this amendment would be offered.

As I understand the bill as reported, it would put into effect the agreement that both the unions and management agreed. The only thing is that, as I understand it, the membership of one of the unions did not ratify it. Why would we in Congress adopt an amendment which would go beyond that, if that is what the amendment does?

Mr. JAVITS. It does not; as a matter of fact, it goes somewhat shorter than the agreement. Let me explain why.

I think the Senator is absolutely right in wanting to know. I am sorry he was not here, but I often find myself in the same position.

If the Senator will look at the memorandum of understanding, on page 17 of the committee report, item 3D reads:

> Effective as of the date of notification of ratification of the agreement, 7¢ per hour applicable to mechanics only.

If all the four unions had agreed at the time this matter fell apart, it would have been the middle of December 1969 that such a notice was given to the carriers. That particular provision would then have taken effect the middle of December 1969.

The three unions actually notified the carriers that they had ratified it. The fourth obviously did not. Hence, legally, that could not be effected.

So when the matter finally went into court, which was shortly before February 19, 1970, that was the first time within which the issue, as it were, was taken out of the hands of the parties, and they were compelled not to strike, by court order or congressional mandate signed by the President, because when the court order expired, which was a 10-day run, we passed a law for 37 days. Also, I think it is relevant that February 19, 1970, is the date the three unions which had ratified the agreement offered to enter into it without the Sheet Metal Workers.

Now, in our proposal to the Senate, we eliminated that retroactivity and had it take effect, but notwithstanding the words of the agreement, we had it take effect as of the time the President would sign the resolution now pending before the Senate, or some similar resolution.

That was seen, when the committee discussed the amendment yesterday, as unfair to a great many of these workers who stood ready, willing, and able to perform their part of the contract, and were prevented from doing so by the one union.

That situation obtained from the middle of December to the middle of February. Thereafter, everyone was prevented by the courts and Congress; and naturally, in discussing the thing, as a matter of equity, though not as a matter of law—because as a matter of law they were unable to give the notification of ratification, and they would have been unable to do so until now—but as a matter of equity, we finally decided to split it down the middle. Instead of just saying 50 percent, we tried to pick some logical basis for it, and the logical basis was the date of February 19, which turned out to be roughly 50 percent.

I made some preliminary soundings with both unions and management, and though I am unable to represent that they agree, we do not believe we will have any trouble with it, and apparently it is preferable to leaving the matter in as a new item of bargaining, which we would be doing if we did not deal with it in this resolution in some way or arriving at such a drastic solution that we would again have to deal with wildcat strikes; and, even as it affected the Sheet Metal Workers Union, as the order of magnitude involved was something like $280,000, we decided to make this rough measure of justice.

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

Mr. JAVITS. I yield.

Mr. GRIFFIN. Is the Senator from New York familiar with what is happening in the other body with respect to this particular provision?

Mr. JAVITS. We have informed the other body with respect to what we are doing, and my hope and guess is that they may be doing much the same thing.

Mr. GRIFFIN. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York.

The amendment was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. RANDOLPH. Mr. President, I ask unanimous consent that the name of the junior Senator from Wisconsin (Mr. NELSON) be added as a cosponsor of the amendment to Senate Joint Resolution 190 just agreed to.

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

Mr. JAVITS. Mr. President, we have really tried. We have made the announcement a number of times. We have had a number of quorum calls. We have really tried to bring Members to the floor who had any interest in this legislation, wished to amend it, or wished to debate it. We consider it a critically important measure, Mr. President, dealing with a very large part of the economy of the country over the past few months, and still very important; and it is important as a precedent. I emphasize this, Mr. President, before we have third reading, so that anyone who wishes to say anything may do so.

But we have had no intelligence of anyone having any interest in the bill who wishes to speak, and as far as I am concerned, as the manager of the bill, I am ready for third reading if the Senator from West Virginia is.

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

Mr. JAVITS. I yield.

Mr. RANDOLPH. What the able Senator from New York says is true about our efforts to inform all Senators of the vote on the pending resolution. I also call attention to the fact that the leadership has announced, not only yesterday but even the day before, that this resolution would be before the Senate following the vote on the Carswell nomination.

Mr. JAVITS. Mr. President, I ask for the third reading.

The PRESIDING OFFICER. The joint resolution (S.J. Res. 190) is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the joint resolution.

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

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Indiana (Mr. BAYH), the Senator from Minnesota (Mr. MCCARTHY), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Georgia (Mr. RUSSELL) are necessarily absent.

I further announce that the Senator from Rhode Island (Mr. PELL) is absent on official business.

I further announce that, if present and voting, the Senator from Georgia (Mr. RUSSELL) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT) is absent on official business as observer at the meeting of the Asian Development Bank in Korea.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from California (Mr. MURPHY) is necessarily absent.

If present and voting, the Senator from Utah (Mr. BENNETT), the Senator from South Dakota (Mr. MUNDT), and the Senator from California (Mr. MURPHY) would each vote "yea."

The result was announced—yeas 88, nays 3, as follows:

[No. 123 Leg.]

YEAS—88

Aiken	Gore	Muskie
Allen	Gravel	Nelson
Allott	Griffin	Pastore
Bellmon	Gurney	Pearson
Bible	Hansen	Percy
Boggs	Harris	Prouty
Brooke	Hart	Proxmire
Burdick	Hartke	Randolph
Byrd, Va.	Hatfield	Ribicoff
Byrd, W. Va.	Holland	Saxbe
Cannon	Hollings	Schweiker
Case	Hruska	Scott
Church	Hughes	Smith, Maine
Cook	Inouye	Smith, Ill.
Cooper	Jackson	Sparkman
Cotton	Javits	Spong
Cranston	Jordan, N.C.	Stennis
Curtis	Jordan, Idaho	Stevens
Dodd	Kennedy	Symington
Dole	Long	Talmadge
Dominick	Magnuson	Thurmond
Eagleton	Mathias	Tower
Eastland	McClellan	Tydings
Ellender	McGee	Williams, N.J.
Ervin	McIntyre	Williams, Del.
Fannin	Metcalf	Yarborough
Fong	Miller	Young, N. Dak.
Fulbright	Mondale	Young, Ohio
Goldwater	Montoya	
Goodell	Moss	

NAYS—3

Baker	Mansfield	Packwood

NOT VOTING—9

Anderson	McCarthy	Murphy
Bayh	McGovern	Pell
Bennett	Mundt	Russell

So the joint resolution (S.J. Res. 190) was passed, as follows:

S.J. RES. 190

Joint resolution to provide for the settlement of the labor dispute between certain carriers by railroad and certain of their employees

Whereas the labor dispute between the carriers represented by the National Railway Labor Conference and certain of their employees represented by the International Association of Machinists and Aerospace Workers; International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers; Sheet Metal Workers' International Association; International Brotherhood of Electrical Workers functioning through the Employees' Conference Committee, labor organizations, threatens essential transportation services of the Nation; and

Whereas all the procedures for resolving such dispute under the Railway Labor Act have been exhausted; and

Whereas the representatives of all parties to this dispute reached agreement on all outstanding issues and entered into a memorandum of understanding, dated December 4, 1969; and

Whereas the terms of the memorandum of understanding, dated December 4, 1969, were ratified by the overwhelming majority of all employees voting and by a majority of employees in three out of the four labor organizations party to the dispute; and

Whereas the failure of ratification resulted from the concern of a relatively small group of workers concerning the impact of one provision of the agreement; and

Whereas this failure of ratification has resulted in a threatened nationwide cessation of essential rail transportation services; and

Whereas the memorandum of understanding, dated December 4, 1969, permits the service of notices or proposals for changes under the Railway Labor Act on September 1, 1970, to become effective on or after January 1, 1971; and

Whereas the national interest, including the national health and defense, requires that transportation services essential to interstate commerce is maintained; and

Whereas the Congress finds that an emergency measure is essential to security and continuity of transportation services: Now therefore, be it.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the memorandum of understanding, dated December 4, 1969, shall have the same effect (including the preclusion of resort to either strike or lockout) as though arrived at by agreement of the parties under the Railway Labor Act (45 U.S.C. 151 et seq.) and that February 19, 1970, shall be deemed the "date of notification of ratification" as used in this memorandum of understanding.

Mr. JAVITS. Mr. President, I move that the vote by which the resolution was agreed to be reconsidered.

Mr. RANDOLPH. Mr. President, I move that the motion to reconsider be laid on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. SAXBE). Without objection, the preamble is agreed to.

Mr. MANSFIELD. Mr. President, the emergency legislation dealing with the threatened railroad strike was handled in a most expeditious manner today in the Senate under the guidance of the senior Senator from New York (Mr. JAVITS). As the ranking minority member of the Labor and Public Welfare Committee, Senator JAVITS has contributed greatly to our understanding of the problems involved and the importance of the measure. We are indebted to him for his hard work and careful attention to the needs of the Nation and the labor force in this instance.

To be commended also for his diligent and thoughtful work on the measure is the Senator from West Virginia (Mr. RANDOLPH). The always thorough and knowledgeable presentation of his views, and his effective legislative skill are as always most welcome and contributed greatly to the competent handling of the bill.

The entire Labor Committee of the Senate, its chairman and the Senate as a whole are to be commended for the efficient and expeditious handling of this proposal.

ORDER FOR ADJOURNMENT UNTIL 9:30 TOMORROW MORNING

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 tomorrow morning.

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

ORDER FOR RECOGNITION OF SENATOR HANSEN TOMORROW MORNING

Mr. MANSFIELD. Mr. President, I ask unanimous consent that immediately upon the approval of the Journal, the distinguished Senator from Wyoming (Mr. HANSEN) be recognized for not to exceed 45 minutes.

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

Mr. MANSFIELD. Then, following the remarks of the Senator from Wyoming (Mr. HANSEN), I ask unanimous consent that the previously granted request to allow the Senator from South Carolina (Mr. THURMOND) to proceed for not to exceed 25 minutes and the previously granted request to allow the Senator from Maryland (Mr. TYDINGS) to proceed for not to exceed 30 minutes, be allowed.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of the remarks of the Senator from Maryland (Mr. TYDINGS), there be a morning hour for the conduct of morning business with a time limitation of 3 minutes for each Member.

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

SUBCOMMITTEE MEETING DURING THE SESSION OF THE SENATE TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Gore Subcommittee on International Organization and Disarmament Affairs of the Committee on Foreign Relations be permitted to meet during the session of the Senate tomorrow morning.

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

FEDERAL PAY LEGISLATION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 767, S. 3690.

The PRESIDING OFFICER. The bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. S. 3690, to increase the pay of Federal employees.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on the pending bill.

The yeas and nays were ordered.

SENATE JOINT RESOLUTION 192—INTRODUCTION OF A JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION WITH RESPECT TO THE OFFERING OF VOLUNTARY PRAYER OR MEDITATION IN PUBLIC SCHOOLS AND OTHER PUBLIC BUILDINGS

Mr. SCOTT. Mr. President, I introduce today a new joint resolution proposing a constitutional amendment to permit voluntary prayer in our public buildings, and especially our public schools. I do so in the hope that the introduction of a new resolution at this time will renew effectively congressional interest in this issue which has so long been a matter of great public concern. I am sorry to say that requests by myself, and others, for Senate hearings on this question in the last session of Congress failed to draw a favorable response. The introduction of the new bill I am offering today will provide, I hope, the incentive that is needed now to pursue this matter successfully. My resolution is offered as confirmation of my own personal support in this effort.

Mr. President, I believe my resolution strengthens and improves language which previously has been proposed. My resolution does so in two ways.

First, it mentions specifically "schools" as among those public buildings in which voluntary prayer would be permitted. To mention only public buildings without this additional clarification would, I feel, leave the question of intent open to some doubt.

Second, I recognize that some regard even voluntary prayer as something requiring formal procedure. Therefore, I have drafted my resolution to permit "meditation" as a substitute for voluntary, nondenominational prayer. By so doing, my resolution addresses itself to the basic issue in a manner which still permits the greatest possible flexibility for a divergence of religious belief. Individual or group prayer or meditation on a voluntary basis need not be formalized or institutionalized, but at the same time, such activities should not be penalized. It is with this uppermost in mind that I offer my new resolution.

Mr. President, the people of my Commonwealth of Pennsylvania have been especially outspoken on this issue. They have petitioned the courts for years, and despite setbacks there, have in some communities recently reinstituted voluntary prayer. In at least one school, the exercise centers on the daily prayer from the CONGRESSIONAL RECORD, a reminder of the fact that we, as national leaders in Congress, begin each daily session with the opportunity for prayer. It is this same opportunity for prayer which my resolution would make available to others, and particularly to the Nation's schoolchildren who otherwise are denied a privilege we in Congress take for granted.

Mr. President, I believe in the separation of church and state. I do not believe in the separation of children from the opportunity for prayer or meditation. I believe that public hearings, including attention to the voluntary nature of this amendment, could do much finally to resolve this question, and I offer my resolution for this purpose.

I urge that it be given early and favorable consideration.

Mr. President, I introduce the joint resolution for appropriate reference on behalf of myself, the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Texas (Mr. TOWER), the Senator from Montana (Mr. MANSFIELD), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from Kansas (Mr. DOLE).

The PRESIDING OFFICER. Without objection, the joint resolution will be received and appropriately referred.

The joint resolution (S.J. Res. 192), proposing an amendment to the Constitution of the United States with respect to the offering of voluntary prayer or meditation in public schools and other public buildings, introduced by Mr. SCOTT (for himself and other Senators), was received, read twice by its title, and referred to the Committee on the Judiciary.

Mr. SCHWEIKER. Mr. President, I want to commend the distinguished minority leader for his speech today in support of public prayer, and for his resolution, offered today, to allow prayer in public schools.

This fight was formerly led by his predecessor as minority leader, the late Senator Everett Dirksen, and I am glad to see my senior colleague offering his leadership abilities to this important issue.

As a Senator who is a cosponsor of Senate Joint Resolution 6, Senator Dirksen's "school prayer amendment," I share Senator SCOTT's disappointment that hearings have not been held on the Dirksen amendment. I feel the Scott constitutional amendment is a better, stronger proposal, and deserves serious consideration by the Judiciary Committee and the full Senate.

It is important to me that Senator SCOTT has specifically included meditation as a substitute for voluntary, nondenominational prayer, because he thus makes it clear that those of us who support prayer in public schools do not want to impose any form of institutionalized religion. However, I feel strongly that those who wish to include prayer in the education of our young people are not prohibited from doing so.

This is an important issue to many persons in Pennsylvania. I commend Senator SCOTT for his initiative in representing these Pennsylvanians, just as I commend him for his leadership in the Senate, on behalf of public prayer. It is a privilege for me to be a cosponsor with him on this measure.

Mr. GOLDWATER. Mr. President, will the Senator from Pennsylvania yield?

Mr. SCOTT. I yield.

Mr. GOLDWATER. I should like to ask the Senator a question: Is this similar to the amendment offered by the late Senator Dirksen?

Mr. SCOTT. Yes. I may say that it is closely similar. It is modeled on that amendment, and now specifically includes the words "schools and public buildings," and the addition of the word "meditation" as a form of prayer, so that prayer does not necessarily have to be vocal.

Mr. GOLDWATER. I thank the Senator very much. Would he consider me as a cosponsor of his resolution?

Mr. SCOTT. I would be very happy to have the Senator as a cosponsor and, Mr. President, ask unanimous consent that the name of the Senator from Arizona (Mr. GOLDWATER) be included in the resolution as a cosponsor.

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

Mr. FANNIN. Mr. President, will the Senator from Pennsylvania consider me also as a cosponsor of his resolution?

Mr. SCOTT. I would be very happy to have the Senator from Arizona (Mr. FANNIN) as a cosponsor and, Mr. President, I ask unanimous consent that the Senator from Arizona (Mr. FANNIN) be added as a cosponsor of the resoluion.

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

Mr. TOWER. Mr. President, if the Senator from Pennsylvania will yield to me, with the understanding that he does not lose his right to the floor, I should like to make a brief statement in support of the resolution he has just offered.

Mr. SCOTT. I am happy to yield to the Senator from Texas.

Mr. TOWER. Mr. President, I am pleased to cosponsor the resolution introduced by my distinguished colleague from Pennsylvania, Senator SCOTT, which calls for an amendment to the Constitution specifically allowing voluntary, nondenominational prayer in schools. I believe that everyone should voluntarily have the right to engage in religious observance. Of course, the State should not support or "establish" a religion in a partisan, denominational way. It is difficult, indeed, to see how a rule which permits a child to join in a prayer, if he so desires, establishes a religion. The men who wrote our Constitution did not feel that a state religion could be established so easily. They were aware of the principle enunciated in the first amendment and did not think that a prayer to open the first Congress or a motto on our coins—"In God We Trust"—violated that amendment.

Nor is there any reason to believe that the Founding Fathers felt that voluntary prayer in a public school was an evil to be prevented by the first amendment. Thus, we are seeking by a new amendment to restore original constitutional meaning.

It is a fact that we are predominantly a religious people. The history of our founding shows that our whole social and political system reflects certain Judaeo-Christian concepts of law and right. In our hectic, modern life there is often too little time for our children to get the religious training which has been an important part of American life since our Nation's beginning. As the public school becomes a larger part of our children's lives and consumes more and more of their time, it becomes increasingly important that the school provide them with the opportunity to pray to their God if they wish. It would be inexcusably shortsighted to spend millions of

dollars so that our schools may develop the minds and bodies of our children while denying those schools the right to give students the voluntary opportunity to develop their spiritual selves.

The framers of our Constitution and Bill of Rights were deeply religious men who intended the first amendment to be a protector of religion, not a destroyer of it. If we allow the first amendment to be construed to deny the right of children to voluntarily enter into prayer, we frustrate the intent of the men who drafted that amendment. I see no reason why we should not allow free public expression of the religious belief which is so rooted in our history.

I am pleased to join with Senator SCOTT in calling for an amendment to our Constitution to specifically allow religious expression in schools either through voluntary, nondenominational prayer or through periods of meditation.

I submit that it was the intent of the framers of the first amendment to guarantee freedom of religion and not freedom from religion.

Mr. SCOTT. Mr. President, I thank the distinguished Senator from Texas. I am very honored to have have him as a cosponsor of the bill.

GENERAL REVISION OF THE PATENT LAWS—AMENDMENTS

AMENDMENTS NOS. 578 AND 579

Mr. SCOTT. Mr. President, the United States has made great strides in the fields of technology and science in recent years. Much of the credit for these advances must be given to the American patent system which has stimulated and encouraged innovation and invention. To insure that the patent system continues to play this vital role, it is necessary to periodically revise and update the patent laws. To this end, the distinguished Senator from Arkansas (Mr. MCCLELLAN), chairman of the Subcommittee on Patents Trademarks, and Copyrights, introduced S. 2576, for the general revision of the patent laws.

It is my privilege to serve on this subcommittee and to work with the chairman and other members of the subcommittee to bring about needed revision in our patent laws.

I rise today to submit two amendments to S. 2756. Although I will submit substantial explanatory and supporting data at the conclusion of my remarks, I am taking this opportunity to briefly explain the purpose of my amendments. The amendment (No. 578) proposed to sections 261 and 271 deals with patent license provisions and is intended primarily to implement recommendation XXII of the report of the President's Commission on the Patent System. The American Bar Association, the American Patent Law Association, the Philadelphia Patent Law Association, and the Pittsburgh Patent Law Association approve in principle legislation intended to implement recommendation XXII. Moreover, the American Patent Law Association supports the specific language I am introducing today.

The amendment (No. 579) proposed to section 301 is intended to make it clear that the patent laws shall not be construed to preempt the right of the courts under State or Federal law to decide issues with respect to enforcement of contracts involving rights to intellectual property such as trade secrets, technical know-how, and unfair competition. The principles embodied in my amendment are supported by the American Bar Association, the American Patent Law Association, the Board of Governors of the Philadelphia Patent Law Association, and the Pittsburgh Patent Law Association. The specific language of my amendment is supported by the American Patent Law Association.

I believe these amendments address themselves to extremely important questions in the patent law field. There is merit to their underlying principles. It is for this reason that I propose them to S. 2756. However, I harbor no pride of authorship in the specific language and stand ready to examine alternative approaches to meet the needs to which my amendments are addressed. It is my hope, however, that these amendments will serve to further stimulate thought and discussion on the action needed in these important areas.

In order to further illuminate the need for these amendments, I ask unanimous consent that the following materials be printed at the conclusion of my remarks: Detailed explanations of the amendments to sections 261 and 271; a detailed explanation of the amendment to section 301; that section of the Report of the President's Commission on the Patent System dealing with recommendation XXII; a letter from the Honorable Merl Sceales, chairman of the Section of Patent, Trademark and Copyright Law of the American Bar Association, discussing recommendation XXII; a letter from the Honorable Philip G. Cooper, president of the Philadelphia Patent Law Association, discussing recommendation XXII; a lengthy memorandum prepared by the American Patent Law Association on "the need for legislative clarification of the law relating to patent license provisions"—summary and full memorandum.

The PRESIDING OFFICER. The amendments will be received and printed and will be appropriately referred; and, without objection, the material will be printed in the RECORD, as requested.

The amendments (Nos. 578 and 579) were referred to the Committee on the Judiciary.

The material ordered to be printed in the RECORD, reads as follows:

RE SECTIONS 261 AND 271 (RECOMMENDATION XXII)

The amendments proposed to Sections 261 and 271 of S. 2756 are intended primarily to implement Recommendation XXII of the Report of the President's Commission on the Patent System. The net effect of those amendments, with regard to patents or applications for patent, would be to:

A. Re-arrange Section 261(b) to make clear, in the first paragraph, a patent (or a patent application) owner's right to assign or license his patent (or application) exclusively, and in the second paragraph to limit the license to: (1) specified fields of use covered by the patent (or application), (2) specified geographical territories, (3) exclusive or non-exclusive practice of the invention, and/or (4) any desired number of licenses as he may please.

B. Add new subparagraph 261(e) so as to specify that an assignor cannot challenge the validity of the patent he has assigned unless he first returns the price paid and bases his attack on grounds not available at the time of the assignment.

C. Add a new subparagraph 261(f) to stipulate that no party to a license can contest validity of a licensed patent unless he (1) first surrenders all future benefits and (2) then or thereafter settles all past obligations due under the license.

D. Add new Section 271(f) and 271(g) to provide a statutory basis for the following licensing practices, as follows:

(f)(1) the granting or prohibiting of certain fields of use of the (patented) invention, and permitting or prohibiting one or more of the primary functions of the patent, namely the right to exclude others from making, using or selling the (patented) invention.

(2) the granting of a license which contains a provision excluding or restricting any conduct reasonable under the circumstances.

(g)(1) the granting of non-exclusive cross licenses and the granting of a license containing a provision requiring the grant back of a non-exclusive license under improvements on the licensed invention.

(2) the granting of a license which requires a royalty fee or price:

(i) of any amount, however paid, on any desired royalty base;

(ii) computed on any basis convenient to the parties;

(iii) covers a single patent or a single package consisting of a multiple number of patents; or

(iv) which differs from that agreed to with other parties.

Section 271(f)(1) would make it just as legal to license less than all of the right to exclude others from making, using and selling the subject matter patented (35 USC 154) as it is to license the entirety of the right. It would assure continued freedom of the patent owner to license for a term less than the remaining term of the patent, license to make and use without licensing sale, license to make use and sell in specified sizes or for specified purposes or fields, etc.

The Supreme Court sustained a limited field license in *General Talking Pictures* v. *Western Electric Co., Inc.*, 305 U.S. 124 (1938). Other decisions on the subject are collected in Oppenheim, Federal Antitrust Laws (1968), pp. 706–8. In *Atlas Imperial Diesel Engine Co.* v. *Lanova Corporation*, 79 Fed. Supp. 1002 (D. Del., 1948), the court sustained a license to a patent to engines which was limited to a specified maximum size.

Limited licenses have, at least until recently, been considered legal in the same respect as unlimited licenses. They are useful in many situations. For example, the Government takes at least a license to make, have made, and use for Government purposes in connection with inventions made during the course of Government financed research. Many antitrust decrees provide for compulsory licenses under all the patents of the defendant for certain limited purposes such as "to make use and vend lamps, lamp parts or lamp machinery". *U.S.* v. *General Electric Co.*, 115 F.Supp. 835, 848 (D.N.J., 1953).

Under the proposed statute there would be no inquiry as to the "reasonableness" of the particular portion of the total patent right to exclude that is offered for license or is licensed—any more than there is inquiry as to the "reasonableness" of the price a patent owner proposes to charge or charges for a license or whether a refusal to license at all is "reasonable".

The proposed language would not make legal those contracts or combinations that go beyond the grant of a limited license and restrain trade. Conduct such as occurred in

Hartford-Empire Co. v. *U.S.*, 323 U.S. 386 (1945), where limited licenses were part of an overall combination to restrain trade, would continue to be illegal.

Section 271(f)(2) would continue the right of the patentee to include in licenses such reasonable terms as are necessary to secure the full benefit of the invention and patent grant. For example, 35 USC 287 provides for a limitation on recoverable damages for patent infringement unless certain notice is on the patented articles. Under the proposed language a license requirement to this end would be legal. Similarly, a common form of license royalty is a percentage of the sales price. To secure the full benefit of the invention and patent grant with such license arrangement, the patentee should be entitled to receive necessary data as to what is sold by the licensee so as to determine that the royalties are correctly paid. The proposed language would assure that such provisions are free from challenge under the antitrust or any other laws.

The proposed language would not legalize agreement provisions that are not reasonable to secure the patent owner the full benefit of the invention and patent grant. For example, it would still be improper for a license to require that the licensee abstain from making or selling products that compete with the patented product. See *National Lockwasher Co.* v. *George K. Garrett Co.*, 137 F(2d) 255 (3d Cir., 1943). Also, limitations on the patentee, such as occurred in *United States* v. *Besser*, 96 Fed. Supp. 304 (E.D. Mich., 1951) (Aff'd. 343 U.S. 444 (1952)) and *United States* v. *Krasnov*, 143 Fed. Supp. 184 (E. D. Pa., 1956) (aff'd. 355 U.S. 5 (1957)), do not secure to the patent owner the full benefit of his invention and patent right in a reasonable manner and would continue to be invalid.

Section 271(g) deals with a number of common arrangements that up to now have been considered generally legal but have been recently questioned to at least some degree.

Paragraph (g)(1) enables the patentee to cross license and also to insist on a nonexclusive license back. If the patentee is to grant a license it is only equitable that the licensee be prepared to reciprocate. This consideration had led the courts to approve nonexclusive grantbacks even in antitrust decrees rendered after proven violations of the Sherman Act. See, e.g., *United States* v. *National Lead*, 332 U.S. 319, 359 (1947).

Paragraph (g)(2)(i) continues the present law that the amount of royalties is purely a matter of private bargaining. In *American Photocopy v. Rovico, Inc.*, 359 F(2d) 745 (7th Cir., 19), the court held, in overruling a preliminary injunction, that excessive royalties were a patent misuse and antitrust violation. After trial on the merits it was concluded that there was no misuse. 257 Fed. Supp. 192 (N.D. Ill., 1966) and 384 F(2d) 812 (7th Cir., 1967.) While the effects of this decision are now largely dissipated, it is believed appropriate to have a statutory provision that will avoid future such holdings.

Paragraph (g)(2)(ii) continues the present law that consideration need not be measured by the extent of use of the patented invention. Minimum royalties, for example, are a proper and very useful way to handle license fees. Although such royalties were specifically held valid in *Automatic Radio Mfg. Co.* v. *Hazeltine Research*, 339 U.S. 827 (1950), questions have been raised and the matter is believed best clarified by statute.

Paragraph (g)(2)(iii) makes it clear that the principle of paragraph (g)(2)(ii) applies to the analogous case where an arrangement involves a plurality of patents or patent claims and the royalty charge is not segregated as to any particular patent or patent claim.

Paragraph (g)(2)(iv) deals with differing royalty fees or purchase price figures. In *LaPeyre v. FTC*, 366 F(2d) 117 (5th Cir., 1966), and a number of other cases involving the same facts, dissimilar royalty rates were found to offend Section 5 of the Federal Trade Commission Act or the Sherman Act. These cases rest on an exceptional fact situation not likely to be repeated. Paragraph (g)(2)(iv) would make certain that the *LaPeyre* and companion cases are limited to their particular facts. A patent owner is not and should not be in the position of a public utility. The Congress has consistently and properly refused to enact compulsory licensing statutes. An endless number of considerations affect the royalty rate or purchase price to be arrived at as a matter of private bargaining, including the particular field of use by the licensee, the licensee's sales volume, the extent the licensee grants a license back, and many others. Paragraph (g)(2)(iv) assures that this bargaining can continue.

RE SECTION 301

There is at present in S. 2756 a Section 301 which sets forth the traditional provisions that the Federal patent laws do not preempt contractual or other rights or obligations not in the nature of patent rights, imposed by State or Federal law on particular parties in connection with inventions or discoveries, whether or not subject to the Federal patent statutes. In view of recent judicial decisions which cast a shadow of doubt on the propriety of entering into contracts for the protection of trade secrets, technical know-how, and the like, and which suggest that such private contracts are preempted by the patent laws, it is recommended that this point be legislatively clarified by rewording Section 301 along the following lines:

This title shall not be construed to preempt, or otherwise affect in any manner, rights or obligations not expressly arising by operation of this title whether arising by operation of state or federal law of contracts, of confidential or proprietary information, or trade secrets, of unfair competition or of other nature.

In the absence of such a provision in the statutes it may be presumed that any body of technical knowledge, which by its very nature normally would constitute patentable subject matter, would be subject to application of the federal patent laws. But this would be unfair and unreasonable if the subject matter consisted of information that is available in the prior art or which, no matter how valuable it may be commercially, lacks the element of unobviousness required for it to be eligible for patent protection (e.g. a literature study to determine from the prior art the best process route to a certain item of manufacture, and a plant design based thereon; a computer program based upon preexisting know-how; exact product simulation of form, color, size, etc.). In the absence of protection for such subject matter in the patent laws there is, nonetheless, a critical need for protection that should be available through the private law of contracts or the law of torts. Section 301 will fulfill that need and assure that the patent laws are not improperly applied so as to exclude such protection in situations where contract or tort law is indicated.

The need for Section 301 is important to the independent or relatively small researcher or developer of technical know-how and to large companies as well. At any level of operations the property rights which may be affected by that provision are of tremendous importance in the development and use of American technology. For example, a common occurrence are agreements entered into between domestic and foreign entities which involve, among other things, the transfer of technological information—important details of a process or product for which the recipient is willing to pay substantial sums of money. In 1968 the United States' technological balance of payments for agreements to exchange such technical information credited our country with 1½ billion dollars. In the absence of a law such as Section 301 provides such technical agreements might be outlawed as being preempted by the patent statutes. But the patent laws would afford insufficient protection for the subjects of those agreements as they may consist almost exclusively of non-patentable technical know-how. Thus, the net effect would be to put an end to the exchange of information and payments therefor now represented by those agreements, for in the absence of adequate protection few persons or companies would want to chance disclosing their know-how and few would want to pay for acquiring know-how that anyone may duplicate with impunity.

REPORT OF THE PRESIDENT'S COMMISSION ON THE PATENT SYSTEM

XXII

The licensable nature of the rights granted by a patent should be clarified by specifically stating in the patent statute that: (1) applications for patents, patents, or any interests therein may be licensed in the whole, or in any specified part, of the field of use to which the subject matter of the claims of the patent are directly applicable, and (2) a patent owner shall not be deemed guilty of patent misuse merely because he agreed to a contractual provision or imposed a condition on a licensee, which has (a) a direct relation to the disclosure and claims of the patent, and (b) the performance of which is reasonable under the circumstances to secure to the patent owner the full benefit of his invention and patent grant. This recommendation is intended to make clear that the "rule of reason" shall constitute the guideline for determining patent misuse.

There is no doubt, in the opinion of the Commission, of importance to the U.S. economy of both the U.S. patent system and the antitrust laws. Each is essential and each serves its own purpose within the framework of our economic structure. However, conflicts between the two have arisen. But this does not mean that the two systems are mutually exclusive, that a strong patent system is a threat to the antitrust laws, or that the latter cannot be effectively enforced so long as a patent system grants limited monopolies.

On the contrary, the two systems are fully compatible, one checking and preventing undesirable monopolistic power and the other encouraging and promoting certain limited beneficial monopolies. In this way, each may easily achieve its objectives in a strong economy.

The Commission, therefore, does not favor any proposal which would weaken the enforcement of the antitrust laws or which would curtail in any way the power of the courts to deny relief to a patent owner misusing the patent he seeks to enforce. However, uncertainty exists as to the precise nature of the patent right and there is no clear definition of the patent misuse rule. This has produced confusion in the public mind and a reluctance by patent owners and others to enter into contracts or other arrangements pertaining to patents or related licenses.

No useful purpose would be served by codifying the many decisions dealing with patent misuse into a set of rules or definitions permitting or denying enforceability of patents in given circumstances. The risk of unenforceability is too great and such a codification is wholly unnecessary. All that the Commission believes to be required is explicit statutory language defining, for the purpose of assignments and licenses, the nature of the patent grant heretofore recognized under the patent statute or by decisional law. This is, the right to exclude others from making, using and selling the patented invention.

The mere exercise, conveyance or license of these conferred rights should not in itself constitute misuse of a patent. A patent owner should not be denied relief against infringers because he either refused to grant a license or because he has exercised, transferred or licensed any of the conferred patent rights himself. This should not include immunity of even these conferred patent rights from the antitrust laws when the patent owner becomes involved in a conspiracy to restrain or monopolize commerce, or when the patent is itself used as an instrument for unreasonably restraining trade.

There are also a number of conditions and provisions long associated with the transfer or license of rights under patents which must be distinguished from the exclusive right to make, use and sell conferred by the patent grant. Among these are improvement grant-backs, cross licenses, package licenses, patent pools, no contest clauses, and many others which are simply matters of private contract, ancillary to the conveyance or license of a patent right. As such, these conditions and provisions must be judged, along with other purely commercial practices, under the antitrust laws and the patent misuse doctrine. The Commission does not recommend immunization of any of these other provisions or conditions from either the antitrust laws or the application of the misuse rule.

This recommendation also makes it clear that a patent may not be used to control commerce in subject matter beyond the scope of the patent. For example, it could not be considered "reasonably necessary" to secure full benefit to the owner of a machine patent that he attempt to control any of the commerce in an unpatented raw material to be used in the machine. Neither could it be held that such an attempt had a direct relation to the machine claims in his patent. By the same standards, the patent owner could not control commerce in one of the unpatented elements of his combination invention where his claims are to the whole combination.

AMERICAN BAR ASSOCIATION,
Chicago, Ill., November 5, 1970.

Re: S. 2756 For the general revision of the patent laws.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Patents, Trademarks, and Copyrights, Judiciary Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: As Chairman of the Patent, Trademark & Copyright Section of the American Bar Association, I am enclosing a brief prepared by members of our Section which illustrates why it is of the utmost importance to include Recommendation XXII of the President's Commission on the Patents System as a Section of the above bill or in any revision thereof. The brief sets forth legislative language which paraphrases Recommendation XXII, and this language has been approved by our Section and the House of Delegates of the American Bar Association.

The executive branch of the government, as represented by the Department of Justice and the Judicial branch in decisions by the Courts involving both private litigation and litigation in which the Department of Justice has been involved, have created great uncertainty in the law with respect to patent licensing. We submit that the legislative branch should now take the lead, fortified as it is, by Recommendation XXII of the Presidential Commission to provide a statutory expression of a standard to aid business men, private inventors and the general public in the patent licensing area.

We have, of course, noted the position of the Department of Justice, as indicated in a letter to you from assistant Attorney General McLaren, which appeared in the Congressional Record. It should not be left to the Justice Department to establish the law of patent licensing case by case, as proposed by Mr. McLaren. This would be an abdication in this area of the rights and duties of the legislative branch.

The difficulty with the reasoning of the Justice Department is that it always has its sights set on the big company. It completely overlooks "the little man from Little Rock." There are many individuals and small companies who have patents, and often the best and only way for them to benefit from the patent system is to license their patents. Very few companies, for example, would take a non-exclusive license from an individual, since in practically all cases, the licensee company must spend several hundred thousand dollars to redesign and test the product to meet the commercial demands of the market. This a company is not willing to do if competitors are also licensed, particularly upon the same terms and in the same field of use.

A statutory provision defining the metes and bounds of patent licensing, such as is proposed in the attached brief, would protect these little men by providing guidelines under which they can operate. The big company can survive under the approach proposed by the Justice Department. The little man cannot, and he needs a statutory mandate under which he can be advised that he is proceeding legally.

We could have included numerous other examples of cases in the attached brief where the decisions of the Courts have left the law of patent licensing in a confused state. However, we appreciate that your time and that of your committee is limited and believe our short brief clearly illustrates the problem and points up the necessity for legislation in the patent licensing field.

I trust the enclosed will be of help to you.

MERL SCEALES,
Chairman.

A NEED EXISTS FOR ADDITIONAL STATUTORY PROVISIONS IN PROPOSED PATENT REFORM LEGISLATION

I. INTRODUCTION

There is much uncertainty in the law of patent licensing and legislative clarification is needed. The confusion in this area of the law was noted by the President's Commission on the Patent System which reported:

. . . uncertainty exists as to the precise nature of the patent right. . . .

This has produced confusion in the public mind and a reluctance by patent owners and others to enter into contracts or other arrangements pertaining to patents or related licenses.[1]

As a suggestion for reducing the confusion and bringing some certainty to the law of patent licensing, the President's Commission offered Recommendation XXII which stated:

The licensable nature of the rights granted by a patent should be clarified by specifically stating in the patent statute that: (1) applications for patents, patents, or any interests therein may be licensed in the whole, or in any specified part, of the field of use to which the subject matter of the claims of the patent are directly applicable, and (2) a patent owner shall not be deemed guilty of patent misuse merely because he agreed to a contractual provision or imposed a condition on a licensee, which has (a) a direct relation to the disclosure and claims of the patent, and (b) the performance of which is reasonable under the circumstances to secure to the patent owner the full benefit of his invention and patent grant. This recommendation is intended to make clear that the "rule of reason" shall constitute the guideline for determining patent misuse.[2]

Recommendation XXII was translated into proposed legislation as Section 263 of the Dirksen bill S. 2597 (90th Congress). Section 263 of the Dirksen bill, which Section has been approved by the American Bar Association,[3] states:

263. Transferable nature of patent rights

(a) Applications for patent, patents, or any interests therein may be licensed in any specified territory, in the whole, or in any specified part, of the field of use to which the subject matter of the claims of the patent are directly applicable, and

(b) A patent owner shall not be deemed guilty of patent misuse because he agreed to contractual provisions or imposed conditions on a licensee or an assignee which have:

(1) A direct relation to the disclosure and claims of the patent, and

(2) The performance of which is reasonable under the circumstances to secure to the patent owner the full benefit of his invention and patent grant.

(c) In determining the reasonableness of such provisions or conditions under this section, the courts shall, in each case, consider all factors involved in the exploitation of the patented invention and the economic effect of such provisions or conditions.

The most recent patent reform legislation, McClellan S. 2756 (91st Congress) does not, however, include a provision like Section 263.

Either Section 263 of Dirksen S. 2597 (90th Congress) or a similar section is needed in patent reform legislation to encourage the licensing of patents by rendering more certain the law governing such transactions.

II. REPRESENTATIVE PROBLEM AREAS

Some of the principal areas where the law relating to patent licensing is uncertain are: "field-of-use" licensing, royalty collection following patent expiration, package licensing, nonexclusive licenses containing differing royalty rates, grant-back covenants, and setting of royalty rates.

A. "Field-of-use" licenses

There is present confusion in the law as to whether or not a patent owner may limit the licensed use of his invention to a designated apparatus, process or field of business activity. More particularly, while it has been believed since the 1938 decision of the Supreme Court in *General Talking Pictures Corp.* v. *Western Electric Co.*[4] that a patent owner can limit his license under the invention to a particular field (such limitation commonly being referred to as a "field-of-use" limitation) it now appears that the Department of Justice plans to challenge the legality of "field-of-use" licenses in certain instances where they are issued to a plurality of licensees.[5] Patent owners are thus placed on the horns of a dilemma in as much as they cannot with any certainty grant "field-of-use" licenses. To grant such licenses would be to invite an action from the Justice Department.

B. Collections of patent royalties following patent expiration

A further area of concern to patent owners involves the legality of charging a royalty the payment of which is to be spread over a term of years which exceeds the life of the licensed patent.

In 1964 the Supreme Court in *Brulotte* v. *Thys Co.*[6] held that a license of a single patent which required payment of royalties for a period beyond the expiration date of the patent was an unlawful extension of the patent monopoly and therefore a misuse of the patent.

In 1969 the Supreme Court in discussing the *Brulotte* case has stated:

Recognizing that the patentee could lawfully charge a royalty for practicing a patented invention prior to its expiration date and that the payment of this royalty could be postponed beyond that time, we noted that the post-expiration royalties were not for prior use but for current use, and were nothing less than an effort by the patentee to extend the monopoly beyond that granted by law.[7]

Footnotes at end of article.

This is confusing and statutory clarification is needed.

C. Package licensing

The problem of post-expiration royalties discussed in Section II B is also of concern in the licensing of several patents to a single licensee (such licenses being commonly referred to as "package" licenses). Patent owners are presented, in view of the Supreme Court decisions, with the problem of determining whether a package license is unenforceable if the royalty provision does not provide for a decrease in the royalty rate should any of the licensed patents expire during the life of the license agreement. The practice of charging a royalty rate which does not diminish during the life of the agreement, even though some of the licensed patents may expire, was early approved in *Automatic Radio Co. v. Hazeltine Research Co.*[8] Apparently this practice is still permitted in the tenth circuit, as evidenced by *Well Surveys, Inc. v. Perfo-Log, Inc.*[9] while it is in trouble in the third circuit. More particularly, the third circuit in *American Security Co. v. Shatterproof Glass Corp.*[10] 268 F.2d 769 (3d Cir. 1959) found patent misuse in a license clause which continued the full royalty rate "to the expiration of the last to expire of any"[11] of the patents licensed under the agreement. The confusion is further amplified by a statement in majority opinion of the *Brulotte* case, supra, which distinguished the *Hazeltine* case, supra, by pointing out that not all of the patents involved in the *Hazeltine* case were to expire during the period of royalties. Further, as was pointed out in a footnote to the majority opinion in the *Brulotte* decision, the review petition filed in the *Hazeltine* case: did not . . . raise the question of the effect of the expiration of any of the patents on the royalty agreements.[12]

Statutory clarification is needed.

D. Nonexclusive licenses containing differing royalty rates

Recent decisions have held that the owner of a patent could not charge different royalty rates to licensees under the same patent.[13] Because of these decisions there is doubt as to the legality not only of a patent owner charging different royalty rates in situations where licensees are involved in the same "field-of-use" but also in those situations where the licensees are involved in different "fields-of-use."

Clarification on the law with regard to the setting of differing royalty rates for licensees of the same patent is needed.

E. Grant-back covenants

While it has been believed that a "grant-back" provision in a patent license (such a provision being one which requires that the licensee assign or license back to the licensor any patent or improvement in the products or the processes of the licensed patent) is a legal and valid provision under the doctrine announced in *Transparent-Wrap Machine Corp.* v. *Stokes & Smith Co.*,[14] at least as long as such grant-back provisions were not linked with any other anticompetitive activity,[15] it now appears that the Justice Department contemplates challenging license agreements containing particular types of grant-back clauses.[16] In order to have any certainty as to whether or not such provisions may be lawfully included in license agreements, statutory clarification of the legality of such provisions is needed.

F. Royalties

The law is also unclear as to the extent to which the patent owner and his licensee are free to set a mutually agreeable royalty rate. Particularly, while the Supreme Court in the *Brulotte* case[17] noted that a patent empowers the owner to exact royalties as high as he can negotiate with the leverage of that patent, the recent case of *American Photocopy Equipment Co.* v. *Rovico*[18] held that a patent owner should be denied a preliminary injunction against infringement of his patent because in the court's opinion the patent had been misused as the royalty rate was exorbitant and oppressive. How can an attorney advise his client as to whether or not a royalty rate is exorbitant and oppressive?

Statutory clarification is needed.

III. STATUTORY TREATMENT OF THE ABOVE PROBLEMS

Only Section 263 of the Dirksen bill S. 2597 (90th Congress) and the 91st Congress' version thereof, S. 1569, has treated any of the problems discussed above, with which the public is concerned on a day-to-day basis.

To enact patent reform legislation without a provision such as Section 263 of the Dirksen bill so that the law can develop on a "case by case" basis will simply prolong the uncertainty for an undeterminable period.

Prolongation of the uncertainty will most certainly be a disservice to the Patent System, and ". . . produce confusion in the public mind and a reluctance by patent owners and others to enter into contracts or other arrangements pertaining to patents or related licenses"[19] as was observed by the President's Commission to study the Patent System.

Therefore, it is requested that Section 263 of the Dirksen bill S. 2597 (90th Congress) be incorporated into McClellan bill S. 2756 (91st Congress) and any subsequent patent reform legislation.

FOOTNOTES

[1] Report of the President's Commission on the Patent System, U.S. Government Printing Office (1966), p. 37.

[2] Id at p. 36.

[3] CONGRESSIONAL RECORD, vol. 113, pt. 22, p. 30370.

[4] 305 U.S. 124, 59 S.Ct. 116 (1938).

[5] Address by Richard W. McLaren, PTC Research Institute of George Washington University (June 5, 1969), 161 U.S.P.Q. No. 11, p. II; and address by Roland W. Donnem, Michigan State Bar Convention, Trade Regulation Report (October 7, 1969) pp. A-4 and A-5.

[6] 379 U.S. 29, 85 S.Ct. 176 (1964).

[7] *Zenith Radio Corporation* v. *Hazeltine Research, Inc.*, ——— U.S. ———, 89 S.Ct. 1562 at 1583 (1969).

[8] 339 U.S. 827, 70 S.Ct. 894 (1950).

[9] 396 F. 2d 15 (10th Cir. 1968), *cert. denied* 393 U.S. 951. See *McCullough Tool Co.* v. *Well Surveys, Inc.*, 343 F. 2d 381 (10th Cir. 1965), *cert denied* 383 U.S. 933.

[10] 268 F. 2d 769 (3d Cir. 1959).

[11] Id at 777.

[12] 379 U.S. 29 at 32.

[13] *Laitram Corp.* v. *King Crab, Inc.*, 244 F. Supp. 9 (D.C. Alaska 1965), motion for new trial denied, 245 F. Supp. 119 (1965); *U.S.* v. *United Shoe Machinery Corp.*, 110 F. Supp. 295 (D.C. Mass. 1953); *Peelers Company* v. *Wendt*, 260 F. Supp. 193 (D.C. Wash. 1966); and *Barber Asphalt Corp.* v. *La Fera Grecco Contracting Co.*, 116 F. 2d 211, (3d Cir. 1940).

[14] 329 U.S. 637, 67 S.Ct. 610 (1947).

[15] *U.S.* v. *General Electric*, 80 F. Supp. 989 (D.C. N.Y. 1948), *U.S.* v. *General Electric*, 82 F Supp. 753 (D.C. 1949); *U.S.* v *Alcoa*, 91 F. Supp. 333 (S.D. N.Y. 1950); and *Kobe, Inc.* v. *Dempsey Pump Co.*, 198 F. 2d 416 (10th Cir. 1952).

[16] Address cited note 4 supra.

[17] 379 U.S. 827, 70 S.Ct. 894 (1950).

[18] 359 F. 2d 745 (7th Cir. 1966), *cert denied* 385 U.S. 846.

[19] The Report of note 1 supra at p. 36.

THE PHILADELPHIA PATENT LAW ASSOCIATION,
Philadelphia, Pa., January 28, 1970.

Hon JOHN L. MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: In the belief that you are in full accord with the statement in the recent Presidential Executive Order 11,215 establishing the President's Commission on the Patent System that:

". . . the patent system . . . has contributed materially to the development of this country by furthering increased productivity, economic growth, and an enhanced standard of living and has strengthened the competitiveness of our products in world markets; . . ."

The Board of Governors of the Philadelphia Patent Law Association is writing to you concerning a matter deeply affecting this patent system.

The constitutional mandate granting to authors and inventors, for limited times, "the exclusive right to their respective writings and discoveries" was made with the knowledge that this right would enhance the public good by encouraging inventors to invent. Without the protection afforded by the patent system an invention could be copied and the market stolen by an unscrupulous manufacturer with ready facilities. With the patent system an inventor is encouraged to improve existing products to the public benefit. The limited right is not monopolistic at all. In the words of the late Mr. Justice Roberts:

". . . a patent is not, accurately speaking, a monopoly. . . . An inventor deprives the public of nothing which it enjoyed before his discovery, but gives something of value to the community by adding to the sum of human knowledge . . ."

An inventor can use the patent right in several ways. He may use it to protect himself in the manufacture and sale of the invention or he can license another to do this for him in return for a suitable royalty. Thus the right to grant licenses frequently becomes the real thing of value which the inventor receives. To the extent that his right is unnecessarily limited, the incentive to compete is likewise reduced.

The basic right of a patentee to license his invention has been guaranteed from the earliest times. Nevertheless, the Courts have, over the years, successively limited the scope of his right to grant licenses, some of these decisions finding their basis in the Antitrust laws. But each decision, the good and the bad, has been purchased at the considerable expense of Court litigation. The law has been written by the Courts rather than by the legislature. As you stated in your speech introducing your Patent Bill S. 2756, the Department of Justice is urging a continuation of this technique in the belief that "any necessary development or clarification of the law in this area could be obtained as a part of the Department's antitrust enforcement program."

Further, according to an article which appeared in the Wall Street Journal for Wednesday, January 7, 1970, the Justice Department has formed a new staff unit in its Antitrust Division to concentrate on cases "involving restrictive practices in the licensing of patents and technology." The article continues to point out that "In recent months, the department has filed antitrust suits challenging agreements not to contest the validity of patents; agreements dividing sales or use of territories for patented products, and restrictions on the sale of certain drugs in generic, or bulk, form."

The continuing attempt to write patent law in the Courts can not only result in burdening industry with the cost of defending itself but also the resulting uncertainty will discourage others from participating in what has been for many years their inherent right. Today no one in industry knows what customary licensing procedure will next be subject to attack or what penalties will be invoked against him for doing what has been, for years, common practice. The United States Supreme Court itself has participated in this situation. In a dissenting opinion, the late Mr. Justice Frankfurter protested that the Court was repudiating a legal principle that "was woven into the fabric of our law and has been part of it for now more than seventy years." (Mercold v. Mid-Continent.)

There is thus an urgent need for Congress to express in clear and unmistakable terms the fair bounds and limits within which industry may be free to operate.

This conflict between the patent system and the antitrust laws was recognized by the President's Commission on the Patent System. Their report recognized that "the two systems are fully compatible", but that ". . . uncertainty exists as to the precise nature of the patent right and there is no clear definition of the patent misuse rule." Recommendation 22 of the Report then stated that the licensable nature of patent rights should be clarified in the patent Statute.

In view of the urgent need presented by this situation, a special Committee on Antitrust and Misuse was formed within the Philadelphia Patent Law Association, instructed to study the entire situation and to submit appropriate recommendations to the Board of Governors. Many meetings have been held by this Committee. It has studied the action taken and statements submitted by other Patent Law Associations. It subsequently submitted strong recommendations to the Board of Governors urging the Board to take appropriate action to approve its recommendations and to submit corresponding views to those most concerned with the hope that Congress will, in the revised patent Statute now under consideration, clarify the rights of licensors and licensees in a manner which will, for once and for all, establish their proper metes and bounds and minimize the harassment that will necessarily result from legislation by Court decisions. Accordingly, the Board of Governors, at a meeting held on January 15, 1970 unanimously adopted the following Resolution:

Resolved, that the Board of Governors of the Philadelphia Patent Law Association adopts the findings of its Committee on Antitrust and Misuse which approves in principle the recommendations submitted to the Senate Committee by the American Patent Law Association (APLA) in regard to Recommendation No. 22 of the President's Commission.

A copy of the proposed statutory language which has been submitted by the APLA is enclosed for your convenience. We and our Committee on Antitrust and Misuse enthusiastically endorse the recommendation of the APLA that a provision of this type be included in the revised Patent Act for the reasons outlined in this letter. Because of the importance of this matter, our Committee is continuing to study the specific wording of the APLA proposal. Should we have recommendations to make or any changes in the specific wording to propose we will submit these to you promptly.

Very truly yours,

PHILIP G. COOPER,
President.

Enclosure.

PROPOSED STATUTORY LANGUAGE

With respect to Recommendation No. 22 of the President's Commission, we previously have placed the Association on record with the Senate Committee as favoring the following proposal:

1. Change the heading of Section 261 of S. 2756 to read—Transferable and Licensable Nature of Patent Rights.

2. Amend the first and second sentences of Section 261(b) in S. 2756 to read as follows:

Applications for patent, patents, or any interest therein, shall be assignable in law by an instrument in writing, and in like manner exclusive rights under applications for patent and patents may be conveyed for the whole or any specified part of the United States.

An applicant, patentee, or his legal representative may also at his election, license or otherwise waive any of his rights under Section 154 or Secton 281 of this title in whole or in any part thereof, by exclusive or nonexclusive arrangement with a party of his selection.

3. Add subparagraphs (f) and (g) to section 271 of S. 2756 as follows:

(f) No patent owner shall be guilty of misuse or illegal extension of the patent rights because he has entered into, or will only enter into,

1. An arrangement granting some rights under the patent but excluding specified conduct, if the conduct excluded would be actionable under Section 271 and Section 281 of this title: or,

2. An arrangement granting rights under the patent that excludes or restricts conduct in a manner that is reasonable under the circumstances to secure to the patent owner the full benefit of his invention and patent grant.

(g) No patent owner shall be guilty of misuse or illegal extension of patent rights because he has entered into or will only enter into an arrangement of assignment, license or waiver of some or all of his rights under Section 154 or 281, for a consideration which includes:

(1) A non-exclusive exchange of patent rights;

(2) A royalty, fee or purchase price;

(i) In any amount, however paid or measured, provided that any amount paid after the expiration of a patent is based solely upon activities prior to such expiration:

(ii) Not measured by the subject matter of the patent or by extent of use by the other party of the rights assigned, licensed or waived;

(iii) Not computed in a manner that segregates the charge for any particular patent, or for any particular claim or claims of one or more patents:

(iv) Differing from that provided in some other arrangement.

MEMORANDUM ON THE NEED FOR LEGISLATIVE CLARIFICATION OF THE LAW RELATING TO PATENT LICENSE PROVISIONS

SUMMARY

Encouraging innovation is the principal objective of the patent system. Patents do this, first, by encouraging invention, or the investment in inventive efforts thus, patents provide a lead time for the patent owner against competitors who would copy the invention and enjoy a free ride on the research and development investment. Second, patents facilitate the marketing of inventions. Often the useful dimensions of an invention exceed the interests or capabilities of the patent owner to develop, produce or market it. The patent owner must then be able to use his patent to secure what he lacks in the means to market.

The patent is a form of monopoly, albeit a temporary and specially-created one and therefore is an automatic anathema to some antitrust theorists. Nevertheless, the patent "monopoly" brings a form of innovative competition that no antitrust law can provide. This is, in effect, competition in value, as distinguished from price (although the patented product must still compete in price with its available alternatives).

The patent owner is entitled to keep all others from practicing his invention. Or he can sell the patent or license others to use it. A licensing arrangement must hold prospects of profit for both parties and, accordingly, must be adapted to an existing business situation. However, the patent owner is entitled to attach only those terms to his license that are reasonably related to the scope of his patent grant. Otherwise, his patent can be held unenforceable as a patent misuse; or the patent owner can be held in violation of the antitrust laws, subjecting him to severe penalties—including a prison sentence, heavy fines, and treble damages to those his acts have injured. *The need is therefore apparent for reasonable certainty in the laws relating to patent licensing if patents are to be used effectively in bringing new products and processes into maximum use and fostering innovative competition.*

In several important respects, the applicable law is so unsettled as to hamper legitimate licensing activities. This arises from diversities in holdings of our courts. Equally disturbing for the future is the unrealistic attitude of the Department of Justice, due in part to a lack of appreciation of the practical problems of licensing and operating under licenses. Representatives of the Antitrust Division with increasing frequency are threatening actions against patent owners who engage in licensing practices well within the scope of their patent grant and for a proper purpose but which the Division considers opposed in theory to a concept of antitrust.

Patents, by statute, have the "attributes of personal property." The owner of personal property other than patents enjoy, among the attributes of ownership, the right to dispose of all or part of his property whenever, wherever and to whomever he chooses. And in disposing of it he is not called on to prove that what he is doing is legal or even reasonable. The patent owner, in disposing of his patent property, should enjoy the same presumption of legality and reasonableness concerning his transactions.

There is need for legislative clarification in several specific areas of patent licensing. These include:

1. Field-of-use licensing

A patent owner is entitled to all uses of his invention. Some uses, such as those beyond his ability or interest to develop and market, he may choose to license to others. Such a license is not restrictive but merely conveys less than the total right belonging to the patent owner. However, the Department of Justice insists that such a license is restrictive, and there is increasing danger that our courts, which heretofore have upheld such practices, will fall victim to this pressure. The President's Commission on the Patent System, appointed by President Johnson, concluded that the field-of-use license, like the license for a particular territory (which is specially sanctioned by present statute), should receive statutory approval.

2. The right to license (or not to license)

Strange as it seems, the right of a patent owner to license parties of his choice has been challenged. A White House Task Force on Antitrust Policy has urged that if a patent owner licenses his patent at all he must license all comers who are financially responsible and of good reputation. At least one court decision has spoken similarly. While the use of patents beyond their proper scope is clearly wrong, and the interdiction of antitrust or the defense of patent misuse becomes appropriate, the insistence that the patent owner must license all qualified parties if he licenses anyone is clearly an unwarranted extension of antitrust philosophy. The lack of appreciation for the facts of business life is endangering the important prerogative of the patent owner to select his licensees.

3. The freely negotiated royalty

A federal court has held that a royalty, acceptable to some sixteen other licensees, was excessive and *per se* violation of the antitrust laws. While the Supreme Court has repeatedly held that a patent owner is entitled to whatever royalties the parties negotiate, there is now judicial support for questioning the royalty terms of any license. This intervention by a court to determine *ex post facto* that a royalty does not suit the court's idea of reasonableness and amounts to price fixing is more than unwarranted. Moreover, in

most instances an arrangement that later proves an undue burden on the licensee will be adjusted for the good business reason that it impairs the sale of the product and the generation of royalties for the patent owner.

4. Royalty differential between nonexclusive licensees

A series of court decisions in related cases have held different charges to different licensees to be a *per se* antitrust violation. These decisions may or may not portend a judicial trend against the freedom of the patent owner to charge different royalties to different licensees. This judicial uncertainty is compounded by the report of the aforementioned White House Task Force on Antitrust Policy, on which the Department of Justice has commented with apparent favor. The Task Force would have each license under a patent to be on terms "neither more restrictive nor less favorable" than every other license—even though the licenses be for different products or purposes, and even though the benefits of the license may vary widely among several licensees.

5. The royalty base

The complexities in the practice of some product and process patents sometimes make it difficult or impossible to measure the use of the patent for determining royalties. On such occasions the parties agree on some conveniently determinable parameter as a measure of use. It would seem inappropriate for the courts to interfere with such arrangements, and in fact decisions have been generally reasonable. Nevertheless, there is uncertainty which a clear legislative provision would alleviate.

6. Royalty for the package license

Where a prospective licensee wants to do something that in its totality is covered by a group of patents, some of which may not be used all the time or which may be alternatives to others, the entire group of patents may be licensed. If the patent owner does not coerce his licensee into accepting and paying for unwanted patents, antitrust problems are usually avoided. But in establishing a royalty he may encounter problems. Usually, no breakdown of royalty is made for individual patents because the extent of their use cannot be predicted when the license is negotiated. But when the patents begin expiring the right of the patent owner to continue to receive the full royalty is sometimes questioned. The reduction in value of the remaining patents as each patent expires would in most instances be impossible to determine fairly. If the original agreement contemplating the continuance of royalties until the last significant patent has expired was reached in arms-length bargaining without coercion, it should remain in force as the parties intended.

7. Royalty payment after expiration of patent

A single Supreme Court decision has raised doubts in the minds of some as to the validity of a license calling for payment of royalties after expiration of the patent but for activities carried out while the patent was alive. Installment payment of royalty is usually a concession to the licensee and should not be a source of loss or litigation to the patent owner.

The President's Commission on the Patent System observed the patent owner's plight in the matter of permissible patent license provisions:

However, uncertainty exists as to the precise nature of the patent right and there is no clear definition of the patent misuse rule. This has produced confusion in the public mind and a reluctance by patent owners and others to enter into contracts or other arrangements pertaining to patents or related licenses.

This, indeed, is true.

The Department of Justice is becoming increasingly active in critical surveillance of patent licensing. While the Department favors a case-by-case development of the law (with the Department initiating or participating in litigation to is own end), such development would inevitably be expensive—both for the patent owner and the public. Moreover, the resulting law could well be misdirected, because it would have its origins in aggravated and unrepresentative fact situations.

The interests of patent owners and the public call for legislative clarification of some of the major problems now in such an uncertain state. Especially, these interests need safeguards against case law making *per se* antitrust violations of some of the practices so important to innovation through patents.

MEMORANDUM ON THE NEED FOR LEGISLATIVE CLARIFICATION OF THE LAW RELATING TO PATENT LICENSE PROVISIONS

INTRODUCTION

When the patent system is viewed in terms of its constitutional objective of encouraging useful innovation, patent and antitrust concepts may touch but they shouldn't tangle. However, there is mounting evidence of inconsistency and confusion in the courts and a disturbing trend in the Department of Justice concerning the terms that may be incorporated in patent licenses without invoking the sanctions of antitrust.

The importance of this development lies in the fact that the licensing of patents, and the freedom to adapt the license to the business situation facing the patent owner and his prospective licensee, are often indispensable to the full utilization of the patent for the benefit of both the public and the patent owner.

It is the purpose of this Memorandum on behalf of the American Patent Law Association to outline some of the problems of patent license provisions and to suggest areas in need of legislative clarification.

THE ROLE OF PATENTS IN INNOVATION

There are two distinct but important roles of patents in the innovative process one widely recognized and the other too often ignored. Both are embraced within the constitutional requirement that the patent system "promote the progress of useful arts." [1]

The first is the incentive to invent, or—more commonly—to support inventive efforts. Of course, a few gifted individuals invent as a reflexive response to a problem or challenge. They may have little regard for the economics or marketability of their inventions but simply invent for the satisfaction of exercising their creative talents. For them the patent system may provide little personal incentive to invent (although patents may afford the only means for bringing their inventions into use for the benefit of the public, as will be developed below).

But the ofttimes risky investment in research, development, design, manufacturing and marketing activities in the context of the innovating unit, be it an individual or corporate group, could hardly be justified if the results could always be freely copied by those having no such investments to recover. The innovator of a marketable product needs a *lead time* during which he can deny competitors a free and profitable ride on his investment in the innovation. This is what the patent system gives him in return for disclosing details of the invention in a patent—provided his invention can qualify as sufficiently different from what has been done before to merit a patent.

From this limited lead time of seventeen years, sometimes called the patent "monopoly," the patent owner has an opportunity to recover his expenses, earn a profit and possibly invest in other innovative adventures—so long as the public is satisfied his product is worth buying at the price he charges. It is the *prospect of patent coverage* that justifies much investment in research and development leading to new products, new plants, new employment opportunities and genuine progress in the useful arts.

The second role of patents in innovation concerns the ability to market. At the patent's expiration, anyone can use the invention free of the patent. In the meantime, public disclosure of the invention in the patent often stimulates others to invent improvements or make quite different inventions, building on the ideas in the patent.

While public disclosure of the invention in the patent is therefore a contribution in itself, the full range of benefits contemplated by the patent system are not realized until the patented invention is embodied in a product or service available to the public. The right to exclude others from practicing an invention is hollow, indeed, both from the standpoint of the patent owner and the public, if the patent owner lacks the money, talent, organization or facilities to bring the invention to market. It is therefore essential that if the patent owner decides to market the invention *he be able to use his patent* to secure what he lacks in the means to market.

This is particularly important where the invention is capable of application outside his regular field of interest or competence. In such event he needs to use his patent in a business arrangement that will give incentive to those of his choosing who are expert in other fields and can handle the special problems of development, manufacturing and marketing.

These two elements, *the incentive to invent* (or support inventive efforts) and *the ability to market*, are the heart of a patent's contribution to "innovation." They are sequential but inseparable, and recognition of this duality will be seen as important in resolving patent antitrust conflicts in the area of patent licensing.

THE CONTRIBUTION OF PATENTS TO THE ANTITRUST OBJECTIVE

To the extent the patent owner has the exclusive right to prevent others from making, using and selling the invention claimed in the patent, he does, indeed, enjoy a monopoly—albeit a temporary one. But the temporary monopoly of the patent takes nothing from the public, for the patent *by law* covers only that created for the first time by the inventor.

Because a monopoly of any kind is anathema to the antitrust theorist, the monopoly of the patent has given rise to the erroneous idea that patent and antitrust concepts are endlessly opposed. The patent monopoly is regarded as an intrusion on the principle of free and unfettered competition.

In truth, however, the utilization of the temporary patent monopoly brings an entirely new dimension to the free competition sought by the antitrust laws. This new dimension arises from the necessity for competitors to find their own routes to successful products, a process that in its stepwise implementation brings new and better or cheaper products to the market. Indeed, there is no stronger incentive to invent, or to invest in efforts to invent, than a successful, patented product in the hands of a competitor. This can properly be called *innovative* competition—or competition in *value*, as distinguished from price—a form of competition not secured through application of any of the antitrust laws.

PATENTS, PROFITS AND PROPHETS

If the support of inventive efforts leads to grant of a patent, or if a patent is otherwise acquired, the problem of the patent owner is how to use the patent for profit. The patent may cover a manufactured article, a device or machine, a chemical compound or combination of compounds, a process for making something, or a method for doing something. If practicable, the patent owner usually chooses to make and sell the patented

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Footnotes at end of article.

product himself or use the process in his own plant.

However, if in his business judgment he decides the best opportunity for profit lies in granting licenses to others, he must proceed with the utmost care. First, he must choose as his licensees only those who, by their good reputations or capabilities, will bring credit to his invention. In licensing his patent for practice by others he is parting with a portion of the exclusive privilege his patent gives him, and licensed activities that would demean the invention would inevitably lessen the value of his remaining rights under the patent.

Second, he must fashion the patent license to the business situation he faces. Obviously, the arrangement must hold prospects of profit for both parties. But in taking into account the business interests involved, the patent owner can properly include in the license only those provisions reasonably related to securing for him the legitimate benefits of the patent grant—which confers the right to exclude others from making, using or selling the patented invention. If the license goes farther, the validity of the arrangement can be be called into question because the patent has been employed beyond its lawful scope. The patent owner has, in other words, "misused" his patent.[2]

Patent misuse is a defense against a charge of infringement and may relieve the infringer of liability. Although the patent may be valid, the patent owner loses his right to enforce it so long as the misuse continues and the consequences have not been corrected. If the misuse can be shown to have adversely affected competition, or to have been part of a plan to restrain or monopolize trade, the acts of misuse may rise to a violation of the antitrust laws. The phrase "antitrust laws" includes Sections 1 and 2 of the Sherman Act and Sections 3 and 7 of the Clayton Act, with the Federal Trade Commission Act sometimes included.[3]

While patent misuse is actionable only as a defense to a suit for infringement or a related suit for breach of a license, activities believed to constitute antitrust violations can be enjoined by a court on the basis of action by the Department of Justice, acting in the name of the United States Government, or on the basis of action by injured private parties. The penalties for antitrust violations can range from heavy fines to prison sentences (where a criminal violation is made out), and private parties who have been injured by the illegal acts can sue for treble damages.

Increasingly, the patent owner who licenses his patent needs the gift of prophecy. In tailoring his license to the business situation existing *at the time of licensing*, he and his prospective licensee must foresee not only how the courts and Department of Justice might interpret the license provisions, but also how changing business circumstances might affect such interpretations.

As will be demonstrated below, the state of the decisional law is unsettled in the extreme. But of equal importance is the threatening posture of the Department of Justice. The recently-announced establishment of a Patent Unit within the Antitrust Division of the Department of Justice underscores concern over some of the policies that seem to be emerging in the patent-antitrust area.[4]

Speaking in Washington on June 5, 1969, Assistant Attorney General McLaren, in charge of the Antitrust Division of the Department of Justice, outlined the guiding philosophy of antitrust enforcement in this area as follows: [5]

In considering whether to attack a particular licensing provision or practice, we ask ourselves two fundamental questions. First, is the particular provision justifiable as *necessary* to the patentee's exploitation of his lawful monopoly? Second, are less restrictive alternatives *available* to the patentee? Where the answer to the first question is no, and to the second yes, *we will consider bringing a case challenging the restriction involved.* (Emphasis added.)

The Department of Justice is therefore not only concerned with whether a given practice in a given situation in fact constitutes an antitrust violation, but whether the particular licensing arrangement was "necessary," or whether there might have been other ways of putting the patent to use that would have imposed less "restriction" on the licensee.

More will be said below about use of the word "restriction" in the patent license context. It is important to understand, however, that the Department of Justice is using the term to describe that portion of the patent grant which the patent owner has chosen *not* to license.

If the patent owner can deny access of all others to his invention, it would seem appropriate that he be entitled to control the degree to which he relinquishes his exclusive rights, *so long as the license provisions are within or reasonably ancillary to the patent grant.* No gift of prophecy could possibly anticipate the outcome of a test of a licensing arrangement, made in a given business context at a specific point in time, against the subjective criteria of "necessity" and "availability of alternatives" applied at some future time. One is led to conclude that only the failure of the arrangement would prove its legality.

THE DISPOSITION OF PATENTS AS PERSONAL PROPERTY

It should not be taken as the position of the American Patent Law Association that all the patent license provisions discussed herein should always be permitted to stand in all circumstances. Even the most innocuous terms can be applied in a predatory manner to achieve, through conspiracy or individual action, results that are anticompetitive, clearly beyond the scope of the patent grant and inimical to progress in the useful arts. But to adopt the test proposed by the Department of Justice, or to permit the declaration of *per se* illegality of license provisions which, in their proper application, can bring innovative advances more rapidly into public use and actually create competition in the process, is to defeat the principal objectives of both the patent and antitrust laws.

Considerations of the public interest involved in patent licensing permeates this entire discussion. Another important factor to examine, however, is the nature of the rights of the patent owner. The present statute declares that "patents shall have the attributes of personal property." [10] As will be shown, much of the agitation from antitrust theorists today would lead to a clear derogation of this concept.

There is no dispute that a principal attribute of personal property is the owner's right to the benefits of ownership, use and disposition. Of course, the law will impose limitations on the right or apply sanctions against the owner where the public is injured by the exercise of the right. But acts of ownership, use and disposition which are themselves legal will not be interdicted merely because they *may* lead to illegal or undesirable consequences. *The owner of private property enjoys, in effect, a presumption that his acts in exercising his rights of ownership, use and disposition are legal.* He does not have to demonstrate their legality or test them by a rule of reason. The burden of establishing that his conduct was illegal or against the public interest is on the party asserting it. Indeed, our society could function in no other way.

Patents are a species of personal property. An important attribute of patent property should therefore be the patent owner's right to the benefits of ownership, use and disposition. Of special concern here is the right of disposition. Certainly, a normal incident of patent ownership should be the right of the patent owner (1) to retain the entire patent property for his own use, or (2) to dispose of all or part of it whenever, wherever and to whomever he chooses. It should not be presumed at the outset that, in exercising his patent right of disposition, the patent owner is going to misuse it. Or, simply because he *might* misuse it, he should not be automatically foreclosed from disposing of his patent on terms that are in themselves perfectly legal. Even one charged with a crime enjoys a legal presumption of innocence; the act of disposing of all or part of a patent right should carry no less favorable a presumption.

Nevertheless, the Department of Justice and some judicial decisions would deny the owner of patent property the same benefits and presumptions accorded owners of other forms of personal property. To implement its bias, the Department avails itself of a ready access to the courts (through bringing suits or filing amicus briefs) in cases it selects as most potentially destructive on their facts to the licensing practices it wishes to outlaw. In addition, the Department is utilizing other forms of attack, such as direct pressure, public announcements by Department representatives on the banquet circuit, threats of suits, and consent decrees, to force its views on patent owners who do not wish to serve as test cases for new antitrust theories.

What is the practical effect of this unfortunate situation on the patent owner trying to put his patent to work?

THE PATENT OWNER'S DILEMMA

A patent is not like a commodity that can be priced and placed on the shelf for sale, like a loaf of bread. In "merchandising" or licensing a patent, many factors must be considered, some arising from the interests of the patent owner and some from interests of the potential licensee. By a process of negotiation, each party represents its interests and strengths in arriving at an arrangement satisfactory to both which is within legal bounds today and, hopefully, will remain so for the life of the agreement.

Among the factors considered, many of which give rise to some form of expression in the license, are the following:

Cost of the development to the patent owner and licensee.

Anticipated volume of sales.

Patent owner's product line and market position.

Need for exclusivity.

Territory.

Availability of substitutes not under patent.

Number of patents involved.

Scope of invention v. scope of patent coverage.

Ease of circumventing patent.

Need for licenses under patents of others.

Relative value of invention in different fields of use.

Capability of licensee to serve all fields of use.

Need for lead time.

Need for further technical development.

Need for market development.

Need for investment in production facilities.

Financial responsibility of licensee.

Expected savings from use of invention.

Need for technical assistance from patent owner.

Need for use of trade secrets.

Availability to licensee of later improvements by patent owner.

Fair royalty.

Base for royalty determination.

Protection against later licenses at lower royalties.

Footnotes at end of article.

Exchange of licenses in lieu of royalty.

Non-exclusive rights to patent owner on improvements by licensee.

Right to grant sublicenses.

Detectability of infringement.

Willingness of patent owner to enforce patent against unlicensed infringers.

Willingness of patent owner to defend licensee against infringement suits brought by others.

Conditions for terminating the license.

Before examining individually certain specific licensing problems, it will serve the better understanding of the impact of antitrust to consider how easily, in the exercise of sound business judgment, a patent owner can fall victim to a whole conglomerate of antitrust problems in licensing his patent. Here is the plight, ficticious but representative, of the A Company:

Company A is small manufacturer of electrical switches based in Los Angeles. Its sales are confined to switches for use in buildings in the Los Angeles area. The company owns a patent on a switch which was developed at a cost of $70,000 and three years' effort. It believes the switch can be adapted for other uses but considers expansion undesirable because of lack of capital, development personnel and manufacturing capacity, as well as the increased costs of marketing in remote areas. It does, however, want to retain the exclusive right to the switch in the building field in the Los Angeles area.

In order to reach other markets, Company A decides to license the patent at a royalty of 5%, giving each licensee the exclusive territory he demands in which to sell and service switches, and limiting each to the sale of switches for use in buildings.

The manufacturer in the Detroit area would like to develop the patented switch concept for use in automobiles. However, in order to recover the estimated $100,000 required for the development, he asks for an exclusive license in the automotive field. A royalty of 2% is established as reasonable in view of the development costs and the low profit margin from large volume sales to automobile manufacturers.

Back in Los Angeles, a competitor of Company A, who manufacturers switches for use in aircraft as well as buildings, asks for a non-exclusive license for selling to the building trade and an exclusive license for the aircraft industry. The license for the building trade is refused, because the company wants to retain the exclusive right in its home territory. But the exclusive license for the aircraft field is granted at a 10% royalty rate. This figure contemplates the high profit margin but low sales volume of switches for the aircraft industry.

At this point the company consults its attorney to prepare the various agreements. The attorney is convinced that the business judgment is sound, all terms are reasonable, and the arrangements will move the invention to markets throughout the United States at the earliest possible time, with responsible financial backing and business skill in each of the markets served. But the attorney nevertheless advises that (1) it has jeopardized the enforceability of the patent in all markets, including its own market in Los Angeles, by refusing to license its Los Angeles competitor in the building field after licensing others elsewhere in the same field,[4] (2) it has invited an antitrust suit, because the Justice Department has declared it is looking for a situation where a patent license divides fields of use among companies that would otherwise compete,[5] (3) it has opened itself to private antitrust and treble damage claims from its competitors as well as those of its licensees,[7] and (4) it has provided ingredients of a defense of patent misuse by charging different royalty rates under the same patent.[8,9]

Footnotes at end of article.

This example illustrates a gamut of licensing problems facing today's patent owners. Company A is small and incapable of extending its market outside its home area. But the magnitude of the invention's contribution is no less because of the patent owner's size. Therefore, if Company A is denied the right to license individually the various fields of use of the invention, and on terms that will encourage the licensee to proceed with manufacturing and marketing of a quality product, a significant portion of the patent grant will not be used, and the public will not benefit from the invention in the unlicensed fields not served by Company A.

Moreover, the right to charge different royalty rates for different uses of the invention is important because of the different relative values and sales volumes of the products involved. And if, having licensed the manufacture and sale of building switches in areas not served by Company A, it must then license its backyard competitor, a more prudent course would be to refuse to license anyone in the building field—a decision certainly not in the interests of Company A or the users of switches outside Los Angeles.

THE NEED FOR LEGISLATIVE CLARIFICATION

It is appropriate now to examine certain of the specific license provisions that under actual or threatened attack. These are:

Field-of-use licenses.

The right to license (or not to license).

The freely negotiated royalty.

Royalty differential between non-exclusive licensees.

The royalty base.

Royalty for the package license.

Royalty payment after expiration of patent.

In order to appreciate the justifications that demand at least the application of a test of reasonableness before these licensing provisions are categorically rejected as patent misuses or *per se* antitrust violations, brief fact situations will introduce each provision.

1. Field-of-use license

Company B is a large manufacturer of hardgoods of many types but has limited facilities for chemical research and development, except with specific reference to adjunctive supplies for its hardgoods. The company achieves a breakthrough in a chemical process which leads to the development of a new line of materials for use with its hardgoods. It also recognizes vast possibilities for the invention in other fields foreign to its corporate interests and capabilities.

The problem facing Company B is how to make the broadest use of the process without itself departing significantly from its primary business. It recognizes that several areas of application are sufficiently distinct in themselves (paper, pharmaceuticals, novelties, cosmetics) that no single company could exploit the technology to its fullest. It therefore chooses to grant exclusive licenses in a number of fields of use. Several licensees invest considerable money in adapting the basic technology to their particular fields and bring the public new products that differ significantly from the old ones.

In an atmosphere that would discourage or hold illegal the field-of-use license, this program of patent utilization simply would not be possible.

Among the ways a patent owner can divide his patent-given rights, two are most important: by geographical territory and field of use. Although in disfavor with the Department of Justice, the territorial division is specifically sanctioned by statute and enables the patent owner to license his patent in the whole or any part of the United States.[10] It is common to refer to this form of division of the patent right as a territorial "restriction." Since semantics are sometimes important, it should be noted that the territorial division is not a restriction at all but only the grant of rights under the patent for a portion of its territorial scope. The word "restriction" implies an agreement with respect to the rest of the territorial scope, and *no such agreement can properly (or even logically) be implied from the territorial license.*

The license for use or for sale or resale in a specified field of use rests on precisely the same principle as the territorial license. It involves the grant of less than the patent owner's total right to exclude others from any and all uses of his patented invention. As will be noted further below, semantics have become important here.

There is no assurance that an invention will be neatly proportioned in its applicable scope to the technical or marketing capabilities or interests of the patent owner, whether the owner be an individual, a small company or a large company. Company B illustrates a situation where exclusive field-of-use licenses can be the single, most effective way of exploiting an invention to the fullest for the benefit of the public as well as the patent owner. In fact, the situation is a classic example of the operation of the patent incentive to encourage investment in innovation, for here the parties making the investment (the licensees) are assured of basic patent protection before they start. They can therefore commit funds more generously and undertake a more comprehensive program of development than might otherwise be the case.

Those who oppose licenses to specific fields of use within the patent grant ignore the fact that such licenses, when translated into marketed products, often provide the public with alternatives that would not otherwise be available—at least until the patent has expired. If a patent owner distributes field-of-use licenses to various producers of different kinds of products, each licensee, in adapting the invention to his particular product line, introduces a new use of the original invention. On the other hand, if the patent owner limits utilization of the patent only to his line of merchandise, the public may not have the opportunity to enjoy the maximum potential of the patented invention. While the patent owner must retain the option to license or not to license, if he chooses to license he should not be absolutely foreclosed from licensing less than his full patent right.

The same principle works in the area of copyrights. A novel is usually published first in hard-cover book form. But prior to publication as a book, it may be serialized in a magazine. The magazine publisher receives an exclusive right only for that limited purpose. Thereafter, the book may be licensed separately for adaptation as a play for the living stage, or for motion pictures, television or other limited uses, including publication of a paperback edition. These licenses of less than the copyright owner's total right, like the field-of-use license, afford the public a variety of options and opportunities to enjoy the work in different formats.

It was pointed out earlier that the benefit to the patent owner from a licensing arrangement must be within or ancillary to the scope of the patent grant. Accordingly, license terms *solely* for the benefit of the licensee, such as giving him the right to restrict the patent owner in this practice of the invention[11] or to veto additional licensees,[12] may understandably encounter difficulties as outside the grant. But, obviously, a license is a two-party negotiated agreement and must offer prospective advantages for the licensee. Legitimate concerns of a licensee which the patent owner may properly consider in negotiating terms of the license include such as the following, all of which can best be served by a field-of-use license:[13]

A prospective licensee may want to commit himself under the license only for a particular product or technological area in which he has a problem, but prefer to avoid

commitments in speculative areas where he is unable to make a satisfactory evaluation or has no interest.

The licensee may be able to obtain a lower royalty rate in a field where the patent owner is not using the patent, because in such fields the licensee would not be competing with the patent owner.

A licensee may prefer a sliding scale of royalty payments to ease the expense of his early period of marketing or to reduce the royalty burden as his volume increases. Where the licensee is practicing under more than one but not all the fields of the patent's use, the field-of-use license provides the necessary flexibility in the arrangement.

The licensee may be able to obtain a lower total royalty or lump-sum requirement for a paid-up license if the license is limited as to field.

If the license calls for periodic payment of a minimum royalty to keep the license in force, the licensee may prefer separate licenses for each field so he can cancel individual licenses where he is unable to meet the minimum without disturbing the licenses in his more successful fields.

The licensee may prefer separate field licenses so he may later assign the licenses with the business of each field, whereas a single license would be indivisible.

It would seem undeniably within the scope of the patent grant for a patent owner who could rightfully exclude *all* others from practicing his invention for *any* purpose whatsoever to part with a portion of that exclusivity corresponding to a given field of use. It should be readily apparent that *the field-of-use provision, like the permissible territorial limitation, is really not restrictive.* While grant of a license for a particular field could be coupled with a restriction, the typical field license standing alone is nothing more than permission to make, use or sell in a defined segment of technology. It neither expressly nor impliedly authorizes or denies any right of the licensee with respect to any *other* technological area within the patent's scope. The licensee can operate in other fields of the invention on precisely the same basis and subject to the same consequences for infringement as anyone else, without regard for whether or not he is a licensee under some other field covered by the patent.

Here, semantics have become important. The Department of Justice sees no difference between a license containing a positive prohibition against sales in a particular field and a patent license limited to a particular field; it would condemn both as illegal divisions of markets.[14] It regards the fact that in most instances the licensee in fact does not stray into the unlicensed area as evidence of a tacit agreement to divide the market. Here the Department of Justice is reading the facts to prove what it wants to prove, in total disregard of business reality: the licensee usually stays within the licensed field because that is where his interests lie or because he simply doesn't wish to be sued for infringement. Indeed, the patent owner doesn't need his licensee's *agreement* not to infringe. The patent itself is sufficient.

Implicit in the position of the Department of Justice is the necessary presumption that the licensee, absent his license to the limited field, would promptly infringe outside that field. By renting a farmer's oxen, the Department is saying, one by implication agrees not to covet the farmer's wife! Maybe so. But by licensing a field of use, *the licensee makes no promises with respect to other fields within the patent's scope.*

There is a paradox in the Department's position. While it urges that field-of-use patent licenses are just as illegal as efforts at market division where no patents are involved, it would sanction such licenses where the patent owner was *reserving to himself* a portion of the total field covered by the patent.[5] It would seem that if the licensee is *impliedly* agreeing to stay out part of the patent's field in one case, he is doing so in the other. So if business justification exists in one case, the justifying facts should at least be considered in the other.

Moreover, an agreement to divide markets between competitors constitutes a *per se* violation of Section 1 of the Sherman Act.[15] If field-of-use licenses are equated to division of market agreements then they, too, must be *per se* antitrust violations. On what basis, then, can the Department of Justice find some field-of-use licenses justifiable and others not?

Before this broader attack on field-of-use licensing, the primary objection of the Department of Justice in this area seemed to be the field-of-use license in which the field was divided among licensees who would otherwise compete.[5] Such an objection implies the mechanical application of valid antitrust principles but without considering the rationale and justification for the practice in the patent context. A field-of-use licensing program can be well within the scope of the patent grant and should yield to antitrust only if coupled with anticompetitive acts that remove it beyond that scope and into the province of antitrust.

So, too, is a licensing program limiting resale of patented products purchased from the licensor to specified fields or to specified classes of customers. The argument has been made that such practices are analogous to controlling resale *prices* of patented products. On the theory that the first sale of a patented product removes it from the scope of the patent grant, the control of resale prices is considered a misuse of the patent.[16]

The critical distinction, however, is that *the patent extends to all uses of the patented product,* and hence the analogy to price control is inapposite. Indeed, the patent owner's control over use of his patented product, to the extent he chooses to exercise it, is part of the essence of his right. And no valid reason appears why this right should not follow the product in its first sale by his licensee, assuming notice to the purchaser. The patent right has not yet been exhausted.

The Department of Justice is clearly committed to the destructive extension of antitrust principles in this aspect of patent licensing. On the other hand, President Johnson's White House Task Force on Antitrust Policy, in a report released and commented on favorably by Assistant Attorney General McLaren,[5] recommended that patent owners be denied the right to grant exclusive licenses *except as to specific fields of use.*[9] The patent owner would be required to apply to the Federal Trade Commission for certification that such a license was necessary to the commercial utilization of the invention.

The courts have been more solicitous. In 1938 the Supreme Court expressly sanctioned the field-of-use concept in the *General Talking Pictures* case.[17] Since then, license to *use* in a specified field or to *sell* to customers for use only in specified fields has been widely upheld.[18] Adverse decisions have, of course, resulted where the field-of-use provision was coupled with means which in total import violated antitrust principles.[18 19]

The example of Company B shows the type of problem facing the corporate patent owner. But the situation of the private inventor, research company or university can readily be envisioned as even more difficult, for they must often rely exclusively on licensing to bring their inventions into public use. They must literally sell out to a large company capable of exploiting all the major fields of use of the invention, or in shaping a licensing program run the considerable risk of exposing their patents to the vagaries of court decisions or the pressures of the Department of Justice.

The President's Commission on the Patent System, appointed by President Johnson, singled out such licenses as a particular object of concern. Recommendation XXII of the Commission states:[20]

The licensable nature of the rights granted by a patent should be clarified by specifically stating in the patent statute that: (1) applications for patents, patents, or any interest therein may be licensed *in the whole or in any specified part, of the field of use* to which the subject matter of the claims of the patent are directly applicable . . . (Emphasis added.)

This Recommendation has not been included in patent bills submitted by the Administration or by Senator McClellan, apparently because of opposition from the Justice Department.[21]

The patent statute now permits the licensing of a patent or patent application in "the whole or any specified part of the United States." It is submitted that the statute should provide also for the licensing of the patent or patent application for the whole or any specified *use* to which the invention can be applied. It seems clear, as the President's Commission recognized, that the detriment to the public from categorically forbidding either the territorially-limited or field-of-use far outweighs any risks in sanctioning these established practices.

2. The right to license (or not to license)

Company C owns a patent and manufactures and sells products covered by its patent. The company is of modest size and through its relatively small sales organization is unable to reach all the geographical areas in which its product would find a market. From among its dozen competitors it selects four whose marketing ability and reach will supplement its own and give adequate coverage of the neglected areas. These companies are anxious to add the product to their lines because they see opportunities, through sales and advertising efforts, for profitable expansion. Similarly, Company C, by licensing these four companies, seek a return by way of royalties from sales it could not make itself. Although competitors not favored with a license have requested one, Company C has declined because further licensing would so dilute the market as to make it unprofitable for any of the licensees as well as for Company C. The Department of Justice hears from a rejected competitor and presses Company C to license it. The company complies but wishes now it had refused to license anyone.

It would seem unnecessary at this stage of our nation's commercial development to raise the question of the patent owner's right to license or not to license. However, the Department of Justice has in fact exerted pressure on patent owners to grant additional licenses. Moreover, a recommendation of the White House Task Force on Antitrust Policy would require a patent owner granting one license under his patent to grant *all* financialy qualified and reputable applicants a license under terms "neither more restrictive nor less favorable" than the first license.[9]

The Task Force engages in an inconsistent dichotomy. It acknowledges that a patent confers on the patentee "the right to exclude others from the field covered by the patent" and declares allegiance to the antitrust "goal" of preventing use of a patent beyond its scope. But then it concludes:[22]

That goal will be served by denying the patentee the right to confine use of the patent to a preferred group and requiring that *if the patent is licensed it shall be open to competition in its application.* (Emphasis added.)

If the patent statute gives the right to exclude, it is clearly within the scope of the grant to deny licenses altogether or, equally, to deny additional licenses after the first. But the Task Force would automatically cancel the remaining right of the patent owner not to license solely for the reason that he did

Footnotes at end of article.

license once before. *The Task Force at once acknowledges the proper limitation of antitrust sanctions to matters beyond the patent's grant and the determination to penetrate the grant in the name of antitrust.*

It is revealing that one dissenting member from the Task Force's Report was of the opinion that they had "given too little attention to the patent field" to embark on such recommendations.[23] These, indeed, appear to be accurate observations.[24]

Further evidence of the uncertainty facing the licensing patent owner is a recent court decision. The patent owner had already licensed his patent and put his invention into public use, but the court had this to say in *dictum* about his refusal to grant the defendant a license: [6]

An owner of a patent cannot assert his rights under the law and Constitution if such owner refuses to make use of a patent, or to license a patent so that it may be of use to the public, *or refuses to license an applicant when it has already granted a license to the applicant's competitor.* (Emphasis added.)

It is of interest to compare the language with that of a decision of the *same court* (different judge) rendered four months earlier: [25]

Plaintiff has no duty to grant a license to defendant under the patent in suit, merely because defendant has requested such a license. *A patent owner has the right to grant a license to some, as he chooses, without granting a license to others.* (Emphasis added.)

The selection of licensees is an important undertaking. As indicated earlier, activities reflecting discredit on the invention, such as a poorly conceived sales approach or inadequate servicing of the product after sale, can in fact harm the rights remaining with the patent owner. The Task Force would meet the problem by requiring compulsory licensing only of parties who are financially responsible and of good reputation. Obviously, this is not enough. It must remain the right of the patent owner to select his partners by criteria in addition to solvency and reputation.

When the patent owner negotiates a license, he is committing himself for the life of the license, which typically is for the life of the patent. With the shifting and unpredictable positions of the courts and the continuing threats from the Department of Justice, it is becoming increasingly difficult to plot a reasonable and yet "legal" course in licensing (or not licensing) patents. Legislative intervention to clarify the right to license or not to license is surely in order.

3. The freely negotiated royalty

Patent owner D licensed sixteen companies who were eager to practice the technology of the patent. Royalty and other terms were essentially the same for each licensee, following hard negotiations for the first license. One company declined to accept a license because it regarded the royalty as too high. Several years later it began producing and selling the patented product, and D promptly sued for infringement. The infringer's defense was that D should not be permitted to enforce his patent because the royalty it charged licensees was so exorbitant and oppressive as to violate the antitrust laws. The court agreed, and an extensive and successful licensing program was placed in jeopardy.

That a court would intervene in the business judgments of parties who freely negotiated a given royalty in a licensing arrangement would seem to stretch the imagination. But the above situation is taken from real life. The Court of Appeals for the Seventh Circuit did in fact hold in 1966 that a royalty found to be "exorbitant and oppressive" could be a *per se* violation of the antitrust laws on the theory that prices could effectively be fixed by requiring such a royalty.[26] On remand for determination of whether the royalty here was in fact "exorbitant and Oppressive," the District Court concluded it was not.[27] But the proposition stands as precedent, at least in the Seventh Circuit.

Prior to the foregoing decisions the Supreme Court had spoken unequivocally on the right of the patent owner to negotiate any royalty acceptable to a licensee. In 1926 the Court said: [28]

Conveying less than title to the patent or part of it, the patentee may grant a license to make, use and vend articles under the specifications of his patent for any royalty . . .

Again, in 1964 the Supreme Court reaffirmed this position: [29]

A patent empowers the owner to exact royalties as high as he can negotiate with the leverage of the patent monopoly.

A thoroughly reasoned decision in the Ninth Circuit in 1957 reached the same conclusion, stoutly defending the right of a patent owner to set his royalty (while holding against him for patent misuse on other grounds): [30]

To say that the mere amount of money due and payable for the grant of a license is subject to judicial review would render each and every agreement made subject to court approval.

Where royalty is excessive the problem is usually self-adjusting. It means simply that the parties did not comprehend the nature of the market or underestimated the competition. Once the agreement is signed, both parties want the product sold. If excessive royalty forces the selling price to uncompetitive levels, it would be a rare and shortsighted patent owner who would not be willing to reduce the royalty in exchange for larger sales volume and, ultimately, greater royalty income.

A royalty freely agreed to by the parties in what they initially conceive to be their mutual interests should be left to the parties for further negotiation if their mutual interests are no longer being served. The threat of judicial reformation of royalty provisions or, worse, of judicial determination that a royalty established by mutual agreement is *ex post facto* an antitrust violation should be laid to rest by statute.

4. Royalty differential between nonexclusive licensees

Company E produces a patented chemical and sells in bulk to industrial users for reprocessing into other products and in finished form to individual customers for their use. Royalty is set in each market to account for the high volume purchases of the industrial user and low volume purchases of the individual customers, both in keeping with competition in each field.

As in the above situation and the earlier examples of Company A and Company B, business realities often demand different royalty rates among licensees under the same patent.

Despite many court decisions clearly holding the patent owner entitled to any royalty or financial arrangement he can negotiate (on the theory that he does not have to license anyone), where two or more licensees paying different royalties under the same patent enter the picture the patent owner's position is less certain. A judicial trend may or may not be indicated in the most recent decisions close to the point, but varying leasing rates for the same patented machines have been held to violate Section 2 of the Sherman Act, Section 5 of the Federal Trade Commission Act, and to be a patent misuse.[8] In those cases different rentals (royalties) were held to be anticompetitive in effect, even though allegedly based on the proportion of labor saved by use of the patented machines.

Moreover, a principal recommendation of President Johnson's White House Task Force on Antitrust Policy would require all subsequent licenses to be on terms "neither more restrictive nor less favorable" than the first license.[9] Mr. McLaren has alluded to this recommendation in public addresses but says he is "not at this time" taking a position of approval or disapproval.[5] A more recent statement by a Department of Justice representative, however, approves different royalty rates for different uses if the patent owner freely licenses all uses.[14]

Despite the compelling business justifications for such arrangements, patent owners are understandably concerned over the uncertainty of differential royalties. This, too, needs legislative clarification.

5. The royalty base

Oil well drilling Company F licenses a patent on a method for treating the formation to increase oil production. The method involves use of chemicals already employed in the drilling process for other purposes. It is not feasible for the company to install special equipment to monitor use of the old chemicals for the new purpose. The parties agree that royalty will be determined on the basis of average improvement in oil production each month over a predetermined level.

Ideally, royalty under a patent is based on the number of patented products produced or sold. But frequently the patent covers a process or a part of a machine or composition instead of the final product. In such event the royalty to which the patent owner is entitled may be based on some unpatented, measurable parameter.

In complex situations, however, such as that facing the Company F, a less responsive or even non-responsive basis is appropriate. For example, in the manufacture of television and radio sets involving many patents, royalty based on total sales has been upheld.[31] The rationale advanced by the Supreme Court is the convenience of the parties and the absence of coercion by the patent owner. Other decisions where royalty is paid regardless of whether all of a large number of patents are used rest on the premise that the licensee is paying for the privilege to use them.[32, 33]

While decisions raising the issue are usually reasonable on the facts, litigation on the point has in every case put the party defending the practice to great pains and expenses. A simple legislative affirmance of the right to base royalty, fee or purchase price for a patented invention on any mutually agreeable parameter, absent coercion by the patent owner, would alleviate one troublesome aspect of patent litigation.

6. Royalty for the package license

Municipality G. operates a sewage treatment plant. Different conditions of temperature, solids content and other properties of the sewage require different treatments to achieve separation of the solids. The municipality takes a license under a group of patents which together offer advantages in treating the municipality's sewage under most of the conditions encountered. Some conditions require practice of one combination of patents, other conditions require another combination. Since all the patents relate to a single ultimate purpose, namely, the treatment of sewage, and since it was not possible to separate the patents as to importance, the license agreement calls for payment of royalties until the last-to-expire of the licensed patents.

There are two central aspects to the licensing of a group or "package" of patents of special interest here. The first is the legality of the package license; the second is the validity of an agreement that states a single royalty for use of any one or more of the licensed patents, such royalty to continue so long as any of the licensed patents are alive.

Footnotes at end of article.

The owner of a valuable patent is theoretically in a position to coerce a potential licensee into accepting a license under other patents of lesser or no value. It has been held that a party who *seeks* or *voluntarily* accepts a package license does not thereby impose antitrust or patent misuse liability on the patent owner.[31, 32] But where the *patent owner* insists that the license include more patents than the licensee wants, and the patents cover more than a single product, the courts have held the package to constitute an illegal tying arrangement.[34] Where a single product is involved, a mandatory package may be permissible,[35] although ultimately this question will depend on whether tying arrangements are held to be *per se* violations of the antirust laws or subject to a rule of reason.[36] Fairly clear and objective criteria have thus been spelled out for determining the legality of a package license.

But the second aspect of package licensing is more troublesome. Given the judicial approval for *voluntary* package licensing and the business realities leading to the practice, it would follow that a royalty established during negotiations contemplates the value of the *total package* and carries no implication of the value of the individual patents. In fact, particularly in a situation like that of Municipality G exemplified above, it is manifestly impossible to assign such values. Moreover, in many cases, the patents cover alternate ways of doing the same thing, or features that are mutually exclusive and cannot be used together in a single product.

The problem of royalties does not become acute until some of the patents in the package begin to expire. At that time, assuming the licensee is still practicing under one or more of the patents in the original package, should the royalty be reduced as each patent expires? If so, by how much? If not, is the licensor guilty of extending the monopoly of the expired patents?

The division of the inventions between the various licensed patents, where all relate to the same product or product line or process, is often for the administrative convenience of the Patent Office. And the initial royalty and license are based on the totality of the subject matter to which the licensee desired access. It would therefore seem reasonable in such instances to permit royalty payments to continue so long as any patent in the original package that is being used remains unexpired.

The courts are in conflict. In the Tenth Circuit the practice of permitting royalties to continue has been approved,[37] as it was earlier by the Supreme Court.[38] But in the Third and Sixth Circuits the same practice has been held a patent misuse.[34, 38]

The pragmatic effect of the diversity of opinions in the courts leaves the patent owner defenseless against the prospective licensee who negotiates a royalty for a group of patents when he really wants access to only one. After negotiating for the package, he then asks for a license under a single patent and insists on a *pro rata* reduction in royalty under pain of a charge of misuse or illegal tying.

If the parties are unable or disinclined to agree to a royalty breakdown at the inception of the license, absent a package based on coercion, and if at least one significant patent is still alive and being practiced, the full royalty should continue as agreed upon. Needless and expensive litigation could be avoided by statutory acknowledgement of this practical resolution of the problem.

7. Royalty payment after expiration of patent

Patent owner H licenses a small, capable company under an important patent. It was anticipated at the negotiations that fairly substantial sums would have to be invested by the licensee to develop the product for market. Accordingly, no initial payment was required by H, but royalties were set at a compensating level. The product was duly developed and marketed, with success. However, unforeseen events caused a financial crisis in the company, and it was unable to maintain its royalty commitments. H agreed to accept payment of *back* royalties over a period of years, which extended beyond expiration of the patent. All royalties were based solely on activities under the patent before it expired.

A 1964 Supreme Court decision in *Brulotte v. Thys Co.* held that a license requiring payment of royalties after expiration of the last-to-expire of a group of licensed patents was an attempt at projecting the patent monopoly and hence a misuse.[39] Uneasiness with the arrangement exemplified above stems from the allegation in Brulotte that payments were simply being spread over an extended period. The Court, however, found "intrinsic evidence" that post-expiration payments were for post-expiration activities. There can be little dispute that the court reached the proper conclusion on its interpretation of the facts.

A patent owner should be free to negotiate the best royalty terms he can get, so long as the royalties are tied to activities taking place *during the life of the patent.* If the licensee under the patent is unable to carry the royalty burden, payments based on use of the patent during its life should be permitted to extend over whatever period the parties agree is tolerable, even though the payments continue after the patent expires.

While the Supreme Court did not expressly rule out installment payment of royalty, the Brulotte case has been interpreted by some to mean that any payment of royalties beyond the patent's expiration would be a misuse. Whether through inadvertence or by design, the Court has left doubt in the minds of many as to the legality of post-expiration installment payments. This question could be settled by legislative approval of post-expiration payment of royalties accrued during the life of the licensed patents.

RESOLUTION OF THE PATENT-ANTITRUST "CONFLICT"

Reference was earlier made to the dual nature of the innovation the patent system is intended to provide. The elements of innovation were seen to be (1) the incentive to invent (or invest in invention), and (2) the ability to market. This duality rests on the premise that a patent has done less than its job if it is not put to work—either by the patent owner or his licensee.

Too often the apparent conflict between the patent and antitrust concepts is resolved by examining whether striking down the patent owner's licensing arrangements would impair the operation of the incentive to *invent.* Professor Donald F. Turner, former Assistant Attorney General, has made precisely this point when he contends that "antitrust does not retard technological progress."[39] As a result, the impact of antitrust on the patent system is only measured by its impact on *one* of the two essential ingredients of innovation.

Certainly there could be an extreme reached in antitrust enforcement where the incentive to *invent* would be clearly affected. But before that point, the innovation fostered by the patent system could be severely impaired through unduly limiting the right of the patent owner to secure the ability to market his invention by licensing his patent.

The need for legislative rapprochement between patents and antitrust was advanced in 1966 by President Johnson's Commission on the Patent System. In its report, an integrated analysis of the entire patent statute was presented and recommendations made for change.[39] Despite its primary mission to examine the state of the patent laws, the Commission saw the problems facing the patent owner in a menacing antitrust climate and presented the following as its Recommendation XXII:

The licensable nature of the rights granted by a patent should be clarified by specifically stating in the patent statute that: (1) applications for patents, patents, or any interests therein may be licensed *in the whole, or in any specified part of, the field of use* to which the subject matter of the claims of the patent are directly applicable, and (2) a patent owner shall not be deemed guilty of patent misuse merely because he agreed to a contractual provision or imposed a condition on a licensee, which has (a) *a direct relation* to the disclosure and claims of the patent, and (b) the performance of which is *reasonable under the circumstances* to secure to the patent owner the full benefit of his invention and patent grant. This recommendation is intended to make clear that the *"rule of reason"* shall constitute the guidelines for determining patent misuse. (Emphasis added.)

It must be noted, however, that this well-reasoned approach by the President's Commission, while conceptually sound, is not without difficulty. It was earlier pointed out that patents, by statute, have the "attributes of personal property." As such, the terms of disposition of patent property, where the terms are in and of themselves legal, should at least carry a *presumption* of reasonableness. But a "rule of reason" would place the patent owner at the procedural disadvantage of first having to *prove* the reasonableness of his license provisions if they were ever challenged. The concept of reasonableness would more fairly be embodied in a *"rule of presumptive reasonableness,"* under which the burden of proving unreasonableness would fall where it belongs on the party asserting it.

Nevertheless, the Commission demonstrated an underlying appreciation of the patent owner's plight. This is further evident from another observation in the Commission's report. After noting that it did not favor weakening enforcement of the antitrust laws, it noted:

However, uncertainty exists as to the precise nature of the patent right and there is no clear definition of the patent misuse rule. *This has produced confusion in the public mind and a reluctance by patent owners and others to enter into contracts or other arrangements pertaining to patents or related licenses.* (Emphasis added.)

* * * * *

Whether patents will remain a healthy force for progress or become a vestigial appendage depends in large measure on what patent owners are entitled to do with them. This Memorandum does not contend for the legitimation by statute of practices heretofore generally condemned under antitrust. It does, however, urge resistance to the insistent efforts of the Department of Justice and a tendency in some courts to extend the interdiction of antitrust to practices clearly within the patent grant.

Patents, and matters involving patents, have no constant advocate as does antitrust. The Antitrust Division of the Department of Justice is heard in the courts, where it initiates litigation or submits briefs, and in business, to which it announces areas of patent licensing that will be the subject of future challenge.

In the absence of a counter-force on behalf of the patent system, the recourse of those determined to preserve the patent incentive in its total concept, so inextricably bound to the right to license, is to seek legislation upholding the practices that need support against the unbridled club and clout of antitrust.

Footnotes at end of article.

FOOTNOTES

[1] Article I, Section 8.

The Congress shall have power . . . To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

[2] *Motion Pictures Patent Co.* v. *Universal Film Mfg. Co.*, 243 U.S. 502 (1917). See also elaboration of theory in *Morton Salt Co.* v. *Suppiger*, 314 U.S. 488 (1942).

[3] *Sherman Act, Section 1* (15 U.S.C. 1): Contracts, combinations or conspiracies in restraint of interstate or foreign trade or commerce are illegal. *Sherman Act, Section 2* (15 U.S.C. 2): Persons who monopolize, or attempt to monopolize, or conspire to monopolize any part of interstate or foreign trade or commerce are guilty of a misdemeanor, (subjecting them to criminal sanctions). *Clayton Act, Section 3* (15 U.S.C. 14): It is unlawful to sell or lease commodities, whether patented or unpatented, on condition that the purchaser or lessee will not deal in the products of the seller's or lessee's competitors where the effect may be to substantially lessen competition or tend to create a monopoly. *Clayton Act, Section 7* (15 U.S.C. 18): No corporation can acquire the stock or assets (generally interpreted as including patents and interests in patents) of another corporation where the effect may be to substantially lessen competition or tend to create a monopoly. *Federal Trade Commission Act* (15 U.S.C. 41 et seq.): Federal Trade Commission can issue cease and desist orders against unfair methods of competition and against violations of Sections 3 and 7 of Clayton Act but so far has taken little action in matters involving patents.

[4] *The Wall Street Journal* (Midwest Edition), January 7, 1970, page 16.

[5] Assistant Attorney General Richard W. McLaren, *Patent Licenses and Antitrust Considerations*. Address before The Patent, Trademark and Copyright Research Institute of The George Washington University (June 5, 1969), 161 U.S.P.Q. No. 11, p. II.

[6] *Allied Research Products, Inc.* v. *Heatbath Corp.*, 161 U.S.P.Q. 527, 530 (N.D. Ill. 1969).

[7] *Clayton Act, Section 4.* 15 U.S.C. 15.

[8] *Peelers Co. v. Wendt*, 260 F.Supp. 193 (W.D. Wash. 1966); *La Peyre v. Federal Trade Commission*, 366 F. 2d 117 (5th Cir. 1966); *Laitram Corp. v. King Crab, Inc.*, 245 F.Supp. 1019 (D. Ct. Alaska 1965).

[9] Antitrust and Trade Regulation Report, No. 411, Special Supplement, Part II, May 27, 1969: *White House Task Force Report on Antitrust Policy*, page 22.

[10] 35 U.S.C. 261.

[11] *McCullough v. Kammerer Corp.*, 166 F. 2d 759 (9th Cir. 1948).

[12] *United States v. Krasnov*, 143 F.Supp. 184 (E.D. Pa. 1956), affirmed 355 U.S. 5 (1957).

[13] T. L. Bowes: *Forum Contribution*. Idea 12:1129 (1968–9).

[14] Bruce B. Wilson, Special Assistant to the Assistant Attorney General, *Patents and Antitrust: The Legitimate Bounds of the Lawful Monopoly*. Address before The Patent Law Association of Pittsburgh, November 19, 1969.

[15] *White Motor Co. v. United States*, 372 U.S. 253 (1963).

[16] Raymond C. Nordhaus and Edward F. Jurow: *Patent-Antitrust Law*, at 265. Jural Publishing Co. (1961, Supp. 1968); *The Ansul Co. et al. v. Uniroyal, Inc.*, 163 U.S.P.Q. 517 (N.D. N.Y. 1969).

[17] *General Talking Pictures Corp. v. Western Electric Co.*, 305 U.S. 124 (1938).

[18] H. Thomas Anstern: *Fish Traps, Indians, and Patents: The Antitrust Validity of Patent License Restrictions on Sales Price, Field of Use, Quantity, and Territory*. U. of Pittsburgh Law Rev. 28:181, 188 (1966).

[19] J. G. Jackson and E. L. Jackson: *Use Limitations in Patent Licenses*. Idea 12:657 (1968–9).

[20] *Report of the President's Commission on the Patent System*, U.S. Government Printing Office (1966).

[21] Senator McClellan's statement accompanying introduction of S. 2756. Congressional Record, August 1, 1969, page S. 8952.

[22] *Supra* Note 9 at 4.

[23] *Supra* Note 9 at 26.

[24] *Supra* Note 9 at 27.

[25] *Bela Seating Co., Inc. v. Poloron Products, Inc.*, 160 U.S.P.Q. 646 (N.D. Ill. 1968).

[26] *American Photocopy Equipment Co. v. Rovico, Inc.*, 148 U.S.P.Q. 631 (7th Cir. 1966).

[27] *American Photocopy Equipment Co. v. Rovico, Inc.*, 257 F. Supp. 192 (N.D. Ill. 1966); affirmed, 384 F. 2d 813 (7th Cir. 1967).

[28] *United States v. General Electric Co.*, 272 U.S. 476, 489 (1926).

[29] *Brulotte v. Thys Co.*, 370 U.S. 29 (1964); 143 U.S.P.Q. 264, 266 (1964).

[30] *Stearns et al. v. Tinker and Rasor et al.*, 116 U.S.P.Q. 222, 235 (9th Cir. 1957).

[31] *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 89 S. Ct. 1562 (1969); 161 U.S.P.Q. 577.

[32] *Supra* Note 16

[33] *Automatic R[illegible]g. Co. v. Hazeltine Research, Inc.*, 339 [illegible] 827 (1950).

[34] *American Security Co. v. Shatterproof Glass Corp.*, 268 F. 2d 769 (3rd Cir. 1959), *cert. denied*, 361 U.S. 902.

[35] *International Mfg. Co. v. Landon, Inc.*, 336 F. 723 (9th Cir. 1964).

[36] *Northern Pacific Railroad Co., v. United States*, 356 U.S. 1 (1958).

[37] *Well Surveys, Inc. v. Perfo-Log, Inc.*, 396 F. 2d 15 (10th Cir. 1968), *cert. denied*, 393 U.S. 951; *McCullough Tool Co., v. Well Surveys, Inc.*, 343 F. 2d 381 (10th Cir. 1965), *cert. denied*, 383 U.S. 933.

[38] *Rocform Corp. v. Acitelli-Standard Concrete Wall, Inc.*, 367 F. 2d 678 (6th Cir. 1966).

[39] Donald F. Turner: *Patents, Antitrust and Innovation*. Univ. of Pittsburgh Law Rev. 28:151 (1966). See also Gerald Kadish: *Patents and Antitrust: Guides and Caveats*. Idea 13:83 (1969).

FEDERAL PAY LEGISLATION

The Senate continued with the consideration of the bill (S. 3690) to increase the pay of Federal employees.

Mr. McGEE. Mr. President, I send to the desk a series of amendments to the bill to provide for purely technical correction as reported. I ask unanimous consent that these perfecting amendments be agreed to.

The PRESIDING OFFICER. The amendments will be stated.

The assistant legislative clerk read as follows:

On page 2, lines 15 and 16, strike out "and rules for the payment of retroactive compensation".

On page 2, line 20, strike out "(1) in" and insert in lieu thereof "in (1)".

On page 2, between lines 22 and 23, insert the following new subsection:

"(d) (1) Notwithstanding section 3679 of the Revised Statutes, as amended (31 U.S.C. 665), the rates of pay of officers and employees of the United States Government and of the municipal government of the District of Columbia whose rates of pay are fixed by administrative action pursuant to law and are not otherwise increased by this section are hereby authorized to be increased by the agencies employing such officers and employees by amounts not to exceed the increases provided by this section for corresponding rates of pay in the appropriate schedule or scale of pay.

"(2) Nothing contained in this section shall be held or considered to authorize any increase in the rates of pay of officers and employees whose rates of pay are fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates or practices."

On page 3, line 21, insert "h" before "(b)".

On page 4, line 1, after "under", insert "section 2(a) of".

The PRESIDING OFFICER. Is there objection to the request of the Senator from Wyoming? The Chair hears none, and the amendments are agreed to.

Mr. McGEE. Mr. President, I ask unanimous consent that there be printed at this point in the RECORD a series of pay schedules reflecting the increases made by this bill and the various statutory system.

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

GENERAL SCHEDULE—ANNUAL RATES AND STEPS

[6 percent increase effective Jan. 1, 1970]

Grade	1	2	3	4	5	6	7	8	9	10
GS-1	$4,125	$4,262	$4,399	$4,536	$4,673	$4,810	$4,947	$5,084	$5,221	$5,358
GS-2	4,621	4,775	4,929	5,083	5,237	5,391	5,545	5,699	5,853	6,007
GS-3	5,212	5,386	5,560	5,734	5,908	6,082	6,256	6,430	6,604	6,778
GS-4	5,853	6,048	6,243	6,438	6,633	6,828	7,023	7,218	7,413	7,608
GS-5	6,548	6,766	6,984	7,202	7,420	7,638	7,856	8,074	8,292	8,510
GS-6	7,294	7,537	7,780	8,023	8,266	8,509	8,752	8,995	9,238	9,481
GS-7	8,098	8,368	8,638	8,908	9,178	9,448	9,718	9,988	10,258	10,528
GS-8	8,956	9,255	9,554	9,853	10,152	10,451	10,750	11,049	11,348	11,647
GS-9	9,881	10,210	10,539	10,868	11,197	11,526	11,855	12,184	12,513	12,842
GS-10	10,869	11,231	11,593	11,955	12,317	12,679	13,041	13,403	13,765	14,127
GS-11	11,905	12,302	12,699	13,096	13,493	13,890	14,287	14,684	15,081	15,478
GS-12	14,192	14,665	15,138	15,611	16,084	16,557	17,030	17,503	17,976	18,449
GS-13	16,760	17,319	17,878	18,437	18,996	19,555	20,114	20,673	21,232	21,791
GS-14	19,643	20,298	20,953	21,608	22,263	22,918	23,573	24,228	24,883	25,538
GS-15	22,885	23,648	24,411	25,174	25,937	26,700	27,463	28,226	28,989	29,752
GS-16	26,547	27,432	28,317	29,202	30,087	30,972	31,857	32,742	33,627	34,512
GS-17	30,714	31,738	32,762	33,786	34,810					
GS-18	35,505									

POSTAL FIELD SERVICE SCHEDULE

[6 percent increase effective Jan. 1, 1970]

	1	2	3	4	5	6	7	8	9	10	11	12
PFS-1	$4,794	$4,954	$5,114	$5,274	$5,434	$5,594	$5,754	$5,914	$6,974	$6,234	$6,394	$6,554
PFS-2	5,182	5,355	5,528	5,701	5,874	6,047	6,220	6,393	6,566	6,739	6,912	7,085
PFS-3	5,602	5,789	5,976	6,163	6,350	6,537	6,724	6,911	7,098	7,285	7,472	7,659
PFS-4	6,056	6,258	6,460	6,662	6,864	7,066	7,258	7,470	7,672	7,174	8,076	8,278
PFS-5	6,548	6,766	6,984	7,202	7,420	7,638	7,856	8,074	8,292	8,510	8,728	8,946
PFS-6	7,077	7,313	7,549	7,785	8,021	8,257	8,493	8,729	8,965	9,201	9,437	9,673
PFS-7	7,650	7,905	8,160	8,415	8,670	8,925	9,180	9,435	9,690	9,945	10,200	10,455
PFS-8	8,269	8,545	8,821	9,097	9,373	9,649	9,925	10,201	10,477	10,753	11,029	
PFS-9	8,940	9,238	9,536	9,834	10,131	10,430	10,728	11,026	11,324	11,622		
PFS-10	9,645	9,967	10,289	10,611	10,933	11,255	11,577	11,899	12,221	12,543		
PFS-11	10,717	11,074	11,431	11,788	12,145	12,502	12,859	13,216	13,573	13,930		
PFS-12	11,905	12,302	12,699	13,096	13,493	13,890	14,287	14,684	15,081	15,478		
PFS-13	13,227	13,668	14,109	14,550	14,991	15,432	15,873	16,314	16,755	17,196		
PFS-14	14,695	15,185	15,675	16,165	16,655	17,145	17,635	18,125	18,615	19,105		
PFS-15	16,328	16,872	17,416	17,960	18,514	19,408	19,592	20,136	20,680	21,224		
PFS-16	18,138	18,743	19,348	19,953	20,558	21,163	21,768	22,373	22,978	23,563		
PFS-17	20,152	20,824	21,496	22,168	22,840	23,512	24,184	24,856	26,528	26,200		
PFS-18	22,390	23,136	23,882	24,628	25,374	26,120	26,866	27,612	28,353	29,104		
PFS-19	24,875	25,704	26,533	27,362	28,191	29,020	29,849	30,678	31,507	32,336		
PFS-20	27,636	28,557	29,487	30,399	31,320	32,241	33,162	34,083				
PFS-21	30,714	31,738	32,762	33,786	34,810							

RURAL CARRIER SCHEDULE

[6-percent increase effective Jan. 1, 1970]

	1	2	3	4	5	6	7	8	9	10	11	12
Fixed compensation	$2,978	$3,136	$3,294	$3,452	$3,610	$3,768	$3,916	$4,084	$4,242	$4,400	$4,558	$4,716
For each mile up to 30 miles of route	109	111	113	115	117	119	121	123	125	127	129	131
For each mile of route over 30	25	25	25	25	25	25	25	25	25	25	25	25

VETERANS' ADMINISTRATION, DEPARTMENT OF MEDICINE AND SURGERY SCHEDULES

[6 percent increase effective Jan. 1, 1970]

	1	2	3	4	5	6	7	8	9	10
Physicians and dentists:										
Assistant chief medical director	$35,505									
Medical director	30,714	$31,738	$32,762	$33,786	$34,810					
Director grade	26,547	27,432	28,317	29,202	30,087	$30,972	$31,857	$32,742	$33,627	$34,512
Executive grade	24,671	25,493	26,315	27,137	27,959	28,781	29,603	30,425	31,247	32,069
Chief grade	22,885	23,648	24,411	25,174	25,937	26,700	27,463	28,226	28,989	29,752
Senior grade	19,643	20,298	20,953	21,608	22,263	22,918	23,573	24,228	24,883	25,538
Intermediate grade	16,760	17,319	17,878	18,437	18,996	19,555	20,114	20,673	21,232	21,791
Full grade	14,192	14,665	15,138	15,611	16,084	16,557	17,030	17,503	17,976	18,449
Associate grade	11,905	12,302	12,699	13,096	13,493	13,890	14,287	14,684	15,081	15,478
Nurses:										
Director of nursing	22,885	23,648	24,411	25,174	25,937	26,700	27,463	28,226	28,989	29,752
Assistant director grade	19,643	20,298	20,953	21,608	22,263	22,918	23,573	24,228	24,883	25,538
Chief grade	16,760	17,319	17,878	18,437	18,996	19,555	20,114	20,673	21,232	21,791
Senior grade	14,192	14,665	15,138	15,611	16,084	16,557	17,030	17,503	17,976	18,449
Intermediate grade	11,905	12,302	12,699	13,096	13,493	13,890	14,287	14,684	15,081	15,478
Full grade	9,881	10,210	10,539	10,868	11,197	11,526	11,855	12,184	12,513	12,842
Associate grade	8,519	8,803	9,087	9,371	9,655	9,939	10,223	10,507	10,791	11,075
Junior grade	7,294	7,537	7,780	8,023	8,266	8,509	8,752	8,995	9,238	9,481

FOREIGN SERVICE SCHEDULE

[6 percent increase effective Jan. 1, 1970]

	1	2	3	4	5	6	7	8	9	10
FSO-1	$33,609	$34,729	$35,505							
FSO-2	26,358	27,237	28,116	$28,995	$29,874	$30,753	$31,632			
FSO-3	20,888	21,584	22,280	22,976	23,672	24,368	25,064			
FSO-4	16,760	17,319	17,878	18,437	18,996	19,555	20,114			
FSO-5	13,618	14,072	14,526	14,980	15,434	15,888	16,342			
FSO-6	11,245	11,620	11,995	12,370	12,745	13,120	13,495			
FSO-7	9,450	9,765	10,080	10,395	10,710	11,025	11,340			
FSO-8	8,098	8,368	8,638	8,908	9,178	9,448	9,718			
FSS-1	20,888	21,584	22,280	22,976	23,672	24,368	25,064	$25,760	$26,456	$27,152
FSS-2	16,760	17,319	17,878	18,437	18,996	19,555	20,114	20,673	21,232	21,791
FSS-3	13,618	14,072	14,526	14,980	15,434	15,888	16,342	16,796	17,250	17,704
FSS-4	11,245	11,620	11,995	12,370	12,745	13,120	13,495	13,870	14,245	14,620
FSS-5	10,088	10,424	10,760	11,096	11,432	11,768	12,104	12,440	12,776	13,112
FSS-6	9,045	9,347	9,649	9,951	10,253	10,555	10,857	11,159	11,461	11,763
FSS-7	8,115	8,385	8,655	8,925	9,195	9,465	9,735	10,005	10,275	10,545
FSS-8	7,276	7,519	7,762	8,005	8,248	8,491	8,734	8,977	9,220	9,463
FSS-9	6,525	6,743	6,961	7,179	7,397	7,615	7,833	8,051	8,269	8,487
FSS-10	5,853	6,048	6,243	6,438	6,633	6,828	7,023	7,218	7,413	7,608

Mr. McGEE. Mr. President, it does not seem necessary to dwell at great length on this bill. All of us have been living with it—the circumstances that produce its requirements and the details that are embodied in its language.

To put it very quickly and to the point, this is a clear, unemcumbered 6 percent pay increase retroactive to last December 27, 1969.

In the terminology of negotiations by the administration and the postal unions during the recent impasse over postal matters, the 6 percent would apply to all Federal employees, not just the postal employees alone.

The Senate will recall that during the critical days of the crisis, the Senate and the House conferees laid down two criteria.

Those two criteria sent to the negotiators were first, that any pay adjustment must be across the board in the retroactive sense for all Federal classified as well as postal employees, and second, that it be made retroactive to not later than January 1, 1970.

These two conditions were followed and this bill reflects the sense of the Senate Post Office and Civil Service Com-

mittee which voted unanimously on these terms.

We held a 1-day hearing on the terms to make sure that we did not misunderstand each other, either downtown, in the Post Office, with the negotiating unions, or here in the Senate of the United States.

Postmaster General Blount, and the Assistant Director of the Bureau of the Budget both confirmed that there are no strings attached to the bill. It is not tied to postal reorganization or any other factor with respect to postal legislation.

There are no conditions with respect to its financing tied to any subsequent legislation. Both spokesmen for the administration made it very clear that the funds necessary for the paying of the retroactive 6 percent would be obtained from existing funds, first, by taking $1.2 billion out of the surplus currently scheduled in the budget report of the President and, second, by stepping up the scheduled collection for gift, estate, and inheritance taxes.

The President is satisfied that this will be sufficient to cover this segment of the increase.

Mr. President, I stress again that this is tied in no way to anything down the road ahead of us in regard to postal reorganization. That is completely separate.

We are waiting now for recommendations of the President. But those are yet to come.

There is no relevance between those and this particular settlement.

In this context, the Senate committee added three provisions to the bill that were not negotiated or negotiable really by the negotiators themselves.

One of these clues into the formula the legislative employees on both sides of the Hill.

The reason for that was that we felt that even though they were left out at Christmas time, the sheer cost of living increases require that it is certainly warranted now.

This addition of the Hill employees increases the price tag by $6.8 million. That is $6.8 million in a total bill that the President tells us will cost $2.5 billion for a full fiscal year.

Thus, we felt in the light of the sweep of this measure that it would be a serious mistake and a great inequity to leave out the legislative employees here on Capitol Hill.

The second inclusion in the bill is to correct an oversight for staff employees of living ex-Presidents, former President Lyndon Johnson and former President Harry Truman.

The cost of correcting this oversight is $16,000 in each case.

It is not retroactive. It simply corrects the law from this date. It means that a former President, for his five employees, will now get $96,000 a year rather than $80,000 a year.

The last category that we have added to the bill, and we did this after carefully weighing the judgment of the Senate in an earlier act, is to add the judges of the District of Columbia courts to the new pay scale that was intended to be theirs a year ago.

Again, through error they were inadvertently omitted from the original 1967 pay authorization. We debated this at great length in this body. I think my friend from Virginia was one of those discussing its implications at that time as well as the distinguished Senator from Ohio (Mr. YOUNG).

In any case, because it was passed by the Senate unanimously at that time, and there is now a bill in the House of Representatives. But, we felt it was the better to restore these district judges to the intent of the Senate's action, in 1967, and this is included in the bill.

Those are the three additions to the bill that the committee voted on, without a single dissenting vote on any issue. It was the unanimous conviction of all that the time for this action was long overdue.

We likewise were mindful of a kind of sense of urgency here because of the strains of the recent impact on the Nation's workfront. Therefore, this committee moved expeditiously and with dispatch in an attempt to arrive at what in its judgment is a very sound, fair, and equitable retroactive pay adjustment measure.

Mr. BYRD of Virginia and Mr. FONG addressed the Chair.

Mr. McGEE. Mr. President, I yield briefly to the Senator from Virginia and then I shall yield to the Senator from Hawaii.

The PRESIDING OFFICER (Mr. SCHWEIKER). The Senator from Virginia is recognized.

Mr. BYRD of Virginia. I thank the Senator. My question is purely for information. I have received mail from time to time asking what benefits ex-Presidents receive. I judge from the Senator's comment a moment ago that each ex-President is permitted five employees and that under the new bill the total compensation will be $96,000.

Mr. McGEE. $96,000.

Mr. BYRD of Virginia. I am wondering what other benefits, if any, former Presidents receive.

Mr. McGEE. I cannot answer that question completely at this time. They get a $25,000 pension. They have an office. I cannot go beyond that which is in our jurisdiction in this case, and that is the clerk-hire funds, which take care of a former President. I am sure he gets other allowances but I am not fully aware as to the substance of all of those allowances.

Mr. FONG. Mr. President, I rise to support S. 3690, a bill to increase the pay of Federal employees. At the outset I would like to commend the distinguished senior Senator from Wyoming for the prompt reporting of this bill to the Senate and for his leadership in seeing that our Federal employees receive fair compensation for work given to the Federal Government.

I would like also to associate myself with the very fine remarks made by the distinguished Senator on the bill.

The Senate will recall that on December 12 of last year it passed a Federal pay bill, H.R. 13000, that would have brought Federal employee salaries up to comparabiilty in two stages—the first stage with a maximum of 4 percent for lower-salaried employees effective January 1, 1970 and the second stage, coming on July 1, 1970. Unfortunately, that bill has languished in a House-Senate conference ever since Senate passage.

Today, with the administration's strongest endorsement, we are asking the Senate to consider another pay bill in lieu of H.R. 13000. I sincerely believe this new bill is much fairer to all Federal employees.

The basic provisions of S. 3690 were agreed to last week by administration and postal employee representatives. It provides a 6 percent across-the-board salary increase for Federal employees paid under all of the statutory salary systems—namely, postal field service, the general schedule of classified civil service, the Department of Medicine and Surgery in the Veterans' Administration and the Foreign Service. It also includes employees paid under other salary systems except wage board employees in the legislative, executive, and judicial branches of the Government. The 6 percent increase would also apply to military personnel under provisions of Public Law 90-207.

Affected by this bill will be approximately 2.1 million Federal civilian employees. Also, because of the provision in Public Law 90-607 all of the 3.2 million military personnel will receive an increase comparable to those given the Federal general schedule employees. Because this pay increase will be effective only for the last half of fiscal year 1970 the cost for 1970 will be $600,000,000 for Federal civilian employees and $600,000,000 for the military. The full year cost in fiscal 1971 will be approximately $2.5 billion—$1.3 billion for the civilian payroll and $1.2 billion for the military.

Presently, the annual Federal payroll for all 6,500,000 Federal employees—civilian white collar and blue collar and the military—total approximately $49 billion.

The Federal Government, during the 11 years that I have been in the Senate, has been a very fair employer. Since 1960, Congress has enacted four different Federal pay laws. The percentage pay increases for general scheduled employees in each of the applicable years were: 1960, 7.5 percent; 1962, 5.5 percent; 1964, 4.1 percent; 1965, 4.69 percent; 1966, 4.21 percent; 1967, 5.27 percent; 1968, 7.18 percent and, in 1969, 7.7 percent. Postal employees in several years received higher salary increases and last year received a lesser percentage increase. The total average salary increases received by Federal employees since 1960 is approximately 45.9 percent. These increases were made to keep Federal employees salary comparable with salaries paid in private industry. I cite these figures only to show that the Congress has tried to live up to its responsibility and pledge to give Federal employees comparability with their counterparts in private industry. Now we are urging again that Federal salaries be taken up to the latest comparability figures as provided us by the BLS.

I believe the basis for this 6-percent figure was the comparability survey conducted by the Bureau of Labor Statistics in early 1969. That survey showed that

as of June 1969. Federal employee salaries were lagging approximately 5.75 percent behind those of private industry. I believe also that in the talks between the administration representatives and those of the postal employees consideration was given to the fact that the retroactive date of December 27, 1969, was 6 months behind the survey date and private industry salaries had increased during those ensuing months. The December 27, 1969 date was a compromise with which the administration could live in its budget squeeze. The 6-percent pay increase to December 1969, is very fair both as to amount and effective date.

I shall only briefly recall for the Senate the fact that in 1962 the Congress went on record as setting the primary guiding principle for Federal salaries to be comparability with private industry. This principle was adopted to stem the loss of high-skilled Federal workers to private industry and to also attract promising young people to careers in the Federal service.

Although Federal salaries continue of necessity to follow by a few months those paid in private industry the purposes for which the comparability principle was adopted have been largely realized.

My experiences with Federal employees have completely justified the salary increases which have been enacted since adoption of the comparability principle in 1962. These increases have helped in the recruitment and retention of our loyal, dedicated, and intelligent Federal employees.

The 6-percent pay increase for these employees which I am strongly supporting will continue to help in this fight to obtain and keep the hundreds of thousands of Federal workers necessary to keep the wheels of this Government working in all 50 States, here in Washington and throughout the world where the U.S. Government is represented.

The 6-percent pay increase your Committee on Post Office and Civil Service recommends to the Senate by a unanimous vote taken yesterday meets that standard of comparability.

The bill includes a provision extending this 6-percent increase to employees of the U.S. Senate and the House of Representatives subject to the controls of Senators presently in the law.

It also has a general limitation provision that no salary increased by this bill shall exceed that of executive pay level 5, which is $36,000.

The committee also approved an increase in the lump sum available for staff hire of former U.S. Presidents from the present $80,000 to $96,000—an increase of $16,000. This was done to keep in line with the general cost-of-living increases enacted in 1968 and would be written into permanent law.

We also include in this bill salary increases for the District of Columbia judges who because of inadvertence were left out of the increases given all other Federal judges last year. The Senate has already twice approved these increases but these bills have been pigeonholed in the House.

I firmly believe this bill is fair and just. It keeps the pledge made by the Congress in 1962 to keep Federal employee salaries on a par with those paid in private industry for substantially similar work.

I strongly urge my colleagues to approve this bill.

Mr. McGEE. Mr. President, I want to take special note here of the strong leadership and cooperation of the ranking minority member of the Committee on Post Office and Civil Service, Senator HIRAM FONG. He has had untiring energy and the greatest patience in this matter. As he would be quick to testify, this has been a painstaking operation over many weeks. It has been a rather difficult time. I want to commend him for the perspective in which he has cast the whole question of pay increase.

This measure is not just a little matter that has taken place here on this day in April 1970. It reflects a long-term commitment, a long-range obligation, and a breakthrough in terms of coming to grips with the matter of comparability.

Most important, the fact that it was negotiated at all is the significant breakthrough in a new procedure at the Federal Government level—that of collective bargaining. If it works—and it is working—we may have, indeed, an effective and tough new formula for resolving future labor-management difficulties at the Federal Government level.

So again I commend my colleague from Hawaii for his patience and untiring efforts.

Mr. FONG. I thank the Senator from Wyoming for his very kind words. It was due to his leadership that we were able to produce the bill presently before the Senate. Several weeks ago we went into conference with Members of the House on H.R. 13000. The House conferees were intent on pushing a salary bill through. Because of the very strong position taken by the Senator from Wyoming the Senate conferees resisted that effort and insisted that the conference wait until the negotiators representing the postal unions and the administration arrived at a conclusion before proceeding further. It was because we waited until the negotiators reached an agreement that we have this bill giving all Federal employees a 6-percent increase retroactive to December 27, 1969.

It was due to the fine leadership of the Senator from Wyoming that we have this bill today. I commend him for his very fine leadership in the Committee on Post Office and Civil Service.

Mr. McGEE. I thank my colleague for his generous remarks.

Mr. RANDOLPH. Mr. President, I wish to commend the chairman of the Committee on Post Office and Civil Service (Mr. McGEE) and the ranking minority member of that committee (Mr. FONG). I think it is important to indicate that all members of the committee voted affirmatively on rollcall, to report this legislation to the Senate.

This measure is an important step in our efforts to provide needed salary increases for all Government employees. Our committee has moved expeditiously to bring this bill to the floor, so that the first phase of the negotiated agreement between the administration and the postal unions can be implemented.

I wish the RECORD to reflect that even though we are covering increases in several categories of Federal employees, I feel strongly that certain employees at lower levels within the Government—I use as an example the letter carriers who have had a beginning salary of $6,176, and who will now, under this measure if it is enacted into law, receive an annual starting salary of $6,548—are entitled to more. Within the very near future we must give attention to a restructuring of these lower pay scales.

Mr. President, that is an inadequate salary. Even with the approximately $400 increase, it is a salary which will not permit the letter carriers or other postal employees in that salary level to rear their families and educate their children and to maintain a moderate standard of living.

I realize the cost of the legislation is substantial. I am conscious also of the desire of the administration and of the unions themselves and the Committee on Post Office and Civil Service to arrive at some agreement which would be acceptable to all parties. It is my belief that the Senate should act affirmatively on this bill.

Mr. CURTIS. Mr. President, will the Senator yield to me?

Mr. RANDOLPH. I yield.

Mr. CURTIS. What is the total annual cost of this bill on a full-year basis?

Mr. RANDOLPH. I believe it is approximately $2.5 billion on an annual cost basis.

Mr. McGEE. That includes the military.

Mr. RANDOLPH. That includes the military.

Mr. CURTIS. Will the Senator break those figures down as to postal and other civil service workers and the military, approximately?

Mr. McGEE. Mr. President, the Senator from Hawaii just did that. Perhaps the Senator could yield to the Senator from Hawaii so he could give that information to the Senator.

Mr. RANDOLPH. It is $372 million for the postal workers, about $900 million for the other civil service workers, and about $1.2 billion for the military.

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

Mr. RANDOLPH. I yield.

Mr. ELLENDER. I thought this bill applied to postal employees only. When were the others included? I regret that I was not present when the debate on the pending bill started. I have been holding hearings. I would like to know what employees are covered in the bill, aside from the postal employees.

Mr. RANDOLPH. Mr. President, I will ask the chairman to respond to our able colleague, but before doing so, and because I desire to take my chair or really leave the floor, because, after the Carswell nomination vote I remained here to handle the resolution relating to the rail strike for the Senator from New York, and I have commitments to keep, I want to reemphasize strongly that the salary which is in the category of that of the letter carriers, as I have indicated—and I refer to the beginner's pay of $6,548, which is approximately $400 more than the present pay—is inadequate.

I repeat, for a good citizen who is capable, it is inadequate for that citizen to keep his household together properly, to educate his children, and to participate in acts of citizenship other than just the doing of his job.

He must be more than a person who, even though he has contact with the public in the category of the letter carrier, a man who just goes to work in the morning and comes home at night, and tries to live within that salary range. He must, for all intents and purposes, be a citizen who can respond to all the wholesome responsibilities as well as, of course, the advantages of our American system of life.

I hope that the chairman of the committee and all the members of the committee, at least in degree, agree with me that it is not enough to talk about comparability, although I understand comparability. It is not enough just to discuss formulas. It is important that we realize that we cannot get away from the figure which I have stated as the very low income which is now paid to Federal workers, not only in the postal service but also, in degree, to certain segments of our classified clerical workers.

Mr. McGEE. Mr. President, the Senator from West Virginia is one of the members of the committee who does his homework. He made a great contribution during these hearings in reminding us all that, once we had arrived at the settlement, we were still lagging, that we have a commitment, under the Pay Act of 1962, to try to bring the salaries of all Federal employees up to their equivalents in the private sector, and that we have been negligent in doing so. We have been dragging behind. The Senator has been very helpful in establishing the urgency of that fact.

I address myself now to the question of the Senator from Louisiana. The present bill includes not only the postal workers, but all the classified Federal employees. The reason the latter are included was that the hearings in the Senate on the original postal pay bill, way back in October, demonstrated, completely and disturbingly, that the lower pay grades of the classified service, in particular, were at least as ill paid as postal grades 5 and 6, and that there was equity that was long overdue them.

In terms of comparability, to which Congress is required by law to respond the Bureau of Labor Statistics figures on comparability last July 1—not this next July, but July 1, 1969—would have required an across-the-board pay raise of 5.75 percent. This one goes, now, back to December 27, roughly 6 months later than July, in order to set it at 6 percent.

The final point is that the 6-percent retroactive increase was negotiated in free collective bargaining between the administration management spokesmen and the postal unions. But the criteria for those negotiations were laid down by the Senate and the House conferees on the old pay bill from last fall—namely, that they should be retroactive to at least January 1, and that they should include the Federal classified employees.

Mr. ELLENDER. And that is to apply to what class of employees?

Mr. McGEE. This would be all classes, now. But the Senate bill at Christmas time would have been scaled down from grades 5 and 6 to 10, down 1 percent per grade.

Mr. ELLENDER. I am referring to the bill we are now considering.

Mr. McGEE. Yes. This one goes back and covers all grades with the same percentages.

Mr. ELLENDER. How about the employees whose salaries we raised in the executive department recently, up to, I believe, $35,000?

Mr. McGEE. It includes none of the executive grades. It does not include Senators, either.

Mr. ELLENDER. And neither legislative employees, I hope?

Mr. McGEE. It includes legislative employees, on the ground that——

Mr. ELLENDER. Which grades of legislative employees?

Mr. McGEE. Legislative employees in both the House of Representatives and the Senate. It leaves it up to the individual Senator whether he applies it to his staff. That is not compelled.

Mr. ELLENDER. When are these additional employees added to the bill?

Mr. McGEE. This was in the bill unanimously reported by the Senate committee after hearings.

Mr. ELLENDER. I understood this morning that when this bill would be taken up later in the day that the only salaries to be considered would be those of the postal employees.

Mr. McGEE. No; that is not correct. This bill was negotiated. This was the result of the labor-management negotiations freely negotiated over these several tortuous days. We came out of that negotiation with two stages of agreement. One stage was that there should be a 6-percent retroactive pay adjustment to last December 27 for all Federal classified employees and the postal service, all of them; and the second stage has to do with what is yet ahead of us, and not involved in this bill in any way—namely, other adjustments in the postal structure, at this point tied to postal reorganization and postal reform.

Mr. ELLENDER. How about the employees of all the special committees that were created by the Senate?

Mr. McGEE. All legislative employees are included.

Mr. ELLENDER. So that a legislative committee employee, let us say the Senator's assistant, who is now paid, I think, $34,000——

Mr. McGEE. $31,317 if he is paid the maximum.

Mr. ELLENDER. He would receive a 6-percent increase?

Mr. McGEE. He would get about $1,800 more, on a permanent basis, unless the Senator said no or the chairman denied the increase.

Mr. ELLENDER. And that applies to all employees of all committees?

Mr. McGEE. That would apply to all legislative employees on the Hill, on both sides.

Mr. ELLENDER. But insofar as the employes of Senators are concerned, the Senator must consent to the increase?

Mr. McGEE. The Senator has to make his own determination.

Mr. ELLENDER. But this applies to all committee employees automatically?

Mr. McGEE. That is automatic.

Mr. ELLENDER. So that where we have employees earning anywhere from $18,000 to $31,000, they get a 6-percent increase?

Mr. McGEE. Yes. Actually, the minimum is $1,000, not $18,000. The feeling of the committee was that since that time, there had been a rise in the cost of living that actually exceeded 7 percent, so that this was only an attempt to stay even with where they were before the last adjustment had been made.

Mr. ELLENDER. Mr. President, I regret that all of the employees mentioned in this discussion are included in the bill. I would cheerfully vote to increase the salaries of postal employees in the lower brackets. I would also vote to increase the salaries of civil employees in the lower brackets. I cannot see, my way clear to vote to increase the salary of those who are now receiving $25,000 to $31,000 by $1,500 to $1,800 and allow an increase of only $300 to $400 for those who really need an increase.

Mr. CURTIS. Mr. President, I shall have an amendment, which I shall send to the desk in a few moments. My amendment will be strike from the bill all pay raises except for the postal and the military. How the military is handled in the pending measure I do not know, whether it is by reference or by actual language. Nevertheless, I want it clear that I am not advocating a denial of a pay raise for the military.

Frankly, I do not like the postal pay raise. I believe that when the postal employees went on strike, they were in violation of law, and they should be put in jail, and I am disappointed that high officials of this Government ignored the law and sat down and negotiated with them. But that is past. We have got a mess on our hands, and we have to do something about that.

But we have a bill before us including increases for some people around this building and the office buildings, who will get an $1,800 a year increase because a letter carrier in a great city cannot live on what he earns.

Mr. President, at the time this Congress reduced taxes, the national debt was $10 billion more than it was a year before. I opposed that bill, because to me the idea of borrowing money to reduce taxes represented rank irresponsibility.

The national debt has increased $3 billion since that date, and here we are with a bill to raise the salaries of all Government employees across the board. And it does not end there. $2.5 billion is not the end of it—it adds to the retirement costs, under a system that is not funded. It is sheerest irresponsibility.

As I say, I shall offer an amendment that will cofine this bill to the postal workers. I shall not undertake to deny the military a pay increase. Within the last 20 minutes, a lady from Nebraska left my office. She had been called to Washington to receive the Medal of Honor that her son was not here any longer to receive. How did he lose his life? He threw himself down on a hand grenade and saved the lives of three of his buddies.

Mr. President, this is wartime. We are going farther and farther in debt every day. If anybody working for the Government does not want to sacrifice to save this country from collapse, he has a remedy. He has the right of resignation.

Mr. President, I do not deny that there are perhaps people under the ordinary civil service who need a pay raise. This is not a selective pay raise. We are operating under a deficit. We are in war. If a pay raise is to be considered at all, it should be a selective one to take care of those situations in which the pay is not enough for the people to live respectably, and that is where it should end.

I am astounded at what has happened since these men went on strike in New York. I pick up the paper and I read that George Meany has settled the pay raise schedules. Where is the great Senate of the United States? Where is Congress? Are we mice or are we men? The Constitution says that Congress shall establish post offices and post roads, and that means that we must take the responsibility for carrying out the service.

No one had a right to enter into an agreement and bind Congress. We are establishing a precedent here that we will live to regret. All that has to be done is to pick out some segment of Government employees, have them go on strike, and all the rest will get a free ride, and our own staffs will enjoy a pay raise of $1,000 to $1,800.

I am not impressed about the arguments of comparability. There is one basic fact: There is no money in the till. We do not have the courage to tax the people to pay the bills for the day-to-day operation of this Government.

I said these things with respect to the last tax bill. We were faced with inflation and all sorts of problems. I thought that the surtax should be extended and that the investment credit should end, and that would have brought in several billions of dollars. Lo and behold, we passed a bill that gave all that revenue away.

I know that what I am saying here will be disappointing in many bureaus and agencies. I know that those people will remember. I also know that the people back home are working so hard to pay their expenses and their taxes that they probably will not remember it. But I have to live with myself.

Mr. President, I send an amendment to the desk, and I ask for the yeas and nays on it.

The yeas and nays were ordered.

The assistant legislative clerk proceeded to read the amendment.

Mr. CURTIS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with. I already have explained what it would do.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On page 1, line 3, strike out "Federal" and insert in lieu thereof "Postal".

On page 2, strike out lines 1 through 11 and insert in lieu thereof:

(2) Schedules referred to in paragraph (1) of this subsection are as follows: The Postal Field Service Schedule and the Rural Carrier Schedule contained in sections 3542 (a) and 3543 (a), respectively, of title 39, United States Code.

On page 2, beginning with line 23, strike out through line 24 on page 3.

On page 3, line 25, strike out "Sec. 4" and insert in lieu thereof "Sec. 3".

On page 4, lines 2 and 3, strike out "section 5335 of title 5, United States Code, or".

On page 4, line 22, strike out "Sec. 5" and insert in lieu thereof "Sec. 4".

On page 4, beginning with "or" in line 25 strike out through "Columbia" in line 1 on page 5.

On page 6, lines 5 and 6, strike out "or the municipal government of the District of Columbia".

On page 6, strike out lines 7 through 22.

On page 6, line 23, strike out "Sec. 8" and insert in lieu thereof "Sec. 5".

On page 6, in lines 23 and 24, strike out "(other than section 7)".

On page 7, in lines 1 and 2, strike out "(other than under such section)".

Amend the title so as to read: "A bill to increase the pay of Postal employees".

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

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

Mr. CURTIS. I yield to the Senator from Wyoming.

Mr. McGEE. Mr. President, I thank the Senator from Nebraska for yielding to me for a comment or two about his very thoughtful remarks.

He has properly dwelt upon the implication present in the minds of some that some kind of action was taken in negotiations downtown that binds Congress. I want to assure the Senator that no action was taken that binds Congress. Congress first, in the appropriate committees, decided that one of the new ways to achieve management-labor settlements without strikes at the Government level was to set up free and unfettered collective bargaining processes. We thought this was a way to approach it. This was undertaken.

We set forth the two basic conditions under which those negotiations should proceed. One was that whatever pay was negotiated would be retroactive to January 1 or earlier, and that it would apply across the board to all classified employees. This was imposed by Congress. The negotiators and the administration were bound by this act of Congress. Congress was not bound by an action that came out of the negotiations. The whole process was the reverse.

I should like to address myself to the Senator's second point, that because of the problem of the deficit, because of budgetary problems, we indeed ought to look at our fiscal souls and be a little more cautious. Let me say that the Senator from Hawaii (Mr. FONG), the ranking minority member of this committee, and I had a very long conversation with the President on this matter. He feels very strongly also on that point. But in the course of our conversation, in the course of our hearings on this specific proposal, the President expressed the belief that he can come up with the necessary two and a half billion dollars without new taxes. He defined it in this way: $1.2 billion from the surplus that his budget scheduling had envisaged and the remainder from stepping up the timetable on estate taxes and inheritance taxes, I think it was.

Mr. WILLIAMS of Delaware. Mr. President, will the Senator yield?

Mr. McGEE. I should like to finish one or two points with respect to the Senator's amendment.

Mr. WILLIAMS of Delaware. What surplus are we talking about?

Mr. McGEE. I am using the President's figures and the President's recommendations. I think he was talking about a $1.3 billion surplus that he had in his budget message to Congress.

Mr. WILLIAMS of Delaware. I note that the national debt, in yesterday's Treasury report, was $13.25 billion higher than it was a year ago, and we have been running behind at an average rate of $800 million per month. I am wondering what surplus, because we are told we are going to need an increase in the national debt of approximately $10 billion to finance the imaginary surplus.

Mr. McGEE. I cannot answer the Senator's question. The Senator should put that to the administration. This is the administration's point in regard to financing this extra commitment.

Mr. WILLIAMS of Delaware. The Senator from Wyoming was speaking so strongly for the administration all throughout the day that I thought he had the answer.

Mr. McGEE. That answer is not my prerogative. That answer is the prerogative of the President of the United States. He draws up the budget recommendations to Congress, and I am respecting the budget he submitted to Congress.

I would say, in conclusion, to the Senator from Nebraska that the Senate passed its own pay bill last Christmas, December 12, across the board, in an attempt to respond to the President's sense of urgency about the problem, but not to go as far as the House went, which had a much larger pay increase, which would have cost a great deal more, and they did not know how they would finance it.

The administration felt they could finance the smaller Senate bill. When that fell by the wayside, due to a great many other developments—it had nothing to do with what the Senate did—we were confronted by this crisis; and in cooperation daily with the administration, we have tried to work out a modest adjustment with which the administration can live and yet which approaches equity.

Mr. CURTIS. May I ask the Senator a question?

Mr. McGEE. Yes.

Mr. CURTIS. The lettercarriers in the great cities aroused sympathy all over the country. What is going to be their annual increase in wages?

Mr. McGEE. Under the bill, it would be $375 a year.

Mr. CURTIS. Employees of the Senate will get up to $1,800. That is not a modest increase. It is merely a vehicle which has taken advantage of the situation in the Post Office where some people went on strike where they should not have.

Mr. McGEE. Let me say to the Senator in that regard that the strike was not only illegal, but it was also unsanctioned by the union leaders. It was a wildcat

strike circumstance. It was negotiated in an effort to try to head off massive strikes. The one group that did not strike or walk off in any form was the Federal employees. They, too, had been granted an across-the-board pay adjustment last December in the Senate's pay bill.

The committee unanimously felt that it would be wrong if we had gone the route the Senator is proposing and just pay the postals retroactively who were involved, some of them, in the walkouts; whereas those who played the game under the law got the same allowance at that time.

Mr. CURTIS. You will continue to pay these people who violated the law? You are going to give them a raise in pay? Is that what you are going to do?

Mr. McGEE. I am saying that the unions who had trouble in the walkouts and the other sympathetic walkouts, and so forth, which got out of hand——

Mr. CURTIS. I am asking the Senator, if that Government employee who violated the law and went on strike is going to be rewarded with a pay raise?

Mr. McGEE. The administration wrote in the negotiations in return for other concessions an amnesty for those out on strike. That was the negotiators' decision.

Mr. CURTIS. The negotiators are not voting on this bill today. I am asking the committee, are you keeping on the payroll all the strikers and giving them a pay raise?

Mr. McGEE. They are not on our payroll. They are on the payroll of the Post Office Department. We are not touching them.

Mr. CURTIS. But we have charge of the purse strings. We are charged with operating the postal service. My question is, Are you going to keep the strikers on the payroll and reward them with a pay raise?

Mr. McGEE. We have left that judgment to the Postmaster General and the personnel administrators downtown. We are respecting the negotiated settlement. It was a fair settlement. It was not one-sided. It was a giving and a taking on both sides.

Mr. CURTIS. Was anyone there to represent the people? They have to pay the bill. Here is the thing, as was mentioned, our debt has gone up $3 billion since the Congress reduced taxes. We are all having to tell our impacted school districts that they cannot have any money. One school district that has an enrollment of 80 percent of children of the military in my State is closing. We are informing other people that there is no money because of a financial crisis. And here, this great committee—I have a profound respect for every individual on that committee——

Mr. McGEE. I gathered that.

Mr. CURTIS. I think the Senator is making a terrible mistake. What I mean is, there is nothing personal about it. I respect the Senator's views, but I think he is making a terrible mistake in bringing in a bill that will raise the salaries as much as $1,800 a year.

I do not defend their actions in striking but, as I understand it, we give them a $375 a year raise now. Is that correct?

Mr. McGEE. The Senator's bill would reward those who went out on strike. This bill rewards all Federal employees, including those who obeyed the law.

Mr. CURTIS. No, no. That is not correct at all. All I do is strike from the bill some of the provisions in the bill. I strike out everything but the postal service because there appears to be an emergency.

Mr. McGEE. For the other Federal workers?

Mr. CURTIS. Certainly not on Capitol Hill.

Mr. McGEE. Our hearings on the classified employees showed that the classified employees were at least as deeply involved at the poverty level as were the postals. Our attempt is not to discriminate or select out for that. This is an adjustment in the cost of living, not a reward for better service. The Bureau of Labor Statistics made it clear in its testimony to us that last July 1, everyone in public service in the Federal Government needed a 5.7 percent salary adjustment to keep even with the rising cost of living—just even. That was last July 1.

Mr. CURTIS. How about the people back home? How much do they need?

Mr. McGEE. This is an attempt to equate the workers with those in the private sector back home.

Mr. CURTIS. It is a poor equation.

Mr. McGEE. It may be, and the Senator may be right in saying that. We have done the best we can from the statistics provided us by the Labor Department.

Mr. CURTIS. Why do they not tie it to the agricultural price index?

Mr. McGEE. The Senator will have to ask the Bureau of Labor Statistics that. We are not quarreling with that. We have simply done the best we could here. We have worked with the President, the Postmaster General, the postal unions, and the members of the committee, to make sure that we came out with something that was fair and not wild, and something that would not put the President in a serious situation. They are agreed on all sides on that score.

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

Mr. McGEE. The Senator from Nebraska has the floor.

Mr. COTTON. I have been asking the Senator to yield.

Mr. CURTIS. I am happy to yield to the Senator from New Hampshire.

Mr. COTTON. Mr. President, I would like to say to the Senator from Nebraska that there is much merit in his proposal and I would support it if he would add just one more provision. That provision is that for a period of 1 year, beginning July 1, the next fiscal year, congressional salaries shall be suspended 25 percent for that 1 year period.

I believe that the postal employees are entitled to a substantial raise. I regret what they did, but I also think of the untold thousands who did not strike and who were faithful to their obligations and to their oaths.

However, I think that the employees in our various offices are getting enough. I would go along with the distinguished Senator from Nebraska in saying that they should not share in this increase. I am bound to say that I think that those who work for the committees and in other capacities on the Hill do not need another raise at this time.

I would go along with the Senator in saying that we would be wise not to vote for an increase across the board through the whole government.

The finest example we could set for the people of this country and for the great unions of this country would be to say that we recognize that what the Senator from Nebraska just a moment ago said with such eloquence is true—that we are at war and that we must make sacrifices. The Congress of the United States, in my opinion, is not receiving a cent more salary than the responsibilities of this office justify. But the Congress of the United States for a period of 1 year should be willing to suspend 25 percent, one-fourth, of their salaries and let that money go back to the Treasury.

If we were willing to do this, we could very well then do exactly what the Senator from Nebraska suggests. We could stop including everyone in a sweeping raise. And we could do only what is vitally necessary and be firm and say no to the others.

I think Congress should be given an opportunity to say, "We are going to limit expenditures and the constant jumping of salaries throughout the Government, and we are going to show our sincerity and our good faith by being the first to make the sacrifice."

And when the time comes, our salaries can be restored. We can give raises if we have finished the war in Vietnam and if we have stopped the demands on this Government and checked the fever of inflation.

Mr. President, I make this as a perfectly serious proposal. I wish the Senator from Nebraska would include that in his amendment. If he is willing to do this, then I will be happy to support his amendment. If he does not, then I cannot support him.

Mr. CURTIS. Mr. President, if I may reply to that, my amendment is not a substitute. The distinguished Senator from New Hampshire would be perfectly in order to attach the amendment he proposes to the bill at any point. If he does, I shall vote for it. I will help him get a rollcall vote. I voted against the pay raise on two or three rollcalls. I voted against the financing of that nefarious commission that started all this mischief. I voted against a continuation of that commission which will hound us again 4 years from now.

However, I will still vote for the Senator's measure. There is no particular reason why it needs to be added to my amendment. And I would have no objection if he were to add it. I would vote for it.

Mr. COTTON. Mr. President, the Senator knows perfectly well that if such an amendment were offered by the Senator from New Hampshire by itself that it would have no chance of passing whatsoever.

The Senator knows perfectly well that he is offering an amendment that would save a great deal of money for this Gov-

ernment, in a time when we need, as he has so well expressed, to husband our resources.

If my proposal were joined with his, I think it would have a chance of passing.

That is why I hope that the Senator from Nebraska would make his amendment a really effective amendment that we could support and that would leave us in the situation of being able to take care of the emergency with which we are confronted.

If we did it in that way and took our own temporary cut, I believe it would do a great deal to help us in the weeks and months ahead.

Mr. CURTIS. Mr. President, I think the Senator is correct. And I hope that he offers such an amendment to the bill. It could be considered in one package. I will support it and help him get a rollcall vote.

Mr. WILLIAMS of Delaware. Mr. President, I commend the Senator from Nebraska (Mr. CURTIS) for the amendment he has offered.

Speaking of the financial position of our Government, it would be well to point out that on March 26 our Government came within $400 million of hitting the $377 billion ceiling. On that date our national debt was $13.250 billion higher than it was a year ago on that same date. I refer to that date because while this report came out yesterday there is a 2-week delay in receiving the report.

Mr. CURTIS. Mr. President, I suggest that amount was about $3 billion greater than when we passed the tax relief bill. Is that correct?

Mr. WILLIAMS of Delaware. Perhaps I do not have the figures. It should be pointed out that this high level is immediately prior to the receipt of the large revenues on April 15. Our debt always peaks about this time of year.

Based on the current operation, as nearly as we can foresee, our debt this fiscal year will be from $8 billion to $10 billion higher than it was a year ago. We are running behind at better than $800 million a month, on a 12-month average.

We hear much talk about surpluses. The only reason we hear about surpluses is that people who make references to surpluses are counting trust funds as normal revenue of the Government. The railroad retirement fund is counted in order to give an imaginary surplus. The civil service retirement fund is counted also. The social security trust fund is included and that fund is composed in its entirety of taxes from the employee and the employer. It consists of not a dime of Government money and not a dime can be spent by the Congress or the President working together to pay the normal operating costs of our Government. We are trustees only. However, the accumulations in those trust funds are counted as though they were normal revenues of the Government in order to report to the people an imaginary surplus.

When this practice was started by President Johnson I said it was done for one purpose and that purpose was to deceive the American people as to the true cost of operating the Government. I make the same statement now, that we are following the same accounting system under this administration. It is wrong.

It is time that we started to tell the American people the truth about our huge deficits which are causing the inflation in this country. That is why these postal employees and others have a hard job to meet the cost of living. It is because we, in Congress, are spending far more than is being taken in. We are not telling them the truth. Congress has passed a bill which was labeled "Truth in Packaging and Lending." I hope some day we get a little more truth in government.

The time is long past due when Congress should recognize that we cannot spend this Government into prosperity on borrowed money any more successfully than can a drunkard drink himself sober.

Mr. CURTIS. Mr. President, I thank the distinguished Senator.

I would like to have the attention of the manager of the bill as well as every other Senator, because I am about to make a unanimous-consent request that, in effect, is a technical waiver of a rule. I want to be very candid about it.

I took the floor before the amendment was drawn. I asked for an amendment that would limit the pay raise to the postal workers and the military. The copy of the amendment which I sent to the desk would not have preserved the pay raise for the military. The copy that I hold in my hand would do that.

Mr. President, I ask unanimous consent, notwithstanding the fact that a rollcall has been ordered, that I be allowed to modify my amendment to make it conform to the statement I made when I offered the amendment.

Mr. McGEE. Mr. President, reserving the right to object, I wish to ask the Senator, for purposes of clarification, whether the only change in the modification is that he inadvertently omitted the military.

Mr. CURTIS. That is correct.

Mr. McGEE. I have no objection.

The PRESIDING OFFICER. Is there objection?

Mr. FULBRIGHT. Mr. President, reserving the right to object, I wish to ask a question. I regret that I had to step out of the Chamber when the Senator was explaining his proposal. I am very interested in what I did hear, but I did not hear all of it.

In the Senator's amendment is there any limit on the size of the salaries to which the increase would apply? I wish to ask the Senator if that is taken into consideration.

I had contemplated that this increase was for the low-paid postal workers, the ones particularly that I read about in the newspapers, the ones who are getting as little as $6,000 or $7,000 a year and living in the big cities, and who really need a raise.

I voted against an increase in Senate salaries last year and one other pay bill because I thought it set an example that was unfortunate in view of the fiscal situation of our country. I wonder whether the Senator has considered a minimum salary range, above which there would be no increase? An increase for those receiving up to $30,000 and $35,000 is uncalled for, and for the same reason I opposed the increase in Senate salaries.

Mr. CURTIS. I feel whatever is done in connection with civil service should be done in another bill, and it should be selective. This bill, by the very circumstances, had to be reported. About the only way the Senator from Nebraska could do anything was to strike out the general civil service.

To be frank with the Senator, if my amendment were adopted, it would not limit the pay raise to the lower paid in the postal service. I would favor such a thing, but under the rush circumstances in which we are proceeding, I have not been able to work out such a scale. It cannot be chopped off. It has to be worked out carefully.

Mr. FULBRIGHT. I am interested in a bill that would include those persons receiving under $25,000. They are the ones in tight circumstances. Actually, the most deserving are those who receive around $6,000, $8,000, $10,000. That is where the case was made, and that is why there is so much sympathy in connection with this bill. I think we made a mistake under the philosophy on which we raised our own salaries. Until the war is over, we owe it to everyone to deny raises to everybody at that level.

Mr. CURTIS. Mr. President, may I have a ruling on my request?

The PRESIDING OFFICER. Is there objection to the request of the Senator from Nebraska? The Chair hears no objection, and it is so ordered.

The amendment of Mr. CURTIS, as modified, is as follows:

On page 1, line 3, strike out "Federal" and insert in lieu thereof "Postal".

One page 2, strike out lines 1 through 11 and insert in lieu thereof:

(2) Schedules referred to in paragraph (1) of this subsection are as follows: The Postal Field Service Schedule and the Rural Carrier Schedule contained in sections 3542 (a) and 3543 (a), respectively, of title 39, United States Code.

On page 2, beginning with line 23, strike out through line 24 on page 3.

On page 3, line 25, strike out "Sec. 4" and insert in lieu thereof "Sec. 3".

On page 4, lines 2 and 3, strike out "section 5335 of title 5, United States Code, or".

On page 4, line 22, strike out "Sec. 5" and insert in lieu thereof "Sec. 4".

On page 4, beginning with "or" in line 25 strike out through "Columbia" in line 1 on page 5.

On page 6, lines 5 and 6, strike out "or the Municipal Government of the District of Columbia".

On page 6, strike out lines 7 through 22.

On page 6, line 23, strike out "Sec. 8" and insert in lieu thereof "Sec. 5".

On page 6, in lines 23 and 24, strike out "(other than section 7)".

On page 7, in lines 1 and 2, strike out "(other than under such section)".

At the end of the bill add the following new section:

Sec. 6. Any reference in section 8 of the Act of December 16, 1967 (Public Law 90-207) to the General Schedule contained in section 5332 of title 5 United States Code, shall be considered a reference to the Postal Field Service contained in section 3542(a) of title 39 United States Code.

Amend the title so as to read: "A bill to increase the pay of postal employees".

Mr. FULBRIGHT. Mr. President, will the Senator yield so that I may ask another question.

Mr. CURTIS. I yield.

Mr. FULBRIGHT. Why cannot the Senator incorporate into his proposal a level above which the increase does not apply?

Mr. CURTIS. I think it is a task that would have to be worked out by a committee. Arbitrarily, let us suppose the figure is placed at $10,000. Would we deny a raise to the man who makes $10,000 and give a raise to someone who makes $9,990? That is the sort of thing that is involved. There is involved the tapering off, and to write a workable amendment on the floor is most difficult. I have no quarrel with the objective.

Mr. FULBRIGHT. I think it is very unfortunate in view of what the Senator from Delaware has said—and he certainly knows more than most of us about the statistics of our finances; I agree with what he said—it is unfortunate to again give raises in the higher brackets, just as it was to raise our own salaries.

Mr. CURTIS. I yield the floor.

Mr. FONG. Mr. President, I rise in opposition to the amendment offered by the distinguished Senator from Nebraska.

The distinguished Senator from Nebraska proposes to raise salaries just for the postal workers and for the military, leaving out 1.3 million people in the general classification program. Let me go into some history of the salary increases and the reasons why the Senate and the Congress adopted the principle of comparability.

As of today, we have approximately 740,000 postal employees. Of the 740,000 postal employees, only 193,000, at the height of the strike, went out on a wildcat strike. The other 500,000 or more employees remained loyal to the Government and remained on their jobs.

Besides the 740,000 postal employees, we have 1,300,000 general schedule employees.

Besides those two categories, there are also 700,000 blue-collar Federal workers. The blue-collar workers have an adjustment in their salaries almost every year because, under present law, their salaries are set by local wage board surveys. These wage board employees receive wage increases when there are increases in the private sector of their communities.

In other words, after a wage survey is made by the local wage board in a particular community, if the wage board finds salaries of comparable workers in industry have increased by 5 or 6 percent, that increase is given to the blue-collar workers. Therefore, as far as the blue-collar workers are concerned, they have pay comparability with private industry employees.

Of the 70 million employees in the United States, approximately 2,800,000 are with the Federal Government. So it can be seen that the Federal Government is a very small employer in the total employment picture in the United States.

If we also look into the employment picture of the States and municipalities, all the municipalities and States, together with the Federal Government, employ approximately 16 percent of the labor force. In other words, 81 percent of the labor force is in private industry.

As long as I have been on the Committee on Post Office and Civil Service, which has been for the past 11 years, that committee has been struggling with the problem of equalizing the salaries of our Federal employees with those paid in industry. So in 1962 we enacted the comparability principle for our white-collar employees. It passed the Congress and is now law. We have told Federal employees that we will pay them what is paid comparably in industry. In other words, a secretary in the Government service will be paid the same salary as a secretary in private industry.

So we have approximately 3 percent of the work force in the Nation, comprising 2,800,000 Government employees, following the 67 or 65 million employees in private industry. We adopted the comparability principle because we felt Government employees' salaries should be equated with those paid in private industry.

How does the Government arrive at the principle of comparability? In the early part of each year the Bureau of Labor Statistics makes a national survey of salaries paid in private industry. Those figures are not worked on until probably June to September. The figures come to the Congress in November or December. In 1969 when the figures were gathered and the equation was worked out, the Civil Service Commission finally told the Committee on Post Office and Civil Service in December that, as of July 1, 1969, approximately 6 months before, the salaries of Federal employees were 5.7 percent behind those paid in industry.

So it was our duty, if we were to follow the comparability statute which we passed in 1962 to give those employees a 5.7-percent increase in salary. We did not do that in H.R. 13000. The Senate, in its wisdom, because of the tight financial situation, gave a 4-percent increase to all employees below the $10,000 figure, 3 percent to those between $10,000 and $15,000, 4 percent to those between $15,000 and $20,000, and 1 percent to those making $21,000. The House conferees would not accept the Senate bill.

Much has been said as to why we should limit this increase to those of a certain salary, that is, those who make $8,000 or $9,000, or below. That was one of the problems that the committee worked on when we were trying to decide what we should do with salaries in the higher categories.

Because Congress would not for many years raise the salaries of those in the upper grades, the salaries were compressed. As a result of that compression, we were losing valuable men to private industry. So President Johnson, in his wisdom, convened the Kappel Commission to look into executive, judicial, and legislative salaries. It arrived at the conclusion that the Federal Government was losing to industry very valuable employees who were in the higher categories of pay. Because we had in previous years given lump sum raises to all employees, we were making the salaries of those who were in the upper categories lag far behind those of industry.

Because of that situation, we adopted the principle of comparability, and we now have a very fine system as far as comparability is concerned.

So we were told by the Bureau of Labor Statistics that, as of July 1969, in almost every category in the Federal salary scale, we were 5.7 percent behind the salaries paid in industry, not only for those in the postal service but also for those in the general schedules.

In 1967 we passed a bill, now known as Public Law 90–207, which ties military pay to that of the general schedule, and it says in substance that if there is an increase in the general schedule, there must be an equivalent increase in military pay.

The amendment which was presented by the distinguished Senator from Nebraska gives to the military, but denies to the general schedule classified employees, an increase in salary.

The BLS figures show that the classified employees in general, like the postal employees, are also behind in their salary schedules, and the amendment which has been offered by the distinguished Senator from Nebraska is an unfair amendment because it rewards one group of employees just because a portion of that group of employees went on strike, and does not compensate that group which was loyal to the Government.

When the conferees of the Senate and the House of Representatives met in conference to discuss the pay bill, H.R. 13000, they came out with a unanimous agreement that any pay bill should embody the following principles:

First, that a bill must give retroactivity to January 1, 1970.

Second, that if an increase was to be given, the increase must be across the board, to the postal service employees and the general schedule employees.

In conformity with guidelines set by the conferees of the House Post Office and Civil Service Committee and those of the Senate Post Office and Civil Service Committee, the negotiators came out with this agreement, providing 6 percent across the board for all employees retroactive to December 27, 1969.

Mr. President, the distinguished Senator from Wyoming and I had breakfast with the President 2 weeks ago and it was the opinion of the President that this was a fair settlement, and in conformity with that feeling, the President has sent a message to Congress urging passage of a bill which would provide a 6-percent increase across the board to all Government employees, except that the agreement did not, of course, include the legislative salaries. But the committee unanimously decided that legislative employees also should be included.

When we ask for an increase in salaries for our Government employees, we are also cognizant of the fact that whenever we increase Government employees' salaries by a few percent, it means billions of dollars. We know that every increase of 1 percent in the salaries of our Government employees means an expenditure of $424 million. Multiply $424 million by 6 percent, and you get an in-

crease of approximately $2.5 billion. This is a tremendous sum. But we should not take it out on the Government employees and say, "You Government employees work for less pay than your counterparts in industry." We should give to our employees what is fair, and our employees are now lagging behind their counterparts in industry by at least 6 months.

I think the amendment offered by the distinguished Senator from Nebraska is not a fair amendment. The bill which is before the Senate is a very fine bill, a bill which has been endorsed by the postal administrators, the administration, the President, the postal unions, and the members of the Post Office and Civil Service Committee, who have gone over it with a fine toothed comb.

I say that the amendment should be rejected.

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

Mr. FONG. I am happy to yield.

Mr. McGEE. I say this partly with tongue in cheek, but I have a new title for a speech which the Senator from Hawaii would probably join me in delivering, and that is, "How to Play Post Office Without Ever Getting Kissed."

We have been involved in this business for a great many weeks, and all we are getting out of it is lumps. It has been a painful as well as a painstaking process. But I echo the Senator's thought that we have come out with something fair and equitable in this regard.

I wanted to raise a point or two about the amendment of the Senator from Nebraska that the Senator from Hawaii has already touched upon. One of them is that, as I read the amendment, first it has the limitation of rewarding those groups who blew their stacks and walked off the job illegally. He is limiting the raise to postal employees and to the military, which brings me to the second blind spot in the amendment.

We cannot raise the military without raising the classified Federal employees, because of the limitations that Congress has imposed on itself under Public Law 90–207. Military pay raises are tied to Federal employee pay adjustments; therefore, I would be interested to hear how the Senator from Nebraska intends to get around that.

Mr. CURTIS. That is very simple. It is the last act of Congress that prevails. One Congress cannot pass a statute that binds a future Congress. We can raise the military any time we want to, without raising civilian salaries.

Mr. McGEE. Then you are amending the Armed Services Pay Act of 1967. The next thought that I wanted to express in regard to the presentation of my colleague from Hawaii was that at this point, at this late date, to tamper with a judgment that has, we think, been considered with cool heads from all angles, would be to jeopardize the chances for the mechanism of a new collective bargaining process that I think if successful would do more to head off further explosions from these sources than any other factor.

Mr. FONG. Especially when the barganing is in conformity with equitable principles.

Mr. McGEE. It has not been excessive in any way. If the military is kept in, as the Senator from Nebraska suggests, we are retaining an increase of $1.2 billion. If the postals are kept in, with a 6-percent retroactive increase, we are retaining another $400 million. That means we are taking out of the bill about $900 million, under the Senator's amendment, for the classified employees. We just do not think this is the way to make this adjustment, in view of the rising costs during the last year.

To keep the matter in perspective, they are still negotiating downtown, and will be negotiating the rest of this year, on the selective process of rewarding the meritorious in terms of real need. This 6 percent was a retroactive adjustment to try to keep pace with the comparability and the cost-of-living pressures that have descended on all, regardless of what level they find themselves in.

So I hope the amendment of the Senator from Nebraska will be defeated.

Mr. GOLDWATER. Mr. President, will the Senator yield so that I might ask the chairman a question?

Mr. FONG. I yield.

Mr. GOLDWATER. Is there some way the committee might give heed to the suggestions made by the distinguished Senator from Arkansas relative to some limitation on this increase? I can understand the need of the lower paid postal employees, but I cannot understand the need of the $25,000 or $30,000, or even the $15,000 civil servant, for a 6-percent increase at this time. I would hope we could confine this adjustment to the area where it is really needed.

As I have said time and again, I blame, in large measure, the plight of the lower paid postal employees on their own unions, because never, during the years I was here before, did I feel that they came in with a package that represented equal pay for the postal employees. They are always lagging about 2 years behind, and I think the blame can be placed upon their unions.

I would hope, because of the rapid increase in the cost of living which is continuing and not abating, the danger that this measure will add to inflation, and the danger that inflation will lead to a downright depression in this country, which will destroy the spending ability of all Americans, that we could take a look at the suggestion of the Senator from Arkansas that we place a ceiling on this increase.

I am thinking, for example, of general officers and admirals. I am thinking of our assistants, who receive very high salaries, I might say. I do not think they are in need of a 6-percent increase, and I would hope that, either through a modification of the amendment of the Senator from Nebraska or a decision by the committee to amend the bill, this could be accomplished.

Mr. McGEE. The Senator from Arizona has made a very thoughtful pursuit of that point, along the lines suggested by the Senator from Arkansas in the earlier colloquy.

I might say that the committee deliberated a long time on that point, in terms of where a good cutoff possibility might lie, or whether we had better just give a monetary adjustment across the board, let us say $750 per individual, which would thus help the lower ones more than the upper ones.

We got into such complications on that, in carrying it out in terms of the negotiations, that it seemed that the fallout from those consequences did not make enough difference to go that route.

Likewise, on that same point, the whole emphasis on the 6 percent was geared into the comparability factor. Underway right now are the separate negotiations unrelated to these to try to adjust these other compensating factors.

I would hope that we could consider in the context in which all of this has come that the least complicated and least loaded way in terms of unfairness to individuals is still to go the 6-percent across the board on all of the levels now. We in the Senate do not have to give it to our employees. That is our decision. I did not give it to mine the last time, and I am not going to stampede into that. That is our prerogative. So we do not have to go that route.

I think it is meritorious that we weigh this and that we ought to strive to come up with some kind of formula soon down the road we are trying to pick our way along right now, where we can give good consideration and real thought to some possible adjustments along the line that the Senator suggests. I just do not believe that it now, at this stage, belongs in this particular adjustment.

Mr. GOLDWATER. I can understand the Senator's reluctance to change at this late date. However, my concern—and I am not sure whether this is also the concern of the Senator from Arkansas—is expressed by the very word he has repeatedly used—"negotiation." It is against the law to strike against the Government. I have a very strong feeling that the people who strike against the Government should be dismissed from the Government. The Senator is talking about negotiations. If this across the board goes, this is just the beginning, in my humble opinion. We would have recognized the right of the Federal employee to strike against his Government, against the law of the United States.

We have not punished anybody for doing this. This is the opening wedge for every union in this country to demand unearned wage increases. The postal employee we are talking about has earned an increase. I do not think my administrative assistant, with all due respect to him, has earned an increase. I do not think the assistants downtown who are earning $20,000, $25,000 and $30,000 a year have earned an increase. But this is not going to stop. Working people all over this country are again demanding, as the Teamsters are demanding, unearned wage increases. The only result of this is unearned price increases, and the very people we are trying to help here today are the ones who wind up behind the eight ball again.

I have seen statistics recently that show that the man who had been receiving these increases over the past 5 years merely breaks even with what he was making 5 years ago because of the

cost of living increase. This disturbs me greatly, and it is the prime reason why I suggested that we pay attention to what the Senator from Arkansas has suggested, that we do put a ceiling on this. At least it indicates to the people of this country that we are not going hog wild, that we are not bending to the pressures of George Meany and a postal union and a threat from other governmental unions.

I would hope, even though I know the committee has had a hard job and has worked long and quickly on this, that we could incorporate some cut-off level in this. I do not think the committee has had any demand from the higher salaried employees. Has it?

Mr. McGEE. No. We have not been lobbied by any of the higher salaried employees, that I know of. I have not been. I cannot speak for the others.

Mr. GOLDWATER. I would certainly hope that during the course of the discussion the chairman could get together with his committee and decide. If he wants a suggestion, why not double what the Labor Department says is a minimum earning for a family—I think it is about $4,400—and let us do better than that and say $9,000? Anything above that we do not increase.

Mr. McGEE. I think this has real merit. I think it would take more in the way of study and hearings than to skim this off the surface on the floor this afternoon. We have been up and down that one several times.

I should like to say, in response to the Senator from Arizona that there is no cave-in here to labor or to George Meany. The Senator will find, when the record of these negotiations has been made public, that the labor negotiators were very responsible. These were not the ones who were walking out. These were the ones who advised against it. The management people tell me that it has been a very tough but responsible give and take. That is what collective bargaining is all about. We really believe that the greatest thing at stake right now is not even that total in dollars. It is the chance for success of this now, that that will do more to establish the credibility of labor-management relations in Government, where the strike is illegal, and do more to head it off in the future, than to patchwork this thing right now because of the bind we are in.

It is our genuine conclusion that we have a better chance to succeed the way we have recommended here in the proposed legislation—mindful as we are of the problem it poses for us in terms of the higher echelon groups. If those are added together, I am told we are still talking about a handful of dollars in comparison with the total of $2.5 billion.

Mr. GOLDWATER. Even a handful of dollars is important now.

I was interested in listening to the Senator from Delaware recite the plight of the dollar in this country, and he did not include one item that I am sure he has the figures on—the plight of the civil service retirement fund.

Does the Senator have that information?

Mr. WILLIAMS of Delaware. I understand it is a deficit of approximately $40 billion to $50 billion on an actuarial basis. It is nearer $60 billion.

Mr. GOLDWATER. I am told, further, that if this is not met by 1980, there will be no retirement for us younger people. [Laughter.]

Mr. McGEE. Last year, Congress provided a permanent formula for taking care of it. We are no longer back where we were with that problem.

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

Mr. McGEE. I yield.

Mr. PASTORE. If the Senator from Arizona needs it that badly, he can have mine.

Mr. GOLDWATER. I will take it.

Mr. FONG. Did we not have a problem about 5 years ago, when we gave an increase to the lower grade postal employees and did not increase the others? We found that the lower grade employees were making more than the supervisors.

Mr. McGEE. The Senator is correct. In fact, it used up whatever difference there was between those with greater repsonsibilities than we had allowed for. That is why we are in trouble. There was no January 1964 pay increase for the high-level employees, because the ceiling had been reached.

Mr. FONG. And did we not find, before we enacted that pay raise bill, that those in the upper grades were really farther behind on comparability than those in the lower grades?

Mr. McGEE. Much farther behind.

Mr. FONG. Did we not find that those in lower grades were almost comparable to those in private industry but those in the upper grades were very far behind?

Mr. McGEE. That is true.

Mr. FONG. If the increase is just given to the lower grade employees we will find that the upper grade employees will lag farther behind than they were before.

Mr. McGEE. The Senator is correct. And then they will do what was suggested by one of our colleagues this afternoon—they will go out and find something else. This is what we are trying to slow down or prevent. We believe we need these people, and we are trying to hold those with proven competence in the leadership role.

Mr. FONG. Is that not why the Kappel Commission recommended that the salaries of Representatives, Senators, and top executive levels be increased, so that those who were just below them could have their salaries increased, and we could keep them in Government?

Mr. McGEE. That is correct. That was the whole purpose of the Kappel Commission report.

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

Mr. McGEE. I yield.

Mr. PASTORE. I think there is a great deal to be said about the fact that there are few jobs—no question about it—in which the employees are being excessively paid. There is no question about it. Some adjustments ought to be made. How those adjustments can be made, is the question. But, by and large, I would say that the majority of the employees of the Federal Government are either modestly paid or in many instances underpaid.

The suggestion was made here to limit an increase to those making up to $9,000. That sounds good at first blush, but that would exclude the air traffic control employees, and that would create a problem. I think that essentially their complaint is money more than it is over work. I think they do a good job while they are at their posts. I do not approve of what they did, any more than I approve of anyone engaging in a wildcat strike against the Government. I have always said that when you strike against the Government, you strike against yourself.

When I was Governor of the State of Rhode Island, I was threatened two or three times, and I know the strong position I took at that time. You have to take a strong position and not tolerate that.

I think that here a mechanism has been adopted that in the future will be very helpful. I realize that in the process anyone could get up and point out a half-dozen or perhaps more than that where certain employees are really going to receive too much money when we give them the 6-percent increase. There is no question about that. But, by and large, I am afraid that if we begin to try to make every adjustment on the Senate floor in every particular case, we will destroy the whole purpose of the bill. That is one thing we have to consider here. I am not too happy that some people will get a 6-percent raise, but, on the other hand, that is only a handful. There is a great multitude of Federal employees who are being underpaid and they do have a grievance which has to be met.

Mr. STEVENS. Mr. President, the point the Senator from Arizona made was adequately argued in committee. It would be recalled that President John Griner of the American Federation of Government Employees, stated that the spread of 6 percent over the existing grades would be a more equitable fashion. I am inclined to believe that that would have been the best way if we were the negotiators, but we did not negotiate. The Postmaster General and the Government Employees Union came before the committee and explained that this was the product of the crucible of labor-management negotiations.

I commend the Senator and the ranking minority member for their efforts to make this a meaningful session. It is still going on. We still have the problem of comparability to settle; but I, for one, oppose the amendment that has been offered, and I would hope that we would be able to go ahead and have our input to the labor-management negotiations, as the Senator did during the time it was going on through the conference committee representatives, but we can also recognize that we can avoid strikes and slowdowns by getting meaningful representation to the union and the people who represent the Government employees.

Mr. McGEE. I want to thank the Senator from Alaska, who has been one of the hardest working members of the committee.

Mr. FULBRIGHT. Mr. President, I want to ask a question. The Senator said that his committee had considered an across-the-board raise instead of a percentage raise. That, it seems to me,

might go a good way toward meeting the observation the Senator from Arizona made, and with which I am in sympathy.

Supposing we authorized a $500 across-the-board raise. That would certainly not be so much out of line with those making $30,000 as with those making $8,000 or $9,000. That would actually be about 6 percent of $8,000, or $480, I believe, which would accomplish it to some degree.

I just think it is impracticable, somehow, to use this formula at this late date. What is impracticable about authorizing a $500 raise? That would be meaningful for those who get $7,000 or $8,000. It would not be too much for the man making $30,000.

Mr. McGEE. We weighted that. It was not practical, in our judgment——

Mr. FULBRIGHT. Why not?

Mr. McGEE. For the simple reason that the formula arrived at, of 6 percent, was to adjust to rising costs of living, and that ahead is the negotiation to compensate for the inequities. That is what is being talked about downtown right now. Therefore, we felt, in view of what is going on there now, that we were prepared to address ourselves to the formula that was arrived at in one of the two settlements; namely, 6 percent retroactive, and that was the reason we finally rejected the flat formula, flat sum of money, and the complications it would impose. It would throw out of whack the negotiations going on now, in terms of trying to make that adjustment downtown.

Mr. FULBRIGHT. It seems to me that is not so simple, procedurally, as the 6 percent. We could go on and negotiate in addition to that. We assume it is, in a sense, just a temporary raise, to meet a kind of emergency.

I just wish to reiterate that I think it is bad psychology when the country is undergoing the greatest inflationary movement it has had in many years. It is as serious, I read, as back to the Civil War, to engage in further wage rises and at the higher level particularly. I am reluctant to vote for that. I think I shall vote for the amendment of the Senator from Nebraska, in the hope that at least this increase could be limited temporarily. I recognize, of course, that there are other things, particularly the air traffic contollers, who might well deserve as much or more consideration.

I would prefer, if it were possible, to incorporate the idea of an extra, limited increase in the higher brackets, just for the same reason I thought it was wrong for us to increase Senators' salaries.

Mr. McGEE. Mr. President, I am ready to vote.

Mr. CURTIS. Mr. President, I shall not detain the Senate for more than 2 minutes. I invite the attention of the Senator from Arizona and the Senator from Arkansas to the fact that to vote for my amendment is the way to reach the objective that is sought.

We are in a crisis over the postal pay. It seems that we must do something on postal pay. By deleting from the bill the general civil service, then the committee will have time to work out an amendment that deals with the problem of low-paid individuals not receiving enough to get along under present prices.

Let us consider what we are doing today.

According to the statement of the committee, we are giving the letter carriers in a great city a $375-a-year raise, and our administrative assistants up to $1,800.

Oh, I have heard about the great glories of negotiations, and the glories of comparability.

Let us have a little comparability within the Government.

Now any of those who know conditions in their own States have serious question about this business of comparability. Certainly there is nothing comparable about Government wages, nongovernment retirement pay, farm income, or the great masses of people who work for a living in our small communities.

Here is something else we are doing in the bill. We are raising the page boys in the Senate to a greater total amount than we are giving to the letter carriers in the cities who are supporting a family.

I love every one of those page boys. I hope the day will come when they will have a place here in the Senate. I think they will do a better job. But we are asked, in the name of comparability, to vote for a bill that will give the page boys in the Senate a $394.20 increase and the letter carriers will be getting a $375 increase. Oh, the glories of comparability. They sound good, if we never look at the figures. But, they are as phony as a $3 bill.

Mr. President, I have left in my amendment the raises for the postal service because we are in a situation that we have to meet. Let me say that no postal worker in the State of Nebraska struck or asserted his right to strike. I shall always praise them for that.

I have also included the military because we are in a time of war and they are sacrificing for us. Furthermore, no one in the military can resign.

Mr. President, let us meet what has to be met today; namely, the postal crisis.

I do not want to offer an amendment against the military. As I say, they cannot resign, and they are rendering a tremendous service to our country in their sacrifices for us.

It does not mean that the door is closed to the general civil service. The committee can report a bill and take into account the fine suggestions made here. Do not be mistaken, $800 million is the first price tag. It affects fringe benefits, it affects group hospitalization costs, it affects life insurance costs, and it affects the retirement pay.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Nebraska. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Indiana (Mr. BAYH), the Senator from Nevada (Mr. BIBLE), the Senator from North Carolina (Mr. ERVIN), the Senator from Indiana (Mr. HARTKE), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Minnesota (Mr. McCARTHY), the Senator from Minnesota (Mr. MONDALE), and the Senator from Georgia (Mr. RUSSELL) are necessarily absent.

I further announce that the Senator from Rhode Island (Mr. PELL) is absent on official business.

I further announce that, if present and voting, the Senator from Nevada (Mr. BIBLE), the Senator from North Carolina (Mr. ERVIN), the Senator from Hawaii (Mr. INOUYE), and the Senator from Louisiana (Mr. LONG) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT) is absent on official business as observer at the meeting of the Asian Development Bank in Korea.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from California (Mr. MURPHY) is necessarily absent.

On this vote, the Senator from South Dakota (Mr. MUNDT) is paired with the Senator from California (Mr. MURPHY). If present and voting, the Senator from South Dakota would vote "yea" and the Senator from California would vote "nay."

If present and voting, the Senator from Utah (Mr. BENNETT) would vote "nay."

The result was announced—yeas 8, nays 77, as follows:

[No. 124 Leg.]

YEAS—8

Cook	Fulbright	Mansfield
Curtis	Goldwater	Williams, Del.
Dominick	Hansen	

NAYS—77

Aiken	Griffin	Pastore
Allen	Gurney	Pearson
Allott	Harris	Percy
Baker	Hart	Prouty
Bellmon	Hatfield	Proxmire
Boggs	Holland	Randolph
Brooke	Hollings	Ribicoff
Burdick	Hruska	Saxbe
Byrd, Va.	Hughes	Schweiker
Byrd, W. Va.	Jackson	Scott
Cannon	Javits	Smith, Maine
Case	Jordan, N.C.	Smith, Ill.
Church	Jordan, Idaho	Sparkman
Cooper	Magnuson	Spong
Cotton	Mathias	Stennis
Cranston	McClellan	Stevens
Dodd	McGee	Symington
Dole	McGovern	Talmadge
Eagleton	McIntyre	Thurmond
Eastland	Metcalf	Tower
Ellender	Miller	Tydings
Fannin	Montoya	Williams, N.J.
Fong	Moss	Yarborough
Goodell	Muskie	Young, N. Dak.
Gore	Nelson	Young, Ohio
Gravel	Packwood	

NOT VOTING—15

Anderson	Hartke	Mondale
Bayh	Inouye	Mundt
Bennett	Kennedy	Murphy
Bible	Long	Pell
Ervin	McCarthy	Russell

So Mr. CURTIS' amendment was rejected.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed, without amendment, the joint resolution (S.J. Res. 190) to pro-

vide for the settlement of the labor dispute between certain carriers by railroad and certain of their employees.

FEDERAL PAY LEGISLATION

The Senate continued with the consideration of the bill (S. 3690) to increase the pay of Federal employees.

Mr. FULBRIGHT addressed the Chair.

The PRESIDING OFFICER (Mr. EAGLETON). The Senator from Arkansas is recognized.

Mr. FULBRIGHT. Mr. President, I have not yet drawn it up but I wish to offer an amendment to change the 6 percent which appears at line 12 on page 1 to $400, which would have the effect of giving approximately 6 percent. At $7,000 it would be $420. I am told by the staff that the cost of this proposal would be approximately the same as the current bill.

Since the Senate rejected the amendment of the Senator from Nebraska which limits the increase to the postal service and the military, I now assume there is no possibility of restricting its application. I think it would be much wiser to strike out the 6 percent at line 12 on page 1 and to insert in lieu thereof $400. That would be across the board and everyone would get $400. This would preserve the absolute relationship between all employees. It would not violate the principle we discussed a moment ago about giving 6 percent only to those up to $10,000.

No supervisor would get less than his underlings. I think this is a much more equitable way to approach it.

Furthermore, in view of the dire condition of the Federal Government, and as long as the war continues inflation will continue, and I see no prospect of it ending. I think it is the height of improvidence and unwise to engage in further substantial increases in salaries. I regret the Senate set the example in raising our own salaries. I voted against it on the same principle.

Comparability is applicable only in a relatively small number of employees of the Government, Furthermore, the Government is not comparable in the way it conducts its business to that of private enterprise.

I offer my amendment at this time.

The PRESIDING OFFICER. The amendment will be stated.

The ASSISTANT LEGISLATIVE CLERK. On page 1, line 12, strike out 6 percent and insert in lieu thereof $400.

Mr. FULBRIGHT. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. McGEE. Mr. President, the point made by the Senator from Arkansas is a very worthwhile point and we have on some occasions in the past made adjustments according to that formula.

The committee weighed very carefully this proposal, which would tamper with the negotiated formula already torturously worked out in free collective bargaining. We felt that the benefits to be gained by going the route that the Senator proposes would have more fallout complications than would make it worthwhile.

Furthermore, the formula aggravated the problem we have been trying to work out at least since 1965, of trying to keep separate in meaningful ways which have been worked out in great detail in hearings, the differences in wage returns for those with higher and more responsible positions.

This is a carefully dovetailed kind of operation.

Lastly, the negotiations under way right now downtown, where the negotiators have been meeting since 3 o'clock, are looking precisely to this formula down the road. We believe that if we were to tamper with this formula this evening, it would blow the negotiations that have been achieved between the administration and the interested groups; that it would not be responsible legislation in this bill at this time. We think the proposal has merit for weighing in future proceedings. So we recommend against it at this time.

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

Mr. McGEE. I yield.

Mr. FULBRIGHT. Can the Senator tell us what percentage of postal employees would get as much under this amendment as they would get under the bill?

Mr. McGEE. I did not hear the last part of the Senator's question.

Mr. FULBRIGHT. What percentage of the posal employees would get as much under my amendment as they would get under the bill? I refer only to the postal employees.

Mr. McGEE. The postal employees only would get more——

Mr. FULBRIGHT. No. I am asking about the percentage of the postal employees. Would not a very large percentage get just as much under my amendment as they would under the bill?

Mr. McGEE. Yes.

Mr. FULBRIGHT. What percentage?

Mr. McGEE. About 95 percent.

Mr. FULBRIGHT. The 95 percent of all postal employees would get just as much under this amendment as under the bill presented. All that would be done would be to avoid giving these large increases on a percentage basis to those making $25,000 or $30,000 a year. Does the Senator agree?

Mr. McGEE. What the amendment does is tear down the work of the committee that has been going on for 5 years, trying to get a new salary structure that is relevant in terms of different levels of responsibility. I just do not think this is the bill or the place or the method to unravel what has been worked together so intricately.

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

Mr. McGEE. I yield.

Mr. FONG. Would not this proposal wreak havoc with the comparability formula?

Mr. McGEE. Indeed, it would throw out of kilter the whole comparability formula, which we have been trying to achieve ever since we passed that bill.

Mr. FULBRIGHT. How could that be when 95 percent would get approximately the same under my amendment as they would under the bill? How does that wreak havoc?

Mr. FONG. It wreaks havoc because the Senator would limit it to those who are drawing perhaps $6,000 or $7,000 a year, but for all those who are drawing more than $6,000 or $7,000 a year, there would be no increase which in turn would cause a severe compression problem.

The Bureau of Labor Statics informed us that, as of July 1, 1969, all Government employee salaries were 5.75 percent behind that of industry in salaries.

In 1962 we adopted the principles of comparability. We said that Government employees should have comparable wages with their counterparts in industry. This amendment would wreak havoc with the comparability philosophy and wreak havoc with the whole concept.

Mr. FULBRIGHT. How is comparability arrived at? Is it a computer estimate?

Mr. FONG. The Bureau of Labor Statistics makes national salary surveys and gathers information from all industry to see if the pay in private industry jobs is comparable with the same jobs in Government.

Mr. FULBRIGHT. Who says that?

Mr. FONG. The Bureau of Labor Statistics.

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

Mr. McGEE. I yield.

Mr. SYMINGTON. I was interested in the remarks made by the distinguished Senator from Arkansas with respect to the various wars we are now fighting. He mentioned the fact he had voted against the increase in Senate salary. So did I. A few minutes ago I was looking at the tickertape, and noted there is now a plan to build 10,000 homes in Vietnam for families of South Vietnamese military.

My distinguished colleague, Senator EAGLETON, pointed out the other day that in our town of St. Louis, with 665,000 people, we built last year exactly 14 single unit houses.

It seems to me, as day after day on this floor we continue to approve all these adventures abroad, which are costing the taxpayers of the United States over $100 million a day—Europe, the Middle East, the Far East—we might give some consideration to what the problems of the people of this country are back here at home. Only last year $6 of every $100 of take-home pay in the United States was taken away from our people, all of it through inflation, most of it because of the heavy price of these ventures.

Is it not about time that we stopped worrying so much about the importance of babysitting and gendarming the rest of the world, and started paying more attention to the problems of our own people here at home?

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

Mr. McGEE. Mr. President, I yield the floor.

Mr. MILLER. Mr. President, I would like to ask either the manager of the bill, the Senator from Wyoming, or the Senator from Hawaii a question about comparability. As I understand the proposition before the Senate, the proposal is

to try to take care of a problem resulting from increases in the cost of living, and for the time being a 6-percent increase is deemed to be what must be done. If we apply this 6 percent to the various scales under the comparability doctrine, naturally we can expect that some of the higher-paid employees are going to have more than a $400 increase, because they had more than a $400 increase in their cost of living. If we confine it to a $400 increase, it is going to have an impact upon the philosophy or the doctrine of comparability which is supposed to be supported by the cost-of-living increase.

I ask if this is not what we are really deciding.

Mr. McGEE. That is precisely the point. That is what is jeopardizing the law passed in 1962. The committee was commissioned to work toward comparability in the public service, to try to entice and hold competent individuals in Government.

The move now by this amendment in the bill today would jeopardize the comparability efforts that have now gone on for 8 years.

Mr. MILLER. Then, when the Senator from Wyoming stated that the amendment has some merit, I take it he was stating it had merit when we look at some possible revisions in the pay scales later on?

Mr. McGEE. That is right.

Mr. MILLER. But it does not have merit in the concept of the increase in the cost of living that we are trying to cover?

Mr. McGEE. When we have a fixed increase, we always take in those at the lower end of the scale and then go higher up. It was the conclusion of the committee that taking the flat figure would create new problems and that the fallout complications would cause more problems than would be solved by such a provision.

Mr. MILLER. It just seemed to the Senator from Iowa that to mix in a flat increase with a problem having to do with an increase in the cost of living does not fit. If we had no increase in the cost of living, and we were merely trying to equalize, especially in some of the lower brackets, I could understand this idea of a flat increase. But that is not what our problem is, and that is not what we are here about.

Mr. McGEE. That is right.

Mr. MILLER. I thank the Senator.

Mr. YOUNG of North Dakota. Mr. President, will the Senator yield?

Mr. MILLER. I yield.

Mr. YOUNG of North Dakota. I think a far more important consideration for us today is that Mr. Blount, the Postmaster General, Mr. George Shultz, the Secretary of Labor, Mr. George Meany, the head of the AFL–CIO, and the representatives of the postal workers' unions all agreed on the 6 percent. If we change the formula now, we will upset everything, and have to start all over again where we were about 2 weeks ago when we had the strike. This would present a very serious situation.

Mr. MILLER. The Senator, in my judgment, is absolutely correct. But I would suggest that the reason they settled on this is because the problem is that of a cost-of-living increase, and that is the reason we have to have a percentage increase. Otherwise, we are going to destroy the very purpose for which this legislation has been introduced.

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

Mr. MILLER. I yield.

Mr. FONG. Also, this 6 percent was within the area of the 5.7 percent comparability percentage which the Bureau of Labor Statistics said we should have given to the Government employees as of July 1, 1969.

Mr. MILLER. I am very happy that the Senator made that point. That is right on the target.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Arkansas.

Mr. CHURCH. Mr. President, I have no expectation that the amendment offered by the distinguished Senator from Arkansas will be agreed to. I recognize the difficulty entailed, due to the negotiations that have taken place and the delicacy of the present situation.

Nevertheless, I shall support the amendment, and I shall support it for just one reason: I think a grave mistake was made at the commencement of this Congress. To begin with, it was made by the President of the United States when he accepted a 100-percent increase in his salary. From that time forward, he lacked any moral basis upon which to urge others not to insist upon very substantial increases in pay. The mistake was compounded, in my judgment, when Congress authorized a 42-percent increase in congressional salaries, and extended a comparable increase across the board to cover all top executive officials of the Government.

This denied to Congress a moral basis upon which to urge the country, in a time of war and insistent inflationary pressures, to pull in its belt and restrain the tendency to insist upon more and more pay.

Now we have a bill which undertakes to increase all Federal pay, not just for postal workers, but for the classified civil service and the armed services as well, and once again it is based upon a percentage increase, which is not directed toward those employees who need it most, toward those who are hurt most by the inflation, those who are receiving the lowest pay, but will give the largest increases to those who are earning the most pay. High-salaried employees who are earning $25,000 and $30,000 will be getting $1,500 and $1,800 increases in pay. Those who need it the most, at the bottom of the pay scale, will be getting the least, say, $300 or $350.

I think the problem we face in this country is the way we keep serving ourselves, with those at the top always taking the biggest slice. If there ever was a time to stop this, it is now. I know it is hard. We failed earlier in the case of the topmost Federal executives, and now it is very difficult to face up to the need. But the need nevertheless exists.

If we were to adopt the amendment offered by the Senator from Arkansas, we would spend as much money, but we would utilize that money on those people who are getting $4,000, $5,000, or $6,000 a year, and trying to pay their grocery bills with it. We would give the relief where the relief is really needed, and we would stop the process of fattening the pocketbooks of those who do not need it, most of whom are not even asking for it, up at the top of the salary scales of the Government.

I shall support the amendment because it is addressed to those who need the added money most.

The PRESIDING OFFICER (Mr. EAGLETON). The question is on agreeing to the amendment of the Senator from Arkansas (Mr. FULBRIGHT). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Indiana (Mr. BAYH), the Senator from Nevada (Mr. BIBLE), the Senator from North Carolina (Mr. ERVIN), the Senator from Indiana (Mr. HARTKE), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Minnesota (Mr. McCARTHY), the Senator from Minnesota (Mr. MONDALE), and the Senator from Georgia (Mr. RUSSELL) are necessarily absent.

I further announce that the Senator from Rhode Island (Mr. PELL) is absent on official business.

I further announce that, if present and voting, the Senator from Nevada (Mr. BIBLE), the Senator from North Carolina (Mr. ERVIN), and the Senator from Louisiana (Mr. LONG) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT) is absent on official business as observer at the meeting of the Asian Development Bank in Korea.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from California (Mr. MURPHY) is necessarily absent.

If present and voting, the Senator from Utah (Mr. BENNETT), the Senator from South Dakota (Mr. MUNDT), and the Senator from California (Mr. MURPHY) would each vote "nay."

The result was announced—yeas 21, nays 64, as follows:

[No. 125 Leg.]

YEAS—21

Allen	Eagleton	McGovern
Church	Ellender	Nelson
Cook	Fulbright	Stennis
Cotton	Goldwater	Talmadge
Cranston	Hansen	Thurmond
Curtis	Hollings	Williams, Del.
Dole	Mansfield	Young, Ohio

NAYS—64

Aiken	Cooper	Harris
Allott	Dodd	Hart
Baker	Dominick	Hatfield
Bellmon	Eastland	Holland
Boggs	Fannin	Hruska
Brooke	Fong	Hughes
Burdick	Goodell	Jackson
Byrd, Va.	Gore	Javits
Byrd, W. Va.	Gravel	Jordan, N.C.
Cannon	Griffin	Jordan, Idaho
Case	Gurney	Magnuson

Mathias	Pearson	Sparkman
McClellan	Percy	Spong
McGee	Prouty	Stevens
McIntyre	Proxmire	Symington
Metcalf	Randolph	Tower
Miller	Ribicoff	Tydings
Montoya	Saxbe	Williams, N.J.
Moss	Schweiker	Yarborough
Muskie	Scott	Young, N. Dak.
Packwood	Smith, Maine	
Pastore	Smith, Ill.	

NOT VOTING—15

Anderson	Hartke	Mondale
Bayh	Inouye	Mundt
Bennett	Kennedy	Murphy
Bible	Long	Pell
Ervin	McCarthy	Russell

So Mr. FULBRIGHT's amendment was rejected.

Mr. GRIFFIN. I ask for third reading, Mr. President.

Mr. HARRIS. Mr. President, there is a group of employees who are not covered by this bill because their salaries are determined by different procedures. They are the one-fourth of the Federal employees who are referred to as wage board employees.

Back in October of 1968, my former colleague, from Oklahoma Senator Monroney, offered an amendment which was adopted and is now law. It provides for a much more equitable method for setting the salaries of these employees, who up to that time had certainly been inequitably treated. The difficulty, however, has been that the Civil Service Commission and the Department of Defense have moved unconscionably and intolerably slow in the implementation of that section of the law referred to as the "Monroney amendment."

In that regard, I ask unanimous consent to have printed at this point in the RECORD an article published in the Daily Oklahoman of Monday, March 9, 1970, pointing this out.

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

WAGE BOARD PAY SCALE AT TINKER AIR FORCE BASE POSES ONE BIG HEADACHE

(By Kathy Christie)

WASHINGTON.—Reluctant Pentagon and civil service commission officials are wrestling with results of a just-completed wage board pay survey for Tinker Air Force Base.

As they see it, the survey will result only in inequities in pay scales for blue collar workers. They readily admit that an amendment by former Oklahoma Senator A. S. (Mike) Monroney that became law back in October, 1968 has given them nothing but bureaucratic headaches. They'd dearly like to have it taken off the books.

Unlike employees under the classified grade system whose pay scales are fixed nationally, the pay of wage board employees is based on the going-pay rate in the local economy for similar work.

Prior to enactment of the new law a little over a year and a half ago, federal job positions for which no comparison could be found in private industry in the area were merely lumped with jobs in other fields on the same general skill level, and an average was established.

However, the Monroney amendment requires the government to seek comparative pay rates outside of the local area if there are not comparable jobs in local private industry.

So, for example, to set wage board pay for aircraft mechanics at Tinker Air Force base, the surveyors now have to reach beyond the normal 50 mile radius to Tulsa's large aircraft industries in order to find comparable private pay.

In doing so, they likely will come up with a salary level for aircraft mechanics which is higher than other workers in the same grade levels will be receiving.

Civil Service Commission Chairman Robert Hampton in testifying last year on wage board pay legislation before the House Post Office and Civil Service Committee said that the amendment would "if carried to its full potential . . . pose a threat to the entire prevailing rate concept."

More recently Hampton said that the law "is vague and very difficult to administer. He said, "There can be no practical application of the law . . . no way to apply it in theory and maintain it" in setting local wage board pay rates.

Raymond J. Braitsch, who heads the Department of Defense wage fixing office, said the new out-of-area wage survey will affect those Tinker employees in grades W-9 and above "who are concerned with accomplishment of the mission of the organization" such as "aircraft overhaul and repair specialists."

It would not affect carpenters, plumbers and the like, he said.

Although the legislation was enacted over a year and a half ago, "its requirements were not ironed out until about four months ago," Braitsch said.

He said that "about 40 areas" are being surveyed for special requirements, and some locations which had been recently surveyed under previous regulations were being resurveyed.

Braitsch said that the report for Tinker was among the first in the nation to be completed, but added, "I don't expect that a new schedule based on the data will come for weeks or possibly even months." He said the problem was in interpreting the law and establishing correct legal procedures.

It took 14 meetings of the National Wage Policy Committee to work up guidelines for coordinating the new out-of-area survey rules, and extended negotiations between DOD, the principal surveying agency, and employee unions to reach agreement on initial instructions.

Even after all the hassling, officials say there are still more than a few wrinkles yet to be smoothed out.

"It's a mess, just rife with inequities," Braitsch said. "The Department of Defense and the federal government were generally opposed to this (amendment) from the beginning." However, he said the amendment had been "tacked on to an 'unvetoable' bill."

There is unanimous agreement among knowledgeable government officials that the new survey for special category jobs could conceivably result in federal employees receiving a higher wage scale in Oklahoma City than those holding down the same occupation in Tulsa, where the private industry pay scale had been surveyed.

What the new out-of-area survey requirements boil down to, is a large headache that the government officials will just have to live with—at least for a while.

Although there are several legislative proposals to ease or change the new system, relief seems to be a good way away.

Mr. HARRIS. Mr. President, this article details the fact that the Chairman of the U.S. Civil Service Commission, Mr. Robert H. Hampton, has not favored the Monroney amendment and that the Department of Defense has not favored it, either. While there are disclaimers that they have dragged their feet in carrying it out and providing fairness for this group of employees, I think that those statements are suspect because of the great delay in the implementation of that amendment.

I would say to the Senate that the Committee on Post Office and Civil Service, under the chairmanship of the distinguished Senator from Wyoming (Mr. McGEE), has been very helpful and very interested in the special problems of these employees. The staff of that committee has asked the Civil Service Commission to move with dispatch on carrying out the Monroney amendment, and very recently has received a letter from the chairman of the Commission which sets forth the Civil Service Commission position with regard to these employees. I ask unanimous consent that this letter be printed at this point in the RECORD.

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

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C. February 10, 1970.

Mr. DAVID MINTON,
Committee on Post Office and Civil Service, Washington, D.C.

DEAR DAVID: I have your letter of January 22, 1970, concerning the application of the Monroney Amendment and the wage board situation at Tinker.

Before I respond to the questions raised by Senator Harris' Legislative Assistant, let me assure you that we have not been dragging our feet in the implementation of the Monroney Amendment. It is true that the former Administration opposed this law; it is equally true that I am not in favor of it because I believe that it is contrary to the whole principle of establishing pay rates on the basis of rates prevailing in private industry in the local area. Nevertheless, the Commission recognizes that it has a responsibility for the implementation of the Monroney Amendment. We do not believe that we have been remiss in that responsibility.

Beginning with the enactment of the Monroney Amendment on October 12, 1968, staff began immediately to develop implementing instructions. It was not easy. The wording of the law is not precise and therefore can be interpreted in a number of ways. Because of this it took 14 meetings of the National Wage Policy Committee before the first instructions were issued. When the Department of Defense undertook to apply these instructions, it raised some basic questions which required three more meetings of the National Wage Policy Committee before satisfactory answers were developed. The last meeting of the Committee was August 15, 1969.

Since that time, the Department of Defense, which is the lead agency in the majority of the wage areas, has been obtaining information needed to make the necessary determinations on the principal types of positions for application of the Monroney Amendment.

While no wage schedule has yet been issued under the provisions of the Monroney Amendment, it appears that the Oklahoma City wage area will be the first. We understand that Defense has identified the principal types of positions for which Monroney Amendment rates will be established and is at this time developing the survey coverage necessary to establish the wage schedules. Even so it will probably be March or April before the data are secured and the schedules issued.

With this general background in mind, I will respond to the questions raised by Senator Harris' Legislative Assistant concerning the Tinker situation. My responses will be numbered to correspond to the number of the questions in the letter.

1. Two surveys have been completed at Tinker since the Monroney Amendment was enacted. The first was issued on January 9, 1969, but was effective on October 30, 1968.

The second was issued on October 27, 1969, and was effective November 2, 1969.

2. The Monroney Amendment will be applied retroactively to both these surveys as soon as necessary survey data are obtained.

3. We have no information on what the amount of the wage increases may be under the Monroney Amendment.

4. I have responded to the status of the Monroney Amendment earlier in this letter.

5. As indicated earlier, Defense is now in process of developing the survey coverage to apply the Monroney Amendment at Tinker. It will be about March or April, however, before the data are received and the schedule is issued.

If you have further questions, please let me know. I am returning Mr. Dage's letter for your files.

Sincerely yours,

ROBERT E. HAMPTON,
Chairman.

Mr. HARRIS. With the aid of an able legislative assistant, Gary Dage, I have been among those who have continued to press for equity for these employees who have been left behind. This past weekend I met in Oklahoma City with Mr. W. T. Knight, who is an executive council member and legislative director of AFGE Local No. 916 there, and other members of that local and other wage board employees, in the Oklahoma City area. I ask unanimous consent that their names be printed at this point in the RECORD.

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

AMERICAN FEDERATION GOVERNMENT EMPLOYEES

1. W. T. Knight—Exec. Council Member and Legislative Director of A.F.G.E.-Local 916.
2. Jerri Smith.
3. N. J. Nance, President, Local 916-A.F.G.E.
4. Timothy Greene, Vice Pres., Local 916-A.F.G.E.
5. Grace Harris.
6. James T. Harris.

Mr. HARRIS. As stated in the letter from the Chairman of the Civil Service Commission, to which I referred earlier and had printed in the RECORD, the Civil Service Commission has reported that the Department of Defense has been running a survey in the Oklahoma City area, under the Monroney amendment, and they do expect that the employees in that area will be the first to be covered by the survey. I think that survey is objectionable in that it is being carried on in counties which really do not have positions in private industry comparable to Federal Government positions in the Oklahoma City area and does not, for example, include jobs and salaries paid in Tulsa County. I have been contending very strongly that that situation should be corrected and that the surveyed counties ought to include Tulsa.

Furthermore, I think it is imperative that the Department of Defense and the Civil Service Commission move with dispatch to complete the implementation of this law. It is over a year now since the Monroney amendment went into effect. Despite that fact they continue to object to its application, and they continue to make comments—as the article to which I referred earlier shows—that there are going to be all sorts of difficulty in implementing that amendment.

Mr. President, that amendment is the law. These employees are entitled to a great deal more consideration on the part of the Federal Government than the unconscionable delay we have recently seen.

I would ask the distinguished Senator from Wyoming, who has done such an excellent job in regard to the bill presently before the Senate—and I commend him and other members of the committee for their efforts, and I support them—first, if he has any report as to what we might do to get the Department of Defense and the Civil Service Commission to move a little more rapidly in regard to wage board employees?

Mr. McGEE. First, may I say to the Senator from Oklahoma that I met with two delegations in Kansas City from Tinker Air Force Base in Oklahoma City and from Tulsa, when I was in Kansas City meeting on problems recently with Federal employees. I am mindful of the urgency of the problem the Senator has described. The next order of priority in the Senate Post Office and Civil Service Committee is to begin hearings on the wage board matter. We believe that the opening of hearings will serve the proper purpose of speeding up what has been a very long process. I think, in fairness, it is a real can of worms in some ways in terms of interpreting some of the instructions.

Mr. HARRIS. Will S. 1958, the bill which I have introduced and which has the support of the AFGE nationally and locally in my State, will that be one of the measures which the Post Office Committee will take up?

Mr. McGEE. That is one of the measures on which we will be sitting and ordering hearings in regard to its terms.

Mr. HARRIS. Does the distinguished Senator believe that the hearings will help clear up any difficulties that there are in the so-called Monroney amendment, or at least move the executive department and the Civil Service Commission along finally to get implementation of the law?

Mr. McGEE. I would say we are confident that it will, without being belligerent about it.

Mr. HARRIS. I am very much pleased to hear that, and I know that the wage board employees will be also. I commend the distinguished Senator for what he is doing in regard to those employees, as well as those covered by the bill now before the Senate.

Mr. McGEE. I should have injected—I overlooked it—because the schedule has been thrown off by this postal crisis, and we have been going at it night and day for 3 weeks, now that we do have one other priority that we will be working on and ordering hearings on, and that is the issue of pornography in the mails; but that we must do simultaneously, although there is no connection between the two.

FEDERAL PAY LEGISLATION

The Senate continued with the consideration of the bill (S. 3690) to increase the pay of Federal employees.

Mr. CURTIS. Mr. President, I have an amendment at the desk and ask that it be stated.

The PRESIDING OFFICER (Mr. EAGLETON). The amendment will be stated.

The bill clerk read the amendment as follows:

On page 2, line 23, after the word personnel insert "other than personnel whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives."

And on page 3, strike out lines 9 through 12.

Mr. CURTIS. Mr. President, I shall not detain the Senate.

This amendment would remove from the pay raise bill the employees of House and Senate, our offices, and the committees. It would not affect the Government Printing Office or the Library of Congress.

I point out that under the bill brought in here, to do justice to the postal carriers supporting families in great cities, it would give them $375 a year raise, but would also give the page boys in the Senate $394.20 a year raise. It would also give raises to our own staff of up to $1,800.

Mr. President, that is my case.

Mr. McGEE. Mr. President, just for the RECORD, no Senator in this body, under this bill, is required to violate his own conscience in terms of paying his own employees.

The RECORD should show that.

Any Senator who does not want to pass this allowance on to his employees should exercise his conscience in terms of the rest of the Hill employees.

The formula on 6 percent is an attempt to adjust to the increase in the cost of living since a year ago. It is not an attempt to pad anyone's salary.

Mr. President, I think we have had enough of words this afternoon on this subject.

Mr. CURTIS. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. DOMINICK. Mr. President, I rise in support of the amendment of the Senator from Nebraska.

For the life of me I cannot understand what we are doing here.

We are trying to take care of the postal employees who need a raise, which has been worked out. Yet, in addition to that, we are giving a raise to Federal employees. Then we are going to add on, without any hearings or anything else, except, as I understand it, just a verbal request of one of the Members of this body, the Hill people.

Mr. President, I believe that we got into enough trouble around here recently when we raised our own salaries. I do not think we should do anything about raising Federal employees' salaries as well.

Mr. FONG. Mr. President, according to the Bureau of Labor Statistics, if our employee was worth $10,000 last year, he is entitled to a 6-percent raise this year if he was comparable in salary to those in private industry last year.

Now the figures given to us indicate that our employees are 5.7 percent behind those of private industry, as of July 1, 1969.

This increase is a $2.5 billion increase, which represents 6 percent across the board.

So far as the employees in the legislative branch are concerned, that will be $6,800,000 out of the $2,500,000,000.

If the employees in the postal service and the employees in the general schedule classification deserve a 5.7-percent increase, then the employees of our departments, the employees who are working for us and the employees on our staffs, if they were worth the salaries they were paid last year, they are entitled to the 6 percent this year.

Mr. MOSS. Mr. President, I might point out an additional feature, that this is not a mandatory increase. It still remains within the discretion of each Senator and Representative as to what he will do. But that amount of money will become available——

Mr. MANSFIELD. If the Senator from Utah will allow me to interject there, it is mandatory so far as the committees are concerned.

Mr. MOSS. That is true, but not the personal staffs of Senators and Representatives.

Mr. GOLDWATER. Mr. President, I do not ask this facetiously but, had not the postal workers struck, would the committee have made this recommendation?

Mr. McGEE. That is a difficult question to answer, for me or for anyone else. We addressed ourselves to the question of the pay bill last December but we had not gone to conference to negotiate with the House, who did have it in. It is conceivable that this could delay the postal adjustment 2 or 3 days, or whatever it might take to go to conference on this, but it was not in our bill because we were addressing it to a condition existing last December, at the President's request.

Mr. GOLDWATER. Again, I do not ask this facetiously, but I am afraid, because I have heard the word "negotiate" used so often today, that it seems with the passage of this bill, we will no longer be the determiners of the wage structure of the Federal Government, that we will have given this over to the unions of the United States.

The PRESIDING OFFICER (Mr. EAGLETON). The question is on agreeing to the amendment of the Senator from Nebraska.

On this question the yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Indiana (Mr. BAYH), the Senator from Nevada (Mr. BIBLE), the Senator from North Carolina (Mr. ERVIN), the Senator from Indiana (Mr. HARTKE), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Minnesota (Mr. MONDALE), and the Senator from Georgia (Mr. RUSSELL) are necessarily absent.

I further announce that the Senator from Rhode Island (Mr. PELL) is absent on official business.

I further announce that, if present and voting, the Senator from North Carolina (Mr. ERVIN), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. LONG), and the Senator from Nevada (Mr. BIBLE) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT) is absent on official business as observer at the meeting of the Asian Development Bank in Korea.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from California (Mr. MURPHY) is necessarily absent.

On this vote, the Senator from South Dakota (Mr. MUNDT) is paired with the Senator from California (Mr. MURPHY). If present and voting, the Senator from South Dakota would vote "yea" and the Senator from California would vote "nay."

If present and voting, the Senator from Utah (Mr. BENNETT) would vote "nay."

The result was announced—yeas 19, nays 67, as follows:

[No. 126 Leg.]

YEAS—19

Allott	Fulbright	Pearson
Cook	Goldwater	Spong
Cotton	Hansen	Talmadge
Curtis	Hatfield	Thurmond
Dole	Hruska	Williams, Del.
Dominick	Jordan, Idaho	
Ellender	McClellan	

NAYS—67

Aiken	Gurney	Pastore
Allen	Harris	Percy
Baker	Hart	Prouty
Bellmon	Holland	Proxmire
Boggs	Hollings	Randolph
Brooke	Hughes	Ribicoff
Burdick	Jackson	Saxbe
Byrd, Va.	Javits	Schweiker
Byrd, W. Va.	Jordan, N.C.	Scott
Cannon	Magnuson	Smith, Maine
Case	Mansfield	Smith, Ill.
Church	Mathias	Sparkman
Cooper	McCarthy	Stennis
Cranston	McGee	Stevens
Dodd	McGovern	Symington
Eagleton	McIntyre	Tower
Eastland	Metcalf	Tydings
Fannin	Miller	Williams, N.J.
Fong	Montoya	Yarborough
Goodell	Moss	Young, N. Dak.
Gore	Muskie	Young, Ohio
Gravel	Nelson	
Griffin	Packwood	

NOT VOTING—14

Anderson	Hartke	Mundt
Bayh	Inouye	Murphy
Bennett	Kennedy	Pell
Bible	Long	Russell
Ervin	Mondale	

So Mr. CURTIS' amendment was rejected.

Mr. YARBOROUGH. Mr. President, I am pleased to support S. 3690, a bill to increase the pay of Federal employees and military personnel.

This legislation will provide 6-percent across-the-board increases for the salaries of Federal employees who are paid under statutory salary systems—the postal field service, the general schedule of the classified civil service, the Department of Medicine and Surgery in the Veterans' Administration, and the Foreign Service—and employees paid under other salary systems in the legislative, executive, and judicial branches of the Government. The 6-percent increase will also apply to our military personnel.

The pay increase is made retroactive to the first day of the first pay period which began on or after December 27, 1969.

This legislation is based on the Federal salary comparability provisions of the Salary Reform Act of 1962 which attempts to adjust the wages of Federal employees to levels generally comparable with private industry.

This is a clean pay bill with no strings attached. There are no provisions in this bill for the administration's postal corporation tie-in or for President Nixon's proposed 4-cent increase of first-class letter mail from the present 6 to 10 cents. There are absolutely no strings attached to this pay raise. By voting for this pay raise no one is bound expressly or impliedly or in any manner whatsoever, to vote for a tearing up of the Post Office Department.

As the ranking senior member of the Committee on Post Office and Civil Service, I have been in the forefront of the fight for the comparability pay raise in this Congress as well as in the past Congresses. While I support at least the 6-percent increase proposed before the Senate today, I believe the bill does not go far enough in postal pay but it is a positive step to correct the injustice our dedicated, loyal public servants have endured too long. This increase is both justified and necessary.

Mr. President, I strongly urge Senators to join me in support of the bill.

Mr. BYRD of West Virginia. Mr. President, I shall cast my vote for S. 3690, the Federal Employees Salary Act of 1970.

This legislation provides a 6-percent across-the-board salary increase for most Federal employees. I am happy to note that military personnel and postal workers are also included.

Every day, our constituents place new demands upon our Government. In order to remain a strong country, our Government must attract into public service, the most qualified people available. A rapidly moving technological society can afford only the best in governmental leadership. This legislation will help to close the gap remaining between the wages of Federal employees and their counterparts in the private sector, who with similar skills, receive much more in monetary compensation.

Mr. President, these salary increases are for people who need pay increases. The lower and middle income American is always hit the hardest by the rising cost of living. Last year, I voted against legislation which doubled the salary of the President of the United States. I voted against increasing the salaries of the Vice President, Members of Congress, judges, and Cabinet members.

The real needs of the postal workers have at last been recognized. Today, in some areas, those on welfare receive more money from the Government, than do postal workers.

This bill will also provide a 6-percent increase for our military personnel. This will be money well spent, for I—as have other Senators—have received many letters from hard-pressed military families who are unable to keep up with the rising cost of living under current military allowances. We owe much to these families, many of whom have personally carried the heavy burden of our involvement in Southeast Asia. The least we can do for these brave Americans, who are sent to Vietnam, is to give them the peace of

mind that their families are more adequately provided for.

Mr. President, passage of this bill must not be construed to mean that strikes against the U.S. Government will be excused or even tolerated. Thousands of postal workers and Federal air traffic controllers have clearly violated statutes forbidding strikes against the Government.

During my 18 years of service in the U.S. House of Representatives and the U.S. Senate, I have consistently worked for and voted for adequate and proper salaries for our Federal employees. Federal employment is a position of trust, and a high sense of duty is owed by civil servants to the citizens of our Nation. But, the law is clear: Title V, section 7311, of the United States Code says:

> An individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he . . . participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia.

Mr. President, the penalties for such strikes are a fine of not more than $1,000, or imprisonment for not more than 1 year and a day, or both. Those who struck knew what they were doing. Each Federal employee is required to sign an affidavit on which this prohibition to strike against the Federal Government is clearly stated.

We cannot allow this flagrant violation of Federal law to go unnoticed. The growing trend, throughout the Nation, of indifference to the laws of our land cannot be overlooked by the Government itself. The enforcement of these laws cannot be subject to political expediency. If one group is permitted to strike against the Government, and granted amnesty, then other groups may do the same. The inevitable result would be the destruction of our form of government.

While I am certainly sympathetic toward the grievances of the air controllers and the postal workers—and I know of the difficult conditions under which they work—the American public must be assured of air transportation and mail service throughout the country. Concern for the benefits of a few, must not jeopardize the well-being of the Nation.

Mr. President, so far as I know, no postal employee in my State of West Virginia participated in the postal strike. I commend these fine men, they are a credit to their State and their Nation. The Congress has responded to this trust by providing more adequate compensation for our Federal workers. Public service should not mean financial sacrifice. This bill will go a long way in correcting previously existing inequities, and I am glad to be able to support it.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

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

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Indiana (Mr. BAYH), the Senator from Nevada (Mr. BIBLE), the Senator from North Carolina (Mr. ERVIN), the Senator from Indiana (Mr. HARTKE), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Minnesota (Mr. MONDALE), and the Senator from Georgia (Mr. RUSSELL) are necessarily absent.

I further announce that the Senator from Rhode Island (Mr. PELL) is absent on official business.

I further announce that, if present and voting, the Senator from Nevada (Mr. BIBLE), the Senator from North Carolina (Mr. ERVIN), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. LONG), and the Senator from Rhode Island (Mr. PELL) would each vote "yea."

Mr. GRIFFITH. I announce that the Senator from Utah (Mr. BENNETT) is absent on official business as observer at the meeting of the Asian Development Bank in Korea.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from California (Mr. MURPHY) is necessarily absent.

If present and voting, the Senator from Utah (Mr. BENNETT), the Senator from South Dakota (Mr. MUNDT), and the Senator from California (Mr. MURPHY) would each vote "yea."

The result was announced—yeas 84, nays 1, as follows:

[No. 127 Leg.]

YEAS—84

Aiken	Gore	Nelson
Allen	Gravel	Packwood
Allott	Griffin	Pastore
Baker	Gurney	Pearson
Bellmon	Hansen	Percy
Boggs	Harris	Prouty
Brooke	Hart	Proxmire
Burdick	Hatfield	Randolph
Byrd, Va.	Holland	Ribicoff
Byrd, W. Va.	Hollings	Saxbe
Cannon	Hruska	Schweiker
Case	Hughes	Scott
Church	Jackson	Smith, Maine
Cook	Javits	Smith, Ill.
Cooper	Jordan, N.C.	Sparkman
Cotton	Jordan, Idaho	Spong
Cranston	Magnuson	Stennis
Curtis	Mansfield	Stevens
Dodd	Mathias	Symington
Dole	McClellan	Talmadge
Dominick	McGee	Thurmond
Eagleton	McGovern	Tower
Eastland	McIntyre	Tydings
Fannin	Metcalf	Williams, N.J.
Fong	Miller	Williams, Del.
Fulbright	Montoya	Yarborough
Goldwater	Moss	Young, N. Dak.
Goodell	Muskie	Young, Ohio

NAYS—1

Ellender

NOT VOTING—15

Anderson	Hartke	Mondale
Bayh	Inouye	Mundt
Bennett	Kennedy	Murphy
Bible	Long	Pell
Ervin	McCarthy	Russell

So the bill (S. 3690) was passed.

Mr. MANSFIELD. Mr. President, with the passage of this measure, the distinguished senior Senator from Wyoming (Mr. MCGEE) has earned the highest commendation of the Senate. As chairman of the Committee on Post Office and Civil Service, he has exhibited a keen interest in and strong devotion to the needs and problems of all Federal workers. The Senate is deeply grateful.

The Senate is grateful as well for the strong cooperative efforts of the distinguished Senator from Hawaii (Mr. FONG). As the ranking minority member, his assistance and support were vital to the committee and to the swift and efficient action on this proposal today.

Notable too were the contributions of the distinguished Senator from Nebraska (Mr. CURTIS), the distinguished Senator from Louisiana (Mr. ELLENDER), and others. Their views, as always, were most thoughtful and highly valuable.

Our thanks go also to the able and distinguished Senator from Arkansas (Mr. FULBRIGHT) for his contribution. His always thoughtful views were appreciated and added considerably to the high quality of the debate.

Again, I wish to thank Senator MCGEE, Senator FONG, and the entire Post Office and Civil Service Committee for their diligent attention and hard work on this measure. The Senate as a whole is also to be commended for its cooperative efforts on this measure. Those efforts enabled final disposition today.

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, with statements therein limited to 3 minutes.

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

S. 3183—REFERRAL TO COMMITTEE ON COMMERCE; S. 2802—RE-REFERRAL TO COMMITTEE ON PUBLIC WORKS WHEN REPORTED BY COMMITTEE ON COMMERCE; S. 2802—ADDITIONAL COSPONSORS

Mr. RANDOLPH. Mr. President, I ask unanimous consent that S. 3183, pending before the Committee on Public Works, be rereferred to the Committee on Commerce for consideration by that committee in conjunction with similar proposals dealing with coastal zone legislation before the Committee on Commerce.

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

Mr. RANDOLPH. Mr. President, this matter has been discussed by the Senator from Maine (Mr. MUSKIE), the Senator from Delaware (Mr. BOGGS), of the Committee on Public Works, and the Senator from South Carolina (Mr. HOLLINGS), of the Committee on Commerce. It is my understanding that this procedure also has the approval of the chairman of the Committee on Commerce (Mr. MAGNUSON).

Mr. President, I ask unanimous consent to have printed in the RECORD at this point a statement by the Senator from South Carolina (Mr. HOLLINGS) and a letter from the Senator from Delaware and the Senator from Maine ad-

dressed to the Senator from South Carolina describing the agreement.

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

STATEMENT OF SENATOR HOLLINGS

On behalf of the Committee on Commerce and its Subcommittee on Oceanography I am pleased to say that we shall accept the re-referral of S. 3183. We shall include it among the coastal zone management bills on which we are now holding hearings and in the other deliberations of the Committee. We agree that any legislation reported on this subject will be referred for a period of time to be agreed upon to the Committee on Public Works for consideration of rivers and harbors and pollution aspects of the legislation. We shall welcome having the Committee on Public Works participate with us when representatives of the Administration are heard.

MARCH 19, 1970.

Hon. ERNEST F. HOLLINGS,
U.S. Senate,
Washington, D.C.

DEAR FRITZ: Pursuant to conversations by the staff of the Committee on Public Works and the staff of the Senate Commerce Committee regarding pending Coastal Zone legislation, Senator Boggs and I are pleased to cooperate with your request for referral of S. 3183 to the Commerce Committee to be considered with S. 2802 and S. 3460.

We understand that the unanimous consent agreement for re-referral of this legislation will indicate that any legislation reported on this subject will be referred for a period of time to be agreed upon to the Senate Committee on Public Works for consideration of rivers and harbors and pollution aspects of that legislation.

Further we understand that Joint hearings will be held on this legislation with the Committee on Public Works at the time you hear Administration witnesses.

We are also pleased that the Senate Commerce Committee will consider at an early date Senator Muskie's proposed legislation relating to Marine Sanctuaries.

Please let us know when you want to engage in a floor colloquy regarding re-referral of S. 3183.

Sincerely,

EDMUND S. MUSKIE.
J. CALEB BOGGS.

Mr. RANDOLPH. Mr. President, I further ask unanimous consent that S. 2802, pending before the Committee on Commerce, be automatically referred to the Committee on Public Works, when reported by the Committee on Commerce. This would be for a period of 30 legislative days, for consideration of those aspects of that legislation which relate to matters normally within the jurisdiction of the Committee on Public Works, particularly with reference to rivers and harbors improvements and water quality aspects.

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

Mr. RANDOLPH. Mr. President, I am gratified that the Committee on Commerce and the Committee on Public Works continue to work with harmony and cooperation on these environmental quality matters in which we share jurisdictional interests.

Mr. BOGGS. Mr. President, I concur in the request of the distinguished Senator from West Virginia (Mr. RANDOLPH) that S. 3183 be rereferred to the Committee on Commerce. This bill to establish a national policy and comprehensive national program for the management, beneficial use, protection, and development of the land and water resources of the Nation's estuarines and coastal zone was introduced on November 25 by the distinguished ranking minority member of the Committee on Public Works (Mr. COOPER) Senator RANDOLPH, and myself. This is an administration bill. In order to give the Commerce Committee, which is holding extensive hearings into the coastal zone management, the benefits of the administration thinking in this matter, we have concluded that it would be wise for them to consider this very important bill.

It is our understanding that any bill dealing with the subject that is reported by the Committee on Commerce will be referred to the Committee on Public Works for additional consideration.

May I at this time ask unanimous consent that the names of the Senators from Oregon (Mr. HATFIELD and Mr. PACKWOOD), the Senator from Tennessee (Mr. BAKER), the Senator from California (Mr. MURPHY), and the Senator from New York (Mr. JAVITS) be added as cosponsors of S. 3183.

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

ADDITIONAL COSPONSORS—SENATE RESOLUTION 383

Mr. HARRIS. Mr. President, last Thursday I introduced for myself and the distinguished senior Senator from Kansas (Mr. PEARSON) Senate Resolution 383, which if adopted would express the sense of the Senate that affirmative steps by the United States are needed to defuse the dangerous situation in Indochina, and further that a comprehensive multinational conference of all interested parties which could consider ways to neutralize the whole area would be the most promising form of action that could be taken.

I am pleased to ask unanimous consent that the names of the distinguished senior Senator from Ohio (Mr. YOUNG), the distinguished senior Senator from Michigan (Mr. HART), the distinguished junior Senator from Wisconsin (Mr. NELSON), the distinguished junior Senator from Iowa (Mr. HUGHES), and the distinguished senior Senator from Hawaii (Mr. INOUYE) be added as cosponsors of this resolution at its next printing.

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

Mr. HARRIS. Mr. President, all Americans are eager to see peace restored in this area immediately. I think it is important that the Senate exert its influence toward this goal by adopting such a resolution.

If, as a New York Times editorial has recently suggested, "it is futile to talk of sanitizing the two crucial border states while the war continues in South Vietnam," then such a conference considering Indochina as a whole would provide the only means of achieving a real solution.

I again urge a positive and immediate U.S. response to the recent French proposal for a Geneva conference. A State Department spokesman has said that the administration is exploring this possibility in private. Both the Times in its editorial of April 5 and the Washington Post on April 4 suggest that the administration may still fear that a multinational conference concerned with the whole area would lead to neutral governments in South Vietnam as well as Laos and Cambodia. We must be realistic in our foreign policy, working toward what is possible and ignoring the supposed advantages of alternatives which cannot be achieved.

The two editorials which I have mentioned present clearly many of the issues and key factors in the current Indochina crisis, and I commend them to the attention of the Senate. I ask unanimous consent that they be printed in the RECORD.

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

[From the New York Times, Apr. 5, 1970]

ESCALATING FOR PEACE

France's proposal for a new international conference to deal with the "indivisible" problems of Vietnam, Laos and Cambodia offers the Nixon Administration another chance—perhaps a last chance—to move from confrontation to negotiation in Indochina before a wider war engulfs the entire area of the former French colonial empire.

Administration officials have reacted with caution to the French suggestion so far. Secretary of State Rogers told the Senate Foreign Relations Committee the other day that the United States wants to encourage neutralism and avoid a wider war in Cambodia. The Administration has indicated similar objectives in Laos, while clinging to an apparent goal of preserving a friendly anti-Communist Government in Saigon.

But, as the French have noted, it is futile to talk of sanitizing the two crucial border states while the war continues in South Vietnam. In both Cambodia and Laos the initiative rests with the Communists whose superior military forces menace weak and unstable local governments.

If Hanoi chooses to press its advantage in either place, Washington will be confronted with a desperate choice—either to intervene against the wishes of large numbers of Americans and contrary to the sound tenets of the Nixon Doctrine or to accept passively a new threat to the flanks of American troops in Vietnam.

Any move to intercede with proxy forces—whether Thai troops in Laos or South Vietnamese in Cambodia—would only complicate a bad situation. Such interventions, already attempted on a limited scale, are unlikely to prove decisive. They could, however, inflame traditional local rivalries and more deeply involve the United States in local feuds that are none of this country's proper concern.

The Communists, as Senator Fulbright has observed, "cannot drive us out of Indochina. But they can force upon us the choice of either plunging in altogether or getting out altogether." The best hope for avoiding a wider war lies in recognizing the limitations of Vietnamization and responding positively to France's call for a wider "peace escalation."

[From the Washington Post, Apr. 4, 1970]

ISSUES OF A GENEVA CONFERENCE

The idea of a general Geneva-type conference on Indochina has now picked up an international sponsor, France, and the support of a mixed group of United States Senators, including Messrs. Fulbright and Harris and (for not quite the same reasons) Pearson and Murphy. This is in addition to the private sympathy, so far not reflected in policy, of assorted officials inside the Executive Branch. Elements in Vietnam, Laos and Cambodia who prefer the risks of "neutraliza-

tion" to those of continued war also favor the idea. Has its time come?

According to the Nixon administration, the answer seems to be no. One must say "seems to be" because the administration, despite the fact that the Geneva-conference approach has been lying around for years and has been actively discussed for weeks, is still seeking refuge from public comment on grounds that there has not been time to "analyze" the (French) proposal. It could be that the administration has tactical reasons for cultivating a negative pose: it may hope thereby to get a better price for an eventual decision to attend. We do not pretend, however, to have evidence that this is so.

The real crunch seems to be that a Geneva conference could only produce a neutralized South Vietnam acceptable to Communists and non-Communists alike, while the administration's goal is to sustain an independent non-Communist regime. "Vietnamization" is its effort to endow that regime with the resources and will to support itself, in good part. The administration's solicitude for Saigon—its concern to protect Mr. Thieu and Mr. Ky not only from their military adversaries but from their political rivals—was amply demonstrated in the case of Tran Ngoc Chau; a South Vietnamese Deputy with Communist contacts, he was sentenced to 10 years in prison last month for pro-Communist activity, while the American Embassy calmly watched. It goes without saying that Hanoi and Moscow and Peking would not attend a conference to prop up that kind of regime. (Hanoi might easily decide, it must be admitted, that no conference could assume as good a result as simply waiting for Mr. Nixon to draw down American troops past the point of no return.)

In order to avoid a bruising and fruitless collision on the conference issue between a cautious administration and its impatient critics, it probably will be necessary to broaden considerably the discussion of it. Two points need special attention.

First, what is the value to the United States of a Thieu-Ky Communist government in Saigon, or something like it and what price in battle losses and domestic division is worth paying for it? Second, what is the damage to American credibility, with all that means to world stability, and what is the damage to American self-confidence, with all that means to domestic stability, if it comes to appear on a wide scale that the United States has turned tail? There is also the immediate question of whether the American public, eager to have its boys come home, would stand still for the slowdown or halt in troop withdrawals that would almost certainly have to be a part of a decision to negotiate an over-all settlement.

The summoning of a Geneva conference, then, must be considered not just in terms of its anticipated outcome in the neutralization of Indochina, South Vietnam included. It must be weighed for its suitability as a diplomatic and political vehicle for carrying the United States, with international company, out of an involvement that it may be unable to extricate itself from alone.

ADDRESS BY SENATOR MONDALE AT STATEWIDE INDIAN YOUTH COUNCIL ANNUAL MEETING

Mr. HARRIS. Mr. President, last Saturday the distinguished Senator from Minnesota (Mr. MONDALE) spoke to the Oklahomans for Indian Opportunity statewide Indian youth council annual meeting in Norman, Okla.

His message was highly knowledgeable, challenging, and inspirational.

I think that the deep understanding and forceful advocacy of Senator MONDALE—as on this occasion—has given many American Indian youth the kind of hope and encouragement they need to continue their remarkable efforts on behalf of American Indians, young and old.

I ask unanimous consent that Senator MONDALE's speech be printed in the RECORD at this point.

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

SPEECH DELIVERED BY SENATOR WALTER F. MONDALE

It is a pleasure to see so many Indian youth here—and to know that, despite what some white people want to believe, Indians are alive.

The white man has done his darndest to make you think that you are dead, that Indians do not exist. The Indians of Oklahoma especially have been targets of this kind of thinking. Here you are the state with the second largest Indian population in the country and, because you have no reservations, people tend to forget that Indians with Indian problems and Indian frustrations are very much alive here.

Over the years the white man has done his best to bring about the end of Indian Americans. But somehow the Indians kept coming back.

The Great White Father in Washington started with a policy of extermination. He practiced it with episodes that would make the My Lai incident look like a coffee party. But it didn't work. Indians kept coming.

The government then tried a policy of isolation. It took the productive Indian lands for white settlement and left for the Indians that which was poor, unfertile and unsuitable for living, let alone farming. The government then forced the Indians—many of them descendants of yours from the Five Civilized Tribes—out of Georgia, Mississippi, and Alabama and herded them across the Mississippi River like animals. Those that survived settled here in land which they were told they could have (as so many treaties stated it) "as long as the moon rises, the grass is green, the rivers flow, and the sun shines."

But then the white man changed his mind and decided to divide up Indian lands and give each Indian his own little unproductive plot to die on. But it didn't work. Indians kept coming.

The white man was confused. He had reduced the number of Indians, he had deprived them of their lands, he had broken their spirit, he had isolated them on wasteland reservations—yet they still continued to survive. So he launched his final plan—he would beat the Indian-ness out of the Indians. If they refused to die, he would tell them they weren't Indians, that there was nothing in their heritage or culture that should be saved, that they should, in effect, becomes Apples—Red on the outside, but White in the inside. The white man called it assimilation.

So orders went out from Washington that all male Indians must cut their hair short, even through many believed that long hair had spiritual significance. Children were forbidden to speak their native tongue in school, even if that was the only language they knew. In school they studied history and learned that the goldminers who seized Indian lands and killed whole bands of families were "heroes," and the Indians defending their family and property were "savages," and that everytime the cavalry won it was an heroic feat and everytime the Indians won it was a massacre.

Many Indians were hauled off to boarding schools where anything "Indian"—dress, language, religious practices, even outlook on life—was uncompromisingly prohibited. But it didn't work—and it still isn't. Indians keep coming—and they are Red all the way through.

You can guess how dumbfounded the white man was at this point. All his plans to rid the world of those terrible Indians had gone awry. Why had they failed? Why did the Indian insist and persist in remaining an Indian?

The white man thought he knew the answer. It was because Indians were dumb, stupid and lazy. They weren't smart enough to learn the white man's ways. So to prove his point he sent out researchers to do studies and surveys and reports.

And the researchers came back and said:

Yes, the average educational level for all Indians under Federal supervision is five school years;

Yes, dropout rates for Indians average 50 percent, twice the national average;

Yes, Indians fall progressively further behind the longer they stay in school;

Yes, the average Indian income is $1,500, 75 percent below the national average;

Yes, the unemployment rate among Indians is nearly 40 percent—more than 10 times the national average;

Yes, 50,000 Indian families live in unsanitary, dilapidated dwellings, many in huts, shanties and even abandoned automobiles;

Yes, 40,000 Navajo Indians are functional illiterates in English;

Yes, a white child has a better chance of living to age 45 than any Indian baby has of living to its 1st birthday.

But the researchers also said No, the Indian is not dumb; No, there is no difference in native intelligence between the Indian population and any other race; No, there is nothing in the Indians' internal makeup which makes him lazier, more stupid, or less intelligent than anyone else.

The white man was shocked! Something must have gone haywire. So he sent out the researchers again and again and again, and they made study after study after study. But they all reached the same conclusion: the Indian race had the same percentage of gifted, bright, average, dull and retarded children as any other people.

Some researchers haven't given up their studies. As of January of this year, for example, there were 64 research projects going on concurrently at the Pine Ridge, South Dakota, reservation. The combined cost in academic salaries alone would feed all the hungry children on the reservation.

But some people, including white men (believe it or not), started thinking. Could it be, they asked themselves, that the Indian doesn't want to change? Could it be that something else in society should be changed instead? Could it be the Indian is an Indian, and will always remain so?

Some Indians, like Bill Penseno of the National Indian Youth Council, began talking:

"The problem is not with the Indians, he told the Senate Indian Education Subcommittee. "The problem is with the institutions that service Indians . . . The institutions that serve Indians were created by man. The Indians were created by God. Surely the institutions are more amenable to change than the people."

And some non-Indians, like the late Senator Robert F. Kennedy, listened—and began talking themselves:

"We must stop blaming the Navajo and other Indian children for their failure in education," he said. "We must realize it is the educational system we have created that is at fault. The Indian child needs pride in his forbears, his heritage, tradition, culture, history and background. There can be little respect for one's own culture if another culture is forced on you."

So a number of people began looking at the main tool of assimilation, the educational system, and they realized that a public school not only taught skills, but the value system of the dominant society. It exemplified the so-called melting pot theory. Put in children of diverse backgrounds, give them "mainstream America" teachers and textbooks, stir diligently and they will come out with the same skills and values as everyone else. It

worked for the children of immigrants, it should work for the Indians.

But as anthropologist Anne M. Smith points out, it didn't work and couldn't work, for a very good reason: the immigrants looked at the values and success-oriented goals of mainstream America and said, "It is good." The Indians looked at that same mainstream in light of their own value systems and said, "It is polluted."

I remember so well the words of Miss Margaret Nick, a beautiful and articulate Alaskan native, as she spoke to our Indian Education Subcommittee in Fairbanks.

"One thing I know," she said: "is that if my children are proud, if my children have identity, if my children know who they are and if they're proud to be who they are, I think this is what education means. Some people say that a man without education might as well be dead. I say, a man without identity, if a man doesn't know who he is, he might as well be dead. That is why it's a must that we include our history and our culture in our schools before we lose it all. We've lost way too much already. We have to move now."

The solution, as forward-thinking people like Senator and Mrs. Harris have been advocating for some time, is cultural pluralism—permitting the Indian to learn the skills of society while at the same time not only permitting, but encouraging him to retain his Indianness.

There are some instances of this happening now—the Rough Rock Demonstration School on the Navajo Reservation being the prime example—but there are too few instances. At Rough Rock, an all-Navajo school board encourages the "Navajoness" of the students. Culturally sensitive curriculum materials prepared by the Navajos themselves are in use. Bilingual teaching techniques are used. Indian teachers and aides dominate the school. While the students learn Navajo, they also learn English—and at a faster pace than when they were reprimanded for speaking their native tongue.

There is no other school in the country which has so encouraged cultural pluralism. Most schools that are doing anything have a halfway approach—an Indian History unit, a part-time class in Indian culture and traditions, an after-school Indian club, etc. When these are honest efforts to eliminate prejudices and instill pride and dignity, they are good. But when they are token, half-hearted efforted efforts because it is the "in thing" to do, they are bad. I believe it has to be the responsibility of Indian students like yourselves to keep the schools honest. Oklahomans for Indian Opportunity must forever be on guard to protect Indian interest in the schools, to see that myths are replaced by facts.

This isn't an easy job, as I am sure you are well aware. For example, I think we have a promising Indian Education program in Minnesota, headed by Mr. Will Antell, an able and dedicated Chippewa. But, despite the gains we have made, we have to be ever-alert to schools unconscious adding anti-Indian materials to their curriculum. A couple years ago our Indian Education office began a sweeping inventory of history textbooks being used in elementary schools. The survey resulted in the elimination of a number of anti-Indian books. But just when we were beginning to feel satisfied over that job, the states Library Services Institute for Minnesota Indians learned last month that metropolitan school systems were using books which ridiculed sacred ceremonials and cultural traditions.

I know from my work on the Senate Indian Education Subcommittee that you Oklahoma students do not face any easy task. The Subcommittee's hearing at Twin Oaks in February 1968 documented a number of problems of Indians in the public schools. The Carnegie Corporation's report, "Who Should Control Indian Education," contained a less-than-optimistic picture of progress in its case study of the problems of getting an Indian elected to the all-white board of the all-Indian White Eagle School near Ponca City.

People are beginning to recognize that *cultural difference does not mean cultural inferiority*, that one can build on the strengths of Indian culture rather than try to destroy it, that Indians deserve control over the education of their own children.

Almost 200 years ago the leaders of Virginia, after signing a treaty with six Indian nations, offered to educate six of the chief's sons.

The chiefs were thankful for the offer, but they rejected it, noting that they had tried white man's education before.

Well, what was wrong with it? The white leaders ask.

According to the chiefs, their children had come back from white man's schools "bad runners, ignorant of every means of living in the woods; unable to bear the cold or hunger; they knew neither how to build a cabin, take a deer, or kill an enemy; spoke our language imperfectly; were therefore neither fit for hunters, warriors or counselors; they were totally good for nothing."

Perhaps, the Indians said, the governors would like to send a dozen white children to be educated with the Indians.

"We will take great care of their education," promised the chiefs. "Instruct them in all we know, and make men of them."

The white governors didn't take the Indians up on their offer, apparently thinking the Indians had little to offer. For 200 years non-Indians have felt that way. But now, the times they are a-changing. Whites are beginning to see the many good things in the Indian's way of life. They are beginning to learn they can learn something from the Indian. It's about time!

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The VICE PRESIDENT laid before the Senate the following letters, which were referred as indicated:

REPORTS ON REAPPORTIONMENTS OF APPROPRIATIONS

A letter from the Acting Director, Bureau of the Budget, Executive Office of the President, reporting, pursuant to law, that the appropriation to the Department of Labor for "Trade adjustment activities," for the fiscal year 1970, had been apportioned on a basis which indicates the necessity for a supplemental estimate of appropriation; to the Committee on Appropriations.

A letter from the Acting Director, Bureau of the Budget, Executive Office of the President, reporting, pursuant to law, that the appropriation to the Department of Labor for "Grants to States for unemployment compensation and employment service administration" for the fiscal year 1970, has been apportioned on a basis which indicates the necessity for a supplemental estimate of appropriation; to the Committee on Appropriations.

REPORT OF INDIAN CLAIMS COMMISSION

A letter from the Chairman, Indian Claims Commission, reporting, pursuant to law, on the final conclusion of judicial proceedings regarding certain American Indian tribal claims (with accompanying papers); to the Committee on Appropriations.

PROPOSED LEGISLATION TO AUTHORIZE THE LONG-TERM CHARTERING OF SHIPS BY THE SECRETARY OF THE NAVY

A letter from the Acting Secretary of the Navy, transmitting a draft of proposed legislation to authorize the long-term chartering of ships by the Secretary of the Navy, and for other purposes (with an accompanying paper); to the Committee on Armed Services.

REPORT OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the management of Government industrial plant equipment kept for possible future use, Department of Defense, dated April 7, 1970 (with an accompanying report); to the Committee on Government Operations.

REPORT OF THE GIRL SCOUTS OF THE UNITED STATES OF AMERICA

A letter from the President and National Executive Director, Girl Scouts of the United States of America, transmitting, pursuant to law, the twentieth annual report of the Girl Scouts for the fiscal year ended September 30, 1969 (with an accompanying report); to the Committee on Labor and Public Welfare.

REPORT OF THE POSTMASTER GENERAL

A letter from the Postmaster General, transmitting, pursuant to law, a revenue and cost analysis report of the Department for fiscal year 1969 with an accompanying report); to the Committee on Post Service and Civil Service.

PROSPECTUSES PROPOSING CONSTRUCTION OR ALTERATION OF PUBLIC BUILDINGS FOR POST OFFICE DEPARTMENT USE

A letter from the Acting Administrator, General Services Administration, transmitting, pursuant to law, prospectuses proposing construction or alteration of certain public buildings for use by the Post Office Department (with accompanying papers); to the Committee on Public Works.

BILLS AND A JOINT RESOLUTION INTRODUCED

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

By Mr. FULBRIGHT (by request):

S. 3691. A bill to amend the Foreign Service Act of 1946, as amended, to lower the mandatory retirement age for Foreign Service officers who are career ministers; to the Committee on Foreign Relations.

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

By Mr. MURPHY (for himself and Mr. CRANSTON):

S. 3692. A bill to amend section 2(3), section 8c(2), section 8c(6)(I), and section 8c(7)(C) of the Agricultural Marketing Agreement Act of 1937, as amended; to the Committee on Agriculture and Forestry.

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

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

S. 3693. A bill to amend section 3(d) of the Bank Holding Company Act of 1956; to the Committee on Banking and Currency.

By Mr. METCALF (for himself and Mr. MANSFIELD):

S. 3694. A bill providing that certain privately owned irrigable lands in the Milk River project in Montana shall be deemed to be excess lands; to the Committee on Interior and Insular Affairs.

By Mr. HART:

S. 3695. A bill for the relief of Irena Jardzioch; to the Committee on the Judiciary.

By Mr. MOSS:

S. 3696. A bill to amend title 5, United States Code, to provide for the temporary or intermittent employment of experts, consultants, or stenographic reporters, and for other purposes; to the Committee on Post Office and Civil Service.

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

By Mr. MONDALE (for himself, Mr. BURDICK, Mr. CRANSTON, Mr. EAGLETON, Mr. GRAVEL, Mr. HARRIS, Mr. HART, Mr. HARTKE, Mr. HUGHES, Mr. INOUYE, Mr. JACKSON, Mr. JAVITS, Mr. MANSFIELD, Mr. MCCARTHY, Mr. MCGEE, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. PERCY, Mr. RANDOLPH, Mr. RIBICOFF, Mr. WILLIAMS of New Jersey, Mr. YARBOROUGH, and Mr. YOUNG of Ohio):

S. 3697. A bill to amend the Federal Water Pollution Control Act, as amended, and for other purposes; to the Committee on Public Works.

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

By Mr. SCOTT (for himself, Mr. SCHWEIKER, Mr. TOWER, Mr. MANSFIELD, Mr. RANDOLPH, Mr. DOLE, Mr. FANNIN, and Mr. GOLDWATER):

S.J. Res. 192. A joint resolution proposing an amendment to the Constitution of the United States with respect to the offering of voluntary prayer or meditation in public schools and other public buildings; to the Committee on the Judiciary.

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

S. 3691—INTRODUCTION OF A BILL TO AMEND THE FOREIGN SERVICE ACT OF 1946, AS AMENDED

Mr. FULBRIGHT. Mr. President, by request, I introduce for appropriate reference a bill to amend the Foreign Service Act of 1946, as amended, to lower the mandatory retirement age for Foreign Service officers who are career ministers.

The bill has been requested by the Secretary of State and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with the letter from the Secretary dated March 23, 1970, to the Vice President and the explanation of the proposed bill.

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

The bill (S. 3691) to amend the Foreign Service Act of 1946, as amended, to lower the mandatory retirement age for Foreign Service officers who are career ministers, introduced by Mr. FULBRIGHT, by request, was received, read twice by its title, referred to the Committee on Foreign Relations, and ordered to be printed in the RECORD, as follows:

S. 3691

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 631 and 632 and the headings thereto of the Foreign Service Act of 1946 (22 U.S.C. 1001 and 1002) are amended to read as follows:

"FOREIGN SERVICE OFFICERS WHO ARE CAREER AMBASSADORS

"SEC. 631. Any Foreign Service officer who is a career ambassador, other than one occupying a position as chief of mission or any other position to which he has been appointed by the President, by and with the advice and consent of the Senate, shall be retired from the Service at the end of the month in which he reaches age sixty-five and receive retirement benefits in accordance with the provisions of section 821, but whenever the Secretary shall determine it to be in the public interest, he may extend such an officer's service for a period not to exceed five years. Any such officer who hereafter completes a period of authorized service after he reaches age sixty-five shall be retired at the end of the month in which he completes such service.

"PARTICIPANTS IN THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM WHO ARE NOT CAREER AMBASSADORS

"SEC. 632. Any participant in the Foreign Service Retirement and Disability System, other than one occupying a position as chief of mission or any other position to which he has been appointed by the President, by and with the advice and consent of the Senate, who is not a career ambassador shall be retired from the Service at the end of the month in which he reaches age sixty and receive retirement benefits in accordance with the provisions of section 821, but whenever the Secretary shall determine it to be in the public interest, he may extend such participant's service for a period not to exceed five years. Any such officer who hereafter completes a period of authorized service after he reaches age sixty shall be retired at the end of the month in which he completes such service."

SEC. 2. The amendment made by section 1 shall be effective upon enactment, except that any Foreign Service officer who is or become a career minister and who is not occupying a position to which he has been appointed by the President, by and with the advice and consent of the Senate, shall be mandatorily retired for age in accordance with the schedule below and receive benefits under section 821 of the Foreign Service Act of 1946, as amended, unless the Secretary determines it to be in the public interest to extend his service for a period not to exceed five years.

RETIREMENT SCHEDULE

(1) Any career minister who reaches age sixty-five during the month of enactment of this Act shall be retired at the end of such month;

(2) Other career ministers who are age 60 or over as of the date of enactment of this Act shall be retired at the end of the month which contains the mid-point between the last day of the month of enactment of this Act and the last day of the month during which the officer would reach age sixty-five, counting thirty days to the month; and

(3) On the last day of the thirtieth month which ends after the date of enactment of this Act, all other career ministers who are age 60 or over shall be retired, and thereafter the amendment made by section 1 shall be applicable in all cases.

(4) Any career minister who completes a period of authorized service after he reaches mandatory retirement age as provided in the above schedule shall be retired at the end of the month in which he completes such service.

The letter and explanation, presented by Senator FULBRIGHT, are as follows:

THE SECRETARY OF STATE,
Washington, March 23, 1970.

HON. SPIRO T. AGNEW,
President of the Senate.

DEAR MR. VICE PRESIDENT: Enclosed is a draft bill "To amend the Foreign Service Act of 1946, as amended, to lower the mandatory retirement age for Foreign Service officers who are career ministers."

The bill would lower the mandatory retirement age for career ministers from age 65 to 60. However, such officers would continue to be exempt from mandatory retirement for age while serving in positions to which they have been appointed by the President, by and with the advice and consent of the Senate. The bill would continue the Secretary's authority to extend the service of any officer for up to five years beyond mandatory retirement. This would insure that the lowered retirement age would not work to the detriment of the public interest. The bill also provides for a gradual implementation of the change in order that affected officers may have time to make necessary adjustments.

The majority of Foreign Service officers who attain the rank of career minister serve, during their remaining careers, in chief of mission positions or in other positions to which they are appointed by the President. After it has been determined that a career minister past age 60 will no longer serve as a chief of mission or fill a position requiring appointment by the President, he should be mandatorily retired as in the case of all other Foreign Service officers in class 1 and below. This change will serve to accelerate retirement of career ministers who are not assigned or appointed to positions of the type for which career ministers are needed. A detailed explanation of the bill is enclosed.

The Department has been informed by the Bureau of the Budget that there would be no objection from the standpoint of the President's program to the enactment of this legislation. We would appreciate early consideration of this proposal.

Sincerely yours,

WILLIAM P. ROGERS.

EXPLANATION

The proposed legislation would lower the mandatory retirement age for career ministers from age 65 to age 60. Such officers would continue to be exempt from mandatory retirement for age while serving in positions to which they have been appointed by the President, by and with the advice and consent of the Senate. Also, the Secretary would retain the authority to extend the service of any officer for up to five years beyond mandatory retirement.

The majority of Foreign Service officers who attain the rank of career minister serve, during their remaining careers, in chief of mission positions or in other positions to which they are appointed by the President. When it has been determined that an officer past age 60 who has been promoted to the rank of career minister will no longer serve as a chief of mission or fill a position requiring appointment by the President, he should be mandatorily retired as in the case of all other Foreign Service officers of classes 1 and below. This change will serve to accelerate retirement of career ministers who are not assigned or appointed to positions of the type for which career ministers are needed.

There should be some delay in putting such a change into effect in order to provide the affected officers time to make necessary adjustments. The period of delay should take into account both the legitimate career expectations of officers now serving as career ministers and the Service's need for an early effective date of the new regulation. The attached draft legislation specifies that for officers age 60 or over at the time of enactment, the effective date would be set midway between the date of enactment and the date the officer concerned reaches 65.

For example, the retirement date under the proposed legislation for an officer 64 years old at the time of enactment whose 65th birthday is ten months hence would be five months after the date of enactment. A 62 year old officer whose 65th birthday was to be 30 months hence would be subject to retirement 15 months after the date of enactment. An officer whose 60th birthday coincided with the date of enactment would be subject 30 months hence. This 30-month date would be the outerlimit, and the end

of that month would be the effective date of the legislation for all career ministers reaching 60 after the date of enactment. Thus after two and a half years following the date of enactment, all career ministers would be mandatorily retired on reaching the age of 60, unless they were serving at that time in positions to which they were appointed by the President with Senate confirmation, or unless they were extended by the Secretary.

The proposed legislation also includes two technical changes. The first would permit all participants in the Foreign Service retirement system to work and earn retirement credit until the end of the month in which they reach mandatory retirement age. Present wording in the law prevents them from earning retirement credit past the birthday on which they reach such age. Since Foreign Service annuities do not begin before the first of the month following retirement, the change would be both equitable to participants and simplify administration for the Department.

The second technical change would make explicit what has long been done in practice, namely, to require the retirement of officers serving after mandatory retirement age either as a result of a Presidential appointment or of an extension by the Secretary. Such retirement would take place at the end of the month in which such service was completed.

COMPARATIVE

EXISTING LEGISLATION	PROPOSED LEGISLATION
FOREIGN SERVICE OFFICERS WHO ARE CAREER AMBASSADORS [OR CAREER MINISTERS]	FOREIGN SERVICE OFFICERS WHO ARE CAREER AMBASSADORS
SEC. 631. Any Foreign Service officer who is a career ambassador [or a career minister], other than one occupying a position as chief of mission or any other position to which he has been appointed by the President, by and with the advice and consent of the Senate, shall [upon reaching the age of sixty-five,] be retired from the Service and receive retirement benefits in accordance with the provisions of section 821, but whenever the Secretary shall determine it to be in the public interest, he may extend such an officer's service for a period not to exceed five years.	SEC. 631. Any Foreign Service officer who is a career ambassador other than one occupying a position as chief of mission or any other position to which he has been appointed by the President, by and with the advice and consent of the Senate, shall be retired from the Service *at the end of the month in which he reaches age sixty-five* and receive retirement benefits in accordance with the provisions of section 821, but whenever the Secretary shall determine it to be in the public interest, he may extend such an officer's service for a period not to exceed five years. *Any such officer who hereafter completes a period of authorized service after he reaches age sixty-five shall be retired at the end of the month in which he completes such service.*
PARTICIPANTS IN THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM WHO ARE NOT CAREER AMBASSADORS [OR CAREER MINISTERS]	PARTICIPANTS IN THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM WHO ARE NOT CAREER AMBASSADORS
SEC. 632. Any participant in the Foreign Service Retirement and Disability System, other than one occupying a position as chief of mission or any other position to which he has been appointed by the President, by and with the advice and consent of the Senate, who is not a career ambassador [or a career minister] shall [, upon reaching the age of sixty,] be retired from the Service and receive retirement benefits in accordance with the provisions of section 821, but whenever the Secretary shall determine it to be in the public interest, he may extend such participant's service for a period not to exceed five years.	SEC. 632. Any participant in the Foreign Service Retirement and Disability System, other than one occupying a position as chief of mission or any other position to which he has been appointed by the President, by and with the advice and consent of the Senate, who is not a career ambassador shall be retired from the Service *at the end of the month in which he reaches age sixty* and receive retirement benefits in accordance with the provisions of section 821, but whenever the Secretary shall determine it to be in the public interest, he may extend such participant's service for a period not to exceed five years. *Any such officer who hereafter completes a period of authorized service after he reaches age sixty shall be retired at the end of the month in which he completes such service.*
None.	EFFECTIVE DATE—SECTION 2 OF BILL *Sec. 2. The amendment made by section 1 shall be effective upon enactment, except that any Foreign Service officer who is or becomes a career minister and who is not occupying a position to which he has been appointed by the President, by and with the advice and consent of the Senate, shall be mandatorily retired for age in accordance with the schedule below and receive benefits under section 821 of the Foreign Service Act of 1946, as amended, unless the Secretary determines it to be in the public interest to extend his service for a period not to exceed five years.*
None.	*Retirement schedule* *(1) Any career minister who reaches age sixty-five during the month of enactment of this Act shall be retired at the end of such month;* *(2) Other career ministers who are age 60 or over as of the date of enactment of this Act shall be retired at the end of the month which contains the mid-point between the*

S. 3692—INTRODUCTION OF A BILL TO AMEND THE AGRICULTURAL MARKETING AGREEMENT ACT OF 1937, AS AMENDED.

Mr. MURPHY. Mr. President, I rise to introduce a bill as an amendment to the Agricultural Marketing Agreement Act of 1937, to permit the inclusion of canning pears.

The basic purpose of this legislation is to enable pear producers in the States in which pears for processing are primarily grown to enter into a multi-State marketing agreement if they elect to do so. The Agricultural Marketing Agreement Act of 1937 is the cornerstone of the self-help program through which farm producers work together essentially at their own expense in order to obtain more orderly and stable production and marketing of their products. It now covers a number of commodities including pears for fresh shipment.

Canning pears are produced in a number of States, with most of the production centered in California, Oregon, and Washington. Through State programs, pear producers in the Pacific coast States have attempted to work together for some years particularly in industry promotion. It appears clear that through a regional order the pear producers would be able to work together much more efficiently both in their efforts to promote the processed product and also in other respects such as research and study relating to the production of pears. The bill I have introduced is actually enabling legislation which simply would make it possible for some suitable program to be adopted at a later date.

There are a number of special features in this bill which are designed to meet reasonable concerns which have been expressed:

First. A substantially similar bill, H.R. 2690, has already been approved by the House Agriculture Committee and is awaiting action on the House floor. In the committee hearings, the pear producers have made it clear that they will assume the cost of any assessments levied if a program is adopted and, therefore, no cost will fall upon the pear canners.

Second. The pear producers in a given State must by a two-thirds vote approve any marketing order before it can become applicable to pears produced in that State. Moreover, they are given the right, once an order has been adopted applicable to them, to elect to terminate its application to them by a similar vote. This is to make certain that no one State, more populous than others involved in

last day of the month of enactment of this Act and the last day of the month during which the officer would reach age sixty-five, counting thirty days to the month; and

(3) On the last day of the thirtieth month which ends after the date of enactment of this Act, all other career ministers who are age 60 or over shall be retired, and thereafter the amendment made by section 1 shall be applicable in all cases.

(4) Any career minister who completes a period of authorized service after he reaches mandatory retirement age as provided in the above schedule shall be retired at the end of the month in which he completes such service.

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a proposed order, would possibly dominate the others.

Third. It is explicitly clear that no program adopted can be made applicable to the canned or otherwise processed pears.

Fourth. Pear processors are given representation up to one-third of the total membership of the administrative committee which must recommend to the Secretary of Agriculture and administer any program. This representation is particularly significant since the Secretary of Agriculture requires a two-thirds vote of the committee for approval of any program or amendment.

I believe that this legislation is in the best interests of the public as well as the pear producers because it is a democratic way of enabling those involved in pear production to help themselves, at their own expense, achieve more stability and order in the production and marketing of their products. This approach is essential to the survival of the independent farmer who produces pears and who is so important to our society.

Mr. President, I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

The bill (S. 3692) to amend section 2(3), section 8c(2), section 8c(6)(I), and section 8c(7)(C) of the Agricultural Marketing Agreement Act of 1937, as amended, introduced by Mr. MURPHY (for himself and Mr. CRANSTON), was received, read twice by its title, referred to the Committee on Agriculture and Forestry, and ordered to be printed in the RECORD, as follows:

S. 3692

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Agricultural Adjustment Act of 1933, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, is further amended as follows:

(1) Section 8c(2), as amended, is further amended by inserting "pears," after the words "canned or frozen" where they first appear and also before "olives" in subdivision (a) in the first sentence thereof.

(2) Subsection (I) of section 8c(6), as amended, is further amended by striking "fresh" immediately before "pears" in the proviso.

(3) Section 2(3) of the Act is amended by inserting "such marketing research and development projects provided in section 8c(6)(I)", immediately after "establish and maintain".

(4) Section 8c(7)(C) of the Act is amended by inserting "or pears," immediately after "a marketing order applicable to grapefruit" and by replacing the period following "in such order" with a colon and adding "*Provided,* That in a marketing order applicable to pears for canning or freezing the representation of processors shall not exceed 33⅓ per centum of the total membership of such agency."

(5) Section 8c(19) is amended by adding at the end thereof the following: "For the purpose of ascertaining whether the issuance of an order applicable to pears for canning or freezing is approved or favored by producers as required under the applicable provisions of this title, the Secretary shall conduct a referendum among producers in each State in which pears for canning or freezing are proposed to be included within the provisions of such marketing order and the requirements of approval or favor under any such provisions applicable to pears for canning or freezing shall be held to be complied with if, of the total number of producers, or the total volume of production, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of 66⅔ per centum except that in the event that producers in any State fail to approve or favor the issuance of any such marketing order, it shall not be made effective in such State."

S. 3696—INTRODUCTION OF A BILL TO PROVIDE FOR TEMPORARY OR INTERMITTENT EMPLOYMENT OF CERTAIN EMPLOYEES

Mr. MOSS. Mr. President, I introduce a bill to amend title 5 of the United States Code to revise the law governing the method whereby the Federal Government procures the personal services of experts and consultants on a part-time or intermittent basis, and to increase the allowable per diems paid therefor to present-day economic realities.

Under present law, such services can be procured by the Federal Government only in accordance with authorizations contained in individual appropriation bills or other specific statutory provision. Section 3109 of title 5 of the United States Code so conditions agency power. This situation has produced a number of undesirable results including lack of uniformity among the agencies, inadequate and disparate rates of per diem paid, and most important, disposition of qualified experts to refrain from proffering their services to the Government. The net effect is a situation operating to the Government's disadvantage calling for remedial legislative relief. My bill provides for this necessary relief.

Experience under present law has clearly demonstrated that the appropriations process is a cumbersome, inadequate, and generally undesirable method under which to procure these types of services. Several years ago, the House Committee on Appropriations, Subcommittee on General Government Matters, requested the Bureau of the Budget to conduct a study in the hiring of experts and consultants on a part-time basis. The Budget Bureau found that dozens of separate authorizations were, in fact, contained in other statutes which permit differing per diem payments. In its report to the committee's chairman, the Budget Bureau concluded that there exists no uniformity as to the conditions under which these services are, and should be, obtained.

Based on these findings and conclusions, the Budget Bureau recommended an amendment to Federal law: First, to provide general authority for the employment of experts and consultants, or firms thereof, without the need for additional authority in appropriation or other acts; second, to provide for Presidential regulation of the conditions under which both types of expert and consultant services may be procured and paid for; and, third, to provide that all authorizations in other statutes for obtaining expert and consultant services be subject to Presidential regulations unless specifically exempted by legislation.

Experience has also clearly demonstrated the need to increase payable per diems for such services to present-day economic realities. The longstanding suspicion that present rates almost guarantee that the Government will not get first-rate people in its hiring of temporary experts and consultants was recently borne out by a nationwide poll conducted by the National Society of Professional Engineers. This organization, consisting of some 67,000 members, all of whom are qualified by academic training and demonstrated ability to have become licensed under one or more of the various State engineering registration statutes, conducted a survey last year from among its membership engaged in private engineering practice. These individual professionals were requested to indicate per diem payments according to their types of clients—Federal Government clientele, State government clientele, local government clientele, and private clientele.

By an overwhelmingly large margin, the majority of these licensed engineers charge and are paid rates exceeding those generally allowed by the Federal Government. This is true not only with respect to private clients, but also with respect to State and local governments.

A similar condition undoubtedly prevails in other fields as well. The Bureau of the Budget report to which I referred earlier, based on the Bureau's study, recommended raising per diem rates payable to individual experts and consultants as a means of obtaining the temporary services of the highly qualified individuals which the Federal Government needs.

My bill provides that an agency may procure the temporary or intermittent services of experts, consultants, or stenographic reporters, or an organization thereof, by contract for a period not in excess of 1 year. It provides that the services thereby procured, as well as any procured under any other provision of law, must be obtained under such conditions and regulations as the President may prescribe and, except where a higher rate is specifically authorized by law or regulation, at rates of pay for individuals not to exceed the rate for GS-18 of the General Schedule. And in connection with the rate bearing relationship to GS-18, the Bureau of the Budget had previously recommended that the total amount as thus calculated with respect to these services should include allow-

ance for annual leave and Government fringe benefits.

Finally, my bill would exempt, for this purpose, application of appropriate provisions of present law governing appointment in the competitive service, advertising requirements other than in the case of an organization of stenographic reporters, and the classification and General Schedule pay rate sections.

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

The bill (S. 3696) to amend title 5, United States Code, to provide for the temporary or intermittent employment of experts, consultants, or stenographic reporters, and for other purposes, introduced by Mr. Moss, was received, read twice by its title, and referred to the Committee on Post Office and Civil Service.

S. 3697—INTRODUCTION OF CLEAN LAKES ACT OF 1970

Mr. MONDALE. Mr. President, 2 weeks ago Congress adopted the Water Quality Improvement Act conference report, clearing the way for the enactment of a comprehensive program to improve the deteriorating condition of our waterway. Its passage marked the culmination of a long struggle to strengthen the Federal Water Pollution Control Act.

I was especially pleased by this action because the conference report retained the clean lakes research provision originally introduced by Senator BURDICK and me in 1966. It will enable the Federal Government to undertake basic research or to make grants for studies into the cause and prevention of lake pollution.

This is an important first step in what I hope will be a concerted campaign to restore the thousands of lakes which are jeopardized by pollution.

But we need to move immediately beyond research and study and begin implementing programs to restore and preserve these lakes.

Many of the Nation's small fresh water lakes are deteriorating. Some of these lakes are in such desperate condition that they cannot wait for the research processes set up by the recently-passed clean lakes provision.

It is to this problem that I am addressing my new legislation.

The bill I am introducing today is an extension of the program just approved by the Congress. It is in line with the conclusion reached by the 1967 House Committee on Government Operation's report "To Save America's Small Lakes" which stated:

> A twin-pronged approach to the problem of accelerated eutrophication would seem desirable—an expanded program of basic research to add to the limited knowledge about the eutrophication processes and their effective and economical control, plus immediate action in the form of demonstration projects utilizing present knowledge and skills.

The new clean lakes bill would establish a coordinated program of increased waste treatment and lake cleansing utilizing the latest technology. It is aimed at rehabilitating the lakes which are in particularly poor condition.

I am concerned about the hundreds of lakes which already have been fouled by man's carelessness; lakes which have been used as a convenient dumping area for municipal, industrial and agricultural wastes.

Municipal sewage is increasing, filled with phosphorous materials from detergents or human wastes. In many instances, it is dumped untreated into nearby lakes.

Industries find it expedient to locate adjacent to lakes where they can pump their chemical-filled discharges.

Lakes also suffer from agricultural runoffs. Overflows contaminated with pesticide, herbicide, and fertilizer residues wash into the lakes. Siltation adds to the load.

Unlike moving rivers, lakes have no flushing system to purge themselves of these burdens.

The unrelieved surge of nutrients into these lakes causes the waters to be enriched past their capacity. The problem becomes one of eutrophication—the aging of lakes.

The elements added to the lakes by sewage and runoffs act as fertilizers of aquatic growth, causing a veritable population explosion of algae. These plants have a self-generating cycle and create an increasing demand on the oxygen in the water, thus killing desirable bacteria which work naturally to cleanse the water.

Meanwhile, lakebeds fill with sludge and debris, and the marine life chokes and dies.

A recent survey by the University of Minnesota indicated that the State's once-sparkling lakes are gradually taking on a new color—green. The study identifies sewage seeping from inadequate disposal systems of lakeshore homes as the main source of pollution. It also notes that runoff of fertilizers from farmland and nutrients from cattle feedlots reduce the water quality of many lakes. Municipal sewage is dumped directly into the waters of 34 major recreational lakes studied.

The problems are not endemic to the 11,500 lakes in Minnesota which are in excess of 10 acres. Many of the more than 100,000 fresh water community lakes in the Nation are being victimized by the same problems.

Our lakes have too often been forgotten in the rush to improve our environment. Since lakes are so essential to our way of life and represent such an irreplacable resource, it is obvious that they cannot be neglected.

Yet, unless restorative measures are taken soon, many of our priceless lakes will be irretrievably lost.

The bill I am introducing today recognizes the desperate plight of these lakes and provides for a plan to reclaim these waterways.

There are four major points covered in this new Clean Lakes Act.

First, the bill authorizes an increase in the Federal grant now available under section 8(b) of the Water Pollution Control Act for treatment works which are located near or adjacent to a lake and which discharge treated wastes into the lake or tributary waters. The increase would be to a maximum of 65 percent of the costs, if the State pays at least 20 percent of the costs. To be eligible for this increase, enforceable water quality standards must be established and the works be consistent with the plan for the implementation, maintenance, and enforcement included in the standards. These works must discharge only treated water, and industries hooking up to the municipal system must provide pretreatment of their wastes. The bill authorizes an annual appropriation of $150 million for fiscal years 1972, 1973, 1974, and 1975 for the purpose of funding these increased grants.

Second, the bill directs the Secretary of the Interior to provide technical and financial assistance to the States and municipalities in carrying out a comprehensive program of pollution control. This would include the use of harmless chemicals to destroy unwanted supplies of algae that accelerate the aging process of lakes, the dredging of lake bottoms to remove decaying sludge and other noxious pollutants, the recovery of overgrowth of algae and trash from the surface, and the improvement of lake shores. The bill authorizes up to 80 percent Federal grants for this program from a total appropriation of $900 million over a 4-year period beginning in fiscal year 1972.

Third, the bill authorized the use of experienced Federal water resource agencies such as the Bureau of Reclamation and the Corps of Engineers, to help carry out this program under agreements with the States.

Fourth, the bill provides measures to enforce water quality standards for lakes subject to this program. These measures include penalities and injunctive relief.

I believe we must take these steps if we are to save these troubled waters.

There are several techniques which can be employed to clean the lakes.

Obviously, we can move to upgrade the waste treatment facilities to cut back the flow of nutrients into their waters. This is a preventive procedure. There are other direct measures to be used to rid the lakes of pollution.

Chemicals are being developed which attack algae forms, but do not harm the fish life of the lakes. Copper sulfate has been used in the past to control algal blooms for a short period of time. Experiments are also being conducted with alum, which sinks surface sediments, and with lime, which attacks the acidity in some "bog lakes." Recent research efforts at the Cincinnati Water Research Laboratory resulted in the discovery of a virus which is parasitic, specifically to blue-green algae.

Dredging and surface screening operations have proven successful in clearing lakes of sludge, weeds and other undesirable contents.

It was heartening to read last week in the Washington Evening Star of a special treatment for the Snake Lake in Wisconsin which was less costly than dredging or screening. This consisted of literally flushing the lake's waters into a nearby earth area. There the foul water was strained through a natural filter of sand to seep back into the lake bed. The project, administered by the University of Wisconsin and the Wisconsin Department of Natural Resources through a grant from the Upper Great Lakes Regional Commission, has appar-

ently been a success. The cost was $10,000 to pump the lakes 21 million gallons.

I am hopeful that we can correct these problems for the benefit of future generations. Lakes provide not only a source of water but offer recreational outlets, scenic sites for homes, and spiritual uplifting.

Our lakes are a priceless commodity. To delay action in cleaning our lakes is to risk losing them. We cannot afford to do this.

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

The bill (S. 3697) to amend the Federal Water Pollution Control Act, as amended, and for other purposes, introduced by Mr. MONDALE (for himself and other Senators), was received, read twice by its title, and referred to the Committee on Public Works.

Mr. MONDALE. Mr. President, I ask unanimous consent that a statement, prepared by the Senator from North Dakota (Mr. BURDICK), be printed in the RECORD.

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

The statement of Mr. BURDICK is as follows:

STATEMENT OF SENATOR BURDICK

Mr. BURDICK. I am pleased to join the Senator from Minnesota as a co-sponsor of the new Clean Lakes bill.

I well remember that Senator Mondale and I first introduced Clean Lakes legislation nearly four years ago.

We felt that while considerable attention was being paid to the water quality in our rivers, many of the Nation's lakes were deteriorating because of the lack of a Federal program. At that time we proposed a comprehensive program aimed at revitalizing these lakes through the prevention, removal and control of pollution. We originally sought to do this through Federal grants establishing pilot projects in connection with State or municipal agencies. This work was designed to develop new or improved methods to control lake pollution.

With the enactment of the Water Quality Improvement Act of 1970, we have completed the first step. This Act includes a provision for Federal grants for basic research into the cause and cures of lake pollution.

It is my understanding that the latest proposal by the Senator from Minnesota would go one step further. Is that correct?

Mr. MONDALE. That is correct. The new Clean Lakes bill is aimed at saving many of the lakes throughout our Nation which need restorative action now. The bill would authorize the use of our latest technology in a program to stop lake pollution through the expansion of waste treatment facilities, and also to implement a program of lake cleaning through such methods as surface screening, dredging, use of harmless chemicals and flushing.

Mr. BURDICK. Is there evidence that these techniques can be successful?

Mr. MONDALE. There are a number of projects being undertaken by those interested in saving our lakes, and they report success. It is obvious that what works for one lake will not necessarily work for another. The flushing treatment which has proved successful in Wisconsin is designed for smaller lakes which have become filled with slime. On the other hand, there are indications that lakes clogged with weeds and marine growth can be cleared through a harvesting process. There are different techniques for different problems, and there is sufficient evidence that they work to warrant projects to clean up our polluted lakes.

Mr. BURDICK. The Clean Lakes bill proposes to use such Federal agencies as the Bureau of Reclamation and the Corps of Engineers.

Mr. MONDALE. Yes. I believe this gives our government an excellent opportunity to turn the expertise of its agencies toward remedying pollution. In many instances, Federal projects have contributed toward pollution and the destruction of our natural resources. Lake restoration would seem to be a particularly constructive project for these agencies.

ADDITIONAL COSPONSORS OF BILLS

S. 3388

Mr. GRIFFIN. Mr. President, on behalf of the Senator from Pennsylvania (Mr. SCOTT) I ask unanimous consent that, at the next printing the name of the Senator from Delaware (Mr. BOGGS) be added as a cosponsor of S. 3388, to establish an Environmental Quality Administration.

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

S. 3484

Mr. NELSON. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senator from Indiana (Mr. BAYH), the Senator from Massachusetts (Mr. BROOKE), the Senator from Oklahoma (Mr. HARRIS), the Senator from Michigan (Mr. HART), the Senator from Minnesota (Mr. MCCARTHY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Minnesota (Mr. MONDALE), the Senator from Oregon (Mr. PACKWOOD), the Senator from Illinois (Mr. PERCY), the Senator from Texas (Mr. YARBOROUGH), and the Senator from Ohio (Mr. YOUNG) be added as cosponsors of S. 3484, the Marine Environment and Pollution Control Act which I introduced February 19.

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

S. 3491

Mr. NELSON. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from Maryland (Mr. TYDINGS) be added as a cosponsor of S. 3491, the Mined Lands Restoration and Protection Act, which I introduced February 23.

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

S. 3505

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Washington (Mr. JACKSON) I ask unanimous consent that, at the next printing, the names of the Senator from New Mexico (Mr. ANDERSON), the Senator from Nevada (Mr. BIBLE), the Senator from Idaho (Mr. CHURCH), the Senator from Utah (Mr. MOSS), the Senator from North Dakota (Mr. BURDICK), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Wisconsin (Mr. NELSON), the Senator from Montana (Mr. METCALF), the Senator from Alaska (Mr. GRAVEL), the Senator from Idaho (Mr. JORDAN), the Senator from Arizona (Mr. FANNIN), the Senator from Wyoming (Mr. HANSEN), the Senator from Oregon (Mr. HATFIELD), the Senator from Alaska (Mr. STEVENS), and the Senator from Oklahoma (Mr. BELLMON) be added as cosponsors of S. 3505, to amend the Land and Water Conservation Fund Act.

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

S. 3619

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Indiana (Mr. BAYH), I ask unanimous consent that, at the next printing, the names of the Senator from Connecticut (Mr. DODD), the Senator from Washington (Mr. JACKSON), and the Senator from New Hampshire (Mr. MCINTYRE), be added as cosponsors of S. 3619, to create, within the Office of the President, an Office of Disaster Assistance, to revise and expand Federal programs for relief from the effects of major disasters, and for other purposes.

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

ADDITIONAL COSPONSORS OF A JOINT RESOLUTION

SENATE JOINT RESOLUTION 61

Mr. MANSFIELD. Mr. President, on behalf of the Senator from Minnesota (Mr. MCCARTHY), I ask unanimous consent that, at the next printing, the names of the Senator from Alaska (Mr. GRAVEL) and the Senator from Texas (Mr. YARBOROUGH) be added as cosponsors of Senate Joint Resolution 61, proposing an amendment to the Constitution of the United States relative to equal rights of men and women.

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

SENATE RESOLUTION 384—RESOLUTION REPORTED TO AUTHORIZE ADDITIONAL EXPENDITURES FOR THE COMMITTEE ON THE JUDICIARY

Mr. EASTLAND, from the Committee on the Judiciary, reported the following original resolution (S. Res. 384); which was referred to the Committee on Rules and Administration:

S. RES. 384

Resolved, That the Committee on the Judiciary hereby is authorized to expend from the contingent fund of the Senate, during the Ninety-first Congress, $20,000, in addition to the amounts and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act, approved August 2, 1946.

ADDITIONAL COSPONSORS OF RESOLUTIONS

SENATE RESOLUTION 211

Mr. BROOKE. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senator from Missouri (Mr. SYMINGTON), the Senator from Connecticut (Mr. DODD), the Senator from Delaware (Mr. BOGGS), and the Senator from Nevada (Mr. BIBLE), be added as cosponsors of Senate Resolution 211, seeking agreement with the Union of Soviet Socialistic Republics on limiting offensive and defensive strategic weapons and the suspension of test flights of reentry vehicles.

Mr. MANSFIELD. Mr. President, re-

serving the right to object, what total does that make now?

Mr. BROOKE. I think that makes 50 cosponsors, 55 altogether who have indicated in one way or another their support for this resolution.

Mr. MANSFIELD. Fifty-five. I am delighted. I withdraw any objection.

Mr. BROOKE. I thank the distinguished majority leader.

The PRESIDING OFFICER (Mr. SAXBE). Is there objection to the request of the Senator from Massachusetts? The Chair hears none, and it is so ordered.

NUCLEAR ARMS CONTROL

Mr. DODD. Mr. President, I have decided to cosponsor Senate Resolution 211 because I believe it represents both a safe and reasonable approach to the problem of arms control and arms limitation.

I want to compliment the junior Senator from Massachusetts on his initiative in this matter.

I consider the resolution to be prudent because, obviously, it will be to the advantage of the Soviet people and the American people, both, if we can place some kind of limit on the extremely costly and dangerous race in nuclear weapons.

I also consider the resolution safe because, as amended, it makes it clear that the suspension of further deployment of offensive and defensive nuclear systems will be, I quote, "subject to national verification or such other measures of observation and inspection as may be appropriate."

National verification, in my understanding, involves verification by means of satellites and other existing intelligence resources. I am pleased that the wording of the resolution takes note of the fact that national verification by itself may not be adequate and that it may have to be supplemented by direct observation and inspection.

This is of critical importance because, clearly, there has to be an assurance that any agreement reached would at least make it exceedingly difficult for the Soviet Union to cheat.

Ours is an open society, where cheating on any such agreement would be inconceivable. Theirs is a closed society, whose entire record suggests that they would be prepared to cheat if they ever thought it would be to their advantage and that they could get away with it.

This makes it imperative that we pay particular attention to the problem of verification.

There is another observation I would like to make.

I am supporting this resolution in the hope that the Soviet Union will agree to a prompt cessation of the further deployment of nuclear weapons systems.

There are some who say that there is a rough condition of parity between the overall nuclear strength of the Soviet Union and our own overall strength.

There are others who say that, everything considered, the Soviets already enjoy a significant superiority over the United States in strategic nuclear weapons.

What cannot be challenged is that the Soviet nuclear assembly lines have for the past 4 years operated at a tempo which far exceeds the most pessimistic estimates of our intelligence community.

Four years ago, in July 1966, when we decided to freeze our ICBM strength at the arbitrary figure of 1,054, the Soviet Union had 250 ICBM's. In the latter part of 1969, according to hard intelligence, the U.S.S.R. had more than 1,300 ICBM's in place or going into place. These included a growing force of the giant SS-9 missiles, each of which is capable of delivering several 10-megaton warheads.

While Moscow's 100 older missile-firing submarines cannot begin to compare with the Polaris, the Soviets have for some time now been building Polaris-type submarines. If Admiral Rickover is correct in estimating that they can produce such submarines at the rate of 10 to 12 a year, then by 1972 or 1973 they will have a Polaris fleet as large as our own. And if, in the interim, their missile assembly lines have continued to function at the rate of recent years, their ICBM strength might be well past the 2,000 mark. This would give the Soviets a frightening and indisputable superiority in strategic nuclear weapons.

At that point, the United States would have to reconsider its entire strategic posture.

In cosponsoring Senate Resolution 211, therefore, I want to emphasize that I think there is a time limit tied to the acceptance of the proposed freeze by the Soviet Union.

This year we can agree to such a freeze because, while there would be risks, the risks would be at an acceptable level. But if the Soviet nuclear buildup continues, then 1 year or 2 years or 3 years from now, we may not be able to agree to such a freeze.

President Nixon has already made it clear to the Soviet Union that we are prepared to enter into either a compromise agreement or a systems by systems agreement on the limitation of nuclear weapons.

I feel that the passage of Senate Resolution 211 by the Senate would greatly strengthen the hand of the administration in future negotiations.

I earnestly hope that the Soviet Government will accept the wisdom of entering into such an agreement now rather than postponing action until an agreement becomes impossible.

Under President Kennedy and President Johnson and now President Nixon, the United States has repeatedly demonstrated that it is prepared to walk the extra mile and more in the quest for meaningful agreements in the field of arms control.

Today, we stand at a critical point in the nuclear arms race. Whether there can be any agreement is now up to the Soviet Union.

SENATE RESOLUTION 382

Mr. HARTKE. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from Massachusetts (Mr. KENNEDY) be added as a cosponsor to Senate Resolution 382 expressing the sense of the Senate that the President of the United States should implement the findings of his Cabinet Task Force on Oil Import Controls.

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

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, April 8, 1970, he presented to the President of the United States the following enrolled bills:

S. 2363. An act to confer U.S. citizenship posthumously upon L. Cpl. Andre L. Knoppert; and

S. 2595. An act to amend the Agricultural Act of 1949 with regard to the use of dairy products, and for other purposes.

GENERAL REVISION OF THE PATENT LAWS—AMENDMENTS

AMENDMENTS NOS. 578 AND 579

Mr. SCOTT submitted two amendments, intended to be proposed by him, to the bill (S. 2756) for the general revision of the Patent Laws, title 35 of the United States Code, and for other purposes, which were referred to the Committee on the Judiciary and ordered to be printed.

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

NOTICE OF HEARING ON ELECTORAL REFORM

Mr. EASTLAND. Mr. President, on behalf of the Committee on the Judiciary, I desire to give notice that public hearings have been scheduled for Wednesday, Thursday, and Friday, April 15, 16, and 17, 1970, at 10:30 a.m., in room 2228, New Senate Office Building, on the subject of electoral reform.

ANNOUNCEMENT OF HEARINGS ON MEAT INSPECTION BILLS

Mr. JORDAN of North Carolina. Mr. President, I would like to announce that the Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices of the Committee on Agriculture and Forestry will hold hearings on Thursday, April 16, beginning at 10 a.m., in room 324 of the Senate Office Building, on three bills dealing with meat inspection. The bills are S. 3512, S. 3592, and S. 3603.

ADDITIONAL STATEMENTS OF SENATORS

POSTHUMOUS AWARD OF MEDAL OF HONOR TO SGT. RAY McKIBBEN, OF FELTON, GA.

Mr. TALMADGE. Mr. President, yesterday at the White House, the President of the United States conferred the Medal of Honor posthumously to 21 American soldiers for conspicuous gallantry above and beyond the call of duty in combat in Vietnam.

Among those receiving the posthumous award was Sgt. Ray McKibben of Felton, Ga. The Medal, the highest military honor the Nation can confer upon its brave men, was received by Sgt. McKibben's wife, Mrs. Anna McKibben. I was privileged and honored to be present at the White House for these ceremonies.

Sergeant McKibben, in an act of extreme heroism, gave his life in Vietnam. He paid the supreme sacrifice, and all the Nation and all the free world is indebted to him and to all the young men of America who are fighting so bravely in the frustrating war in Vietnam.

Mrs. Talmadge joins me in extending our sympathies to Mrs. McKibben and the family.

I ask unanimous consent that the citation accompanying Sergeant McKibben's Medal be printed in the RECORD.

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

CITATION

The President of the United States of America, authorized by Act of Congress, March 3, 1863, has awarded in the name of The Congress the Medal of Honor posthumously to Sergeant Ray McKibben, United States Army, for conspicuous gallantry and intrepidity in action at the risk of his life above and beyond the call of duty:

Sergeant Ray McKibben distinguished himself by conspicuous gallantry and intrepidity in action above and beyond the call of duty while serving as team leader of the point element of a reconnaissance patrol of Troop B, 7th Squadron (Airmobile), 17th Cavalry operating in enemy territory near Song Mao in the Republic of Vietnam on 6 December 1968. Sergeant McKibben was leading his point element in a movement to contact along a well-travelled trail when the lead element came under heavy automatic weapons fire from a fortified bunker position, forcing the patrol to take cover. Sergeant McKibben, appraising the situation and without regard for his own safety, charged through bamboo and heavy brush to the fortified position, killed the enemy gunner, secured the weapon and directed his patrol element forward. As the partol moved out, Sergeant McKibben observed enemy movement to the flank of the patrol. Fire support from helicopter gunships was requested and the area was effectively neutralized. The patrol again continued its mission and as the lead element rounded the bend of a river it came under heavy automatic weapons fire from camouflaged bunkers. As Sergeant McKibben was deploying his men to covered positions, he observed one of his men fall wounded. Although bullets were hitting all around the wounded man, Sergeant McKibben, with complete disregard for his own safety, sprang to his comrade's side and under heavy enemy fire pulled him to safety behind the cover of a rock emplacement where he administered hasty first aid. Sergeant McKibben, seeing that his comrades were pinned down and were unable to deliver effective fire against the enemy bunkers, again undertook a single-handed assault of the enemy defenses. He charged through the brush and hail of automatic weapons fire closing on the first bunker, killing the enemy with accurate rifle fire and securing the enemy's weapon. He continued his assault against the next bunker, firing his rifle as he charged. As he approached the second bunker his rifle ran out of ammunition; however, he used the captured enemy weapon until it too was empty, at which time he silenced the bunker with well-placed hand grenades. He reloaded his weapon and covered the advance of his men as they moved forward. Observing the fire of another bunker impending the patrol's advance, Sergeant McKibben again singlehandedly assaulted the new position. As he neared the bunker he was mortally wounded but was able to fire a final burst from his weapon killing the enemy and enabling the patrol to continue the assault. Sergeant McKibben's indomitable courage, extraordinary heroism, profound concern for the welfare of his fellow soldiers and disregard for his own personal safety saved the lives of his comrades and enabled the patrol to accomplish its mission. Sergeant McKibben's conspicuous gallantry and intrepidity in action at the cost of his life above and beyond the call of duty are in the highest traditions of the military service and reflect great credit upon himself, his unit, and the United States Army.

PIONEERS IN BIOLOGY ARE UNRAVELING RIDDLE OF LIFE

Mr. SCOTT. Mr. President, I am pleased to announce to the Senate that Donald C. Drake and Patricia McBroom, of the Philadelphia Inquirer, have been honored by the National Society for Medical Research for their article entitled, "Pioneers in Biology Are Unraveling Riddle of Life," published in the Philadelphia Inquirer on March 7, 1969.

Mr. Drake and Miss McBroom received honorable mention citations through the National Society for Medical Research's annual Claude Bernard Science Journalism contest for their profound perceptiveness of the basic issues and challenges that face science and medical research in these times.

I ask unanimous consent that this award-winning article be printed in the RECORD.

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

PIONEERS IN BIOLOGY ARE UNRAVELING RIDDLE OF LIFE: CRACKING CODE OF CELL HERALDS MAJOR BENEFITS

(By Donald C. Drake and Patricia McBroom)

Nobel laureate Dr. James D. Watson told the people gathered around him at a cocktail party in San Diego that the time had come for molecular biology to do something nice for society—like finding a cure for cancer, hereditary diseases or mental retardation.

The characteristically brash statement by the famed Harvard University biologist pointed up to important facts:

Nothing much of a practical nature has come from molecular biology so far.

An awful lot is about to.

If anyone should know how ripe the field of biology is for the plucking of practical fruits, this biologist with the startled eyes and restless eyebrows should.

Dr. Watson and Francis Crick started the biologic revolution 15 years ago when they deciphered the structure of the master genetic chemical DNA (deoxyribonucleic acid) and set the stage for astounding growth in the field of genetics.

The reason it is only now that molecular biologists are beginning to think in terms of fighting diseases is because prior to the Watson-Crick discovery a profoundly deep ignorance of the life process thwarted scientists in their attempts to make order out of it all.

Just as it takes a school child months to gather basic information about the alphabet, words and sentences before he can start reading a book, so it has been with the molecular biologists.

ARTIFICIAL ENZYME

For the past 15 years they've been doing their homework. Now it appears that they are about to start producing.

In recent years, discoveries have been coming at a quickened pace.

It's only two months since scientists at Merck, Sharp & Dohme and Rockefeller University simultaneously announced the artificial creation of an enzyme, an essential biochemical that makes the life process possible.

One year earlier, biochemists at Stanford University manufactured the DNA core of a virus and, as far as some romantics are concerned, virtually created life in a test tube.

Before that, scientists announced the artificial synthesis of insulin, an important hormone for using sugar which some diabetics lack.

Dr. Robert W. Holley of Cornell University achieved a major breakthrough by cracking the code for one form of the genetic material RNA (ribonucleic acid).

In Chicago, scientists achieved the artificial construction of an RNA strand.

SHARP FRUSTRATIONS

The work, though breath-takingly important and well publicized, was greeted with apathy by most people because no potent medicine or magic bullet was forthcoming.

This is one of the disheartening communication problems that has confronted these scientists, who would very much like to share the excitement of their work but are unable to because it is so difficult to explain.

Their frustration is something akin to that of a baseball fan who has just witnessed a beautiful play and has no one to talk to but his wife who doesn't know the difference between a home run and an infield fly.

The world of the molecular biologist is the cell.

Cells are to the human body—or all other forms of life for that matter—what bricks are to houses.

The average human body is made up of 10 trillion cells. There are about 100 different types. The heart is composed of heart cells. Bones are made of bone cells. And the liver is fashioned from liver cells.

Unlike bricks, however, cells are not static hunks of matter but rather are dynamic biochemical factories that are continually manufacturing protein, the building blocks of all living tissue.

The cells manufacture the thousands of enzymes that are needed to accelerate chemical reactions. Hormones are produced by gland cells. Cells even make copies of themselves for growth, replacement or repair.

At the basis of all this, and hence of the life process, are four chemicals called nucleotides or bases: adenine, guanine, thymine and cytosine.

The bases are a four-letter alphabet strung out in a sequence along a strand of DNA.

They spell out three-letter words called codons.

These words or codons, in turn, form sentences called genes.

FOCUS OF RESEARCH

The sentences tell the cell what protein to make and the type of protein determines whether it will be a heart cell, liver cell or what have you.

Factory workers, if you will, called messenger RNA, make copies of the sentences and carry the instructions out of the cell's nucleus or center into an assembly room called the cytoplasm of the cell.

Here other workers called ribosomes read the instructions, which tell the ribosomes how to make the specific proteins needed by the cell and the entire organism.

The proteins are made of an assortment of amino acids, arranged in a specific sequence, again like the letters in a word.

They are very long words involving hundreds of thousands of letters or amino acids.

Cells have in effect two alphabets—bases to spell out genes and amino acids to spell out proteins.

Understanding this very complicated process—which has been greatly simplified here—has dominated the research efforts of thousands of laboratories throughout the world for the past 15 years, ever since the great breakthrough was achieved by Dr. Watson and Crick, on DNA structure.

This work, undoubtedly one of the greatest scientific discoveries man has ever made,

formed the basis of modern biology, which may one day lead to the control of disease and perhaps life itself.

Though many questions still remain unanswered, scientists now have a sufficiently firm understanding of the process to start thinking of manipulating the life process and hence of conquering disease.

That's why Dr. Watson felt free to say at the meeting of the American Cancer Society in San Diego that he felt the time had come for molecular biologists to start thinking in terms of human illness rather than limiting themselves to laboratory experimental models of single-cell organisms.

The simplified version of the life process presented here required an immense amount of laboratory work to establish.

MAJOR QUESTION

One of the major breakthroughs after the Watson-Crick discovery was made by Dr. Marshall Nirenberg, of the National Institutes of Health, who explained and demonstrated the codon theory. This explained that three bases coded or ordered the manufacture of a single amino acid.

Subsequently Dr. H. Gobind Khorana at the University of Wisconsin made a protein, an RNA molecule, with a specific repeating triplet of bases.

Other scientists cleared up a major question that had plagued researchers:

Since all cells—whether they be heart cells, liver cells or skin cells—contain the same DNA and hence the same genetic instructions, researchers had wondered, for instance, why a liver cell made only liver protein and a heart cell made only heart protein.

The explanation achieved over the past few years was that only a small percentage of the genes in any given cell are active. Most of them are repressed.

For instance, in a heart cell only the heart-related genes are active while all the rest are repressed. In a liver cell with the exact same DNA, all the liver genes are active while all the other genes, including the heart genes, are inactive.

DRAMATIC POTENTIAL

Two years ago, another major question was answered at Harvard University by Dr. Walter Gilbert who isolated a gene repressor and discovered what it was made of.

Even for one not familiar with biology, it takes little imagination to realize the potential of this discovery—especially when one remembers that the cancer process is nothing much more than uncontrolled cell growth, or, more specifically, protein manufacture.

For unknown reasons, not enough genes in cancer cells are repressed. Unlike healthy cells that will multiply only a limited number of times, the cancer cells don't know when to stop. If scientists could fabricate the proper repressor and inject it into a cancer patient, perhaps it would be possible to stop cancer cells from multiplying and hence halt the disease.

Compared to our crude, block-busting methods of fighting disease with wide-acting drugs, this would indeed be disease control on its most sophisticated level.

But this is in the future.

Other molecular biologists and chemists are attacking the problem from a different angle but on the same cellular level.

PROCESS SABOTAGED

A little more than a year ago, newspapers front-paged a story out of Stanford University where Dr. Arthur Kornberg announced that he had synthesized the DNA core of a virus.

The major thrust of most stories was that the California scientist may very well have created life out of inert chemicals, but the importance of the discovery lay not in the possibility of test-tube life but in a better understanding of the disease process.

It is believed that viruses cause disease by entering the nucleus of healthy cells and sabotaging the protein manufacturing process by turning on and off certain genes. When this happens, the cells start manufacturing more viruses instead of their normal proteins.

Dr. Kornberg's work raised the possibility of artificially making do-good viruses that could be sent into cells infected by harmful natural viruses where they would act like doctors on the genes.

The Merck-Rockefeller enzyme synthesis announced only two months ago opened yet another way to attack disease.

An enzyme is one of those proteins that is made in the cell by lining up hundreds of amino acids in a specific sequence.

Enzymes are something like a biochemical oil—they speed up chemical reactions, which would be impossible without them.

Several diseases are caused by a deficiency of one or more enzymes—just as diabetes is characterized by a deficiency of the hormone insulin—and the possibility of curing such diseases with artificially made enzymes is very real.

Perhaps of more immediate importance, knowledge of how enzymes are made and what they do may give the drug makers a very precise way to test drugs.

Under current methods, drug manufacture is largely a comparatively crude hit-or-miss procedure whereby thousands of drugs are blindly given to animals and added to test tubes containing disease-producing micro-organisms with the hope that something good will happen.

AUTOMATIC SHUTOFF

Unfortunately, such drugs may affect many enzyme processes instead of just the one causing the problem. The result: comparatively impotent drugs with many side effects.

If biochemists could manufacture entire genes and find a way to get them into cells and make them function, it conceivably could be possible regenerate limbs for amputees or repair damaged organs rather than transplanting them.

In January, scientists at the Carnegie Institution of Washington announced that they had chemically isolated and purified specific genes, which would be a first step in manufacturing them artificially. But, synthesis is still probably 10 years away at least.

Perhaps a simpler way to start cells multiplying would be to turn the genes responsible for cell proliferation back on. Normally these genes are turned off once their job is done.

For instance, the cells that go to make up a heart stop multiplying after the heart has been formed and has reached maturity. The cells will continue to make the proteins necessary for organ function but the genes responsible for its growth must be shut off or the heart would become monstrously large.

The fact that every cell contains all the genetic information for the organism though most of the genes are shut off was dramatically demonstrated by scientists who forced an intestinal cell from a frog to produce a live tadpole just as though it were a fertilized egg.

The process, called cloning or vegetative reproduction because the method has long been used by plant growers, conceivably could be used with humans, though many weighty problems would have to be solved first.

If this could be achieved, it would be possible to make an exact replica of yourself by cloning one of your cells.

On another level, biologists have combined human and non-human cells to form hybrid varieties.

Doctors have also forced women to superovulate—that is to release several eggs into the oviduct instead of a single one—and harvest the eggs.

Combining this accomplishment with the harvesting of sperm cells, which is already widely practiced for artificial insemination, scientists are now able to fertilize female eggs with male sperm in test tubes.

IMMENSE POWER

This landmark step, announced last month by British scientists, offers hope some day of implanting fertilized eggs in the womb of an infertile woman.

The doom and gloom types like to point to such work as an example of where science is running amuck and urge that the public keep an eye on these evil scientists.

Certainly we should keep up with scientific advances. Just as the physicists gave us nuclear bombs to play with, the biologists could give us a more terrifying toy, but to dwell on the horrors that are possible seems to be a pessimistic way of looking at these developments.

Though cloning and test-tube fertilization seem more dramatic and important than talk about obscure things like DNA, RNA and all the rest, the great prospects for biology and human betterment lie in this obscure world of the esoteric.

It cannot be denied that these fast-breaking biologic breakthroughs are giving man an immense power, power over life.

It's equally true that power, any kind of power, can be used for good or bad.

But the decision on direction will not be made by the scientists so much as by society as a whole.

THE VIETNAM SUSPICIONS

Mr. SYMINGTON. Mr. President, yesterday's Wall Street Journal, in an editorial entitled "The Vietnam Suspicions," analyzes with some perception the uneasy mood that exists both in Washington and the country over present and future policies in Southeast Asia.

The Subcommittee on U.S. Security Agreements and Commitments Abroad will soon release a sanitized version of its closed hearings on Laos, conducted some 5 months ago. That record, in part, deals with the dangers of a past administration policy in Laos which permitted military involvement and escalation to be wrapped in official secrecy; and thus to grow without the benefit of proper public discussion.

Those of us who worked to have that secrecy dropped—as it was with the President's March 6 statement on Laos—hope the unhappy lesson of Laos secrecy will not be lost on this administration as it designs its policy toward Cambodia.

Perhaps it is wise to recall again President Nixon's November 3 statement:

> The American people cannot and should not be asked to support a policy which involves the overriding issues of war and peace unless they know the truth about that policy.

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

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

THE VIETNAM SUSPICIONS

One of the more disturbing effects of the Vietnam war has been its exposure of a tendency to delusion in high places.

Against commonly available wisdom, some of the most powerful men in America in the past decade were able to convince themselves that a modern technological army could be

effective in a guerrilla war in an underdeveloped country; that the attempt to protect unclear U.S. interests in Indochina were worth horrendous and irrecoverable costs to the U.S., and most important of all, perhaps, that Americans could predict and control events actually beyond all influence and even sometimes, understanding.

Much of this delusion, we are persuaded, has been brought under control with the Nixon Administration; at the same time, a disturbing legacy of deep popular suspicion remains. With events in Cambodia and Laos beginning to press new dilemmas on President Nixon, we are bothered to think that though he does seem to perceive the need to avoid delusion, he may not be paying as much attention to the problem of suspicion as it deserves.

Surely the suspicion that top level policymakers may not be in touch with the realities of the Indochina situation remains a powerful factor in popular attitudes towards the war. It is true, of course, that the President's initiation of the troop withdrawals last year and his later appeals to the silent majority had the effect of quieting much of the public criticism of the war. But this dramatic result should not be allowed to conceal the depth of the underlying mistrust.

The politically powerful misgivings over Washington's ability to extricate the U.S. from the war continues to be evident in, among other things, the extraordinary move of the Massachusetts legislature to challenge the Constutionality of the war. The suspicions are also reflected in public opinion polls which recently have shown an ominous shift towards immediate withdrawal, despite the seeming soundness and responsibility of the President's Vietnamization policy.

Indeed, if the course he has chosen has succeeded in winning him some support and a period of tranquility at home, Mr. Nixon remains highly vulnerable. He dare not let the public think he has rekindled a long-term U.S. commitment to defend South Vietnam—even if measures which create such an impression also seem in all rationality the only alternative to a Vietnam disaster. To do so would awaken the panicky suspicions that he has fallen, like his predecessor, into the old delusions.

If that should happen again on a wide scale, the personal political price Mr. Nixon himself will pay may only be exceeded by the agonies which will befall an America already deeply troubled by a widespread sense of lost confidence in Government. This might well happen even if the decisions involved prove ultimately advantageous to the traditional policy goals in South Vietnam.

Typically, the current events in Indochina are ambiguous enough to feed a certain amount of optimism. Some analysts, for example, see a potential advantage to the U.S. in the rise of Cambodian generals more anti-Communist than Sihanouk; and the stepped-up North Vietnamese action in Laos, they say, may reflect a greater than expected success of the Vietnamization program in South Vietnam.

And yet, unfair as it may be, the present mood of the public and the nation's vulnerability to it means that the President simply is not as free as he once might have been to experiment with these changes or even to stand pat and wait for their possible benefits to develop.

Do those who have a voice in Vietnam policy fully understand this? Secretary of State Rogers' reported testimony to the Senate Foreign Relations Committee that the Administration plans to keep the lowest of profiles in Cambodia was a reassuring move. On the other hand, the President's explanation of our involvement in Laos had a less credible ring, and the suspicions were hardly eased by the later exposure of embarrassing errors in it.

Senator Fulbright, who has in the past been moved by displays of Administration candor, was not reassured enough by Secretary Rogers' secret testimony to cancel a speech fearful of disaster from continuation of the policy of Vietnamization. And though continuation of troop withdrawals at the present rate or better might end the suspicions once and for all, high level military men are reported pressing for a slowdown.

Right now, these may seem insubstantial reasons for worry. Yet, perhaps because we are touched by a bit of the Vietnam suspicions ourselves, we cannot ignore them easily. For we find it hard to escape the feeling that the President may soon face the still mercifully postponed choice between humiliating disaster abroad and new and surpassing domestic trauma. If he does not fully weigh the power of the popular suspicions in his thinking now, his capacity to handle that future agony is not comfortable to ponder.

DOES OIL OWN THE INTERIOR DEPARTMENT

Mr. PROXMIRE. Mr. President, Evans and Novak, the noted columnists, detailed in this morning's Washington Post the subservient role the Interior Department has played to the oil industry in regulating production from Federal offshore oil leases.

The Interior Department has, in effect, become an active participant in the oil industry's scheme to maintain high oil prices by insulating themselves from the law of supply and demand.

Despite the law which requires the Interior Department to control oil production from Federal oil leases, the Interior Department has not done so. It has abrogated its responsibility to the State of Louisiana which has market demand proration laws.

Market demand proration laws permit the oil companies to tell the States how much oil they will buy that month and then the State only allows that much oil to be produced. In effect, it permits the oil companies to set the price for oil at whatever level they chose because there is never any excess oil in the market to drive down the price. These laws effectively insulate the oil industry from any adverse effects that might result from competition.

There are approximately 500,000 barrels a day excess production on Federal offshore oil leases that cannot be produced because the Interior Department has sold out to the price-fixing scheme of the oil industry. This oil could be produced today if the wells were allowed to operate at their maximum efficient rate, rather than being artificially limited to protect the high domestic oil prices.

Because the oil industry has caved in to the oil industry pressures, the American taxpayers are not getting full value when these Federal oil leases are put up for bid. If the oil companies bidding on these leases knew they could produce oil from these leases at their maximum efficient rate rather than at the lower level permitted by market proration laws, they would bid more for these leases. These leases would be worth more to the oil companies because they could get a faster return on their capital investment.

The most important adverse effect, however, of allowing the oil industry's price-fixing scheme to apply to Federal oil leases is that it costs the American consumers billions of dollars more for oil and gas than it should. This sellout by the Interior Department has allowed the oil companies to just recently raise retail gasoline prices by 1 cent a gallon, which will cost the American consumers an additional $800 million a year. It is a highly inflationary price increase at a time when every Government agency ought to be doing everything it could to dampen the inflationary fires eating the foundations of our economy, but I guess this does not apply to the Interior Department's relations with the oil industry.

Now, rather than the oil import program in conjunction with these State market proration laws costing the American consumers $5 billion a year, the cost is about $6 billion a year. Why? Certainly not national security. That argument was put to rest by President Nixon's own Task Force on Oil Import Control and by Barry Shillito the Assistant Secretary of Defense who is in charge of making sure our Armed Forces have adequate oil supplies. The only answer is—the political power of the oil industry.

We, as elected representatives of the American people, not the oil industry, must take steps to curb the enormous power of the oil industry which is injuring our Nation's economic health.

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

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

LOUISIANA ALLOWED TO KEEP OIL PRICES HIGH BY PRODUCTION LIMIT ON FEDERAL LAND

An internal memorandum given by the Interior Department to the Senate antitrust subcommittee proves that under a long-standing "tacit arrangement" the state of Louisiana itself limits crude oil production—that is, holds it down—in wholly owned federal offshore lands in the Gulf of Mexico.

Oil experts have long known that Louisiana and other states adjacent to the outer Continental Shelf—owned outright by U.S. taxpayers—play a major role in limiting oil production (thus creating artifically high prices) from the fantastically rich Continental Shelf.

But the Interior Department internal memorandum dated May 26, 1966 (sent last week to Sen. Philip Hart of Michigan, chairman of the antitrust subcommitee now investigating federal oil policies) spells out for the first time how pervasive that role is. It tells how federal oil-and-gas supervisors of the Interior Department are relegated to second-class status in regulating the mechanics of production on federal tidelands. The memo states:

"The Louisiana (oil and gas) commissioner does not consult with the (federal) supervisor, is not required to do so under the present tacit arrangement, and the effect is that the supervisor at New Orleans has little or no control and is in effect placed in a subservient position in his relationship with the state."

The astonishing thing about this "subservient" status of the U.S. government is that the Outer Continental Shelf Lands Act of 1953, which conveyed title of the offshore lands to the federal government, was sup-

posed to give Washington total regulatory control over production. During the debate on that highly controversial bill, former Sen. Price Daniel of Texas, no enemy of the oil industry flatly stated that "the federal government will set up its (own) system of allowables"—that is, levels of production.

At stake here are millions of dollars in profits from crude oil sold at an artifically high price by the simple mechanism of applying state-imposed production limits on state-controlled wells, called prorationing, to federally owned wells.

This policy of creating artificial scarcity of crude oil (which translates into higher prices for gasoline and oil at the local service station) was specifically noted in the report early this year by President Nixon's Cabinet task force on oil import control.

The majority of that commission, headed by Secretary of Labor George Shultz, argued persuasively for switching from the present import-quota system to a tariff system. The majority said that "substituting a tariff for the present quota should make clear the futility of attempting to maintain prices by restricting production."

In other words, with no quota barrier blocking imports, domestic producers would simply be inviting higher imports the more they restricted their own production.

Although the Shultz-led majority report was rejected by Mr. Nixon, it estimated that operating wells in offshore federal lands today have an "excess capacity" of at least 500,000 barrels a day—enough to reduce the price of gasoline and oil to hard-pressed consumers.

Moreover, the May 26, 1966, Interior Department memorandum leaves no doubt that production limits ordered by the states (Louisiana is the most important) are designed far more to maintain high prices of crude oil at the wellhead than for "conservation"—the high-sounding word used to justify production controls.

The memo, for example, states that in holding production down the states are "clearly concerned with monetary advantages"—which is not to be confused with advantages to the oil-and-gas buying consumer.

At issue here is a matter of fundamental politics, rising far above parochial interests of the Interior Department, which can only be resolved by the President. Lyndon Johnson, from the offshore oil state of Texas, did nothing despite the hard questions raised during his administration in the May, 1966, memorandum. Nor is there any indication that President Nixon, whose new constituency embraces the oil Southwest, will assert federal control in the interest of all the taxpayers.

But that may be shortsighted. With inflation a major political concern, a presidential decision ending arbitrary controls and requiring production of the 500,000 barrels a day of "excess capacity" in federally owned offshore lands could mean lower gasoline prices for every automotive owner in the nation. It would also end the offshore oil outrage and assert what the 1953 law intended—real U.S. control of oil production from wells owned not by giant oil companies but by all the people of the U.S.

USIA RESTRICTIONS ON FOREIGN BROADCASTERS

Mr. MURPHY. Mr. President, sometimes it would seem that the many freedoms that exist in America and are so often taken for granted by all of us are now being taken for granted by some foreign aliens in residence. I refer specifically to recent situations that exist between the USIA and foreign correspondents as reported in the April 6 Los Angeles Times.

Certain foreign broadcasters assigned to duty in the United States to report the news have criticized the U.S. Information Agency, whose facilities are made available to them at no cost, for censoring their films before they leave the United States.

This is an incredible situation, Mr. President. The USIA lets these foreign correspondents use their film equipment and technicians, maintained, I might point out at the taxpayer's expense. And now the correspondents who have the privilege to enjoy all of America's freedoms begin to criticize the USIA because they cannot film anti-American propaganda. These foreign "news" casters can, however, always film anti-American interviews when paying for private facilities. But why should the American taxpayers have to pay for the facilities for these particular foreign correspondents to use to depict America in an unfair and untrue reflection.

It is a shocking state of affairs when the United States should be expected to foot the bill for unobjective, anti-American propaganda. I am afraid that our foreign friends, these correspondents, have begun to overextend themselves as far as American freedoms are concerned and have lost sight of the fact that in no other country in the world could they expect to take such liberties in their news reporting.

I ask unanimous consent that the full article first appearing in the Chicago Daily News and reprinted in the Los Angeles Times be printed in the RECORD.

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

FOREIGN BROADCASTERS HIT USIA RESTRICTIONS—MANY USING FACILITIES OF GOVERNMENT SEE TIGHTER RESTRICTIONS UNDER NIXON REGIME

WASHINGTON.—Foreign broadcasters assigned to this country charge the U.S. Information Agency—which provides them with studio facilities—monitors and sometimes censors their work.

Most of the correspondents interviewed said the restrictions on their operations have been tightened under the Nixon Administration.

A USIA spokesman defended the agency's right to protect the country from distortions, but denied its policies amounted to censorship.

The most recent complaint was made to the USIA by Klaus Hendricks, a correspondent for the Dutch radio and television network, AVRO.

Like a number of foreign broadcasters with small budgets, Hendricks has been permitted the use of the USIA studio and technical facilities in downtown Washington, free of charge, to produce features, documents, interview shows and commentaries.

If the correspondents were to hire cameramen or rent a network studio, the costs would range from several hundred dollars to more than $1,000 a day.

VERBAL AGREEMENT

So, under a verbal, informal agreement with the correspondents, the USIA provides free facilities, partly as a courtesy and because some other countries do the same for American correspondents. Some of the foreign broadcasters also suspect it is a way in which the USIA can keep an eye on what is being said about America.

Hendricks has been doing a documentary on Ellis Island, which before it was closed was the reception center for thousands of immigrants who came to this country in the 19th and early 20th centuries. It was also a detention center for aliens who could not gain entrance and who were deported.

Hendricks got his film segments for his show from the National Broadcasting Co. which produced a program on Ellis Island when it was closed a year or so ago. NBC got much of its film from the Library of Congress.

DEPORTATION SCENE

Henricks said he took his film to the USIA studio to dub in his narration, and agency officials watching it balked at one segment which showed police rounding up aliens for deportation during the "Red scare" in the country following the Soviet revolution in 1917.

"There were 72 feet which showed a deportation scene," said Hendricks. "There was no sound, but it showed police coming to get people in their houses, and taking them to Ellis Island. Then it showed the aliens leaving, while smoke was coming from the mouth of the Statute of Liberty."

Hendricks said USIA officials refused to assist him in making the film unless he deleted the segment. Hendricks refused and appealed to Sidney Fine, in charge of USIA's Western Europe operations.

DOCUMENTATION ASKED

Hendricks said he explained the film segment came from the Library of Congress and had already been shown by NBC. He said he intended to say, in his narration, that despite the hope that Ellis Island meant for most, it had also been used for political deportations.

"Fine said it was unduly critical of America and the Communists would take advantage," Hendricks said. "He also told me it would not help relations between the United States and Holland."

Hendricks said Fine demanded documentation of the deportations, including the names of people deported. And he suggested that because it happened 60 years ago, it was irrelevant anyway, Hendricks said.

"I told him it was part of history and for that matter he could object to stories on slavery or the Indians." Hendricks said. "He said he would object to such stories."

Hendricks said he understood that under the verbal agreement with the USIA, foreign broadcasters were not to use tax-supported studios to attack the United States.

"If we do something particularly controversial, like an interview with a radical who is an enemy of the government, we do not use the USIA studios," Hendricks said.

"But their objection to the film of Ellis Island is going to far," he added. "I've decided to do the film anyhow and pay for private facilities. I have worked in East Germany and Hungary and did a lot of documentary stuff using government facilities and there was no problem."

Fine referred questions to Eugene Rosenfeld, a USIA public information officer.

"We know more about Ellis Island than Hendricks does," Rosenfeld said. "He exaggerated the number of people who were deported. What his film did wasn't really part of the spirit of this agreement.

"This is a government facility. Why should we be our own executioner? His film goes out, finishes on the scene of police rounding up and knocking around a bunch of Wobblies."

The "Wobblies," were members of the International Workingmen of the World (IWW), a radical left movement around the turn of the century.

CENSORING DENIED

Rosenfeld said the USIA did not censor Hendricks because he "has a perfect right to

get his film done elsewhere. There was no attempt to censor; we simply wouldn't do it."

Pasi Rutanen, correspondent for the Finnish television network, who has been using the USIA facilities for more than three years, said he has heard from colleagues of other attempts to prevent programs critical of the United States.

Recently, he said, a correspondent's attempt to do an interview show was refused because the agency did not like the guest. Rutanen did not recall who the guest was.

"There are indications it is getting tough," Rutanen said. "They are taking a second look at the people using the facilities and they make tapes and transcripts of the shows. I don't have any proof, but I have the feeling after talking to people at the agency—especially the technical people—that if we talk too freely, if we are too critical, we will not be able to use the studio."

WARNING ON BIAS

Goran Byttner, a Swedish broadcaster, said he was told by USIA officials last March "if I am too biased, I must count on difficulties finding studio facilities. It was a very elegant way of putting it. I have had no trouble, but then I do not use the USIA facilities for documentaries. It is all right with me if they want to read what I saw. I worked in Eastern Europe and they did the same thing there.

"I can understand that Congress could cause trouble for the USIA if we use government facilities and we are hostile. If I paid for the facilities, it would be a different matter."

Peter Pagmamenta, of the British Broadcasting Corp., said it is understood and agreed to by correspondents that the USIA facilities should not be used unless "it is in the interest of the United States."

"Other countries are not as generous in making studios available," he said.

Willebrord Nieuwenhuis, another Dutch correspondent, has used the USIA sudios for four years.

"I accepted the gentleman's agreement that we should not use the studios to embarrass the United States. Obviously the bureaucrats are frightened, and I can understand this. They once asked me to cut out some segments of a film I was doing on American ghettos, because they showed a bare-breasted woman.

"Over the last year, they have become more frightened than ever," he added.

DEPARTMENT OF JUSTICE BAIL STUDY REFUTES NEED FOR PREVENTIVE DETENTION

Mr. ERVIN. Mr. President, I am pleased that the Law Enforcement Assistance Administration of the Department of Justice has released its study on bail reform and the operation of Washington's criminal courts. This study was commissioned by the Department of Justice many months ago, after the Department had proposed its preventive detention legislation. The study promises to be the first thorough statistical analysis of the operation of the criminal courts of Washington. It should be extremely helpful to the Congress in evaluating the pleas of necessity which have been presented on behalf of preventive detention.

It also promises to provide much needed information on the weaknesses which exist in the criminal court system. I have always been confident that a thorough and objective examination of Washington's criminal courts will show that preventive detention is not the answer to the crisis which now faces criminal law enforcement. Whether this is such an objective and thorough study and whether it lives up to its promises only a close reading will disclose.

It is to the credit of the Law Enforcement Assistance Administration that it continued the study until completion and then released it, despite the fact that it proves to be very damaging to the Department of Justice's case for preventive detention.

I regret that before this study was released the Department tried to slip its preventive detention proposal through Congress by hiding it under a misleading title of the District of Columbia Crime Bill. This extraordinary approach toward the legislative process suggests to me that the Department had advance warning that its own study would not support the claims it has made on behalf of preventive detention.

Having failed to slip preventive detention through Congress before the study was released, the Department has now put itself into the strange posture of attacking its own study even before it has had a chance to read it. There can be no other explanation for the most peculiar press statement the Department hurriedly issued along with the report. It is a relatively short statement, but it reminds me of the old North Carolina saying, "Figures sure don't lie, but the reverse isn't always true."

Just one example of the peculiar logic of the Department's "analysis" of its report should suffice. The study found that the overall re-arrest rate of persons released on bail was 11 percent. After some mumbo-jumbo, the Department then transforms this into a recidivist rate of 40 percent. It then attempts to multiply this figure by claiming that arrests are made in only 29 percent of reported cases, and that only half of all crimes are reported. If one multiplies as the Department suggests, we get a re-arrest rate of about 250 percent—in other words, 250 percent of persons arrested are re-arrested before trial.

This is the sort of nonsense the Department's own study warned against at the very start of the report—

> The reader is particularly cautioned against a casual use of the averages reported in this executive summary, since the richness of the narrative supporting material in the court records and the judgmental decisions of persons in the administration of justice require an interpretive summary to accompany each result. The reader is urged to probe deeply in the body of the report to assure proper interpretation and use of the numerical results presented here.

The Department's attempt to twist the report to its own ends is based on the illogical argument that because more crimes are committed than the police know about, and because not all crimes we know about result in arrests, therefore the people who are arrested must be committing six times as many crimes as the records show.

The Department is not satisfied with an unconstitutional preventive detention bill which imprisons persons without trial for crimes they might commit in the future. The Department now tries to justify its bill by saying, in effect, that we should imprison persons without trial to prevent other people from committing crimes in the future we do not even know about.

The reason why the Department is vainly trying to discredit its own study is clear. The Department recognizes that an objective, nonpolitical analysis of the need for preventive detention is extremely dangerous to the future of its legislation. Even a first reading of the report demonstrates this.

The study shows that, overall, 17 percent of all persons charged with a felony and released on bail are rearrested, but only 7 percent are rearrested for a second felony. When these persons are considered according to the distinctions of "violent-nonviolent" crimes made by the Department of Justice preventive detention bill, only 5 percent of those originally charged with a violent crime are rearrested for another violent crime. In the "dangerous-nondangerous" category, another artificial class created by the Department of Justice bill, only 5 percent of those originally charged with a dangerous crime are rearrested for a second dangerous offense.

It must be stressed that these figures are for arrest only, and arrest is not the equivalent of a determination of guilt. It is only a determination by the police that there is probable cause to arrest. The conviction rate for persons accused of robbery and detained before trial—and this is the most favorable rate for the administration's purposes—is 66⅔ percent. Applying that conviction rate against the rearrest figures, we get true recidivism rates of 6 percent for all felonies, less than 4 percent for "violent" crimes, and less than 4 percent for "dangerous" crimes.

In practical terms, this means that under the Department's preventive detention scheme, a judge will have to find the one person out of every 16 who will recommit a felony, the one person out of every 25 who will commit a second so-called violent crime, and the one person out of every 25 who will commit a second so-called dangerous crime. I have no confidence that a mere mortal judge can perform such a feat of prophecy.

It is also significant that the Department of Justice, while apologizing for the results of its study, fails to recognize one of its most meaningful conclusions. The study clearly shows that speedy trial alone would eliminate almost completely the small number of crimes committed by persons on bail. The study proves conclusively that our task is not to enact an unconstitutional and unwise preventive detention law, but to insure that the constitutionally guaranteed right of speedy trial for all criminal suspects becomes a reality.

The frantic attempt by the Department of Justice first to sidestep its own study, and now to disavow it, demonstrates beyond cavil that only the political benefits of the "law and order" slogan can justify this fundamental negation of America's constitutional traditions. I hope that no citizen or Member of Congress, whatever his party, will be misled by these tactics.

Mr. President, the entire report is far too lengthy to reprint in the CONGRES-

SIONAL RECORD, but there is an "Executive Summary" which will be helpful to Members of the Senate. I ask unanimous consent that it be printed in the RECORD in full at this point, but I would like to add the admonition that the full import of these findings can only be understood after a careful reading of the underlying data and analysis contained in the full text.

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

EXECUTIVE SUMMARY

Several prior studies of criminal activity during pre-trial release have developed figures ranging from 7.0 percent reindictments for persons indicted on felony charges to 70 percent rearrests of persons charged with robbery. Subjective judgments have been offered in support of the high end of the range. This study was charged with discovering what a thorough analysis of all written court records would disclose. Raw data relating to 712 defendants in the District of Columbia Criminal Justice System in a sample period in 1968 were collected, evaluated, and analyzed. From this sample, 11.7 percent of the defendants who were released were subsequently rearrested on a second charge while on pre-trial release.

The Criminal Justice System is a highly structured and complicated one, in which judgment plays a dominant role. The description in Chapter III of procedures and problems of collecting data may be of particular interest to those about to begin analysis in the System. For those who wish to consider the extent to which data might be analyzed in relation to dangerousness, Chapter IV offers what should be a useful introduction. Prediction devices developed by others and described in Chapter III offer insight into the problems of prediction, but these devices offer little hope in the near future for a practical tool for the prediction. Some of the data and our analyses, the meat of the report are in Chapter VII.

These data from the District of Columbia, were for weeks 1, 7, 22, and 24 in calendar year 1968. The first half of 1968 was chosen as the latest period available for which all or nearly all of the court cases would be completed. The District of Columbia was chosen because it was an integrated court system under Federal jurisdiction, it had been applying the Bail Reform Act of 1966 extensively (compared with other jurisdictions), and it was convenient to the analytical staff.

Use of the data in this report for deliberations in pre-trial release must be tempered by its limitations. In the District of Columbia, there were an average of 5600 criminal offenses per month reported and 1600 arrests. Many crimes are being committed for which criminals are not apprehended and brought into the courts. A number of persons on pre-trial release are undoubtedly among them. There are no sound data from which to determine how many are in this group.

Our data are based upon a variety of sources in the Criminal Justice System, namely, D.C. police, U.S. Attorney (prosecutor), courts, bail agency, and the jail. The data collection form that was developed essentially follows the flow of a case through the court system, from first action by the prosecutor to sentencing.

In the selected four weeks, 910 defendants were listed on the rolls of cases; analysis showed that only 712 of those defendants were actually charged with felony or misdemeanor offenses for initial arrests during those four weeks. Of those defendants, 401 were released prior to trial, and 47 of those persons were subsequently rearrested on a second charge or charges (11.7%). For purposes of this report, people on pre-trial release who are *rearrested* are called *recidivists*.

Extensive data were collected on each of these defendants and cases; some 50,000 items of information were placed in the memory of a time-shared computer system. These data provide a basis for analysis of factors related to different facets of the pre-trial release question.

Analyses were conducted to find correlations between a variety of socio-economic factors and the offenses. Also analyses were made for subclasses of criminal activity categorized according to the FBI classification system and of felony-misdemeanor interactions. Robberies in the sample were analyzed in even greater detail. A recidivist rate was developed based on number of rearrests per unit of time defendants were on pre-bail release.

Some of the more significant relationships discovered follow. The reader must be aware that the results quoted in the following paragraphs are for a *limited* data base collected in the first half of 1968. These results *may not* be representative of the current situation or even of the 1968 time period.

1. In this sample of 712 defendants, we were able to trace thoroughly 401 who received some form of pre-trial release.

2. Of these 401 persons on pre-trial release (extended to include pre-sentence and pre-appeal releases), 47 were rearrested giving a recidivist rate of 11.7 percent.

3. Almost two percent, (13) of the 712 defendants, entered the system twice in separate incidents during sample weeks. Of these 13, only 2 were on pre-trial release at the time of their second involvement.

4. At presentment or initial hearing (initial pre-trial release determination), the sample contained 217 felony defendants, 437 misdemeanor defendants, and 58 defendants who were "no papered" or otherwise disposed of before presentment. A total of 654 were eligible for pre-trial release consideration.

5. For the 217 felony defendants eligible, our records indicate that the following kind of releases were initially set: 52 percent on money bond, 10 percent on personal bond, 23 percent on personal recognizance, and 15 percent unknown or denied (there were 13 homicide felony defendants who could be detained as capital offenses).

6. For the 126 felony defendants actually released, 26 percent were on money bond, 18 percent on personal bond, 54 percent on personal recognizance, and 2 percent unknown.

7. Comparisons were made to show differences between felony defendants and two categories of felony defendants in proposed legislation: (1) dangerous—including robbery, burglary, arson, rape, and narcotics, and (2) violent—including all dangerous plus homicide, kidnapping, and assault with dangerous weapons. Of the felony defendants (126) released prior to trial, 68 percent were in the violent category, 41 percent in the dangerous category.

8. Twenty percent of the 126 felony defendants, 21 percent of the 86 violent defendants, and 33 percent of the 52 dangerous defendants were rearrested while in pre-trial release.

9. Felony defendants were rearrested for misdemeanors (7%) about as often as for felonies (7%); whereas misdemeanants were arrested for misdemeanors about four times (7%) as often as for felonies (2%). Violent offenders were rearrested twice as often for nonviolent offenses (10%) as for violent offenses (5%). Dangerous offenders were arrested for nondangerous offenses almost 2½ times (15%) more frequently than for dangerous offenses (5%).

PERSONAL CHARACTERISTICS

10. For the sample, representative averages of personal factors analyzed were: age—25.3 years; education level—10.4 years; years resident of community—18; percent employed—56; living with parents or relatives—60 percent; and defendants indicating they had previous record—38 percent.

11. No single personal characteristic appeared as an outstanding indicator of recidivism although felony defendants (excluding those charged with robbery) were older.

RECIDIVIST INDEX

12. A recidivist index was developed for the sample, indicating approximately one rearrest for every 1,000 days a defendant is on pre-trial release.

13. Although our data are limited, the recidivist index showed (1) an increased propensity to be rearrested where the release period extends more than 280 days; (2) an increased propensity of persons classified as dangerous under the proposed legislation to be arrested in the period from twenty-four to 8 weeks prior to trial; and (3), a somewhat larger propensity to be rearrested while awaiting sentence or appeal after trial.

The reader is particularly cautioned against a casual use of the averages reported in this executive summary, since the richness of the narrative supporting material in the court records and the judgmental decisions of persons in the administration of justice require an interpretive summary to accompany each result. The reader is urged to probe deeply in the body of the report to assure proper interpretation and use of the numerical results presented here.

For illustration: One can deduce from statements 6, 7, and 8 in the above summary that if the "dangerous" criterion (as defined in this report) has been fully applied to the sample defendants, then 52 fewer releases and 17 fewer recidivists would have resulted. Thus, the total number of recidivists would have been reduced by one-third (47 decreased to 30), a significant reduction. Yet because *recidivism* in this study denotes *rearrest* only—a released defendant as a suspect for a later crime—the above analysis does not provide direct information on the number of fewer crimes that would actually have been committed or fewer convictions resulted.

The data collected cannot alone solve all of the difficult policy questions which must be resolved. We hope the data and methods presented in this report are useful in resolving the issues. Additional questions can be asked of the data, and other hypotheses tested—a full tabulation of many additional combinations within the time frame and resources available was not feasible.

THE DISTRICT OF COLUMBIA CRIME BILL

Mr. BROOKE. Mr. President, the District of Columbia crime bill, S. 2601, which passed the House and the Senate, is now on its way to a conference committee. There has been much discussion on certain sections of the bill. It passed the Senate by a voice vote without much opportunity for careful scrutiny. Certain provisions raise grave constitutional questions, which William Raspberry's column of April 5, 1970, points out. His column entitled "District of Columbia Crime Bill Is a Can of Worms," pays tribute to the Senator from North Carolina (Mr. ERVIN) for his careful legal analysis of various provisions of the bill.

I ask unanimous consent to have Mr. Raspberry's column of April 5, 1970, printed in the RECORD.

I hope the conference committee will review the bill with these criticisms in mind.

There being no objection, the article

was ordered to be printed in the RECORD, as follows:

DISTRICT OF COLUMBIA CRIME BILL IS A CAN OF WORMS

(By William Raspberry)

District of Columbia residents owe a very large debt of gratitude to North Carolina's Sen. Sam Ervin for exposing the D.C. crime bill for what it is: "An affront to constitutional principles and to the intelligence of the people of the United States."

It is an affront because, under the guise of a war on crime, it seeks to foist off on District residents some of the most repressive legislation devised since Hitler came up with no-knock searches and preventive detention.

But it is also an affront because of the incredibly underhanded way its sponsors have attempted to push it through.

Predictably enough, not many members of Congress have read all 439 pages of the bill. But those who know what the bill contains, because they wrote it, have been less than candid in describing its provisions.

Only recently, for example, was it generally known that the bill includes a provision that a citizen who sues a policeman for false arrest must pay the accused officer's lawyer, even if the citizen wins the case; or that a person convicted for the third time of tampering with a gum ball machine would face a mandatory life sentence.

In the name of crime fighting, Sen. Ervin has pointed out, the bill represents a number of steps "back into the dark ages."

One instance: "When a juvenile is before the Juvenile Court, the burden of inquiring into the suitability of the child for rehabilitation now properly rests squarely on the Court and the administrative machinery it has made available for that purpose.

"However, without justification, the bill would shift that burden to the child. How a child of 15 can be expected to prove that he can be rehabilitated is beyond understanding."

Almost as offensive as what the bill contains is the way its backers have tried to sneak it through.

Obviously, as Sen. Ervin points out, few legislators are likely to wade through all 439 pages of the bill. The more probable approach is to scan the index for the most controversial proposals.

One searches the index in vain for "Preventive Detention," however. That highly controversial segment travels incognito under the name "Codification of Title 23."

The suspicion is that someone wasn't eager to have the question of preventive detention debated, a suspicion that is heightened by efforts to have a preventive detention law enacted before all the facts are in.

The Justice Department commissioned a study by the National Bureau of Standards and the Law Enforcement Assistance Administration to determine how much aid, therefore, the degree to which preventive detention is needed. The results of that study, due March 31, probably will be released in a few days.

But despite the fact that the Justice Department ordered the study in the first place, it chose not to wait for its results before launching a major push for enactment of preventive detention legislation.

Other serious questions have been raised by the Washington Area Economic and Civic Organization (WAECO), an interracial group that has been exploring local issues.

WAECO wonders, for instance, why Associate Deputy Attorney General Donald Santarelli was the only witness called to testify on preventive detention. (And even Santarelli avoided the obvious constitutional questions).

Why, asks WAECO, was no judge, no spokesman for the American Bar Association, no constitutional lawyer called to comment on such problems as these:

Any defendant who wishes to avoid pretrial detention will need to testify in his own behalf. But the bill provides that his testimony may be used against him later.

A pretrial "verdict" of probable guilt—a prerequisite for preventive detention—will almost certainly prejudice a jury when the defendant comes to trial.

But if preventive detention is the most widely discussed segment of the bill, it is by no means the only troublesome one.

Wiretap authority would be expanded to the point where, Ervin insists, "the police could bug confessionals to listen in to the priest and the penitent."

Mandatory sentences would deprive a judge of the discretion so vital to the ideal of fitting punishment to crime.

A juvenile suspect waived to adult court could never be tried thereafter in a Juvenile Court, no matter what his age or the charge against him—no matter even if he were found innocent of the charge on which he was waived.

These and other problems with the bill give credence to Sen. Ervin's characterization of it as "a garbage pail of some of the most repressive, near-sighted, intolerant, unfair and vindictive legislation that the Senate has ever been presented with."

One hopes the hearings will be sufficiently candid and open that members of the Senate will at least know the contents of the garbage pail.

TWO OUTSTANDING ARKANSAS POETS

Mr. FULBRIGHT. Mr. President, in recent weeks two outstanding Arkansas poets, both internationally recognized, have died.

On February 19, Edsel Ford, who had won numerous poetry awards and whose poetry had been published in hundreds of publications, died in Little Rock.

March 26, Rosa Zagnoni Marinoni, Arkansas' poet laureate, died in Fayetteville. My family and Mrs. Marinoni were friends for 50 years. She was a beautiful and gifted woman who contributed much to lift the spirit of her fellow men.

Among the poems published by Mr. Ford was a volume entitled "Return to Pea Ridge." He grew up on a farm just across Little Sugar Creek from the Pea Ridge National Military Park in Arkansas. His poem entitled "Return to Pea Ridge" appears on a plaque at Pea Ridge National Park Visitors Center:

RETURN TO PEA RIDGE

Spirits remembered are not spirits dead . . .
Now in this peaceful place I pause to name
Each man who fell unknown, each man who bled
His way to glory. Theirs was not the blame,
But, driven by some inner source of pride,
Each must have known while dying in this lea
His sacrifice would somehow fit the wide
And widening pattern of a destiny.
How cold that other March time must have been!
How bleak those wooded fields in the attack!
I stand now where a thousand nameless men
Laid down their lives in war, and, looking back,
I know I must remember—I must give
A name to every one, that he may live.

One of Mrs. Marinoni's last poems was written after Mr. Ford's death and in his memory:

FEBRUARY 23D

The sky was weeping.
The whole world was gray.
Beneath a canopy on an Ozark hill
A crowd of mourners formed a dark mass,
Fringed by black silhouettes.
The silver casket, draped with yellow roses,
Seemed to glow.
Some distance away,
A robin pecked the withered grass
Where a bright crocus jutted.
They said a poet had died . . .
But in the wind that tore the last brown leaves
From winter trees,
I heard his clear voice sing;
And well I knew the poet still lived
Within the hearts of those who heard his song
And felt the vibrant clasp of his strong hands.

The death of these two notable Arkansans is a considerable loss, but they leave a treasury of fine poetry which will live for many years.

Mr. President, I ask unanimous consent to have printed in the RECORD an article about Mrs. Marinoni, published in the Arkansas Democrat, and an editorial, published in the Northwest Arkansas Times.

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

[From the Arkansas Democrat Mar. 27, 1970]

MRS. ROSA MARINONI, WELL-KNOWN WRITER AND POET LAUREATE

FAYETTEVILLE—Mrs. Rosa Zagnoni Marinoni, a writer of international stature and Arkansas' poet laureate since 1953, died at age 82 Thursday at her home here.

The author of 12 volumes of poetry and more than 1,000 short stories, Mrs. Marinoni was probably Arkansas' most prolific writer, and according to several literary authorities, she was among the best.

Mrs. Marinoni was a frequent contributor to newspapers and periodicals across the country, and many of her works have been translated for foreign publication.

The Arkansas Democrat recently published one of her works regarding the death of her understudy and friend, Edsel Ford, and the North Little Rock Times published one of her poems the day of her death.

DIED IN HER SLEEP

Relatives said Mrs. Marinoni apparently died in her sleep. She was found Thursday morning in the Italian-style home she called "Villa Rosa," two blocks from the University of Arkansas campus.

It was the home she shared with her husband, Antonio Marinoni, until his death in 1944, and with her second husband, L. A. Passarelli, until he died.

She married Mr. Marinoni shortly before he became the first head of the Romantic Language Department at UA. Her second husband worked in the same department at the university.

Mrs. Marinoni was born Jan. 5, 1888, in Balogna, Italy, and came to the United States with her family 10 years later. Her father was a newspaper correspondent sent by three European newspapers to cover the Spanish American War.

NO FORMAL STUDY

Mrs. Marinoni never formally studied English. The simple and fluent language that characterized her verse was mastered through observation and practice.

Ercil F. Brown of North Little Rock, who edits the "Latchstrings" column in the North Little Rock Times, said "there is no ques-

tion" that she was the best poet ever published in the column.

Mrs. Marinoni led the drive to have Oct. 15 declared "National Poetry Day" in Arkansas.

The movement was carried a step further in 1969 when the state House approved a resolution making Oct. 15 of each year "Rosa Zagnoni Marinoni Day" as well.

The resolution said that Mrs. Marinoni was "poet laureate in the hearts of untold thousands in this great state and in the world."

POETRY FOLLOWED RULES

Brown said that Mrs. Marinoni's poetry was usually structured, and "followed the rules."

He added that her greatness was that "she could write for anybody—the lowly or the mighty."

Mrs. Marinoni was a close fried of Edsel Ford, who died Feb. 19 in Little Rock. Ford was another poet of international recognition and he had been a protege of Mrs. Marinoni.

OTHER POSITIONS

Besides her position as poet laureate of Arkansas, Mrs. Marinoni was poet laureate of the Ozarks and of the Arkansas Federation of Women's Clubs. She was founder of the Northwest Arkansas branch of American Penwomen and the University-City Poetry Club.

Surviving are a son, Paul A. Marinoni Sr. of Fayetteville; a daughter, Mrs. Maria Melton of Faytteville, eight grandchildren and six great-grandchildren.

Funeral will be Monday morning at St. Joseph's Catholic Church in Fayetteville.

[From the Fayetteville (Ark.) Northwest Arkansas Times]

ROSA

Rosa Zagnoni Marinoni, grande dame of Arkansas letters and the state's poet laureate since 1953, died at her home—Villa Rosa, just a few steps east of the University campus—this week.

We're not apt to see her like again.

Mrs. Marinoni's energies, guile, charm, talent and enormous sense of human dignity helped make her a woman of extraordinary accomplishment. She was a teacher, a businesswoman, an artist, a poet, a writer, a speaker, an administrator, a guide on foreign tours, a suffragette, a patron and a matriarch. She was also an accomplished connoisseur of life.

Few, indeed, are those whose sense of purpose and strength of character enable them to overpower the eccentricities and whims of fate that would alter their chosen course or change their life design. Rosa was one who would frown at fate and make it a better world. She leaves behind an impressive list of contributions to her friends and her community. She is author of a dozen books and hundreds upon hundreds of poems and stories; she founded the University Poetry Club; she has helped and encouraged countless young writers and artists, and she has given generously of her time on behalf of the humanities.

Rosa also showed by ample demonstration that a sense of culture and a grace of living can be, and should be, part of life in these hills of our home. That, surely, is one of her finest legacies. Arkansas and the Ozarks are better places for having had her as a friend.

SUPPORT OF S. 952, OMNIBUS JUDGESHIP BILL, SENATE VERSION

Mr. TOWER. Mr. President, I wish to draw attention today to the pending conference action on S. 952, the omnibus judgeship bill. The tremendous growth of the State of Texas in all areas since the last judgeships were created is only part of the need for passing the Senate version of this legislation. Our State has added literally millions of people to its population in the last few years. Furthermore, the incidence of court action has far outstripped the population growth. New judgeships in Texas and around the Nation are urgently needed.

As an example, I will cite the figures from the northern district of Texas, a district which is fairly representative of the rest of the State. Since 1961, when the last judgeship was added in the northern district, the population of this district has increased over 500,000, to around 5 million, and is increasing at the present rate of about 70,000 yearly. The district covers more than 95,000 square miles and is divided into seven divisions. The area is served by only five judges. The caseload increase since 1961 has been over 50 percent. Citing 1960 and 1969 figures, this breaks down as follows: civil cases from 739 to 1,261; bankruptcy cases from 212 to 583; and criminal cases from 396 to 553. These figures do not include nondocketed prisoner petitions. There are currently pending in the area 440 civil cases involving multiple parties, 91 cases for injunctive relief, 45 patent, trademark, and copyright cases, 30 common disaster cases, 57 criminal cases, 84 multiple issue mail fraud, conspiracy, fraudulent claims cases, and 56 other type cases.

Mr. President, the situation is similar in nearly every other section of Texas. These figures show that we must have the extra judgeships that were provided in the Senate version of S. 952. The Federal judiciary likes to pride itself on efficiency of operations with its streamlined, simple set of rules, and the method of case assignment. If we are to continue to maintain that efficiency, and it is the primary responsibility of the Congress that we do so, we must provide the additional judgeships to assure that the judiciary keeps pace.

I urge the Senate conferees to push for quick resolution of the differences in the House and Senate bills, but to remain resolute in their support of the number of judgeships approved by the Senate. There is a strong argument that can be made for an increase even above the Senate level the number of additional Federal judgeships. The agreed-upon figure was a compromise one. There should be no further compromise on this subject. I hope that we can secure the necessary number of judgeships at the earliest possible date.

PLUMBERS SIGN AGREEMENTS FOR INDUSTRIALIZED HOUSING—REMARKS OF PETER T. SCHOEMANN

Mr. PROXMIRE. Mr. President, at the 15th National Legislative Conference of the AFL–CIO Building and Construction Trades Conference here in Washington last month, the general president of the United Association of Plumbers and Pipe Fitters, Peter T. Schoemann discussed some of the key problems in housing construction.

He announced that first agreements had been signed with companies who are constructing housing and plumbing in factories. Work will be performed within the factories by members of the United Association.

If others follow his lead, a real revolution can take place in the industry. Prefabricated housing was 30 percent of the single family units built last year. Some believe that half of all housing will be factory built by 1975, exclusive of mobile homes.

I think it is quite clear from President Schoemann's remarks that he and United Association not only understand the possibilities of such a change in construction methods but that they have taken constructive action and are an integral part in the movement to increase the quantity of housing construction.

One of the oldest myths about housing construction in this country is that the pitifully bad performance in meeting our housing needs is due in substantial degree to the restrictions of the craft unions. This is an old canard which is used as an excuse and a shibboleth by those in the industry and in Government housing agencies to justify their bad record of performance.

The facts are that while the construction trades are involved in the building of central city office buildings and commercial establishments, they have been only marginally involved in housing construction. The best estimates are that about 80 percent of the housing units in this country are built by nonunion labor.

Second, in case after case where large-scale building under union auspices is involved, "project agreements" which provide for the use of new materials and methods have been negotiated.

Third, vast numbers of alleged restrictions have really been restrictions by producers rather than the unions. Plastic pipe in plumbing is one example. Although the unions are not perfect, they have been criticized for many restrictions which are either mythical or where producers of specific products are the key groups pressing for restrictions.

Fourth, the really major problems which plague housing production are directly the fault of the Federal Reserve System, the policies of the Treasury Department, and the acts of some of the key financial institutions in the economy whose restrictions on credit, whose restraint over the money supply, and the institution of policies which foster higher and higher interest rates have brought a disastrous condition to the housing industry.

This country needs at least 2.25 million new housing units a year. We are now starting about 1.3 million a year, or at least 1 million less than we need.

The greatest housing needs are for low- and moderate-income groups. But it is now true that half of the families in this country cannot afford to buy a new house. They are priced out of the market. That is the tragic state of affairs.

It is possible that if the cost of money can be held within bounds, we can meet our housing needs. It is possible that industrialized housing, properly used, can help meet the problem.

Mr. Schoemann and the agreements he and his union have negotiated with

industrialized builders of housing certainly point the way.

I ask unanimous consent that the text of Mr. Schoemann's speech be printed in the RECORD. I hope it will be widely read by those who have assigned the wrong reasons for the lack of housing construction in this country.

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

ADDRESS OF GENERAL PRESIDENT PETER T. SCHOEMANN

This afternoon I want to discuss with you two of the most critical and perplexing problems that face America as we begin this new decade.

These problems are the acute and increasing shortage of two of the basic needs of the people of our great country—jobs and houses. Both of these shortages are complicated by the problems of race relations and economic opportunities for members of minority groups. And these shortages directly affect the interests and aims of the United Association and the welfare of our members and their local unions.

The general officers of the United Association—Martin J. Ward, the Assistant General President, General Secretary-Treasurer William T. Dodd, and myself as your General President—have been very concerned with these problems. We have devoted much of our time and energy over the past months to seeking new answers, charting new directions—and redirections—to meet the challenges they present.

I want to bring you up-to-date on what we have been doing to provide leadership to solve these problems within the framework of our free society. And I want to call upon each of you to work with all your general officers so that we can jointly meet the responsibilities of the United Association in these areas.

Let me say that all of us in this room are in the labor movement because we believe that it offers us the best opportunity to make a contribution to building a better society. Because we believe it is the way to give our citizens a greater measure of security and dignity to which they are entitled. We believe that the strong must help the weak become strong, so that together we can build the kind of America that we all want.

We must never forget that the basic values that we cherish cannot be divided up so that some of us have them and others do not. We cannot have progress for our members, unless all Americans share the ability to advance.

One of the most important, unfinished jobs on the agenda of the American labor movement is the problem of providing decent houses for all of our citizens. This is especially a problem which concerns the unions in the bulding and construction trades—and the United Association is in the forefront of these organizations.

For more than a generation adequate housing has been America's greatest unmet need. In the depth of the great depression, President Franklin Delano Roosevelt called attention to the plight of the one-third of our nation that was "ill-housed, ill-clothed, and ill-fed."

Today, in the midst of undreamed-of wealth, the scandal continues. The goal of a "decent home and suitable environment for every American family," promised by Congress in 1949, seems to be slipping ever farther from our grasp.

On a per capita basis, we are building less housing today than we were in 1925, and almost one out of every two American families is priced out of the new housing market.

For too many families today, sunlight and air are a luxury. Too many children share their overcrowded quarters with rats and vermin. Too many substandard residences are the homes of the dropouts, the left-behinds, the left-outs, the poverty-stricken, the minorities. Too many homes are the breeding ground for crime. Too many neighborhoods are ready to explode in violence and riot.

I could go on and on about the housing problem. But I can also sum it up in a word: the housing industry is sick. Traditionally, it has been a leading contributor to the social and economic health of our nation. Today its sickness weakens our entire national economy.

Month after month after month, we read about a decline in the number of housing starts. If the rate in January continued throughout 1970, we would build less than a million, two-hundred thousand houses this year. The government has set our minimum needs at an average of 2.6 million units a year. We are building less than half of the nations' bedrock housing needs.

New starts may soon fall below an annual rate of one million. If this happens, the country will start losing shelter units. Every old house that is torn down will cause a net shrinkage in the amount of housing available.

And prospects for the future remains dim. Ten years from now—at the end of the seventies—44 million more Americans will need roofs over their heads.

Our housing sickness stems from two sources: First, the nation is not building the homes we need.

Second, low and middle-income families cannot purchase homes under the exorbitant financing rates now in effect. Today's high interest rates make it necessary to pay more for financing than for the home itself. The government's tight money policies are at the root of this problem. Interest rates resulting from artificial monetary restraints are at the highest level in 100 years.

Rising cost of land is another important factor that inflates the price of houses.

But the United Association is doing more than talking about the housing shortage. We are trying to do something about producing more houses, and at least attempting to hold the current price level, if not reducing prices.

In two important actions we have signed first agreements with companies constructing housing and plumbing in factories. As a result of these agreements, our work will be performed by U.A. members.

We have taken these actions because we are looking to the future. We can see that we are at the beginning of a new phase in the construction of houses in the United States: the fabrication of housing components and modules in factories.

Last year prefabricated homes accounted for 30 per cent of the single-family units built.

This was an increase from 25 per cent in 1968, when 225,000 prefabricated units were marketed. The Home Manufacturers Association expects that at least half of all housing will be factory built by 1975. These figures do not include mobile homes.

It is obvious, then, that factory built housing poses problems that we must face squarely.

For many of our local unions, factory built housing presents a new opportunity to organize and gain control of work in the home construction field.

A first step in extending our jurisdiction to this new industry was made in November, when Assistant General President Marty Ward, General Secretary-Treasurer Bill Dodd, Executive Vice President Joe Walsh and myself, as your responsible general officers joined wtih a like representation of Carpenters and Electrical Workers to represent the workers of Prestige Structures, Inc. of Charlotte, Michigan. Since that time we have signed five other Tri-Trades agreements with builders of low-cost, factory housing.

Prestige Structures, Inc., and the companies who have already entered into collective bargaining agreements with the three trades, as well as others who may do so in the future, will be permitted to display the new Tri-Trades Union label to identify these structures as union built homes.

George Romney, Secretary of Housing and Urban Development, predicted that the contract, which is designed as a model for the whole modular factory-built housing industry in the United States and Canada, could create a million new construction jobs.

The Prestige Homes agreements—and all of those that will come after it—provide that all on-site work will be performed by the appropriate union under area building trades conditions and at prevailing pay rates.

When I signed this agreement, I told reporters that the United Association had given considerable thought to deviating from the usual methods of constructing a building. We realize the significance of this agreement, and also its necessity.

If we fail to move into this industry in its infancy, we might lose this work forever—to non-union workers, to union members belonging to other craft unions, or to industrial unions.

However, we have responded to changing conditions, and we will not be left behind as the world moves forward.

This important first step was followed in February with another pace-setting agreement.

In a press conference at the headquarters of the Department of Housing and Urban Development, the United Association took a second step to increase the volume of available homes. By entering into an agreement with American Standard, Inc.—the largest manufacturer of plumbing fixtures and fittings in the world—the United Association gave its approval to producing plumbing units in a factory using the labor skills of U.A. members.

U.A. members will both fabricate and assemble a plumbing system developed by American Standard. The system is called "The Component Plumbing System." It includes the piping, fixtures, and fittings for bathrooms, kitchens, and laundry rooms as used in modern American homes. These will be distributed through American Standards' normal dealer network, and each unit will bear a specially developed UA union label, showing that it has been made in a factory by our members.

This agreement, as well as in the Tri-Trades agreements, provides for employee classifications in addition to the traditional journeyman and apprentice designations.

Rates of pay and fringe benefits for employees will be negotiated locally and will be based on area economic conditions. These conditions will include rates of pay and fringe benefits existing in classifications requiring comparable qualifications.

These actions are a demonstration that the United Association continues to move with the times. It is a continuation of our past policies of permitting the use of new materials, new equipment, new methods of installation, or new tools. We have done these things despite popular beliefs to the contrary.

The record shows that we are attempting to do our share. We understand that the need for volume housing production is too critical to be ignored. But we demand similar action among those elements of our society who are most responsible for the shortage of homes. We call upon the money lenders, the land speculators, the government administrators to take similar bold action to resolve the critical problem of providing homes for all Americans.

Now I want to turn to the other serious problem I mentioned. In addition to houses, the nation is calling upon us to provide economic opportunities for minorities through membership in our unions.

In a society that is becoming increasingly divided between the races, between city and suburb, between haves and have-nots, our responsibility increases. The nation is looking to us for leadership in providing solutions to these confrontations.

We must not turn our back upon our nation's needs. We can and we must assist the neglected citizen find a way to climb up the economic ladder to enjoy the bounty of America.

In 1965, we initiated an affirmative action program to enlist minority applicants in our apprenticeship programs. That challenge has been met successfully, as attested by the Apprenticeship Outreach programs that are now operating in 50 cities. In my address to you in 1968, I set forth a program of affirmative action and the reasons for the necessity of recruiting minority applicants in our apprenticeship programs.

At that time, I said that we were making a beginning, and the time would come in the future when we would have to do more. That time has now come. I call upon all of you—every local union and its officers—to commit your resources to the unfinished work that must be done.

The Building and Construction Trades Department, which met in Atlantic City in December, set forth an expanded program of minority employment in the building and construction trades.

This is the department's present policy position: "We make the flat and unqualified recommendation to local unions throughout the United States that for a stated period of time they should invite the application of qualified minority journeymen for membership in their respective local unions and should accept all such qualified minority journeymen provided they meet the ordinary and equally administered requirements for membership.

"We also recommend that the local unions and the local councils explore and vigorously pursue training programs for the upgrading of minority workers who are not apprenticeship age. Such programs should be developed in such manner as to prevent undercutting the established apprenticeship program. The recommendations which have been previously made on model cities should furnish an appropriate guideline for development of these journeymen training programs.

"We are convinced that the goal of increasing Negro and other minority worker participation in the building and construction trades can be accomplished with due regard to the rights of the existing work force. We think such an approach is preferable to unthinking actions which tend to pit one part of the population against the other."

We believe that this approach is also preferable to the unsound or unlawful government measures that would impose a quota system upon us. The General Officers of the United Association are unalterably opposed to any quota system, whether it is called a "Philadelphia Plan" or some other form of bureaucratic verbiage.

To implement the policy of the Building and Construction Trades Department, which we helped to formulate, the United Association has negotiated with the National Constructors Association to amend the national agreement. We have incorporated a program to train minority workers in labor shortage areas and to find jobs for them on NCA projects. The agreement was signed by me as General President of the U.A. and by Philip S. Lyon, President of NCA.

This program is now part of the national agreement and is administered by six trustees—three from the UA and three from the NCA. Union trustees are myself, Brother Ward and Brother Dodd. Management trustees are J. T. Woods, Jr., E. D. Hoekstra, and Gordon Jones.

The program is financed by a Labor Department grant of around $1.4 million over an 18-month period.

Five hundred workers will be trained under the program which will involve 33 major construction companies.

Those selected for training will be men who have been working in the piping field without benefit of related training, who are beyond normal apprenticeship age, and who may have less scholastic preparation than the normal apprentice. They will be recruited within a geographic area where construction jobs are about to start. Journeymen trainees will be hired at the location only after the union, the company, and the Labor Department investigate and determine that a shortage of skilled manpower exists.

To be eligible, all individuals must be physically fit and have had experience and educational background sufficient to be granted a minimum of 18 months' credit for previous experience in the trade.

Enrollees will be given a maximum of 120 hours of orientation before going to work. On-the-job training will be provided by skilled journeymen, and about 200 hours of related classroom instruction will be required each year.

All trainee-workers will be paid local wage rates. Wages will approximate those paid apprentices and will depend on the level of experience at which a man is rated.

Secretary Shultz told reporters that the agreement is "a major forward step to train workers and to get more minorities into the construction trade."

He added, "President Schoemann and his union have taken the lead among international building trades unions to provide both on-the-job training and related classroom instruction to develop journeymen training for minority workers across the country.

"Members of the Plumbers and Pipefitters Union, who are among the highest skilled workers in America, should take justifiable pride in opening opportunities for everyone regardless of race."

I want to repeat: This agreement is now part of the national contract and all our local unions are bound by its terms just as they are bound by the terms of the other provisions of the national agreement.

Further, we recommend to every local union that they conclude similar agreements on a local level among the contractors who are not a party to the National NCA agreement.

This is not merely a charitable or altruistic gesture. We need these craftsmen in many areas of the country. We cannot supply needed manpower for many construction jobs. Nearly every week, the General Office is involved with contractors who need skilled craftsmen and looking to us to discharge our obligations under our contracts. In too many instances, we have to tell them that the men they ask for are not available.

In the decades ahead, the demands for our members' skills will increase. Pollution control, houses for our citizens, a new industrial plant to meet the needs of rapidly growing population—all of these will combine to strain the UA's resources to provide manpower to build the America of tomorrow. We must start to plan today to meet these needs if we are to discharge our responsibilities and maintain our influence in the nation.

There will be some who say that we can't meet these challenges. But there have always been men of little faith. I emphasize that we must commit ourselves to these tasks. The labor movement is the only force that has the resources and the philosophy to do these practical jobs.

We have the sense of social and moral responsibility. We have the devotion, the dedication, and the determination. We realize that we can influence the future—can influence whether it will bring the bright promise of progress and human fulfillment or misery and disaster.

I for one have unlimited faith in the capacity of free men if they know the problem and if they have the leadership to guide them. We who are the elected representatives of the members of the United Association have to do more and to get more people thinking about these problems, thinking about the alternatives. Out of that greater understanding, we will forge the means to move forward together to build the America we all dream of.

LORNE GREENE, OUTSTANDING TELEVISION PERSONALITY OF 1969

Mr. MATHIAS. Mr. President, recently, I had the privilege of attending the 62d annual banquet of the Advertising Club of Baltimore, the "Frolics of 1970." Mr. I. H. "Bud" Hammerman II, the executive chairman, presided over this annual civic event in which the entire business community of Baltimore participates. The dinner honored the club's outstanding television personality of 1969: Lorne Greene, actor and star of "Bonanza." It also gave the Advertising Club and its president, Mr. William E. Fornoff, an opportunity to present Mr. Howard I. Scaggs, honorary president, a gift for his service until last June as club president.

All who have seen Mr. Greene on his television series "Bonanza" know he is a competent actor.

But I was pleased to find that he is also a thoughtful speaker. Television is fired on from many sides these days. Mr. Greene answered many of the criticisms convincingly in his analytical address. I ask unanimous consent that his remarks be printed in the RECORD.

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

SPEECH BY LORNE GREENE

I'm sure many of you have seen something good on television recently. But have any of you heard something good *about* television recently?

Nicholas Johnson's told us that network has not given enough voice to activism and dissent. Vice President Agnew has told us that network television has given too much voice to activism and dissent.

Senator Pastore has seen in network television a lack of self-censorship. The Smothers Brothers, who lost their TV show, say they were terribly censored by network television.

Some of you may have read a few weeks back that Mayor Lindsay of New York accused television of playing a role in causing drug addiction among children by showing commercials for tension-relief products.

On the front page of the New York Times, alongside this provocative thought of the Mayor's, was a photograph of some New York City mothers and their young children. They were lined up in the street getting pails of water from a city fire hydrant. Their apartment house had been without water for two weeks—and without heat since Christmas.

Despair, disillusionment, hopelessness. This is the stuff of drug addiction. These things are present in Mayor Lindsay's backyard . . . in the backyard of all our great cities. Television did not put it there. But once again, television is the handy whipping boy for another social ill. Name a problem. Someone will point to TV as the culprit.

Are you against "instant analysis and querulous criticism?" The public was asked to speak up on this issue. Do you know what's happened?

If a television network today tags on some analysis after covering a news event, it gets a bushel of critical mail saying "Shame, shame," and worse.

Conversely, if a network judges an event to need no immediate news analysis, it gets a bushel of critical mail saying "why not—you've been intimidated."

Personally, I like to hear how knowledgeable people interpret things. I thought this was a traditional function of the press in America. I've met many of the top newsmen. Any of them worth their salt—and that's most—can analyze what they're covering a lot better than I can. Particularly on short notice.

I've paid my dime for their paper. I've tuned my TV set to their station. I'm entitled to their conclusions. I might not agree with them. I'll make up my own mind whether they're querulous. But they are the professionals in their business, not me. I'm only the boss down on the Ponderosa.

People's feelings about television are emotional, not reasoned. It's a highly personal medium. A fixture in 59 million American homes. People react differently to it because people, in their great variety are different. How do you please them all, all those conflicting tastes and opinions?

Television's not perfect. It has never claimed to be. It can and should thrive on meaningful criticism. But one vital truth seems to constantly escape critics and those who nod yes to all the criticism. They want to remake television to fit their own image of what the medium should be. Folk singer Bob Dylan hit it in the lyrics of a song he wrote called "Maggie's Farm":

"Well, I try my best
To be just like I am
But everybody wants you
To be just like them."

I happen to think there's a lot right with television instead of wrong with it. And I suspect that it is satisfying somebody—even if it only happens to be the overwhelming majority of the people who own television sets. We cannot define public tastes in terms of our own personal preferences and project them as the standard for the majority.

For 22 years America has lived with television. No medium before or since has become so deeply a part of our normal living pattern. It gives most of us our news, most of our entertainment and, according to some observers, a great many of our attitudes and beliefs.

I know one entertainment program intimately. I've been involved with "Bonanza" for 11 years now. It's reaching some 31 and-a-half million people a week in this country, and an astounding 400 million additional viewers in 82 countries around the world.

Naturally, my feelings are biased. But for a show to endure this long, and to reach this many people, speaks well for its universal entertainment quality. If, beyond entertaining, "Bonanza" is shaping any attitudes and beliefs among its international audience, I'd like to think these intangibles are honesty, integrity, reliability, and conviction. This is what "Bonanza" is all about—besides entertainment.

Rarely, however, do television's critics mention entertainment for its own sake. A lot of intellectual snobbishness is behind this. To admit liking television just isn't chic among many of my friends, and I'm sure many of yours. The drums are beaten for cultural programing—serious drama, dissertations on the problems of the world, specialized music, massive doses of news and information.

Television, of course, supplies all of this, although apparently not in the quantities each special interest faction would like. A mass medium, responsible to a total audience, high-brow and low-brow alike, just isn't going to do enough to satisfy any one group. But it has more balance than many people imagine, or care to admit. Approximately 25 per cent of the total NBC Television schedule, for instance, is composed of news and informational programming.

The medium may appear to be dominated by shows like "Bewitched" and "Bonanza" and "Carol Burnett" because that's what most of the public prefers. But the aesthete who claims that he can't find anything worth watching is not looking.

There are thousands of network and local programs to choose from every television season. There is change and variety. There is an increasingly robust educational television service. There is something for everybody. And when television moves in to cover a moon voyage, a national political convention and election, or a Presidential speech, it does stimulate universal interest.

And credit some of those so-called "popular" entertainment shows with a lot more than eye-appeal. Their mind-appeal shouldn't be dismissed.

"Laugh-In," aside from its fun and tremendous popularity, may be teaching us to laugh at ourselves and our ingrained prejudices. It has proven that comedy doesn't have to be some innocuous thing that produces laughter but must have nothing to do with the real issues of living.

Johnny Cash and Glen Campbell, by the force of both television and their attractive personalities, may be popularizing a side of American music—not to mention values and a region of America—for too long considered corny.

For all that is said about it, television has brought people, for the first time in history, face to face with the variety and reality of life.

Anthropologist Margaret Mead calls television a shatterer of myth, a medium through which "the whole world can participate simultaneously in events about which it is impossible to lie."

We've been fond of some of our myths and we reject some of the things we see. But the sights and shocks of the world which television confronts us with—wars, rioting, starvation, prejudice—will not disappear unless we are aware of them, and concerned enough to do something about them.

If television seems too bland to you, remember that somebody else considers it too bold. If you think television is a pacifier and a tool for escape, remember that others consider it an agitator. For the very reason that it is all things to all people—as it should be—I think it's a success. And I've been proud to be a small part of it.

REVERSION OF OKINAWA TO JAPAN

Mr. HOLLINGS. Mr. President, on April 7, my colleague from South Carolina (Mr. THURMOND) presented a fine statement regarding the problem surrounding the reversion of Okinawa to the Government of Japan. Unfortunately, due to the pressing business before the Committee on Post Office and Civil Service, I had to be present at their executive session and could not be on the Senate floor at that time. I wish to associate myself with the remarks and analysis made by Senator THURMOND on this vital issue and the colloquy which resulted with the Senator from Virginia (Mr. BYRD).

Although the Senate on November 5, 1969, by a vote of 63 to 14, approved Senator BYRD's amendment regarding the understanding entered into by the President of the United States and the Prime Minister of Japan concerning article III of the Treaty of Peace with Japan that it shall not take effect without the advice and consent of the Senate, I felt it necessary to communicate with the President in that I did not believe that the joint communique issued on the question of Okinawa was absolutely clear as to the Senate's role in this matter. The President replied to my correspondence in January 1970, indicating that the executive branch would maintain close contact with the legislative branch, including the appropriate form of congressional participation. Such participation would of course, give this body an opportunity to approve or disapprove, which is fundamental to the entire issue.

I believe Senator THURMOND has provided an extremely beneficial service to the Senate by analyzing this complex issue.

EXPROPRIATION OF AMERICAN-OWNED PROPERTIES ABROAD

Mr. TOWER. Mr. President, in December of last year, the Senator from Louisiana (Mr. LONG) called our attention to the unpleasant experience of an American mining company in Mexico. As I recall, he characterized the actions of Mexico toward the sulfur operations of Gulf Resources & Chemical Corp. as "creeping expropriation." The means by which this is apparently to be accomplished are first the placing of restrictions on the company's operations, thereby forcing it to seek a purchaser of Mexican nationality, and second, the subsequent refusal of the Government to follow the procedures found acceptable to it in the Mexicanization of other sulfur companies. Being aware of the growing concern of many of us over the expropriation of American-owned properties abroad, I have followed the Gulf Resources case with interest.

Unhappily, I must report that no relief for the company is in sight and that little effort is being made by the Mexican Government on the company's behalf. On the contrary, the issue is clouded by evasions and counterclaims.

To view these events in proper perspective, we must be aware that almost 20 years ago Gulf Resources was issued a concession contract by the Mexican Government to produce sulfur in the State of Veracruz. The legality and validity of such concessions, and Gulf's vested rights thereunder, have never been seriously questioned. With pioneering effort and the expenditure of large sums of money, Gulf created in the remote jungle of the Isthmus of Tehuantepec an industry employing more than 500 persons, nearly all Mexican nationals, and providing housing, utilities, medical care and schools which otherwise would not be possible.

During its operating history, more than 80 percent of Gulf's sales dollar has been paid as salaries, royalties, and taxes or reinvested in the Mexican economy. All this was done in the good faith belief by Gulf that its concession contract would be honored and that expropriation could not be a serious threat.

I question whether Gulf has received the full benefit of its bargain with Mexico. True, no concession has been cancelled nor have its sovereign powers been used to destroy any vested right; it may well be that the same result has been accomplished by indirect means. To me there seems to be little difference between the exercise of sovereign power to repudiate contract rights and the imposition of restrictions which make it impossible to realize the purpose for which the contract was intended. Whether it be expropriation or sovereign interference, the result is the same—Gulf cannot continue its sulfur operations nor can it sell its properties to a Mexican investor, even for salvage value.

I find small comfort in the fact that, technically, the letter of international law may have been honored. In the final analysis only one conclusion clearly emerges: Gulf has been deprived of its concession rights without compensation.

There have been attempts to cloud the issue by accusations and counterclaims that Gulf is free to operate its properties and that the Mexican Government will not obstruct any proposed sale which complies with Mexicanization laws. But the damage to Gulf already has been done. As a result of the restrictions imposed early last year, the confidence of Gulf's major customers has been destroyed so that continued operations no longer are economically possible; and no responsible Mexican investor will negotiate to purchase the properties in such a hostile atmosphere.

The Mexican Constitution states that private property shall not be expropriated except for reasons of public use upon payment of indemnity. I fail to see why there cannot be just compensation for the harmful result of discriminatory restrictions which have the same effect as expropriation. Unless direct and immediate relief is forthcoming, Gulf's properties ultimately will revert to the Mexican Government at the expense of the more than 19,000 public stockholders of Gulf who will have seen the assets of their company reduced by some $13 million.

VETERANS' MEDICAL CARE

Mr. DOLE. Mr. President, on April 2, 1970, President Nixon announced he would seek $65 million in additional funds from Congress for the Veterans' Administration medical program—$15 million for the remainder of this fiscal year and $50 million added to the budget request for fiscal year 1971.

Mr. President, I commend the President and the able Administrator of Veterans' Affairs, Hon. Donald E. Johnson, for their recognition of the importance of providing a full range of medical services for our veterans.

Unfortunately, at the very time that the needs were increasing, budgetary limitations made it impossible to respond. Furthermore, there have been changes in the types of wounds suffered by our veterans, while we have been able to save their lives through better battlefield care and faster evacuation, we have not yet dealt adequately with the great number of patients with multiple amputations and spinal cord injuries.

Being a veteran who benefited greatly from Veterans' Administration medical care and having visited numerous hospitals where those with multiple injuries are attempting to adjust to their new condition, I wholeheartedly endorse the President's commitment "that no American serviceman returning with injuries from Vietnam will fail to receive the immediate and total medical care he requires."

An article written by Sandra Blakeslee, graphically describing the plight of the Vietnam veteran, was published in the New York Times of Friday, April 3, 1970. 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:

CRIPPLED VETERANS FIND HOSPITALS CROWDED AND ATTITUDES AT HOME AMBIGUOUS

(By Sandra Blakeslee)

"The only time the American people ever see a Vietnam casualty is when he's got blood running out of him on the Cronkite program. After that, he's forgotten."

The man who said that speaks from personal experience. His name is Max Cleland and he had both his legs and his right arm blown off near the Sanh, South Vietnam, 23 months ago.

At that time, a long and arduous journey began for Captain Cleland. From a field emergency station in Vietnam he was taken to a hospital in Japan, then to a military hospital in the United States, where he received formal discharge from the Army, then on to a Veterans' Administration hospital and, finally, home.

More than 13,000 other Vietnam veterans, whose wounds have been severe enough to merit a military discharge, have made that same journey—some disabled for life, many in pain and perhaps most in varying stages of depression and confusion.

Not all of their troubles stem from their wounds, however. There are some things about the war in Vietnam, many experts on veterans' affairs say, that make these wounded men different from American soldiers smashed up in previous wars, that make readjustment to civilian life more difficult.

They show up on three fronts—on the battlefield, during the wounded man's stay in a military and veterans' hospital, and back home as he strives to live with his disability.

Going home often means encountering ambiguous or hostile attitudes toward the war in parlor discussions about its "worth" or "morality" attitudes to which the injured veteran is acutely sensitive.

In a veterans' hospital, according to most experts, the young man will still get good clinical care but will find facilities seriously understaffed, underfunded and overcrowded—conditions that President Nixon moved to alleviate yesterday by approving a $6.5-million increase in the V.A.'s budget.

On the battlefield, the chances are good that the young man will have been one of the increasing number of soldiers who are experiencing and surviving more severe, permanently disabling wounds than ever before. In Vietnam, 81 per cent of those hit are surviving their wounds compared to 74 per cent in Korea and 71 per cent in World War II.

12.4 PERCENT FULLY DISABLED

The Veterans Administration classifies disabilities on a percentage scale. Only 4.4 per cent of World War II wounded were 100 per cent disabled (for conditions such as multiple amputation, paraplegia or blindness.) In Korea the figure was 6.7 per cent. In Vietnam 12.4 per cent of the wounded thus far have received 100 per cent disability ratings.

The wounds suffered in this war are more devastating for two reasons. Combat is close up, guerrilla-fashion. Also, the enemy weapons are more prone to maim a man than not, weapons such as the high-powered AK-47 rifle, rockets, mortars, claymore mines, booby traps and punji stakes.

At the same time, more lives are being saved because of greatly improved medical evacuation techniques, starring the helicopter. During World War II it took an average of 10.5 hours for a man to reach medical attention. In Vietnam it takes an average of 2.8 hours and can take as little time as 20 minutes. All of this means that the wounded entering American military and V.A. hospitals are more battered than in previous wars.

"Some patients who in earlier conflicts would have died on the battlefield and been counted among killed in action, are now reaching hospitals alive," says Lieut. Gen. Hal B. Jennings, Jr., Surgeon General of the Army.

The V.A. and military hospital systems are having a tough time coping with the crush. Frequently military hospitals are forced to shuttle men on or out quickly because of the demand for bed space. The V.A. hospitals, by their own admission, have deteriorated in the last five years.

Dr. Beverly Oliphant, an intern with the Veterans Administration Hospital in Washington, speaking for the House staff, said recently: "Our facility has acres of beautifully kept lawns watered by a newly installed sprinkling system; there are newly paved parking lots and a new 9-foot chain-link fence, and its facade smiles on the rest of the city while inside it harbors a festering sore."

The Veterans Administration, with 1,000 fewer beds available this year than last because of short funds, has fallen back on nursing homes to pick up the caseload spillover. In 1965, 168 nursing homes were so used; in 1970, nearly 7,500 are.

Because of budget restrictions in the last three years, the V.A.'s 166 hospitals remain staffed at 1966 levels, or at least 10,000 people short. As a result, $20-million worth of facilities are not in use because there is no one to staff them. Staff ratios at V.A. hospitals are 1.5 per patient, compared to 2.6 per patient at most voluntary hospitals. Sometimes only one registered nurse cares for 80 patients at night.

PAY FOR VA PHYSICIANS

In addition, tight budgets have left pay for V.A. physicians at an average of 20 to 25 per cent below that of physicians in university hospitals. No funds are available to provide air-conditioning in 66 older V.A. hospitals. And the number of beds in spinal cord injury units has been reduced at a time when the ratio of paraplegics and quadriplegics is eight times that of World War II.

But beyond any shortcomings of the hospitals, the war seems to continue exacting a psychological price after the wounded veterans go home. Captain Cleland, who today drives his own car and plans to enter state politics from his home town, Lithonia, Ga., described his return from the war in an interview.

"You have to defend what you did, explain it," he said. "But the veteran can't communicate the actual feeling of being there, the trauma, the draining that goes on personally. You come back 13,000 miles to a country that can't understand anything that you've done. There's no aura in your being in the military. There's an onus around your uniform."

At recent hearings held by Senator Alan Cranston, Democrat of California, who heads a subcommittee on veteran's affairs, Captain Cleland elaborated:

"To the devastating psychological effect of getting maimed paralyzed or in some way un-

able to re-enter American life as you left it, is the added psychological weight that it may not have been worth it, that the war may have been a cruel hoax, an American tragedy that left a small minority of American males holding the bag."

"SOMEONE HAS GOT TO EXPLAIN"

The fighting man in past wars came home to brass bands filled with the sense that his sacrifice and that of his buddies were worthwhile, according to Dr. Robert Jay Lifton, a psychiatrist at Yale's School of Medicine who has studied the psychological impact of the war.

But Vietnam is different, he and many other experts agree. The stresses of guerrilla warfare bring on an unusually strong state of psychic numbing, they say, and hostility toward the war at home often leads to a deep sense of betrayal, of having been manipulated. "The Vietnam veteran serves as a psychological crucible of the entire country's doubts and misgivings about the war," Dr. Lifton said.

One 19-year-old marine said not long ago: "I think any other war would have been worth my foot. But not this one. One day, someone has got to explain to me why I was there."

Not all of the hospital experiences of wounded veterans are depressing or discouraging. There are 180 military hospitals around the country. The wounded serviceman is sent, on his first stop home, to the one nearest his family or to the one where the best care is given for his particular injury or condition.

Many veterans say that the time spent in the military hospital can be helpful to a wounded man, surrounded as he is by friends in similar straits.

A few weeks ago Jack Farley, a 27-year-old Army captain from Massapequa, N.Y., who lost his right leg from above the knee, told a visitor to the officers' amputee ward—affectionately called "The Pit"—at Walter Reed Army Medical Center in Washington how this group support works.

"Every now and then you find a guy who's really sorry for himself," he said, "a guy laying up sorry," He turned to a friend in the room. "Remember Carpenter? Lost a foot. He would cry a lot, even after weeks here. He always wanted to stay in bed. One day some other amputees got together and threw him out of his wheelchair and watched him crawl back. Did it three times in an hour and a half. It's kind of cruel, but it straightened him out."

AVERAGE STAY SIX MONTHS

The average stay in a military hospital for a seriously wounded man is six months. During that time, the serviceman is "processed for disability," that is, a medical board decides if he should stay for treatment for ultimate return to active duty or if he should be discharged to his home or to a V.A. hospital for further care.

If he is to go on to a V.A. hospital, the wounded man is treated until he reaches "optimum hospital improvement," or until he is sufficiently stable to be moved on. He is discharged or retired from service at this juncture.

Between 1966 and 1969 admissions in military hospitals rose by 134,000, reflecting the buildup in Vietnam, while the number of military medical personnel rose by 10,000. The Army today has 7,100 full-time physicians serving 1.5 million men. The Veterans Administration by comparison, has 5,186 full-time physicians serving 27 million veterans.

Once the military hospital has served its function to "heal you up" one veteran said, "you become pretty much a case of paperwork." Hospital care, in the words of another, becomes "sheer boredom intersperced with periods of stark terror."

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The Vietnam veteran who goes to a V.A. hospital for further treatment of his wounds, such as for fitting of artificial limbs, is placed in with all other patients and suddenly loses the sense that he is special, said Dr. Philip Rowens, previously with a large V.A. hospital in New England.

"He feels neglected, unloved and indeed even insulted that he is no longer singled out for his heroic acts, for his supreme sacrifice," Dr. Rowens said.

It is at this point that the V.A. pulls out all stops to try to help the wounded servicemen through its vocational-rehabilitation branch. This office, operating on an ample budget with headquarters in Washington and 57 regional offices, had 19,000 veterans under some form of training in fiscal 1969.

The wounded servicemen begin to receive visits from V.A. educational and vocational counselors while they are in the hospital if not before. It is the counselors' duty, an administrator said, to tell patients what benefits are available to them and to let them know that they are not alone.

Some of the young men in V.A. wards face extremely difficult decisions. "Let's face it," one V.A. psychologist said, "many of these kids were never God's gift to the academic world. They joined the Army to delay making a decision on what to do with their lives. And now they are in a real fix."

The V.A. offers training in some 30,000 occupations. It pays the disabled veteran full tuition and book fees plus a living allowance if he wants to go to college. Such benefits are available for nine years from the time of his military discharge.

"The Congress has never stinted funds in this respect," said Dr. Joseph Samler, head of the V.A.'s rehabilitation-vocational counseling services.

Once back in society, the wounded veteran must sometimes also contend with simple physical barriers to his mobility. One paraplegic veteran who went to Madison Square Garden recently found seven steps blocking his entry and had to wait, his pride hurt, for policemen to lift him up the steps.

JUDICIAL REFORM ACT—AN ABA ENDORSEMENT

Mr. TYDINGS. Mr. President, on October 15, 1965, shortly after I became chairman of the Subcommittee on Improvements in Judicial Machinery, I stated on the floor of the Senate that, although on the whole the general caliber of the Federal judiciary has been extremely high, "the problem of the unfit judge is a serious challenge to our judicial system." At that time I announced that the subcommittee was going to undertake an extensive study of the problems caused by disabled judges and by judges whose conduct fails to meet the standards of good behavior required by the Constitution.

On February 15, 1966, the subcommittee held its first exploratory hearings on the sensitive subject of judicial fitness. Among the witnesses that first day was Bernard G. Segal, now president of the American Bar Association, and at that time chairman of its standing committee on judicial selection, tenure, and compensation. Mr. Segal's testimony and that of the other witnesses, Judge John Biggs and Joseph Borkin, author of The Corrupt Judge, helped to dramatize the need for the study that the subcommittee had initiated and to give it direction.

Subsequently, in 1966, the subcommittee inquired into the manner in which the States deal with the unfit judge. These hearings concentrated on the New York Court of the Judiciary and the California Commission on Judicial Qualifications, both of which have had success in dealing with these sensitive problems.

On February 28, 1968, after much further discussion, research, and analysis, I introduced the Judicial Reform Act, S. 3055, 90th Congress, second session. The primary feature of the act is the establishment of a permanent Commission on Judicial Disabilities and Tenure composed of five Federal judges and patterned after the successful California Commission on Judicial Qualifications. This Commission would be empowered to effect the retirement of disabled judges and to recommend the removal by the Judicial Conference of Federal judges who violate the constitutional standard of good behavior. Closely related to the removal provisions of the act are provisions dealing with judicial conflicts of interest and requiring financial disclosure by Federal judges.

During 1968 the subcommittee heard 6 days of testimony on the specific provisions of S. 3055. Those hearings produced important suggestions for improvements in the legislation, improvements that were incorporated in the revised act, introduced on March 12, 1969. The act is cosponsored by a distinguished bipartisan group of Senators: Senators ALLEN, BELLMON, EAGLETON, GOODELL, HATFIELD, HOLLINGS, KENNEDY, MAGNUSON, MONDALE, MUSKIE, PACKWOOD, PELL, SCOTT, STEVENS, and YARBOROUGH. I invite our other colleagues to join us in sponsoring this important legislation.

Although the Judicial Reform Act has had a long history, recent events have made its provisions seem particularly relevant. In the past year and a half, the judiciary has suffered the strain of controversies surrounding the appointment of Justice Fortas to be Chief Justice and his resignation some 9 months later; the advent of the Chandler case from the 10th Circuit to the Supreme Court calendar; and the struggles in the Senate over the nominations of Judge Carswell and Judge Haynsworth to the Supreme Court. Each of these controversies demonstrated, in its own particular way, critical problems of judicial temperament and conduct.

Sensitive to these problems, the American Bar Association last year began its own extensive inquiry into standards of judicial conduct. Moreover, the American Bar Association's section on judicial administration and its standing committee on judicial selection, tenure, and compensation both undertook studies of the provisions of the Judicial Reform Act.

On February 24, 1970, acting upon the report of the section on judicial administration, the house of delegates of the American Bar Association overwhelmingly endorsed the key provisions of the Judicial Reform Act.

The action of the American Bar Association received significant and favorable editorial comment throughout the country. I ask unamious consent that these representative editorials be printed in the RECORD.

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

[From the Washington Post, Feb. 2, 1970]

THE UNFIT JUDGE PROBLEM

The American Bar Association has given a welcome boost to the efforts of Senator Tydings to cope with the problem of disability and misconduct on the federal bench. Lawyers as well as Congress are traditionally reluctant to face the fact that judges, no less than other men, sometimes lose their capacity to work and occasionally bring disrepute upon their courts. Of course judges who accept bribes or violate the law may be impeached, but that crude and virtually obsolete procedure does not reach the lesser cases of misbehavior and gross incompetence.

We have long favored Senator Tydings' proposal which would let the judicial system handle its own unfit members. His judicial reform bill would set up a commission of five federal judges to investigate complaints about official conduct of the federal bench. It could dismiss any such complaint or order a hearing and make recommendations to the Judicial Conference of the United States. If the conference should find it necessary to relieve the judge of his responsibilities because of disability or misconduct, an appeal could be taken to the Supreme Court.

Over the years during which this problem has been under discussion no one has come up with a better approach. Indeed, any proposal that might invite the President of Congress to meddle with the status of disabled and unfit judges would be open to possible grave abuses. The Tydings bill is well guarded against abuses as well as being in line with the division of judicial, executive and legislative responsibilities in separate branches. It is entitled to more serious consideration than the Senate has given it to date.

[From the Tampa (Fla.) Times, Feb. 26, 1970]

RELIEVING UNFIT JUDGES

The house of delegates of the American Bar Association should be commended for passing this week a resolution in support of legislation for dealing with federal district judges who are accused of being unfit or disabled.

This support should help persuade many presently hesitant U.S. senators to vote for a judicial reform bill sponsored by Senator Joseph Tydings, D-Md., and 12 other senators.

The Constitution provides that federal judges are to hold office during "good behavior," which normally means for life. The only way of removing a corrupt judge is by impeachment. Under that procedure, the House of Representatives must bring charges, after which the Senate acts as a court and tries the case. This method is so cumbersome that it has been employed only eight times in history and resulted in only four convictions. Furthermore, impeachment is limited to misconduct and cannot be used in cases of physical or mental disability.

The Tydings bill would establish a commission of five federal judges to investigate complaints about the official conduct of any judge in the federal system. The obviously frivolous or lunatic allegations would be weeded out. But complaints that appeared to have possible merit would be thoroughly reviewed, with the accused judge given an opportunity at a formal hearing to defend his conduct.

The procedure is designed to encourage unfit judges to retire or mend their conduct. At any rate, the commission would be authorized to make a recommendation to the Judicial Conference of the U.S., whose decision would be subject to review by the U.S. Supreme Court.

On the whole, the nation can be proud of the caliber of its federal district judges. But it is most essential to recognize that even a few senile, alcoholic or unethical judges can poison the stream of justice.

Congress should act promptly and favorably on this judicial reform measure. To ignore the problem is not to solve it.

[From the Lansing (Mich.) Journal, Mar. 11, 1970]

REVIEW LAW NEEDED ON FEDERAL JUDGES

A problem long overlooked in the U.S. federal bureaucracy is the matter of who judges the federal judges in cases of alleged misconduct or in situation where physical or mental incompetence becomes a factor in a jurist's ability to perform his duties.

At the present time the only means available is the impeachment route, a cumbersome and difficult way to get results.

With the approval of the House of Delegates of the American Bar Association, a bill has been introduced in Congress which would establish a commission of five judges, appointed by the chief justice of the Supreme Court, to examine complaints and make recommendations which would be subject to supreme court review. Final assent of the President would be required for removal of a federal judge.

It is expected that the commission would deal primarily with judges whose age or some form of disability constituted an impediment to continued service. Disciplinary machinery for misconduct cases also would be included. Unfortunately, the bill is now tied up in a U.S. Senate subcommittee.

While legitimate misconduct cases are rare, better machinery is needed to deal with such situations as well as developing a means to encourage the removal or retirement of judges who have become incapacitated by illness or slowed by age.

Michigan recognized this problem two years ago and moved to correct it. The electorate approved a constitutional amendment in 1968 allowing for establishment of a State Judicial Tenure Commission.

The commission has the authority to investigate citizen complaints on lack of qualification of judges and make recommendations to the state supreme court. The supreme court has the authority to then suspend, remove or retire a judge.

The Michigan commission also can deal with the touchy problem of urging older judges to retire if it appears they cannot keep up with their work loads.

Proper administration of justice demands that judicial incompetence must be exposed and corrected and not simply allowed to continue because of tradition. It is even more important at the federal level.

Hopefully, the bill now in the U.S. Senate, will be given priority consideration to help bring about an overdue reform.

[From the Memphis (Tenn.) Commercial Appeal, Mar. 15, 1970]

ON REMOVING JUDGES

One missing element in the otherwise overstuffed federal bureaucracy is an effective, relatively simple procedure for the removal of judges guilty of misconduct or impaired by physical or mental disability. Not many occasions arise when judges have to be compelled to leave the bench, but nevertheless there ought to be a recognized procedure to remove them—equitably, but with dispatch.

That lawyers think so, too, can be found in the overwhelming approval by the House of Delegates of the American Bar Association of the Judicial Reform Act, a bill mired up at subcommittee level in the Senate. It would set up a commission of five judges, appointed by the chief justice, to examine complaints and to make recommendations, subject to Supreme Court review and ultimately presidential assent before taking effect.

The commission would deal primarily with judges whose age or disability constituted an insuperable impediment to continued service, but at least the disciplinary machinery would be there for the rare cases of judicial misconduct.

The proposed procedure would appear to be a reasonable alternative to the cumbersome impeachment process, the only means now available for the removal of a federal judge and so seldom invoked that it can be regarded as moribund.

[From the Albuquerque (N. Mex.) Journal, Feb. 27, 1970]

ABA BACKS TYDINGS BILL

The American Bar Assn. at long last has endorsed legislation providing for removal of federal judges guilty of misconduct or suffering physical or mental ability.

Specifically the ABA's House of Delegates voted to support in principle the Judicial Reform Act sponsored by Sen. Joseph Tydings of Maryland. It was the first time since 1940 the ABA has officially approved specific recommendations on the removal of judges.

Judicial misconduct may not be widespread but the public's confidence in the federal judiciary has been undermined somewhat in the last year or so. This is largely the result of the disclosures last year of Abe Fortas' wheelings-and-dealings and offside activity by other Supreme Court justices.

The Constitution provides for impeachment of federal judges for "treason, bribery or other high crimes and misdemeanors." But impeachment is a long, involved process which rarely has been used.

For instance, a few years ago the 10th U.S. Circuit Court of Appeals which has jurisdiction over New Mexico used a different method to "remove" a federal judge in Oklahoma.

The Circuit Court's Judicial Council stripped the judge of all his duties and authority on grounds he "is presently unable or unwilling to discharge (his job) efficiently."

That order, signed by four judges including New Mexico's Judge Oliver Seth, effectively prevented the Oklahoma jurist from trying any more cases—but allowed him to retain his title and five-figure salary.

Tydings' bill, which faces some trouble in Congress, would provide a better method of removing federal judges, including those whose ability has been impaired by senility.

We believe the measure would be improved if it included a provision for mandatory retirement of all federal judges at a specified age as is required of other federal employes.

[From the Greeley (Colo.) Tribune Republican, Mar. 12, 1970]

EASING OUT THE UNFIT

No really effective provision exists for getting rid of federal judges who have become infirm through age or are otherwise unfit to continue on the bench. Impeachment, with a trial before the Senate, is now provided for. By this means a judge found guilty of corruption may be removed. This does not, however, meet the situation of incompetence caused by physical disability.

That failing has now been given attention by the American Bar Association. In response to a strong plea by Sen. Joseph D. Tydings of Maryland, the ABA's House of Delegates has approved—though only "in principle"—of a reform plan.

Under this proposal, which is embodied in proposed legislature, a commission of five federal judges would investigate complaints about official conduct, and, if it thought proper, recommend removal of the offending judge. If the Judicial Conference of the United States agreed, and if dismissal was upheld by the Supreme Court, the recommendation would go to the President.

The reform plan also gets at the matter of physical or mental disability. In such cases, should a judge decline to retire voluntarily, the commission of judges would recommend to the President that he be removed.

Some past cases show the need for a definite way to oust an incompetent judge. One involved a man so deaf that he could not follow an oral argument, and so blind that he could not read a written statement. In this case unofficial pressure finally persuaded the judge to resign.

The proposed reform has—and it could not otherwise be supported—adequate built-in safeguards. This does not mean that it is home free: as Tydings noted, even with ABA support it will be hard to get the bill through the Senate. While the occasions requiring the removal of a federal judge are few, a practicable system should be available when it is needed.

[From the St. Louis (Mo.) Globe-Democrat, Mar. 16, 1970]

AMERICAN BAR GROUP OKAYS JUDICIAL REFORM

Approval by an American Bar Association group of a proposed law providing for removal from the federal bench of judges found guilty of misconduct and those suffering physical or mental disabilities is an important step in paving the way for enactment of such a law.

The ABA's support may help to override the expected powerful opposition of a number of federal judges who have indicated they will attempt to block the measure.

The bill, now being considered by a subcommittee of the Senate Judiciary Committee, would create a commission of five federal judges to investigate complaints about federal judges and make recommendations to the Judicial Conference of the United States.

If a dismissal was sustained by the Supreme Court, the Judicial Conference would recommend such action to the President. The President would then have the power to oust the Judge.

If a federal judge was found to be physically or mentally incapable of performing his job, he would be given an opportunity to resign. If he did not, the commission would recommend to the President that the judge be removed from office.

This kind of law should have been enacted many years ago. At present the only way a federal judge may be removed is by impeachment, a method which is seldom used because is has been found to be too cumbersome and ineffective.

[From the Bluefield (W. Va.), Telegraph, Mar. 12, 1970]

FEDERAL JUDGE PLAN

The only method of removing federal judges for any reason now is through impeachment. Terming this method an ineffective "mockery," Senator Joseph Tydings of Maryland has introduced a bill to remove from the bench any federal judge found guilty of misconduct. He has 12 co-sponsors, but his biggest break-through came when the American Bar Association's House of Delegates approved the measure and voted to seek its passage.

A number of powerful judges are against the bill, Tydings told the ABA in a personal appeal. Even with ABA support, he said it would be difficult to get the bill through the House and Senate. With ABA support, the bill may have a chance.

It would set up a five-man commission of federal district and circuit judges appointed for four-year terms by the Chief Justice of the United States to hear complaints brought against federal judges. The commission would be empowered to remove any judge found guilty of misconduct. Few thoughtful judges should object to such a procedure, which would provide a needed safeguard against unfit judges remaining in office for life.

[From the Milwaukee (Wis.) Journal, Mar. 7, 1970]

BETTER FEDERAL BENCH

Life tenure for federal judges, including the privilege of opting to retire on full pay, has its merits as a way of raising the odds on a stable and independent judiciary. It has the occasional defect of locking in a judge who has become physically or mentally incompetent or whose moral conduct is unworthy of the bench.

If such a judge won't retire or resign, there is no practicable way to remove him. The only way provided by the Constitution is impeachment (accusation) by the House and trial by the Senate, but that is customarily reserved for only the most outrageous cases, hence almost never used. Its last successful use was in 1936. Trying to use it in every ordinary case would only waste Congress' time.

The situation cries for a workable remedy. Sen. Tydings (D-Md.) has been leading a drive to legislate one. The central feature of his proposed judicial reform act is the establishment of a permanent commission—five judges appointed by the chief of justice—to study complaints and recommend appropriate removals. The actual removing power would be the Supreme Court's. Even that might require some voluntariness, but a judge presumably would feel forced to remove himself if the Supreme Court told him to.

Tydings has just won the probably crucial backing of the House of Delegates of the American Bar Association for his plan. That ought to tip the scales for enactment. Proper manning of the federal bench is of the highest public importance.

[From the Norwich (Conn.) Bulletin, Mar. 7, 1970]

INCOMPETENCY AMONG JUDGES

There is no regular provision for getting rid of federal judges who have become infirm through age or are otherwise unfit to continue on the bench.

Efforts to correct this oversight, therefore should be pushed with some urgency.

There is a provision for impeachment, with a trial before the Senate. By this means, a judge, found guilty of corruption, may be removed, but this does not meet the situation of incompetence caused by physical disability.

That failing now has been given attention by the American Bar Association. In response to a strong plea by Sen. Joseph D. Tydings of Maryland, the ABA's House of Delegates has approved—though only "in principle"—of a reform plan.

Under this proposal, embodied in a bill now before the Senate Judiciary Committee, a commission of five federal judges would investigate complaints about official conduct and, if it thought proper, recommend removal of the offending judge.

If the Judicial Conference of the United States agreed, and, if dismissal was upheld by the Supreme Court, the recommendation would go to the President.

The reform plan also gets at the matter of physical or mental disability. In such cases, should a judge decline to retire voluntarily, the commission of judges would recommend to the President that he be removed.

Some past cases show the need for something definite to oust an incompetent judge.

One involved a man so deaf he would not follow an oral argument, and so blind he could not read a written statement. In this case, unofficial pressure finally persuaded the judge to resign.

The proposed reform has—and it would not otherwise be supported—adequate built-in safeguards. This does not mean it is home free for as Tydings noted, even with ABA support, it will be hard to get the bill through the Senate.

However, it certainly is a sound measure that should be approved without undue delay.

MORRIS ABRAM SETS FORTH THE CRUCIAL NEED FOR SENATE RATIFICATION OF THE POLITICAL RIGHTS OF WOMEN AND FORCED LABOR CONVENTIONS

Mr. PROXMIRE. Mr. President, the failure of the Senate to ratify the Genocide Convention has drawn substantial criticism from many outstanding legal scholars. The criticism is certainly well taken—this treaty is a crucial link in the chain that we must forge to insure international protection of human rights. The failure of this country to sign the Genocide Convention should be a matter of grave concern to us all.

However, in our efforts to secure Senate ratification of this treaty, we should not forget that there are other significant conventions which lie awaiting action by the U.S. Senate. I refer specifically to the Convention on Forced Labor and the Convention on the Political Rights of Women.

Mr. President, there is no justification for our inaction in this vital area. Our failure to assert our moral leadership is inexcusable. We have nothing to lose from Senate ratification of these treaties, and we have everything to gain.

Mr. Morris Abram, a distinguished New York lawyer and a man of outstanding experience in the field of human rights, has spoken forcefully on many occasions of the crucial need for U.S. action on these treaties. I ask unanimous consent that excerpts from his testimony of September 13, 1967, to the Committee on Foreign Relations be printed in the RECORD.

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

Mr. Chairman, if the abolition of slavery in its various manifestations is an acknowledged objective of our foreign relations, and a matter of genuine international concern—because it is an evil which breeds social and political tensions and which, moreover, can have a harmful impact on the sales of American products within our country and in foreign markets—it is difficult for me to understand why this reasoning does apply equally to the evil of forced labor. It is relevant to recall, in this connection, that even the 1926 Slavery Convention, which we ratified long before the existence of the United Nations, called (in Article 5) for all necessary measures to prevent forced labor from developing into conditions resembling slavery—indicating that already then, over 40 years ago, we acknowledged by treaty the similarity of the two evils.

I believe, also, that the Political Rights of Women Convention meets the test both of constitutionality and national interest—in that it is both an important objective of our foreign relations and a matter of genuine international concern. Clearly, genuine economic and social progress is difficult of attainment, especially in the developing countries—to which we send quantities of aid—if half the population is deprived of status and dignity, of the right to vote and to hold public office. Moreover, as pointed out by one witness before the Subcommittee, the withholding from women of civil and political rights, the regarding of them as household

possessions, is an obstacle to the progress of family planning—a crucial means for defusing the population explosion, which is perhaps the most critical problem that faces mankind today.

We practice no forced labor in our country. Our women enjoy political rights on a par with men. The standards of these conventions are entirely consistent with our own practices; they are a projection internationally of our own human rights principles and commitments. We should rejoice that they have become part of the growing body of international law in the field of human rights. We should have been the first to ratify them, rather than still be haggling about vague and fictitious dangers lurking in them.

I believe there exists in some circles a vague fear of the consequences that might flow from opening ourselves up to criticism from foreign powers. It is not clear whether what is feared is deserved or undeserved criticism. In either case, the fear is mistaken. For if the fear is that we may be criticised for national conduct falling below the standards in these conventions—for reinstituting conditions of slavery or practicing forced labor or depriving our women of their political rights—should not external criticism be welcomed? But this eventuality is obviously academic, since we have every reason to be secure in and proud of our standards in the areas covered by these conventions.

On the other hand, if it is feared that the conventions might be used as a peg for subjecting us to *undeserved* criticism, this reveals an unwarranted under-estimation of our capacity to defend ourselves in international forums. The truth is that by becoming a party to these conventions we would not give our "enemies" any propaganda weapon that they do not already have, and that we are not capable of effectively resisting. As an open society, with our practices widely discussed in our own as well as the world information media, we risk nothing. The risk lies rather with the communist and other closed societies, against which our ratification would provide us with a legal and moral handle to prod for *their* delinquencies.

DISTRICT OF COLUMBIA CRIME

Mr. MATHIAS. Mr. President, I wish to remind Congress of our responsibility in facing and dealing with the serious crime problem in the District of Columbia, since Congress has chosen to retain virtually exclusive governmental authority within the District.

To this end, I ask unanimous consent to have printed in the RECORD a list of crimes committed within the District yesterday as reported by the Washington Post. Whether this list grows longer or shorter depends on this Congress.

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

[From the Washington Post, Apr. 8, 1970]

BANK TELLERS FOIL HOLDUP TRY

Two bank tellers foiled an attempted holdup yesterday by an armed man who forced a cab driver to take him to the drive-in window of a Southeast Washington bank branch, police reported.

The cab pulled up to the window at the National Capital bank at 316 Pennsylvania Ave., SE at about 12:15 p.m., police said.

The passenger in the rear seat placed an envelope into the tray with a note threatening the cab driver and demanding $5,000 in cash, according to bank officials.

When the teller, Devora Devaughn, noticed that the passenger was displaying a gun, she screamed and another teller rushed to her window, police reported.

He said he pushed Miss Devaughn to the floor and fell beside her. When the two tellers stood up, the cab had driven off, police said.

The cab driver told police the gunman fled from his taxi in the 600 block of E Street.

In other serious crimes reported by area police up to 6 p.m. yesterday:

ROBBED

Grocery store, 2928 Georgia Ave. NW, was robbed about 2:10 p.m. Monday by three youths, two of whom entered the store. The pair approached the clerk at the cash register and one of them demanded money, indicating the gun concealed under his coat. The cashier handed them the bills and the youths ran north in the 2900 block of Georgia Avenue.

Andrew Braxton, of Washington, was held up about 7:30 p.m. Monday by three youths who confronted him at 12th Street and Pennsylvania Avenue SE. One of them brandished a .38 caliber revolver and ordered Braxton to hand them his money. The youths grabbed the bills and fled on foot.

Agnes Coran, of Washington, was beaten and robbed of a large amount of money about 3:05 p.m. Monday. A man approached her from behind as she was walking in an alley at the rear of the 2800 block of Alabama Avenue SE and beat her to the ground. Snatching her pocketbook containing the money and personal papers, the assailant fled from the alley.

Raymond Hager, of 1615 27th St. SE, was held up about 1:30 p.m. Monday by two young men who knocked on his door and asked for old newspapers. Hager told them he had some papers and the pair followed him inside. Then one of them said, "This is a holdup. Give me your money." After forcing Hager to give them his cash and money orders, the pair ran from the front door.

Bonie Sue Dill, of Washington, was held up about 6:55 p.m. Sunday by seven boys described as 9-year-olds who surrounded her in the 200 block of 3d Street NE. One of them drew a pistol and held her at bay while the others grabbed her pocketbook containing money and papers. The boys then fled north on C Street NE.

Mary Rouse, of Washington, was beaten and robbed about 7:40 p.m. Monday by three youths who attacked her at 55th and Blaine Streets NE. Grabbing her and beating her in the face, the youths took her purse containing a large amount of money, a diamond ring and wedding band.

Eugene Hollingsworth, of Washington, was held up about 8:45 p.m. Monday not far from his home at 8th and E Streets NE. Three juveniles surrounded him, one of them wielding a long club. "Come on, give us your money and you won't get hurt," they told Hollingsworth and forced him to give them his wallet. The trio escaped north on 8th Street.

Peter L. Moore, of Washington, was robbed of a large amount of money about 1:20 p.m. Monday in front of a building in the 2600 block of 33d Street SE. A young man stopped Moore and warned, "Give me the money. Don't move." Removing the cash from his billfold and several checks made out to the Fairfax Pharmacy, the man ran west on Erie Street.

Joseph List, of Washington, was beaten and robbed by two youths who attacked him at 1st and V Streets NW about 2:30 p.m. Monday. Striking from the rear, the assailants beat List in the face and head, then fled with his wallet containing money and papers and his wristwatch.

William L. Cole, a driver for Jacobs Moving Co., was robbed at 1:15 p.m. Monday by an armed holdup man who confronted Cole in the 6300 block of New Hampshire Avenue in Chillum while Cole was eating lunch in his parked truck.

Larry Whitted, of Washington, was robbed and beaten about 4:30 p.m. Saturday while he was collecting for his newspaper route. Three youths attacked him in the 1300 block of Bryant Street NE, beat him to the ground and dragged him to the rear of the block. "Give us your money. We know you got some cause we been watching you collect," the youths told Whitted. Taking his wallet full of cash and his school meal tickets, the assailants fled west on Bryant Street NE.

Esther McNeal, of Washington, was robbed of a large amount of money by three 12-year-olds who approached her from behind as she was walking the 1400 block of 7th Street SE about 1:05 p.m. Monday. They forced her to give them her pocketbook, then ran west into the 1300 block of U Street SE.

Dorothy H. Hall, of 2722 Connecticut Ave. NW, was robbed about 5:05 p.m. Friday by two men who followed her into the elevator in her apartment building. One of them grabbed her around the neck and wrested her pocketbook from her. The men let her off the elevator where she later recovered the purse without the money.

Robert Auker Hess, of Washington, was robbed about 9:45 p.m. Monday by two men, one carrying a gun in his pocket, who confronted him near his home in the unit block of Bryant Street NW. One of them asked for the time, then his companion said, "This is a holdup," and took Hess's wallet containing bills, a check and papers. Demanding Hess's keys, the youths fled south into an alley in the block.

Willie Allen, of Washington, was held up about 8:05 p.m. Monday by two men who approached him in the 1700 block of East Capitol Street NE. "Okay, Pop, we want it," one of them told Allen and pulled out a revolver. While the gunman kept Allen at bay, the other man searched his pockets and removed the bills and papers from him. The pair escaped in an alley heading south from East Capitol Street.

Hazel E. Hutchin, of Washington, was robbed of a large amount of money by three men who approached her on the Safeway parking lot at 6th and H Streets NE and asked if she needed any help. When she replied no, the trio grabbed her pocketbook containing cash, a bank book and papers, then fled north in an alley toward I Street.

David Wade, of Washington, was robbed about 3:40 p.m. while he was vending in his ice cream truck at 17th and A Streets NE. Three youths approached him and one of them, brandishing a gun, said, "Give up the scratch." Wade handed them his money and the trio ran north on 17th Street.

Mayo Best, of Washington, a deliveryman for the Old Colony Laundry, was held up about noon in the 3700 block of Ely Place SE. A man brandishing a revolver forced Best to hand over his money and fled north on 37th Place.

Thomas Simpson, of Lanham, a routeman for Bergmann's Laundry, was held up at 9:20 a.m. as he was entering his truck in the 4300 block of Dubois Place SE. A man approached him from the rear, placed a handgun in his back and said, "This is a stickup." Taking the bills from his pockets, the gunman ran east in the 4300 block of Dubois Street.

Ralph Warren, of Hyattsville, a driver for Thompson's Dairy, was held up about 12:15 p.m. Monday as he was delivering in the 600 block of Hamilton Street NW. A young man asked Warren for a quart of orange juice. When he turned to get the juice, the man pointed to the gun in his pocket and threatened, "Give me all your money or I will blow your head off." Taking a large amount of bills, the gunman fled west on Hamilton Street.

Kenneth Lauziere, of Hillcrest Heights, an employee of Cafritz Hospital, 1310 Southern Ave. SE, was beaten and robbed about 9:40 a.m. Saturday while he was working at his desk inside the hospital. Someone approached him from behind, beat him over the head with an unidentified object and knocked him unconscious. When Lauziere regained consciousness, he discovered the money had been taken from his pocket.

STOLEN

Two television sets, an adding machine, a typewriter, a Waring blender, and a movie camera, with a total value of $800, were stolen between 1:30 p.m. Thursday and 2:30 p.m. Monday from the home of Pearl Alexander, 4851 Indian La. NW.

An IBM Electric typewriter was stolen from a classroom at Catholic University sometime between 7 a.m. March 31 and noon April 4.

Two radio-phonographs, a stereo tape-player, a stereo cassette tape deck, two record players and a stereo set, with a total estimated value of $500, were stolen sometime between 9 and 11 p.m. Monday from Waxie Maxie's Record Shop, 3933 South Capitol St. SE, after a hole was chopped in the roof.

A cash box and an assortment of liquor were stolen between 11:30 a.m. Saturday and 8 a.m. Monday from a metal cabinet in the rear office of the Majestic Distilling Corp., 7826 Eastern Ave. NW after some ceiling tiles were removed.

A stereo tape deck was stolen sometime between 2 p.m. March 26 and 8 p.m. Monday from a car belonging to Rep. Silvio Conte (R-Mass.). The tape deck was stolen from Rep. Conte's car while it was parked in the Cannon House Office Building garage.

An electro-printer machine was stolen between 5 p.m. Monday and 9 a.m. yesterday from an office at McCabe Hall at American University.

Assorted tools from the supply cabinet, a $1,000 electric hand drill, two sets of drills and brackets, a pair of pliers, three micrometers, a set of taps and dies, a tool box, an attache case, six gallons of cement, several knives, six hammers and paste polish from the auto body shop were stolen between 3 p.m. Monday and 8:15 a.m. yesterday from Phelps Vocational School, 26 Benning Rd. NE. A factory installed air conditioner was damaged when the burglars tried to remove it from a car in the shop.

A white bank bag containing $519.15 was stolen from the rear of the Hub Vending Co. office at 3742 10th St. NE sometime between 6:30 p.m. Saturday and 9 a.m. Monday.

STABBED

Marshall Macarth Callier, of 1652 West Virginia Ave. NE, was treated at Rogers Memorial Hospital for stab wounds he suffered about 6:05 p.m. Monday during a fight in his apartment with a woman. Callier told police the woman grabbed a knife and cut him on the arm during the struggle.

ASSAULTED

Francis Thomas, of 3032 Stanton Rd, SE, was treated at Hadley Hospital for back injuries and a wrist wound she suffered about 8 p.m. Monday when she was beaten in the head and knocked to the floor by a man who attacked her in her home. When she tried to get up, her assailant kicked her in the arms and back.

William T. Wilson, of Washington, a Marine, was shot in the arm about 9:20 p.m. Sunday during a fight with three men, one armed with a handgun, in the unit block of V Street NW.

OREGON LEAGUE OF WOMEN VOTERS ENDORSES DIRECT ELECTION OF PRESIDENT

Mr. HATFIELD. Mr. President, all of us are familiar with the fine work done by the League of Women Voters across the country.

In my State, the group has worked for so many worthy causes that I cannot begin to list them. As a State legislator, as Governor, and as Senator, it has been my pleasure to work in concert with the league on many projects.

I speak today, Mr. President, because of letters I received recently from the Oregon and Portland chapters of the League of Women Voters. Their presidents, Mrs. Wanda Mays, of the Portland chapter, and Mrs. Polly Casterline, of the Oregon group, both have studied the issue of direct election of the President and Vice President. Letters from them both endorse this proposal.

As one who long has advocated election reform and sponsored legislation to achieve this end, I take particular pride in these letters.

Mr. President, I ask unanimous consent that the two letters be printed in the RECORD.

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

THE LEAGUE OF WOMEN VOTERS
OF OREGON,
Portland, Oreg., March 16, 1970.

Hon. MARK O. HATFIELD,
U.S. Senate, Washington, D.C.

DEAR SENATOR HATFIELD: The League of Women Voters of Oregon strongly urges you to support the direct popular election of the President and Vice-President of the United States. We request your support of this bill not only by voting for it when it reaches the Senate floor, but also urge you to use your influence on the members of the Judiciary Committee to get this very important piece of legislation out of Committee.

The League of Women Voters of Oregon believes that the direct popular vote for electing the President and Vice-President is essential to representative government. We support the replacement of the out-moded Electoral College method with one that will be more responsive to the will of the people and which also will correct such defects as the faithless elector, non-election of candidate with popular vote, and the present contingent election provision.

It is imperative that Senate Joint Resolution 1 be passed soon to give each State opportunity to ratify the proposed amendment in time for the 1972 presidential election.

Again, the League of Women Voters of Oregon urges your support in this matter.

Sincerely,

MRS. GEORGE CASTERLINE,
President.

LEAGUE OF WOMEN VOTERS
OF PORTLAND,
Portland, Oreg., March 25, 1970.

Senator MARK O. HATFIELD,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HATFIELD: When the electoral reform bill calling for the direct election of the President, now pending before the Senate Judiciary Committee is reported back to the Senate, we hope your vote will be "YES".

The League of Women Voters, after two years of study and research, reached a national consensus supporting the national direct popular vote method to elect the President and Vice President. The League believes that the direct popular vote method is essential to representative government and should include provisions for a national run-off election in the event no candidates have received 40% of the popular vote. We also support uniform national voting qualifications and procedures for presidential elections.

Your support of the direct election of the president will be appreciated. Thank you for your courtesy.

Very truly yours,

MRS. C. W. MAYS, JR.,
President.

OUR HIGHWAY ENVIRONMENT

Mr. DOLE. Mr. President, today we have reached a point where the enhancement and preservation of our environment has become a critical issue in our society. Visual environment is vital to this overall concept. Congress established policies to deal with highway environment through the passage of the Highway Beautification Act in 1965. Yesterday I noted in the Wall Street Journal the courageous steps that Secretary John A. Volpe is taking in stopping "freeways that adversely affect our environment." I commend the Secretary for his strong stand.

He is not without opposition. The Wall Street Journal revealed:

Francis C. Turner, head of the Transportation Department's Federal Highway Administration and a career Federal highway builder, makes no bones about disagreeing with the scope of his boss's new policy. But he also recognizes that with Mr. Volpe squarely on the side of many freeway opponents, there is no turning back.

Congress passed the Highway Beautification Act in 1965. Title I of the act dealt with the removal of billboards along our Nation's highways.

There are two reasons why the highway beautification program has not succeeded.

First, some of the people on the bureaucratic level have fought against the leadership provided by Congress and the Department of Transportation. Second, the position of Highway Beautification Coordinator has never been filled with a man of sufficient leadership qualities to solve the many problems which face any administrator dealing with environmental questions. Congress did not anticipate all the problems nor all the solutions, but it did establish a policy, and that policy is as valid today as when we passed the act in 1965. We must control the blight on our Nation's highways, and we must recognize the property rights of all our citizens while we do it.

The position of Highway Beautification Coordinator has been vacant for almost 1 year. The administration should immediately fill this position with a man who has sufficient experience and knowledge to understand the problems, and who is motivated enough to want to solve the problems connected with highway environment. We want a man who will administer the law and the policies established by Congress and the Department of Transportation. We do not need an empire builder who fights with the administration and would like to establish conflicting policies. We need a leader who will get on with the job and remove the unwanted signs.

Mr. President, I ask unanimous consent that the Wall Street Journal article be printed in the RECORD.

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

[From the Wall Street Journal, Apr. 7, 1970]

HALTING HIGHWAYS: VOLPE STIFFENS STAND ON ROADS THAT DISRUPT HOUSING, SCENIC SITES; TRANSPORTATION OFFICIAL BARS MANY PROJECTS IN PARKS AND HISTORIC URBAN AREAS; NEW ROUTES PUSH COSTS UP

(By Albert R. Karr)

WASHINGTON.—The Government's modest attempts to limit highways that tear up homes or mar scenery appeared destined for scuttling when long-time road champion

John A. Volpe took over as President Nixon's Transportation Secretary.

But instead Mr. Volpe is emerging as an even stronger opponent of disruptive highway projects than his predecessor, Alan Boyd, who launched the Government's curb-the-freeway drive. In decisions affecting highways from Texas to New Hampshire, Mr. Volpe is stopping projects that conservationists say would damage parks or sites of historical interest.

In San Antonio, the Secretary has delighted conservationists but irked Republican Mayor Walter McAllister and Texas highway officials by halting a road due to cut through two parks and by suggesting an alternate route. Mr. McAllister insists "there's no justification" for this change of plans now, and the state highway men have offered instead to complete the original plan without any Federal money. But Secretary Volpe spurns that proposal. The unbuilt part of the road has come to be known as "the Volpe gap."

FRANCONIA NOTCH FIGHT

In New Hampshire, Mr. Volpe has blocked construction of a 15-mile segment of Interstate Highway 93 that would have cut through picturesque Franconia Notch. Conservationists, displaying "Save the Notch" bumper stickers, have fought the project for several years; among other things, they fear the construction would damage the already crumbling rocks profile that forms the Old Man of the Mountain, a scenic high point of the Notch. The Granite State's GOP governor, Walter Peterson, is trying to get the Secretary to reverse his decision, but apparently in vain.

"Freeways that adversely affect our environment cannot be built," Mr. Volpe declares.

The secretary is also insisting that any highway projects that would demolish houses be held up until decent replacement housing is assured. Now, he predicts, road planners will "think a great deal more seriously about going through areas that involve taking houses."

These moves are alarming roadbuilders, who expected a clear path when Mr. Volpe joined the Nixon Cabinet, while winning praise from a number of freeway enemies.

Francis C. Turner, head of the Transportation Department's Federal Highway Administration and a career Federal highway builder, makes no bones about disagreeing with the scope of his boss's new policy. But he also recognizes that with Mr. Volpe squarely on the side of many freeway opponents, there is no turning back.

MORE DISPUTES LIKELY

Anthony W. Smith, president of the National Parks Association, expresses pleasure at the Secretary's move "in refusing to approve highway proposals that would adversely affect park, recreational and surrounding areas." The Rev. Theodore M. Hesburgh, president of Notre Dame University and head of the U.S. Commission on Civil Rights, whose investigations have shown urban highways as one cause of minority-group unrest, calls Mr. Volpe's housing-replacement policy "forward-looking and long overdue."

Mr. Volpe will probably go much further in the months ahead to halt or relocate freeways designed to push through communities, parks or historical sites. While his department would prefer that state highway planners settle disputes on their own, the Secretary sees perhaps a dozen more in which he'll probably have to intervene. Some of these could involve highways affecting the Tinicum Marshes and Wildlife Refuge in Philadelphia, Minnehaha Park in Minneapolis and historical sections of downtown Charleston, S.C.

"I'm saying (to highway planners) that either they come up with decisions on their own to save the environment and help people or we might well have to take the project involved off the freeway system," he says.

While the states actually design the highways in the interstate system, the Federal Government pays up to 90 percent of the cost. Hence it can call off disputed projects or press for changes.

MISSING A DEADLINE

What's more, Federal officials expect state highway planners to proceed more cautiously on future projects. Many roads just won't be attempted, they say, because of the costs and complexities raised by the new restrictions on routes.

"I wouldn't anticipate much pressure from states to build new highways in metropolitan areas any more," says an official of the Bureau of Public Roads, a Transportation Department unit.

Because of various controversies, Highway Administrator Turner predicts that some 150 miles of interstate highways, probably costing more than $2 billion, will not be finished by the current 1974 deadline—if they're built at all.

Partly because of these delays, the cost of the interstate highway program is climbing and the time set for finishing it keeps lengthening. Mr. Volpe is expected to ask Congress to extend until 1978 the mammoth highway trust fund and the taxes going into it to pay for the interstate roads; this arrangement is now scheduled to run out in 1972. Cost of the program is now estimated at about $63 billion, up from the $41 billion projected when it began 14 years ago.

Volpe intervention is not the only reason highway plans are being upset. Despite the pro-highway stands of Mayor McAllister and Gov. Peterson, many other state and local officials are insisting that urban freeways not be built as planned or not be built at all.

Gov. Francis W. Sargent of Massachusetts has declared a moratorium on most roadbuilding in the Boston area, pending a new study of highway needs and social and environmental consequences. He says a planned "inner belt" linking Cambridge and Boston with an existing highway network might not be necessary. Mr. Volpe, his predecessor, thinks the road is needed, but he isn't about to pressure Gov. Sargent to build it.

Responding to opposition from five Cleveland-area communities, Ohio Gov. James A. Rhodes has ordered that a segment of Interstate 290 not be built through their region and may have it deleted from the interstate system. Local opposition to a segment of Interstate 278 in Newark, N.J., forced cancellation of the stretch of road. Town officials in East Hartford, Conn., oppose an interstate segment there.

In New York City, officials have taken two major expressway programs off the highway planning map. Seattle has rejected a Washington State Highway Department road package because it included a second wide freeway cutting a north-south swath through the narrow city.

"The question in some urban areas now isn't what route but whether to build any route," says Gov. Daniel J. Evans of Washington.

SPREADING OPPOSITION

These reappraisals reflect a wave of public reaction against urban freeways. The opposition has intensified in recent years, reflecting the fact that states tackled the easier rural segments of the interstate system first and then later began trying to push freeways through built-up city and suburban areas. Now white suburbanites are joining black ghetto dwellers to protest roads, saying they are ugly, use valuable land, tear up homes, stores and parks, split neighborhoods and add to pollution and noise.

In a number of places, though, the local citizenry is deeply split over highway decisions. In San Antonio, many husbands favor the planned route through the two parks; many of their wives, including members of the San Antonio Conservation Society, support the Volpe-proposed alternative, which would cut through a wealthy community but would take only about four homes there. While some influential Republicans favor the original route, others oppose it. And some of Sen. John Tower's aides pushed for that plan, they heard from the conservationists and backed off.

Indicative of the local complications that can arise in a dispute over one leg of the proposed Baltimore freeway system. Originally it was to cut through the middle-class Negro neighborhood of Rosemont. A design team then proposed going through a white cemetery instead; a predictable howl followed. A leading alternative now is a route through a different, largely black residential enclave, taking 67 homes, says a Maryland Roads Commission official. Still, says a planner, "There's tremendous community opposition."

Here in Washington, resistance to roads is evident at the Government's top levels. High Nixon Administration officials have begun attacking the highway trust fund, calling it an excessive commitment to roads that has prevented allocation of funds for critical mass transit needs. Top White House domestic affairs staffer John Ehrlichman repeatedly urges Mr. Volpe to make antihighway decisions whenever necessary, the Secretary says.

NEW ORLEANS PROJECT KILLED

So far, his decisions have dealt mostly with threats to parks and scenic beauty. Last summer Mr. Volpe vetoed an interstate riverfront roadway through New Orleans, siding with historic-preservation buffs who contended it would mar the city's famed French Quarter. Mr. Boyd had ordered design changes to minimize such effects but stopped short of canceling it.

The Secretary has also given opponents of continued freeway building in Washington partial backing in their protest over displacement of housing and damage to scenic and historical attractions; he has recommended that some segments be restudied or rerouted.

His mandate that no roads be built without firm assurance of replacement housing could mean that highway planners may throw in the towel on some projects, considering the cost of finding new homes. Some 50,000 persons a year are uprooted from their homes by new highways. Replacement-housing problems have snarled highway projects in Charleston, W. Va., and Philadelphia, among other places.

There is ample evidence that the rising concern over the social and environmental effects of highways is making roadbuilding considerably costlier. A dispute over the proposed Richmond Parkway on New York's Staten Island, which was to penetrate a scenic area flanked by parks, camp and a golf course, has brought a proposed rerouting that's expected to cost $42 million, against $30 million for the original route. Baltimore's freeways now are tagged at $800 million, against $300 million when they were to be shorter and when prices were lower.

POLLUTION IN EUROPE

Mr. MATHIAS. Mr. President, every day, each of us receives more evidence that we are destroying our environment through carelessness and abuse. Moreover, the immediacy of the problem was painfully apparent to anyone driving along the Potomac after the recent storm.

The demand for Congress to enact legislation to save the environment is well founded. President Nixon has taken the initiative in his message to Congress on environmental quality. I have supported his efforts by cosponsoring the seven bills submitted by the administration and by introducing several other pieces of legislation.

But we should not forget that the consequences to the environment of technological progress, human carelessness, and governmental myopia are not native to the United States. The European community faces the same crisis as our Nation. In fact, this year has been proclaimed European Conservation Year, recognizing the warnings of Dr. Hans Palmstierna, Sweden's environmental expert. He stated:

I am afraid a real disaster may have to occur before people really will realize the utter necessity of environmental control.

I commend the Morning Herald of Hagerstown, Md., for publishing an article which calls our attention to the international nature of the pollution problem.

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:

POLLUTION IN EUROPE BOTH CONCERNS AND BAFFLES LEADERS

LONDON.—The picturesque Oeresund Straight between Denmark and Sweden is known as "the sewer."

Last June, an estimated 40 million fish died in the Rhine.

No salmon have been found in the Thames for 200 years.

Most living things have disappeared from the lakes and many rivers of northern Italy.

The Seine is gray, greasy and repellent.

Europe sits in an ever-widening mess, her rivers befouled with human and industrial wastes, her coastlines blotched by oil slicks and sewage, the skies over her cities poisoned by civilization's gases.

The governments are aware of the growing menace, but they are largely baffled or intimidated by the skyrocketing cost of cleanliness, the rising tide of population and automation and the ever-increasing demand of industry for more water.

The sheer magnitude of the problem inhibits some of the smaller countries and Dr. Hans Palmstierna, Sweden's environmental expert, says gloomily: "I am afraid a real disaster may have to occur before people really will realize the utter necessity of environmental control."

The year 1970 has been proclaimed European Conservation Year and there appears to be a new sense of urgency. The North Atlantic Treaty Organization has set up the Committee on Challenges of Modern Society to stimulate action by member governments. The Council of Europe, with a score of members, is organizing a series of conferences to spur action on an international scale.

The majestic Rhine, so prominent in fable and military history, touches Switzerland, France, Germany and Holland on its way to the North Sea. It has been called "Europe's biggest sewer" and it is growing dirtier.

More than 7,500 municipalities deliver raw sewage into the Rhine and its tributaries. Five French potassium works in Alsace dump seven million tons of salt into the Rhine annually.

And yet, when the Rhine reaches Holland, it supplies half of the drinking water consumed by the Dutch after passing through Holland's industrialized region.

Georges Housiaux, Belgian president of the European Consultative Assembly's working group on water pollution, says the bacteria count of Rhine water near its origin in Switzerland's Graubuenden Valley is 10 per cubic centimeter. By the time it reaches Holland the count has soared to 1,500,000 per cubic centimeter.

Joseph Addison England's 17th century essayist once wrote that every true Englishman believed the Thames was "the noblest river in Europe." But when a few four- or five-inch fish were hooked in London last summer it was a picture for all the papers.

No other angler had reported a bite on the London banks for 50 years. The salmon which once frolicked the Thames have shunned the noble river for 200 years. Tourists find it a muddy smelly stream pocked in its lower reaches by floating rubbish.

The oxygen content of the Thames water, a measure of its health, frequently sinks to zero during the summer.

There are 20,000 miles of main rivers in Britain and for a quarter of that distance they are badly polluted. The Trent River, where Isaac Walton once fished, is one of the worst. At Nottingham, one-third of the river is said to be composed of effluent from sewage plants.

What is recognized as Britain's most noxious river, the Tame, is one of the Trent's tributaries. It carries away the industrial effluent and sewage from the factory city of Birmingham and three other West Midland burroughs—15 million gallons of it every day. Nothing lives in the gray, opaque Tame.

Foreigners think of Denmark as a model of cleanliness, but seamen sailing the Oeresund say "you can smell your way to Copenhagen."

The smell comes from two big bubbles of brown foul-smelling water two miles off the Danish capital. This is where Copenhagen unloads its sewage at the rate of 50,000 tons of organic matter a year. It has been doing it for centuries.

From Hamlet's Kronborg Castle at Elsinore to Koege 35 miles south of Copenhagen, many of the inviting beaches have signs: "No bathing." The sewage and waste water problems of Copenhagen are so immense that parliament exempted the capital from recent new laws designed to curb pollution.

The government has set up an anti-pollution council to produce recommendations for fighting all forms of pollution land, sea and air. The government already has enacted strict measures to ban the use of DDT and control pesticides, insecticides, fertilizers and other chemicals.

Relying for many years on subsoil water for drinking, Denmark has been reckless with its streams, lakes and offshore waters. Hardly a stream or lake is unpolluted; many are completely dead. Many streams smell of sewage and numerous fjords around the country are unfit for bathing.

Norway, with 96 per cent of its 135,000 square miles virgin land, uncultivated and unpopulated, did not consider water pollution much of a danger until last summer when a small chemical plant south of Oslo dropped about four gallons of cyanide into a sewer.

In the resulting clamor reports of pollution came in from all over the country. Fish in mountain lakes were reported dying. Fish in some of the fjords were said to be dangerous to eat because of mercury and other poisons they had absorbed. A nationwide campaign was started to register all sources of pollution and put a stop to it.

Sweden, in 1967, established a special government department for environment protection after scientists warned of air and water pollution. The government has brought forward a large package of laws to protect the environment.

Unsatisfactory sewage disposal plants are being improved with the help of government funds. Wood industries were induced by the government to install new equipment after it was found lakes and streams were polluted by mercury and other waste products.

The "Blue Danube" has never been what it was cracked up to be in poesy and song. Health officials have warned repeatedly against bathing in the river near Vienna and Linz, where the bacteria count has been found to be 500 million to the cubic centimeter of water. Upstream from these cities the count was only 1,900 to the cubic centimeter.

Austria is full of lakes and mountain streams, and they are in trouble too, due largely to the growth of tourism. Sewage from hotels and camping sites usually is directed right into the lakes.

Professor Reinhold Liepolt, head of the Federal Water Research Station in Vienna, came up with the idea of building sewage rings around lakes to keep sewage out of the lakes. One was installed around Zeller Lake in Salzburg Province and fish have returned to the lake. They are being planned for other lakes.

Near Paris, 40 rose flamingos in a private zoo died in the water of a brook. The owners blamed pollution from a factory. Fish have died by the thousands in other French streams. The United Nations Educational, Scientific and Cultural Organization estimates that six million tons of pollutants go into French rivers every year.

In Paris alone, more than a million cubic yards of used water enters the Seine each day and 25,000 tons of suspended matter is added yearly.

Italy has 5,000 miles of Mediterranean and Adriatic coast and more than 3,500 miles of it is in a degraded state from sewage, industrial wastes and refuse from ships. Oil slicks disfigure about a quarter of the coastline and are regarded as the most serious form of pollution. Almost all rivers in northern Italy have lost their fish and the blight is spreading to central and southern Italy as industry moves south.

Switzerland began taking steps many years ago to keep her lakes and rivers limpid and blue for the tourists. They are still blue, but not so limpid. What pollution there is comes mostly from households and the country spends $250 million a year to maintain 300 waste and sewage plants with 50 more under construction and 100 planned.

The Soviet press writes indignantly about the pollution of lakes and rivers, particularly when it kills off the sturgeon which produce one of Russia's prime export products, caviar. Tons of the fish have died in the past several years, "inflicting a large amount of damage on the national economy," one paper said.

West Germany's industrial Ruhr area has both the worst water and air pollution in the country. The Duisburg chamber of industry and conference boasted recently that only 251,000 tons of industrial grime settled on the area in 1968 compared to 312,000 tons in 1963.

More than $600 million has been spent fighting air pollution in Northrhine—Westphalia in the past 15 years, but a state official admitted "it will never be possible to make the air over the Ruhr anywhere near as clean as over the Bavarian Alps."

Britain too has spent millions of dollars and government scientists now say that London will never again have a "killer smog" like the one in 1952 which killed 4,000 persons. There are still high concentrations of sulphur dioxide in the air at times however.

Italy is preparing stiff regulations to control air pollution from heating, factories and automobiles, and Belgium has set up 300 air pollution control stations. New measures will establish protected zones and regulate various fuels.

Oil floating in from the sea adds to the griminess for Britain and other maritime countries of Europe. Britain is particularly

sensitive because of its experience with the Torrey Canyon, a tanker which ran aground off southern England and dumped 100,000 tons of oil into the sea in 1967.

The beaches of Cornwall and Brittany, in France, were massively polluted.

MEETING OUR NATIONAL HOUSING GOALS

Mr. HATFIELD. Mr. President, I have brought before Senators on many occasions the severe problems facing Oregon's timber industry due to a lack of demand for wood products. The timber industry which is vital to Oregon's economy is imperiled with a near state of depression due to the growth of inflation and tight monetary policies affecting housing and especially in view of the fact that Oregon supplies a fifth of the softwood and nearly half of the softwood plywood used for America's homes.

It is most reassuring to note the administration's understanding of the ramifications of our economic policies on the housing and timber industries and that lack of mortgage money is one of the most pressing restraints on housing. I call attention to the remarks by President Nixon on January 21, 1970 in the National Association of Home Builder's statement of policy:

> Yesterday I met with Secretary Romney, Louis Barba, and officials of the National Association of Home Builders to discuss the crisis situations we are facing in the housing of our people. The continuing decline in housing production, the outflow of funds from savings institutions supporting the housing market, and the drying up of traditional mortgage sources are contributing to a serious housing shortage which is of grave concern to our national well being. Housing and the industry which provides it are bearing a disproportionate burden of both current inflationary pressures and the anti-inflation measures instituted to restore price stability. As a result, a major national resource—the productive capability of our private home building industry to meet our national housing need—is being greatly threatened.
>
> The decline in housing production must and will be stopped. The private sector and all levels of government must take the steps necessary to assure that the nation's housing needs are more fully met now.
>
> There are no easy answers to the housing problem, and a full solution will require time. Extraordinary and unprecedented steps have already been taken. These include extensive direct support to the mortgage market through the Federal National Mortgage Association and the Federal Home Loan Bank Board. In addition, the Department of Housing and Urban Development has authorized issuance of mortgage-backed securities fully guaranteed by the government and has released $1,150 million of funds to provide special assistance in the financing of housing production for low and moderate-income families.
>
> The need now is to go beyond these steps—to change basic attitudes and reexamine old patterns of activity—so that we can reach more quickly the full solutions we seek.
>
> The first step is for all sectors of our economy—business, labor, consumers, and all levels of government—to be fully aware of the nature of this crisis, and for each of them to address itself vigorously within its sphere of responsibility toward adequate solutions. The need to regain early control over inflation is paramount, and voluntary steps to restrain unnecessary spending can play a vital role. In this connection, I have firmly committed the federal government to do its part.
>
> In order to maintain a surplus in the budget, I have cut federal spending to the minimum possible levels this year and next. Some needed federal programs simply will have to be postponed, so that we live within our means. This will help free resources for housing. I urge the private sector to follow this example by also postponing avoidable expenditures and increasing savings.
>
> Some time ago I cautioned business and labor against continuing to base price and wage decisions on the expectation of continued inflation. Those who do are bound to lose. The sooner this is realized the better off they—and the nation as a whole—will be.
>
> Lack of mortgage money is perhaps one of the most pressing immediate restraints on housing. Needed housing must and will be financed and built. All financial institutions—commercial banks, mutual savings banks, savings and loan associations, life insurance companies, pension funds, and trust funds—should recognize the investment opportunities that will exist in this field over the years ahead. They should seek now to move affirmatively into a better position to capitalize on these opportunities.
>
> I pledge that this Administration will take every possible step to solve this most serious housing problem consistent with the overriding need to contain inflation. The housing of our people is and must be a top national priority.

Further, the President's report of April 1, 1970, on national housing goals announces the measures that are being taken to alleviate the crisis by maintaining and expanding mortgage credit at more reasonable interest rates. The President is hopeful that these steps will encourage an increase in housing production by the summer of 1970.

Not only is Oregon's economy affected by lack of new housing starts but it is a national need and responsibility to meet our housing goals. I would concur with the President's January 21 statement that the housing of our people is and must be a top national priority. Every citizen has a right to adequate housing. Supplying housing is the number one social issue for it directly relates to the race issue, the ghetto problem, and the disturbances in our streets.

LAND AND WATER CONSERVATION FUND ACT OF 1965

Mr. JACKSON. Mr. President, on February 25, I was joined by the ranking minority member of the Committee on Interior and Insular Affairs, the Senator from Colorado (Mr. ALLOTT) in my sponsorship of S. 3505, a bill to amend the Land and Water Conservation Fund Act of 1965. S. 3505 would amend this act by providing a minimum annual appropriations authorization of $300 million for the purposes of the fund. This amounts to a full 50 percent greater funding authorization to the Land and Water Conservation Fund Act.

Mr. President, I feel it is incumbent upon Congress to move expeditiously in the enactment of this legislation if we hope to provide present and future generations of Americans with an opportunity to participate in quality recreation in a quality environment.

It was my privilege to have sponsored the 1965 act, together with the 1968 amendment to that act which provided the State and Federal recreational agencies with a guaranteed annual income of $200 million through fiscal year 1973. Since 1965, the fund has made available almost $635 million to the States for park and recreation land acquisition, development and planning, and to the Federal Government for recreation land acquisition. The investiture of these funds was successful in providing millions of acres of additional recreational properties. However, the demand for recreation has been increasing at such a tremendous rate that it has far outstripped the present supply of funds to meet that demand.

This fact was elaborated upon by the President in his state of the Union message, in which he stated:

> As our cities and suburbs relentlessly expand, those priceless open spaces needed for recreation areas accessible to their people are swallowed up—often forever. Unless we preserve these spaces while they are still available, we will have none to preserve.

In his recent message on environment the President proposed new legislation to possibly increase the fund. Secretary Hickel's letter of February 10 to the President of the Senate submitted the legislation recommended by the President. Its intent is to increase the fund above the $200 million level currently authorized by accelerating the sale of surplus property, the receipts from which now go into the fund. Although I applaud the goal of increasing the fund, I believe the method unnecessarily proposes a complicated and uncertain formula that may increase the fund by a small amount or might result in no increase at all depending on the sale of surplus Federal real estate in any given year.

In an effort to increase the amount of money available to the States and the Federal Government for park and recreation purposes, and at the same time provide the participants of this program with a real degree of certainty as to just how much money would be available to them each fiscal year, Senator ALLOTT and I have sponsored S. 505, which provides a minimum amount of $300 million a year for the remaining life of the land and water conservation fund.

Mr. President, I regard it as highly significant that every member of the Senate Interior Committee has now asked to cosponsor this legislation. This action is, I believe, indicative of the deep feeling by the members of the committee that steps must be taken in the near future to provide the necessary funds for acquisition and development of desperately needed park and recreation lands.

Land is a finite resource, and as such will become more valuable as demand for this resource intensifies. We have already lost many opportunities to acquire land throughout the Nation which by today's cost standards represented real bargains. The longer we wait the more difficult and costly it will become to secure the necessary lands to insure that the American public will be able to enjoy high quality outdoor recreation.

U.S. PASSENGER FLEET—THE BROKEN LINK

Mr. MATHIAS. Mr. President, daily the inactive list of U.S. flag passenger liners grows. At present, there are only 13 in operation. While it would seem that a strong commercial force is required, a pattern of retreat has developed. In addition to arguments of a symbolic and commercial nature, there is a need to consider our defense requirements. Our policy of maintaining both a nuclear and conventional response capability requires that ships, wholly owned by our country, be available.

Dr. Robert A. Kilmarx, Director of Soviet Seapower Study, Center for Strategic and International Studies, Georgetown University, argues persuasively for a reexamination of the present legislation relating to our passenger fleets.

I ask unanimous consent that his article, published in the April 1970 edition of Navy-The Magazine of Sea Power, be printed in the RECORD.

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

U.S. PASSENGER FLEET—THE BROKEN LINK

(By Robert Kilmarx)

In the 1950s, when the strategic concept of "massive retaliation" was the order of the day, and conventional forces were relegated to a distinctly secondary place, America's passenger fleet was strong and many elegant liners plied the trade routes. In the 1960s when the shift was made to a flexible strategic force, with the emphasis being placed on non-nuclear response, the very ships necessary to transport that response were, in increasing numbers, being laid up, or deactivated.

It is a grim, and dangerous paradox that when we did not plan to use them there were over fifty U.S. flag passenger liners in operation, but now, when we are very much in need of them there are only 13; and in a few years there very likely will be none.

First to become idle was the American Export-Isbrandtsen Lines liner *Atlantic* in October 1967. She was joined in August-November 1968 by the *Constitution* and *Independence*. Then Moore-McCormack laid up the *Argentina* and *Brasil* in September of 1969. Finally, in November, the majestic *United States* was placed on the inactive list. Today, they lie lifeless at out-of-the-way piers in Baltimore, Jacksonville and Newport News, their hope for future use at best uncertain.

The *Independence* and her sister liner the *Constitution* sailed lucrative routes to Europe and to the Mediterranean during their heyday; the *Independence* carried 1080 passengers and a crew of 580—the passenger list was usually full. Now, only a crew of two live aboard. Her withdrawal from service came at a most inopportune time, occurring just as Soviet penetration of the Mediterranean by political, economic, military and psychological means was going into high gear. This is not an isolated situation, quite the contrary, it has been a sad pattern of commercial retreat when a strong posture was needed.

FEW OPERATING

The only U.S. flag passenger ships still operating in the east coast are the Grace Line's *Santa Rosa* and the *Santa Paula*, each of which can carry only about 300 passengers, and four smaller ships capable of handling 125. Part of the reason these ships are able to operate lies in the fact that they are not truly "luxury liners," although they are most comfortable, since they carry cargo as well as people. Even such combination ships have had problems, for they too are required by law to adhere to specific routes.

Cruise shipping, which would seem to be the answer, is impossible on a full time basis, for without a definite route schedule ships are not eligible for government subsidy, and without subsidy they can not remain economically feasible. Hence, great liners tied up at piers.

On the west coast the story is the same, although one ship, the Matson Lines *Lurline* operates without subsidy—the only American flag vessel to do so from either coast. Oceanic Steamship Company, a Matson subsidiary, still sails two combination ships to Australia and American President Lines has three combination ships operating from the west coast. The sands of time are running out, however; these ships have not been operating on a year round basis and one has already been sold.

NO PROVISION

The future holds out little hope for improvement since President Nixon's proposed legislation for our Merchant Marine, which may soon be enacted, does not contain any provisions directly relating to the U.S.-flag passenger ship industry. To the Administration passenger ships pose a disturbing dilemma, for management feels that they have become an economic liability. To continue their operation is only to sustain intolerable losses—counting government subsidy, the losses in 1968 totaled $60 million. These losses have been produced by high operating costs and the failure to achieve parity with foreign competitors through operating subsidy, as well as the lack of suitability for cruising, under existing statutes. Nothing short of amendment of the 1936 act, which established the present subsidy structure will resolve the problem and there is strong political opposition to such a move in some quarters. The result is that the United States, at a time when it needs passenger ships not only for commercial, and "show-the-flag" reasons, but for very valid defense reasons, finds itself locked into a system whose change would create great political problems.

As important as labor and other operational costs, as well as statutory restrictions have been in producing the problem, by far the most devastating onslaught to America's passenger fleet has come from the country's commercial aviation—which transports people for less money more quickly. That "quickly" is not necessarily a virtue is obvious in the cruise trade, but still must be considered on a point-to-point liner.

Fewer than 15 per cent of all travellers on the North Atlantic route went by air in the 1950's. Since then, with the availability of jet aircraft the figures have reversed—and are even worse—passenger ships on this route now carry only a 7 per cent share of this travel market.

NATIONAL NEED

Clearly, without commercial justification, the only basis remaining to continue the operation of passenger ships would be a national need declared by the federal government, to insure that sealift is at hand to transport our armed forces in case of a future conflict.

Arguments about the contribution of the U.S. flag passenger ships to the United States' image abroad, to our national prestige, to our balance of payments or to other less tangible values of state apparently have not proved persuasive enough to bring change. There is, however, one argument that must be persuasive enough if we are to fulfill our defense requirements—these ships are necessary to move troops and the materials those troops need.

The Department of Defense, however, has not come to the passenger fleet's aid and has not offered military justification for insuring the availability of these ships and their replacement in the years ahead. This is attributable primarily to the still prevalent belief, inherited from Secretary McNamara's administration, that air transport can satisfy anticipated requirements supported by limited sealift that may be obtained from the Military Sea Transportation Service, the National Defense Reserve Fleet (NSDF) and chartered foreign vessels.

The subsidiary concept of "effective control" of foreign flag vessels, that are not U.S. owned, only chartered was fostered by McNamara while Secretary of Defense and unfortunately, its ghost still haunts the corridors of Congress and the Pentagon. This, despite the overwhelming evidence that the tenuous ties of a charter arrangement do not meet the sound needs of defense planning. The validity of the argument against "effective control" receives daily reinforcement from the actual experience of the Viet Nam war. It is also worth remembering that when in 1967 the Suez Canal was closed airlift measures were not sufficient and cries went out for help from foreign vessels.

These experiences make it clear that there are absolute defense needs which can only be met by ships wholly owned by, and available to, the United States to meet the contingencies of mobilization at whatever level they occur.

The U.S. passenger fleet, with its capability to move troops is a definite part of this picture, and its increasing malaise a subsequent weakness in the defense network. The threatened demise of the U.S. flag commercial passenger ship industry puts a difficult burden on Department of Defense planners. For a while they may count on the U.S. passenger ships now tied up at U.S. docks—most of them are in good condition and have been adequately maintained. The ships, however, are aging. The *United States* and *Independence* are about 20 years old. The *Argentina* is even older having served as a troopship in World War II before undergoing conversion to a liner starting in 1947. Should the industry conclude there is no future possibility of a profitable commercial market for their utilization they may end up as floating hotels or in the Reserve Fleet, or attempts may be made to sell them abroad. In any case, they would not be readily available in an emergency.

NO REPLACEMENTS SEEN

No replacements are in sight. The Maritime Administration seems disposed to permit their passing, looking to the day when further subsidies for passenger ship operations would not have to be paid. Also the Maritime Administration does not seem inclined to grant construction subsidies for replacements, and ship purchases from abroad with subsidy are illegal.

The Military Sea Transportation Service will not provide the answer in the 1970's. Only three transport ships (TAPS) are presently operational in MSTS. There are about 18 additional TAPS in the Maritime Administration Reserve Fleet, or in the process of being transferred from MSTS. After having been employed in carrying Allied troops, these 3 ships are also to be deactivated after the Viet Nam war to join the NSDF, this means they would not be ready for 90 to 120 days. Their reactivation would require extensive warning time in case of a future crisis—time that will not exist. The experiences of Viet Nam revealed that many National Defense Reserve Fleet ships were in worse condition than expected and crew shortages and subsequent delays also have been a continuing problem. There is no reason to think things would be easier in the future. The aging NSDF is a disappearing asset (it is now about 25 years old). By 1978, it may be no more. The interests of the Military Sea Transportation Service for fol-

low-on vessels, too, have run into major problems, partly because of budgetary constraints and industrial concern about government competition.

At the same time as the passenger capability has dropped our amphibious forces have been hard hit. Active amphibious sealift ability has been markedly reduced because of budgetary cutbacks. A number of the U.S. Navy's LWAs, LPAs, LSDs and LSTs are being deactivated or scrapped during the fiscal years '70–'71. The Navy's amphibious sealift capability, therefore, is being reduced from two marine expeditionary forces to about 1 and one-third. It will be some time before new LHAs are available, thus the danger exists of a major gap in quick reaction, amphibious sealift performance, as well as follow-on seaborne logistic support, especially to areas of the world where port facilities might not be adequate. There it might be essential to have barge-type ships, with roll on-roll off capability, carrying 800 to 1000 troops or more with organic equipment.

MAIN "TRADES"

The sealift capability from many of the new commercial containerized ships also is restricted because of their non-self-sustaining characteristics. They are designed primarily for the major trade routes and not for carriage to underdeveloped countries. Even with the incorporation of defense features, as is planned, their role may be markedly restricted unless guided by a comprehensive Department of Defense sealift program for the 1970's.

One of the problems is adequate DOD sealift planning: planners apparently have not effectively tackled some key issues of strategic mobility. As Vice Admiral Lawson P. Ramage told the Naval War College on 6 February, 1969, ". . . I have been appalled in recent months to discover how many senior officers of all services particularly those who are intimately concerned with forward planning, have no real conception of the problems of moving troops and equipment to the objective area."

A number of Pentagon military planners agree that some measure of sealift is essential, but they worry about where it may come from in the years ahead and cannot estimate how much will be required with high confidence.

AIRLIFT INADEQUATE

In spite of the availability of C–141 and C–5 air transports, the adequacy of an "airlift only" doctrine in the new military strategy is seriously questioned by many knowledgeable military spokesmen. Contingencies that can be envisaged might call for the employment of U.S. military forces under circumstances in which the landing of troops by air and their marriage to unit equipment in the theater might not be feasible. Insuperable problems may arise because of the vulnerability of the aircraft and of the landing sites, or their lack of availability; problems of overflight rights and the requirements of supporting logistic bases in nearby territory may arise. The very magnitude and character of required operations may preclude airlift alone.

A further reason for concern is the inadequate support in Congress for forward floating deployment of military equipment. Approval for Fast Deployment Logistic ships was never obtained, and the danger even exists that the forward base supplies that have been used up in the Viet Nam war will not be replaced. The problem will be compounded as more of our forces are withdrawn from the Far East and Europe.

There seems to be ample justification for the comments about sealift contained in President Nixon's foreign policy statement. When he was discussing NATO strategy in his statement, "Strategy for Peace" last month, he included the following, "Questions have been raised concerning whether, for example, our logistic support . . . our airlift and sealift capabilities are sufficient to meet the needs of the existing strategy." The answer to these questions may be "not sufficient" but the difficulty may turn out to be the strategy.

COUNTER REACTIONS

Since the operational meaning of a particular strategy is dependent upon capabilities, constraints such as these are alarming—are symptomatic. They could markedly limit not only our willingness to defend our allies but even our capabilities, if the will could be found. In the case of some of our allies and friends, such constraints could help to create counter-reactions. They could be forced to decline to act in their own defense with inadequate means. They may accommodate to threats so that hopeless defense efforts would not be necessary. Some might even turn to the Soviets for assistance.

The fact that the Soviet Union now is at least equal and probably will become superior in some measure in strategic offensive nuclear warfare capabilities puts an increased burden on the current credibility of conventional forces, supported by sealift. These should not be wanting. Serious danger exists that the Soviets, mindful of the changing military balance and suffering from ideological hardening and unstable, weak political leadership, may seek unanticipated opportunities for quick international political gain, when no response from the United States is expected. For the Soviet Union is turning more to an external global policy, while U.S. priorities are turning inward.

Flexible response in many contexts could thus become a hollow shell. The prospect of denial of conventional military options to the President in future contingencies and the political price that may have to be paid for such denial should be cause for great concern. Insufficiency even in sea transport can undermine a successful "Strategy for Peace."

MIDDLE EAST LOBBIES

Mr. HATFIELD. Mr. President, one aspect of the Arab-Israeli conflict that has drawn little attention in this country is the lobbying techniques and groups representing the various sides of the Middle East question. Not only are there efforts by the official representatives of the respective countries involved, but there are numerous interest groups which try to influence policy having to do with issues in the Middle East.

The New York Times of April 6, 1970, contains an article written by Robert H. Phelps describing many of the people, within as well as without public life, connected with this question.

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:

MIDEAST LOBBIES: UNEVEN MATCH

(By Robert H. Phelps)

WASHINGTON, April 5.—Days before the official announcement, one of the first copies of the Nixon Administration's statement turning down Israel's request for more jet fighters was delivered to Max M. Fisher, the Detroit industrialist.

His mission: to explain to Jewish leaders around the country that the President had based his decision on Israel's intelligence reports showing continued Israeli military superiority over Arab enemies and to assure them that Israel would get more planes when really needed.

The gray-haired millionaire, who gave more than $107,000 to Republican candidates in 1968, does not have the best credentials with the predominantly Democratic Jewish community. But the response to the jet-sale rejection was muted, in marked contrast to the strongly critical statements that had followed previous Nixon Administration moves.

The fact that Mr. Nixon, like other Presidents, finds it necessary to take such preventive action is a tribute to the pro-Israel lobby, one of the most potent in the Washington sub-government. While there is also a pro-Arab lobby, it is much smaller and weaker.

The foundation stones of the pro-Israel lobby are an embassy that is generally considered the best run in Washington and scores of Jewish organizations, which have large amounts of manpower, money and zeal.

Whether the influence of the Israeli Government amounts to control of some American Jewish organizations is a subject of debate in the United States and Israel.

The pro-Israel lobby utilizes a complex of devices, ranging from knowledge of how to make maximum use of the American press to political pressure through Congress to secret exchanges of military intelligence.

"They are articulate, they are organized, they are terribly public relations oriented and they are smart," a State Department official commented admiringly of the pro-Israel lobby.

On the Arab side, the embassies are understaffed and generally do not understand the American mind; the old-line Arabists in the State Department are still there but have been outflanked; American scholars and religious groups with Middle East ties continue to speak, but their audiences are small.

The most powerful forces sympathetic to the Arabs—oil, banking, airline and shipping interests—work quietly behind the scenes, pulling back quickly when their activities are detected.

The oil companies are major contributors to organizations staffed by strongly pro-Arab Americans. These organizations include the American Friends of the Mideast, which, since its exposure as an indirect recipient of Central Intelligence Agency funds, has cut its budget more than half, and American Near East Refugee Aid, Inc., which is devoted to raising funds for Palestinian refugees.

Dr. John H. Davis, director of American Near East, who is a former Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, is probably the best-known American who is an outspoken supporter of the Arab cause. But he has a difficult time raising funds.

Under such circumstances friends of Israel have won the hearts of the American people, the votes of Congress and usually, but not always, the mind of the President, no matter who he is.

Asked why their message is so well received, Israeli Embassy officials point to the guilt feelings of Christians who cannot forget Hitler's murder of millions of Jews, respect for little country that "made the desert bloom," delight in Israel's David vs. Goliath role, admiration for its position as a democratic outpost in a vast autocratic domain, and fear of growing Soviet power in the Middle East.

The Arabs do not find American ground so fertile. There is compassion, especially among religious groups, for the millions of Arab refugees, but fund-raising efforts struggle to keep going. There is sympathy for the Arab cause among black militants, disturbing to Jews who have supported civil rights. There is a questioning of American Middle East policy among students of the New Left. And there are attempts by some anti-Semites on the ultra right to portray anything involving Jews as a Zionist plot.

None of these groups is broad-based enough to have much effect on Government policy.

Most significant from the Arab point of view are businessmen and Government officials concerned over the $1.6-billion American investment in Middle East oil and worried that the United States might be forcing Arab countries into the hands of the Soviet Union.

AMBASSADOR RABIN A SYMBOL

The Israeli Embassy staff, working out of plain, cramped quarters in its yellow-brick chancery, is dedicated to the single-minded purpose of winning maximum American support.

The Ambassador, blunt-speaking Lieut. Gen. Yitzhak Rabin, is more than just the head of the delegation; he was the Chief of Staff of the armed forces during the Arab-Israeli six-day war of June, 1967, and is now a symbol.

He tours the country tirelessly averaging about a dozen public appearances a week.

Instead of giving big parties, as the Arab Embassies do, General Rabin invites a few well-placed Senators or Administration officials to his unpretentious modern white villa in an upper middle class neighborhood for a quiet dinner.

"That's the way you really get things done," a Congressional observer said.

A stream of reading material pours out of the embassy. After every important event, a "pink sheet"—a mimeographed back-ground paper giving the Israeli viewpoint—is mailed to 10,000 to 12,000 Americans in important positions. Businessmen, Congressmen, Government officials and Jewish leaders are on the mailing list.

LITERATURE AND FREE TRIPS

There are booklets on 32 special subjects, such as farming and archeology; a "Land of the Bible" newsletter for clergymen; and even comic books for children.

Free trips to Israel are offered to hundreds of Americans; public officials, veterans leaders, labor union officials, newsmen, even radical left students.

"Once they visit us, they become 'ambassadors'," an embassy officer explained.

In the last two years the Israelis have given all-expenses-paid one-week trips to Israel to governors, including John A. Volpe of Massachusetts, who is now the Secretary of Transportation, James A. Rhodes of Ohio, and Claude R. Kirk Jr. of Florida.

The Israelis can offer more than free tickets on El Al Israel Airlines. They bargain with the fruits of their world-renowned intelligence system.

There are the Russian-built radar station, captured from Egypt, MIG engines and other equipment, that the American military is eager to examine. Beyond that, however, the American Central Intelligence Agency knows that the Israeli network of informers extends through Eastern Europe, deep into Russia and over South America.

While there have been times when the Israelis were believed to have falsified information on Soviet arms shipments to Egypt, the C.I.A. is known to have been impressed by the Israelis' intelligence performance.

"The C.I.A. doesn't take amateurs into its confidence," a former intelligence official commented.

The Pentagon has a deep respect for the Israeli military forces, and the three Israeli military attachés receive candid briefings.

Of the Arab embassies, only six of the dozen have maintained full diplomatic status here since the six-day war.

The Kuwaiti Embassy, with lots of oil money to spend, sends out booklets and other literature, but much of the material reargues 20-year-old issues.

The Jordanian Ambassador Abdul Hamid Sharaf, who was educated at American University in Beirut, is generally considered the most effective spokesman for the Arabs because, as one American official put it, "he never loses his cool and argues on the basis of what is good for the United States."

REALIZES SUCCESSES LIMITED

The handsome 30-year-old envoy takes his case to the Senate Foreign Relations Committee as well as to the State Department. He finds his most sympathetic audience in colleges. But Sharaf realizes his successes are limited.

The most sensitive issue regarding the Middle East lobbies concerns the extent to which American Jewish organizations might be controlled by the Israeli Embassy.

Such control would raise the question whether the organizations should be registered as foreign agents, and would throw their tax-exempt status into doubt because of involvement in political activities.

Two provisions of a 1952 treaty of friendship specifically say that the Israeli Government is not given the right to engage in political activity in this country.

Nevertheless, the Administration and many politicians believe that the Israelis do exert effective control over some American Zionists.

WORRIED ABOUT DEMONSTRATIONS

Thus, in February, when President Nixon became concerned that demonstrations against President Pompidou of France might become worse during his visit to New York City, the White House sought and obtained the Israeli Embassy's aid.

Leonard Garment, the President's special consultant for the arts and civil rights, who works with Mr. Eisher as liaison with the Jewish community, called the embassy and asked for help.

Shlomo Argo V, who as Minister is the embassy's second-ranking officer, called the New York Consulate, which in turn called American Jewish leaders.

An Administration official was asked whether it was not strange for the United States Government to call a foreign embassy to ask for help to control American citizens. He replied: "The question is naive."

During the same period, Rep. Bertram L. Podell, Democrat of Brooklyn, telephoned the embassy and asked for aid in his campaign for a boycott by Congressmen of Mr. Pompidou's address to a joint session of the House and Senate. Mr. Podell said the Israelis had turned him down.

There is some evidence that the Pompidou demonstrations were inspired in Israel.

The first word of the demonstrations was carried by The Jewish Telegraphic Agency in a dispatch from Jerusalem on Jan. 18 that said:

"The Cabinet was informed today that some American-Jewish organizations may stage demonstrations of solidarity with Israel during the forthcoming visit of France's President Georges Pompidou, to the United States . . . Some leaders of American-Jewish organizations, after speaking with Israeli representatives, became convinced that a show of solidarity was necessary, the Cabinet was told."

A check of news dispatches on file in the libraries of The New York Times, The Associated Press and United Press International shows that the first article printed in the United States referring to possible demonstrations was on Jan. 3—nearly two weeks after the dispatch from Israel.

The Israeli Embassy has repeatedly denied any attempt to control American Jewish organizations.

SYMPATHY FOR ISRAEL

Almost all American Jewish groups are sympathetic to Israel, although there are varying attitudes toward Zionism—the movement supporting Israel as a spiritual and cultural homeland for Jews.

The American Jewish Committee, which concerns itself with the status and security of Jews all over the world, is officially non-Zionist, although there are many Zionists among its 43,000 members.

The American Israel Public Affairs Committee, a lobbying group financed by contributions from individuals, is a down-the-line supporter of Israel. I. L. Kenen, the soft-spoken vice chairman of the Committee, is referred to by Congressmen as the "Israel lobbyist." When he worked for the Israeli Government he registered as a foreign agent. He stopped registering in 1951.

The power of Mr. Kenen's organization lies in the political impact of the 5.8 million Jews in the United States. Their vote is significant in four big states—New York, Pennsylvania, Illinois and California. In addition, Jewish campaign contributions are vital to Congressional, state and local, as well as Presidential candidates.

A Western Senator said there were only one or two thousand Jews in his state, "but they all contribute to my campaign."

Some of the most important help that Jews render to candidates is not money but work as staff men, drawing up campaigns, writing speeches, composing television commercials and deciding on strategy.

Such political strength can be translated into action, as it was when a half-dozen projects for Israel were added to the 1969 foreign aid bill as the result of lobbying by Mr. Kenen's Committee, by Hadassah—the Women's Zionist Organization of America—by Orthodox rabbis and by other Jewish groups.

Because the Jewish vote has run 70 per cent or more Democratic since the 1930's, the Nixon Administration has been less subject to pressure from that direction.

The Republican National Committee is working hard to get a bigger slice of the Jewish vote. It is paying Warren Adler, a Washington public relations man, $25,000 a year as a special consultant on Jewish affairs.

FULBRIGHT WORRIES ZIONISTS

Jewish political power impels most Senators and Representatives to take a pro-Israel stand, but there is one man the Zionists worry a great deal about. He is Senator J. W. Fulbright, the Arkansas Democrat who is chairman of the Foreign Relations Committee.

Mr. Fulbright was the only man in Congress who praised the Administration's decision to reject, at least temporarily, the request for more jets.

Nor can American Zionists forget that it was Mr. Fulbright who conducted an investigation into the Foreign Agents Registration Law in 1963. The inquiry showed that funds donated for Jewish philanthropies were sent to Israel, then funneled back to the United States for propaganda.

Senator Jacob K. Javits, Republican of New York, is widely considered a spokesman for Israeli causes. But Arabists in the State Department and Congressional experts agree that Mr. Javits is not only knowledgeable about the Middle East, but also eminently fair.

Mr. Javits is probably the best-known Jew in Congress. The Jew with the highest position in the Administration is Henry A. Kissinger, the President's Special Assistant for National Security Affairs. Pro-Arab sources report that Mr. Kissinger studiously refrains from taking sides on Middle East questions.

If Jews are confident of support in Congress and at least neutrality in the White House, they have always felt uneasy about the State Department. For years Pro-Israelis have complained that State's Middle East section has been packed with officers who, because of their years of experience as diplomats in Arab countries, have favored the Arab cause.

Many of the important posts are still held by Arabists. But when Mr. Rogers took over as Secretary of State he named Joseph J. Sisco, an expert on the United Nations and unidentified with either the Israelis or the Arabs, as the overseer of Middle East Affairs.

The Department still maintains close contact with the most powerful of the groups in the United States sympathetic to Arabs—the big businessmen.

The most influential are David Rockefeller, chairman of the Chase Manhattan Bank; John J. McCloy, former president of Chase Manhattan; and Robert B. Anderson, former Secretary of the Treasury and a director of Dresser Industries Company, which has oil interests in Kuwait and Libya.

"They are the Establishment," a pro-Arab observer noted. "They can see the Secretary of State, the President—anyone—almost any time."

Mr. Rockefeller is briefed before his trips abroad and reports to the State Department on his return. He describes his role as not to take sides but to be a reporter for the Government.

"I don't have a one-sided role in this thing," he explains. "But it's useful for the President to know what I hear. I'm just a citizen concerned about the situation in a part of the world that's in danger."

TALKED WITH NASSER

Last Dec. 9, Mr. Rockefeller, in an unannounced visit with the President, reported on his one and a half hour talk with President Gamal Abdel Nasser of the United Arab Republic.

Two weeks later, when word of the secret White House meeting was published, 700 letters of protest descended on Mr. Rockefeller in his office on the 17th floor of the Chase Manhattan building in lower Manhattan. There were crank phone calls. He was denounced in Congress. Depositors threatened to close their accounts and a few did.

The Protests upset the mild-mannered Mr. Rockefeller, who subsequently endorsed direct negotiations between Israel and the Arab states—a fundamental demand of the Israelis. He plans a trip to Israel this year.

The protesters invariably charged that Mr. Rockefeller was more concerned about American business interests in the Middle East than in justice for Israel.

INTERESTS IN MIDDLE EAST

The Chase Manhattan has extensive interests in Arab countries. The bank will not disclose these interests, but there are ties with many oil companies as well as branch banks.

It is not well known, however, that Chase Manhattan is also the leading bank for Israel in the United States, although this business is far less than the bank's stake in the Middle East. Since May, 1951, Chase Manhattan has been the only fiscal agent for Israeli bonds and handles other banking matters for Israel.

In any event, there is little doubt that what Mr. Rockefeller and other businessmen tell the Government amounts to an argument for a more even-handed policy in the Middle East.

Mr. Rockefeller is not alone in learning the risks of talking about the Middle East situation. So deep are emotions on both sides, Arab as well as Israeli, that one State Department source commented:

"It is impossible to please anyone unless you are 300 percent for their side."

IMPACT OF THE NEW SOCIAL SECURITY INCREASES

Mr. WILLIAMS of New Jersey. Mr. President, approximately 25½ million men, women, and children on the social security benefit rolls are receiving checks this month which include the 15-percent increase in benefits enacted by the Congress last December.

On a national scale, the increase will:

Raise the monthly benefit by $345 million, or

Raise the total for the year by $2.5 billion.

Raise the average monthly benefit from $170 to $196. For my home State of New Jersey, the rise in benefits will:

Increase monthly benefits for retired workers from $106 to $122; for retired males, from $124 to $142; and for retired females, from $92 to $106;

Increase average monthly benefits for a retired couple from $192 to $220;

Increase the benefits for a widow (or widower) from $95 to $109; and

Increase annual social security benefits by an estimated $150 million dollars.

Such statistics are gratifying, in particular, for members of the Senate Special Committee on Aging.

In our hearings and studies on the "Economics of Aging," we have attempted to alert the Nation to the importance of social security as a mainstay of retirement income, still in need of additional upgrading despite the very welcome increase of 15 percent. As chairman of that committee, I will continue to present the case for additional reforms, including a mechanism for automatic adjustments in benefit levels to keep pace with changes in productivity, fair treatment for working wives and widows, increases in minimum benefits, and some use of general revenues.

The major purpose of social security reform, of course, is to give help to persons who have earned protection against economic insecurity in retirement. But, as indicated in the Washington Post of April 6, there is another dividend: higher benefits provide a useful infusion of buying power into our economy.

Mr. President, the Associated Press story which appeared in the Post is an excellent account of the economic impact of the new social security benefits. I ask unanimous consent that it be printed in the RECORD.

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

RISE IN SOCIAL SECURITY SEEN AS AID TO ECONOMY

A 15 percent boost in Social Security benefits took effect last week adding $4 billion a year to consumer buying power and firming up the nation's defenses against a recession.

The increase in old age and disability payments to 25.5 million recipients is retroactive to Jan. 1. The three-month back payments will all be mailed in April, adding more than $1 billion to this month's regular benefit checks.

White House economists are counting on this infusion of new disposable income, followed at midyear by the end of the 5 percent income tax surcharge, to shore up the demand for new cars and other consumer goods.

The Budget Bureau's chief economist, Asst. Director Maurice Mann, said the changes "are modest shifts but enough to provide some important support to the economy."

"The swing in the government's fiscal position comes at a time of slight softening in the economy," Mann told an interviewer.

"It is not an over-stimulation that might revive inflationary pressure, but it is enough to stabilize the economy and prevent it from sagging seriously."

The Social Security checks for March, now being mailed, will add some spring zip to the country's spending power. They will carry the retroactive 15 percent increase for March, an additional $345 million payout.

An extra mailing will take place in the week of April 20, bringing the retroactive benefit increase for January and February, Social Security Commissioner Robert M. Ball has announced.

The increase in benefit payments, signed into law Dec. 30, will total $4.2 billion this year and move up to $4.4 billion in 1971 as new names are added to the roll of beneficiaries, Ball said.

The average monthly benefit will rise from $170 to $196 for a retired couple, and from $254 to $292 for a widow with two children.

There will be no offsetting rise in the Social Security payroll tax until Jan. 1, 1971. Present law calls for an increase then from 4.8 percent to 5.2 percent each on employees and employers. President Nixon has proposed that the $7,800 wage base on which the tax is levied be increased to $9,000 at that time. The House Ways and Means Committee is studying this and other proposed changes.

FUTURE HOMEMAKERS OF AMERICA

Mr. DOLE. Mr. President, some individuals seem to be going out of their way lately to point up real or imagined shortcomings, dangers, and ominous characteristics of today's youth. Elders have been viewing young people with apprehension since before Socrates' time, but, somehow, the very great majority of each young generation achieves responsible adulthood in spite of these dire viewings and predictions. One likely reason for the high percentage of productive adults who enter society from each generation of youngsters is the large number of organizations which are devoted to preparing them for the responsibilities which lie ahead.

One organization, the Future Homemakers of America, has established a particularly impressive record in helping high school girls look forward to the challenges of home economics in adult life.

This is National FHA Week in America, and throughout the country more than 600,000 members in 12,000 local chapters are marking 1970 as the 25th anniversary of the establishment of the national organization.

I received a letter and an article from Miss Karon Hosley of Kincaid, Kans., Kansas State FHA songleader, explaining FHA Week and the significance of FHA in the lives of many young Americans.

Mr. President, I ask unanimous consent that Miss Hosley's article be printed in the RECORD, so that the Senate may know fully of FHA's contribution to our country.

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

KANSAS ASSOCIATION OF FUTURE HOMEMAKERS OF AMERICA,
Topeka, Kans.

NATIONAL FHA WEEK—APRIL 5–11, 1970—25 YEARS OF STERLING OPPORTUNITY

1970 is the 25th anniversary of the establishment of Future Homemakers of America as the national organization for home economics students in junior and senior high schools throughout the United States, Puerto Rico, the Virgin Islands, and some American schools overseas.

Future Homemakers of America was founded June 11, 1945, as an incorporated, self-supporting, non-profit organization, co-sponsored by the U.S. Office of Education and the American Home Economics Association.

Membership in FHA is voluntary and is open to any junior or senior high school student who is taking or has taken a home economics course.

The national organization is made up of the chartered State Associations which are made up of local chapters. State supervisors of home economics education or members of their staffs serve as FHA State advisers. High school home economics teachers serve as advisers to local chapters.

Future Homemakers of America as an organization is an integral part of the secondary school's home economics program, providing opportunities for students to have additional experiences in planning and carrying out activities related to the science of homemaking with particular emphasis on the dual role of homemaker and wage earner.

The overall goal of Future Homemakers of America is to help individuals improve personal, family, and community living, now and in the future. The FHA National Program of Work is designed to work toward that goal.

Twelve national officers (youth) are elected each year at the Annual National Meeting. They make up the National Executive Council and are responsible for the plans and policies of the organization. An adult National Advisory Board gives guidance to the Executive Council.

There are 604,000 members of FHA in 12,000 local high school chapters.

National Headquarters are located in the U.S. Office of Education, Washington, D.C. 20202.

ELDERLY SUPPORT S. 3154, THE URBAN MASS TRANSPORTATION ASSISTANCE ACT

Mr. WILLIAMS of New Jersey. Mr. President, during recent hearings conducted by the Senate Special Committee on Aging, it has been forcefully pointed out that transportation is a major problem confronting many older Americans, particularly for the infirm and the low-income elderly.

In February the Senate took significant action in meeting this problem with the passage of the Urban Mass Transportation Assistance Act, a bill which I sponsored.

Recently the Housing Subcommittee of the House Banking and Currency Committee conducted hearings on this legislation and other related measures. During these hearings, persuasive testimony—presented by William Fitch, executive director of the National Council on the Aging; Arthur Kling, chairman of the board of the Kentucky Association of Older Persons; and Norman Seaton, chairman of the Retirees Council of Region 8 of the United Auto Workers of America—underscored the significance of the transportation problem for elderly persons.

Mr. President, because of the importance of this subject and the vital information provided at this hearing, I ask unanimous consent that these three statements be printed in the RECORD.

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

STATEMENT OF WILLIAM FITCH, EXECUTIVE DIRECTOR, NATIONAL COUNCIL ON AGING, ACCOMPANIED BY ARTHUR KLING, CHAIRMAN OF THE BOARD, KENTUCKY ASSOCIATION OF OLDER PERSONS, AND NORMAN SEATON, CHAIRMAN OF RETIREES COUNCIL, REGION 8, UNITED AUTOMOBILE WORKERS OF AMERICA, BEFORE THE SUBCOMMITTEE ON HOUSING, COMMITTEE ON BANKING AND CURRENCY. CHAIRMAN: WILLIAM A. BARRETT

Mr. FITCH. Mr. Chairman, and distinguished members of your committee, my name is William Fitch. I am Executive Director of the National Council on the Aging, and with me to share in our brief presentation this afternoon are Mr. Arthur Kling, Chairman of the Board of the Kentucky Association of Older Persons; and Mr. Norman Seaton, who is the Chairman of the Retirees Council of Region 8 of the United Automobile Workers of America.

We very much appreciate this opportunity to come before your committee to represent a very special segment of the population that I am sure you know has been too often overlooked and neglected but have a great deal of concern and interest in the support and passage of your bill.

I have a rather unusual privilege. When I arrived at the hearing this afternoon I was presented with a letter to you from Harrison Williams.

Mr. BARRETT. Oh, yes.

Mr. FITCH. He has indicated that he would like to associate himself with the point that we shall be making this afternoon and asked permission that the letter and the enclosure be included in the record.

Mr. BARRETT. That will be done without objections, and so ordered.

Mr. FITCH. Fine. Thank you.

(See Exhibit One.)

Mr. FITCH. I very much appreciate this opportunity. Working in the field of aging as we have, with the National Council on Aging, for so long, we have watched and studied the problems of these individuals. We have seen them overlooked. I cannot imagine anything in the field of the aging that has as much significance as improvement in transportation for our older persons.

Nothing could document it more, I believe, than the report that we have just submitted to the Office of Economic Opportunity, based on some 50,000 questionnaires that were completed about older persons living in deprived circumstances.

Our report, and very accurately, is called "The Golden Years—A Tarnished Myth." It is a report prepared for the Office of Economic Opportunity by the National Council on the Aging. It is called "Project FIND", the friendless, the isolated, the needy, and the disabled.

In this report there is one whole section devoted to transportation. I would like to read just one paragraph that seems to summarize it, and with your permission I would like to have the section actually taken out of the report and included in the record. I think it is the kind of documentation that you will find helpful.

(See Exhibit Two.)

Mr. BARRETT. That may be done without objections.

Mr. FITCH. This introductory paragraph says:

"The frequency of transportation which is expressed as a major problem of the elderly poor was probably one of the most surprising findings of Project FIND. In some of the target areas transportation appears indeed to be a major problem, since not only food but health and medical care, church attendance, cultural activities, recreation and social contacts depend on adequate transportation facilities.

"In many rural areas public transportation has disappeared, the bus having given way to the private automobile. For persons able to afford cars and to drive them, the disappearance of public transportation may not seem too important. But when reduced income or impaired physical ability makes driving a car impossible, mass transportation becomes a necessity. It is usually the elderly who suffer most from this lack. And even where mass transportation is available, as in the cities, the cost of the fare is a problem for the poor, and the cost of taxis is prohibitive.

"For persons who are incapacitated to walk to a bus, train or a subway system presents a problem, particularly if stairs are involved."

This report will give the statistics that should be considered when the planning of the mass transportation goes into its next phase.

Mr. BARRETT. You have that worked out, do you not?

Mr. FITCH. Yes. I will have this taken out and put in the record.

A procedure I would like to follow in my presentation is a little contrary to the usual testimony. Most of the experts in the field of aging go on record as telling what they think older persons want and feel. We would like to reverse the trend today.

I have brought two very distinguished older persons here who can tell it like it is, and so with your permission I would like, first, to call on Mr. Arthur Kling, Chairman of the Board of the Kentucky Association of Older Persons.

Mr. KLING. Thank you, Mr. Chairman, and members of the committee.

My name is Arthur S. Kling, and as Mr. Fitch testified, I am Chairman of the Kentucky Association for Older Persons.

I am also Chairman of the Advisory Committee of the Greater Louisville Council of Senior Citizens Clubs which for the past two and a half years has been active in making a study of the mass transportation problem in our own city.

In addition, I served for the past seven years as a member of the Board of the United Appeal. I am presently on the Health and Welfare Council Committee on Planning for the Aged, and I am Chairman of an organization, a branch of the Health and Welfare Council Committee on Planning for the Aged, and I am Chairman of an organization, a branch of the Health and Welfare Council, known as the Senior Information and Referral Service.

This is a new experiment which attempts to channel the needs of older persons to the various private and philanthropic agencies around the city and country.

I want to point out first that what we are facing in Louisville is not a matter of rapid transit. We are facing a problem of transit, period, mass transit. It appears, and I can quote directly the President of our Louisville Transit Company, that in from two to three years they will have to go out of business.

Last year their traffic fell off 9.4 percent. I got this figure just yesterday from the vice president of the Louisville Transit Company. I asked him what the prospects are for this year, and he said probably about the same amount.

So that the patronage of the bus company is rapidly declining. It is becoming economically an untenable arrangement.

Now, this poses not only an economic problem but a social problem as well, as Mr. Fitch just said. Many of our senior citizens are older persons and are virtually under house arrest by reason of the fact that they do not have readily available transportation facilities. The interval between the buses is becoming constantly greater. In some cases in Louisville it is an hour and a half to two

hours between buses, not out to the suburbs, but to a point two or three miles from the central part of the city.

These people not only are facing poor service, but it is costly. It now costs about 40 cents each way, so that 80 cents a round-trip out of the pocket of a person on public assistance, which in our state is $94, the highest, means a real expenditure to get to a health clinic, to a doctor's office, to some sort of facility which they need.

I would like to point out something which is very interesting. Due to the changes in our pattern of merchandising and distribution of services, a very significant change in the topography of our cities has occurred.

I looked it up just last night. In an area in which there were 37 drug stores 57 years ago—and I go back 50 years because at that time I was a salesman selling to drug stores—there are now 7 drug stores left.

In an area in which there were 5 drug stores, a little suburb of Louisville, there is none left. In another area there are 7 left out of 14, and this is an affluent area of our city.

The same thing has happened to grocery stores. Where there were 11 independent grocery stores on one highway, there is now one left. There are five chain stores and my wife has to take a bus to get to any one of them, whereas formerly she could walk up to the corner and had the choice of three grocery stores at our nearest corner, about a thousand feet away.

To buy a spool of thread there is only one place on Bargetown Road, a street that extends about three and a half miles. This is in a shopping center where there happens to be a department store. But at no other place can you buy a spool of thread.

The same thing has happened to doctors' offices. The doctors now have abandoned their neighborhood offices. They moved into the medical centers, and you have to take a bus or car to get to them. Very often you have to cross an arterial highway, with a great deal of traffic, to get to the doctor's office.

The same way with the movie.

In every aspect of our life we are concentrating upon the mass retailer of services, not only of goods but of doctors' services and things of this sort. So that our older people are deprived by virtue of not being able to get around.

I belong to one of the larger senior centers downtown, and we have an anonymous fund for people who cannot afford the cost of bus fare, and each month I contribute a certain amount to this, and a number of other people do, just to enable people to get out of their homes, to get some recreation and meet with their peers and to get some fresh air.

In my opinion this is, as I said, not only a problem of economics, it is a problem of the social wellbeing of a great many of the persons in our communities.

I might say that some of the remarks that I have made apply to the poor in our cities. I am also on the Employment Committee of the Mayor's Human Relations Council in the City of Louisville. We made studies and find that poor people cannot get to work because the bus lines do not go very often, or do not travel often enough to the industries which are now on the fringes of our cities. There are no industries being built up in Louisville. They are all going to the outskirts. And sometimes to travel six or seven miles requires an hour and a half to two hours on a bus because of the infrequency of bus service, because of transfers, and this sort of thing.

So I plead with you, gentlemen, to incorporate in your bill, if it is not already incorporated—and I have had no opportunity to study it—some provisions which will enable the cities to provide service at low cost, reasonable cost to the older persons and the poorer persons of our community.

I want to say in closing that due to our efforts there was passed yesterday in the General Assembly of Kentucky a mass transportation Act which we sponsored and which the Mayor, recently elected Mayor, Mayor Frank Burke, made one of his major planks in his platform.

This mass transportation bill will authorize our city to set up a transportation authority. We see no reason why it should not pass the Senate just as speedily. It passed the House 83 to nothing.

However, this Act cannot become a reality without help from the Federal Government and state agencies, and therefore I plead with you gentlemen, with your committee, to make the older citizens of our community known to your colleagues.

Thank you.

Mr. FITCH. Thank you, Arthur.

Mr. Chairman, there is evidence of senior power being organized around the country. What we are really hoping to see is senior power organized around constructive effort. I think this is a good example.

We have one of the better exponents of Senior Power right here. He is Norman Seaton, who is the Chairman of the Retirees Council of Region 8, of the United Automobile Workers of America.

Norman.

Mr. SEATON. Well, I also, Mr. Chairman and members of the committee, appreciate this opportunity of appearing here today.

I might also add that I am representing here today as the Chairman of the Structuring and Organizing Committee of the United Automobile Workers over 225,000 retirees.

I would also like to add to this that this bill will benefit many millions in our United States. As to the retirees in our country, not only do we believe in helping them just because we have a labor movement—we don't have a movement that just thinks of labor and retirees only. We believe in whatever you do for the community, you work with the community to help them, and that is our program. Our guiding principle has always been that labor will continue to be, and progress only with the total community and not at the expense of the community.

The problem we have mostly all over the United States, in the last meeting that I attended where we had 25 representatives, representing all our retirees, is the transportation problem, which is why we would like to see this bill S. 3145 passed.

In Baltimore, alone, where I make my headquarters at times, a bill has been passed by the Council, the money has been passed by the voters for the appropriation of the bill, and we are going to build a center in the center of this city, a retirees center, which is going to cost $3 million and a million dollars to furnish it. The problem has been—and there has been a lot of discussion about it by some of our Councilmen in Baltimore—what are we going to do after we have this center built? How will the people get there?

We have two problems with transportation. One of them is we see a bus every half hour, maybe three-quarters of an hour. A lot of our retired people not only don't have the time to stand and wait an hour, a half hour, but they are not able to do it. A lot of them are very ill in some way. They have some handicap in their walking. And a lot of them—we have two things to worry about. If they stand on the corner any length of time, then they don't know whether their pocketbook is going to be snatched away or what is going to happen to them. A lot of them stay away from churches. They stay away from clubs, the social clubs that we have.

The last report we have with the Golden Age Club, in Baltimore alone, which represents some 300 Golden Age retirees, the attendance has fallen off, and of course the retirees are at the club at 10 o'clock in the morning and they leave at 3 o'clock in the afternoon, and the reason is because it is a transportation problem. And any time you talk about any part of this program, it always runs into transportation. And the retirees and the elderly and the handicapped are the ones who are penalized.

We have retired in this country, I have heard many hundreds of thousands that are on what you call the disability pension, and we have many millions of retirees whose income is very low. And I do not have to tell you gentlemen that. You know it. Some of the Social Security payments are very, very low, and we often wonder—knowing it is pretty hard to even use some of this money for transportation, we often wonder how do they get along otherwise as far as keeping themselves and paying their rent and buying some food.

It is our hope that this bill that is before your committee for consideration—as was said some time ago by another gentleman here, at least it is a step in the right direction, and it is something where even if we get it started, then we can worry about improving on it in the future.

And I would like this committee to give some consideration to this bill.

Thank you.

Mr. FITCH. Thank you, Norman.

One of the problems that has not come out here, but one that is also pressing in on some of the older persons is the fact that more and more automobile insurance becomes more difficult to get.

Only last week in my office a gentleman whose wife has been his sole means of getting around because she can drive has been informed that she will not be able to have her automobile insurance renewed. His agent said within the past year only four applications from persons over 60 had been approved.

This is changing the whole way of life for many of these older persons. Many of them probably could continue to drive, many of them able to, but many of them realize that there will come a time when they may not be able to. And without the transportation almost all the things we talk about are meaningless—a center, the recreational facilities, even some of the retirement communities. They just become isolated unless there is available transportation.

At a meeting that I attended last night in Newark, New Jersey, where some 200 persons were meeting to consider programs and services for older persons, they were unanimous in saying that they wanted you to know that they were totally in support of your bill.

Many of them wished they had known about the hearings and many of them may still forward reports and additional information for the record.

I am sure that when your bill comes before the House, that you can be assured of a great deal of support among the older persons across the Nation.

I can only say that although the Golden Years, being "a tarnished myth", is true at the moment, there is a great hope in the legislation before your committee. The National Council on the Aging is concerned about the problems of the aging, and you can count on our support, together with the support of older persons across the Nation.

Transportation is, I think, their No. 2 problem, next to income in the later years.

Thank you, Mr. Chairman.

Mr. BARRETT. Mr. Fitch, you have heard me say we will probably start to mark-up this bill on Wednesday.

Mr. FITCH. Yes.

Mr. BARRETT. Do you have any specific recommendations to make that might be beneficial to the aged?

Mr. FITCH. I would like very much to be able to get the consensus of some of the

other organizations working in the field and put something in the record before next Wednesday for you.

Mr. BARRETT. Would you do that?

Mr. FITCH. I would be pleased to.

Mr. BARRETT. Glad to have it.

Mr. FITCH. Thank you.

Mr. BARRETT. Mr. Widnall.

Mr. WIDNALL. Thank you, Mr. Chairman.

Mr. Fitch, I would like to compliment you on your testimony, and that of your two assistants, so to speak, who are sitting with you at the table. I think that you have pointed up some things in connection with the problems of the senior citizen which have not had too much disclosure in the past, and a lot of people are really quite unaware of the problems as they have been developing.

The problem of transportation is certainly very, very serious for them. I have seen it in the area in which I live with the narrowing down of the ability to get around. I know that as we have moved into a more affluent society for the young people with lots of money going for the high speed cars and for everything else where they can go by car one block or two blocks, there has been a constant downgrading of the transportation for those who need it the most and whose demands are the most simple, really, and that is the elderly citizen in the community.

I think we have very much of an obligation to do our best to be helpful in this area.

I would like to add this, though, that the problem is not just the senior citizen on many of these things. The exact same problem exists for almost every citizen. And in the change in our society, a lot of things that are done for bigness, growth, so-called progress, a lot of the greatest things in our society have disappeared.

And much of the friendliness that used to exist has disappeared also in the zest for greater profit, greater this, that and the other thing.

We have got to do a lot together in order to solve some of these problems. I am sure that the Chairman is very mindful of this, and the members of our committee, and we appreciate your suggestions, your criticisms and anything you can submit to us.

Thank you.

Mr. FITCH. Thank you very much. I would like to add just one postscript.

It almost defeats everything we are trying to do, to keep older persons involved in the later years and trying to help them lead useful and meaningful lives. Transportation may very well determine whether these are meaningful years or lonely years without purpose.

Mr. BARRETT. Thank you Mr. Fitch, Mr. Kling, and Mr. Seaton.

Very fine statements, very interesting, very human type statements. We are certainly glad to have your testimony.

EXHIBIT 1: EXCERPT ON TRANSPORTATION FROM REPORT ON PROJECT FIND

(Submitted by Mr. Fitch)

TRANSPORTATION

The frequency of transporation difficulties expressed as a major problem of the elderly poor was probably one of the most surprising findings of Project FIND. In some of the target areas transportation appears, indeed, to be a major problem, since not only food, but health and medical care, church attendance, cultural activities, recreation and social contacts depend on adequate transportation facilities.

In many rural areas public transportation has disappeared, the bus having given way to the private automobile. For persons able to afford cars and to drive them, the disappearance of public transportation may not seem so important. But, when reduced income or impaired physical ability makes driving a car impossible, mass transportation becomes a necessity. It is usually the elderly who suffer most from this lack.

Even where mass tranportation is available, as in the cities, the cost of the fare is a problem for the poor, and the cost of taxis is prohibitive. For persons who are incapacitated, the walk to bus, train or subway system presents a problem, particularly if stairs are involved.

FREQUENCY OF TRANSPORTATION PROBLEMS

Overall, about one-third of the poor respondents reported having transportation difficulties; about one-fifth of the near poor so reported. Of these, 41% of the poor and 30% of the near poor said that they had difficulties with transportation often or very often; 23% of the poor and 19% of the near poor had trouble occasionally. Thus, only about 37% of the poor and about one-half of the near poor who reported having transportation difficulties find these problems not to be major.

The reasons given for lack of transportation are usually "cannot afford transportation" (91% of those lacking transportation often or very often), and "public transportation is not very good" (67% of those lacking transportation often or very often).

Amount of income appears to be very important in the degree of difficulty experienced. Very small amounts of income added to that of persons living at the poverty line appear to result in considerable alleviation of transportation problems. Indeed, the most striking aspect of the table which follows is the substantial improvements in transportation which are indicated just at the point of the poverty line. Thus, fewer couples with incomes of $2,000–2,499 than those with incomes of $1,500–1,999 report difficulties often or very often. This is even more striking in the case of single persons reporting difficulties often or very often at the $1,500–1,999 level as compared to the $1,000–1,499 level. Similarly, the percent of those reporting difficulties rarely rises appreciably for either couples or individuals with incomes over the poverty line.

TABLE 57.—INCOME IN RELATION TO FREQUENCY OF TRANSPORTATION PROBLEMS

[Percentage distribution for individuals and couples]

Income	Often and very often		Occasionally		Seldom or never	
	Couples	Individuals	Couples	Individuals	Couples	Individuals
0 to $499	37	49	21	21	41	31
$500 to $999	38	45	21	23	40	33
$1,000 to $1,499	38	45	22	23	40	31
$1,500 to $1,999	35	31	18	21	47	47
$2,000 to $2,499	29	----------	19	----------	52	----------
$2,500 to $2,999	24	----------	14	----------	62	----------

Transportation problems appear most acute past the age of 79, presumably because persons under 79 are generally more agile and able to manage. Again, it is useful to note the difference in frequency of transportation problems between the poor and the near poor in the same age groups.

TABLE 58.—AGE IN RELATION TO FREQUENCY OF TRANSPORTATION PROBLEMS

[Percentage distribution of replies for poor and near poor groups]

Age	Often and very often		Occasionally		Seldom or never	
	Poor	Near poor	Poor	Near poor	Poor	Near poor
65 to 69	39	29	20	17	40	54
70 to 74	41	28	21	21	38	51
75 to 79	41	27	23	19	36	54
80 to 84	47	32	24	17	37	52
85 to 89	44	35	19	19	36	46
90 and over	39	30	23	30	38	40

As shown in other consumer and service needs, race seems to be a factor in the existenee of transportation problems, though the difference between racial groups is less great than that between the poor and the near poor within racial categories.

TABLE 59.—RACE IN RELATION TO FREQUENCY OF TRANSPORTATION PROBLEMS

[Percentage distribution of replies for poor and near poor groups]

	Often and very often		Occasionally		Seldom or never	
	Poor	Near poor	Poor	Near poor	Poor	Near poor
White	39	29	22	18	38	54
Negro	44	30	21	11	26	58
Other	43	8	18	13	39	78

Higher education appears to have some positive relationship to ease of transportation. This again is probably related to the fact that higher education means higher income, and income seems to be the important factor here.

Males seem to have a slightly less severe transportation problem than women among the poor. Among the near poor, the advantage is even more pronounced. Increased income seems to help males ease transportation problems relatively more than females. However, more income helps both sexes noticeably.

TABLE 60.—SEX IN RELATION TO FREQUENCY OF TRANSPORTATION PROBLEMS

[Percentage distribution of replies for poor and near poor groups]

	Often and very often		Occasionally		Seldom or never	
	Poor	Near poor	Poor	Near poor	Poor	Near poor
Male	39	26	20	17	41	57
Female	41	31	23	21	36	48

Likewise, married women have fewer problems than unmarried. However, increased income seems particularly beneficial from the point of view of transportation for single persons. While 42% of poor singles with transportation difficulties had them often or very often, only 25% of near poor singles reported difficulties that frequently. Similarly, while only 38% of poor singles with difficulties reported them seldom or never, fully 61% of near poor singles so described their difficulties.

TABLE 61.—MARITAL STATUS IN RELATION TO FREQUENCY OF TRANSPORTATION PROBLEMS

[Percentage distribution of replies for poor and near poor groups]

	Often and very often		Occasionally		Seldom or never	
	Poor	Near poor	Poor	Near poor	Poor	Near poor
Married	37	28	20	18	43	53
Single	42	25	20	15	38	61
Widowed	42	30	23	20	34	51
Divorced	40	33	19	22	41	45
Separated	42	33	23	10	35	56

Community reports regarding transportation

Reports from the communities describe the transportation problems of FIND respondents in more human terms than the cold statistics. One of the project reports from an urban area says:

"Transportation services designed specifically for the aging are grossly limited. One of the most often provided services of the FIND Aides was in transporting elderly persons to services or transporting services to them. Other than public buses, the fare for which will soon be raised from 20¢ to 25¢, the only stable and substantial transportation service is from private taxis. The American Red Cross provides this service on a limited basis, if a volunteer is available. The service of the Red Cross is geared toward transportation during disasters and for welfare recipients through appropriate referrals when the welfare recipients are in need of transportation to medical clinics, private physicians, or medical facilities. They can generally accommodate only 5 persons per day."

In one Project FIND area the problem of transportation proved to be so great that station wagons were secured to aid in carrying out the project. The project director wrote:

"There are 907 square miles in the County and there are only four station wagons owned by the CAA. These are kept busy carrying semi-invalid clients to physicians, clinics, and hospitals. There are many senior citizens without any transportation except that which is provided by the CAA, relatives, or neighbors."

In one sparsely populated rural area where the local Community Action Agency secured some government surplus vehicles, transportation or escort services to doctors, banks, stores, etc., was the one direct service most frequently given, with 3,560 such trips recorded during the project's duration.

In another area a team captain in a summary report to the project director wrote:

"It appears that a lack of transportation is the single most important item that affects the older group. Lack of transportation keeps them from shopping at shopping centers so they could take advantage of lower prices. They have to buy from neighborhood stores and drug stores which charge more for their products and thereby the small amounts of their incomes cannot be stretched to a full advantage.

"Lack of transportation also keeps them from going to city and county health clinics for doctor and medications at a reduced cost.

"A large proportion of the people who need surplus commodities are unable to receive them because they cannot get back and forth to the distribution points."

In another local project the need for transportation was so great that an attempt was made to purchase cars and buses for the program by collecting trading stamps (2,200 books of stamps for a car).

How the problems of transportation affect people's lives is indicated in the following quotations from reports:

"Mr. L. lives with his wife in an isolated area. He is a double amputee. He had become used to one artificial leg when the other leg had to be amputated. He needs to go four times a week to a physical therapist about ten miles away. Whoever takes him must be strong enough to manage the wheelchair, which is top-heavy and easily tips over. When he is ready for the second prosthesis he will have to go several times to a city thirty miles away for a cast and fittings. He can spend two weeks in the hospital there to start getting used to the new balance, but thereafter physical therapy must continue, as his muscles at age 63 will require much retraining.

"Mr. W., age 67, is trying to support himself and his wife. The only job he can get is during a split shift. The bus schedule is inadequate and he must wait an hour for a bus twice a day, making his work day intolerably long.

"Mr. and Mrs. M. own their little home in suburban area, but he will probably be unable, because of his age, to get his driver's license renewed next month, and she does not drive. Most of their neighbors are elderly, too, and the few ablebodied people work during the day. There is almost no one there to rely on, and no public transportation. The M's worry about themselves and about the neighbors whom Mr. M. has been helping with transportation."

By any standards of measurement and interpretation, transportation is one of the great problems of the elderly, especially the elderly poor.

EXHIBIT 2: LETTER FROM SENATOR WILLIAMS TO CHAIRMAN BARRETT, MARCH 11, 1970

Hon. WILLIAM A. BARRETT,
Chairman, Subcommittee on Housing, Committee on Banking and Currency, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: As you know, I have already testified on the bill before your Committee today. My purpose at that time was to discuss the major thrusts and provisions of the legislation. At this point, I wish to associate myself with the very important point which will be made by Mr. William Fitch of the National Council on the Aging and his associates here today.

The point is simply this: That transportation inadequacies cause widespread, intense, and—in some cases—worsening hardship among older Americans. As Chairman of the Senate Special Committee on Aging, I have heard, again and again, about such problems. They occur in both urban and rural areas. They cause many difficulties among a group of Americans who suffer from general economic insecurity and many demands upon their fixed incomes.

I therefore commend the National Council on the Aging for making its presentation to you today, and I ask your permission to have included in your hearing record two additional exhibits—attached to this letter—dealing with the transportation problems of the elderly.

With thanks for the many courtesies you have extended,

Sincerely,

HARRISON A. WILLIAMS, Jr.,
Chairman.

RIGHT-TO-WORK LAWS

Mr. DOLE. Mr. President, Kansas is one of 19 States which have enacted what are known as right-to-work laws concerning compulsory labor union membership.

These laws stand as firm expressions of individual rights and exercise of State authority in a field which has, to a considerable degree, been preempted by Federal power under the influence of powerful labor unions.

In the Washington Star of March 11, David Lawrence analyzed recent statistical information on labor contracts and trends in the collective bargaining field.

Mr. President, I ask unanimous consent that Mr. Lawrence's article be printed in the RECORD.

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

THE COMPULSORY UNIONIZATION ISSUE

(By David Lawrence)

The latest survey shows that nearly 83 percent of the union contracts made with companies nowadays provide some requirement either for membership in the union or dues paying on the part of the employee.

The Bureau of National Affairs, Inc., which has just completed a comprehensive study, says that the most prevalent form of union security is the "union shop," which requires all employees to join the union after 30 days on the job and to maintain membership as a condition of employment.

Eighty-six percent of the contracts cited in the survey call for the deduction of union dues from pay envelopes; in 9 percent of the contracts, employees who do not become members are required to pay service fees equal to the amount of union dues.

Hiring provisions—for example, requiring only that preference be given to workers living in the area or to those with prior experience in the industry—are found in 17 percent of the contracts. But agreements expressly stipulating that union members be hired are almost nonexistent, as these are illegal in companies subject to the Taft-Hartley Act.

In construction and other skilled trade unions, the labor union office supplies the worker when an employer begins a building project in a new area or expands his working force. As a practical matter, a building contractor who operates under a union contract usually asks the union office to send out carpenters, plumbers and other skilled craftsmen for jobs that open up.

This is where union leaders run into conflict with the government's efforts to impose racial quotas on hiring of new employees. Labor leaders complain that the government is trying to force them to take into their unions—and into construction jobs—unqualified Negroes.

Labor unions for the most part conduct their internal affairs amicably, though frequently there are bitter contests between rival candidates for office inside a union which stir up ill feelings. Officials of labor unions have found over the years that they

can be re-elected only if they push steadily for wage increases. In a sense they are prompted by what may be called "labor union politics."

Employers recognize often that the union leaders would at times welcome some outside panel to pass judgment on their demands because strikes are costly and occasionally do not yield the anticipated benefits.

Labor unions have steadily grown in size until today the membership is approximately 19 million. The entire labor force is estimated at about 82 million. The unorganized labor population, however, is largely in rural districts and in occupations in which it would be difficult to effect organization.

Broadly speaking, labor union leaders feel that over the years they have benefited by collective bargaining, and that they have in many cases prevented the passage of legislation unfavorable to their own interests.

The power of the national labor union has grown extensively in recent decades. When a strike is called, an entire industry can be shut down because the local unions obey the orders of the leaders of the national union with which they are affiliated. Workers in the skilled trades are almost completely unionized. They have a monopoly in virtually all the manufacturing industries.

Nineteen states have what are known as "right-to-work" laws. These prohibit any labor union from compelling a worker to join a labor organization as a means of getting a job or remaining in a job. The labor groups, however, have managed to prevent the spread of such laws to other states.

What is surprising, of course, is that with all the talk about "liberalism" and "individual rights," a worker in numerous industries must join a union after 30 days in order to keep his job. The employer, moreover, has agreed to the mandate. The courts have never ruled against this obvious invasion of individual rights.

The argument usually heard is that the nonmembers can hardly bargain by themselves and that the labor union represents the only organized body which can conduct collective bargaining negotiations. But the compulsion nevertheless remains, and it is this factor which has led to the development of a National Right-to-Work Committee, which carries on a continuous crusade against any form of compulsory unionization.

NEED TO RETAIN ACP

Mr. MONDALE. Mr. President, in recent weeks I have received a number of letters protesting the elimination of authority to continue the agricultural conservation program in the 1971 agricultural budget. I hope we can restore this highly effective, low cost, and popular conservation program.

In my State of Minnesota 18,746 farms participated in the program last year, 28,806 participated in 1968, and a total of 92,983 participated in the program at least once in the last 5 years. Approximately $10 million in conservation practices were performed on the 18,746 farms in 1969 with the Government share of the costs paid by the ACP program $5 million.

By far the most important conservation practice undertaken in Minnesota was the establishment of permanent cover, six thousand farms in 76 counties established permanent cover on 105,619 acres in 1969 with the Government making cost-sharing payment of $1,342,255 to the cooperating farmers.

In my State of Minnesota, over 1,000 farmers in 50 counties planted trees or shrubs for forestry and erosion prevention purposes on over 6,000 acres, with the Government sharing the cost of these plantings in the amount of $141,000.

Another 1,016 farmers in 84 counties established reservoirs for agricultural uses, with the ACP program sharing the cost to the extent of $386,000.

Mr. James T. Shields, executive director of the Minnesota Conservation Federation, wrote me a few weeks ago about the close cooperation between the ASCS committees and the Minnesota Conservation Department, Division of Game and Fish. He reported that over 17 percent of the total ACP payments in Minnesota in 1968 were made for conservation practices primarily beneficial to wildlife.

The preliminary 1969 report indicates that 1,865 farmers in 81 Minnesota counties planted wildlife food plots last year, averaging about 5 acres per farm, with the Government sharing the cost to the extent of $78,972, or about $40 per cooperating farm. Some 712 farms established or improved shallow water areas and wildlife ponds in cooperation with the Minnesota Department of Game and Fish and received ACP cost-sharing payments of $233,000.

The average payment per farm in Minnesota for all ACP practices performed in 1968 was a modest $186 and in 1969, $269.

Our experience with the ACP program and the cooperation between the county ASCS committees and the State Department of Conservation in Minnesota is not an isolated case. I am told that similar cooperative relationships exist in most States with the result that some 277,000 farmers in the United States in 1969 established permanent cover or planted shrubs and trees for forestry purposes and to prevent erosion. These permanent conservation practices covered 4,300,000 acres, with the ACP program cost-share payments amounting to over $42 million.

After reviewing the wide range of conservation practices encouraged by the ACP program in my own State of Minnesota and in the entire United States, I think this country gets more benefit from the $185 to $200 million ACP program funds spent each year than for many other Federal expenditures. I urge that authorization for the continuation of this highly beneficial program be continued in the 1971 agriculture budget.

Mr. President, I ask unanimous consent to have printed in the RECORD a portion of a recent address by Edwin Christianson, president of the Minnesota Farmers Union and vice president of the National Farmers Union, concerning the agriculture conservation program.

Mr. Christianson, speaking to the 68th annual NFU convention, said:

If the $195 million ACP appropriation is killed, then you endanger about $600 million in conservation work.

Also, I ask unanimous consent that several letters in support of this program and a series of tables which summarize the effectiveness of the ACP also be printed in the RECORD.

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

EXCERPTS OF REMARKS OF EDWIN CHRISTIANSON

The President of the United States recently sent a message to Congress advocating some budget reductions, $2 billion in all, which he said could be saved because these were "sacred cow" programs of importance only to some special interest groups.

In this list of recommended savings, the President included the elimination of the ACP program in 1971, the termination of the special milk program in schools, nurseries and camps, and the inclusion of the Federal Crop Insurance program administrative costs in the rate structure paid by farmers.

"These are not special programs for vested interests, but programs which are of value and benefit to everyone in our society.

"It is inconsistent in our opinion to stir the hopes of the hungry and poorly-nourished that hunger is going to be wiped out and then to seek to end the school milk program which has been such a mainstay in our national child nutrition effort.

"It is unfortunate to cast reflections upon the Federal Crop Insurance program, when in truth, it is as important to agricultural lenders, bankers, main street businessmen and cooperatives as it is to the producer himself. Federal Crop Insurance is an important protection of the cash investment of the farmer in his crops—and important to everyone who has a stake in any of the inputs which the farmer uses in production.

The Agricultural Conservation Program (ACP) is another example of how the public might get an unfortunate impression from the President's remarks.

For a long time, farm people and particularly those of us in Farmers Union have been concerned about the land, water, forest and wildlife resources of our nation.

We have had to fight some difficult battles for enough appropriations for ACP, for Soil Conservation Services, for Great Plains conservation, for watersheds and flood control.

So, we are delighted when the public finally starts to take an interest in the environment. We welcome the great wave of public discussion of the quality of our environment and hope that the new federal programs to safeguard the environment will become a reality.

But, we must disagree when the President of the United States or any other policy-making official proposes to set back the entire pollution control effort by recommending the elimination of federal funds for the ACP program.

People who are familiar with pollution problems, recognize sediment as the No. 1 pollutant in our nation.

Nothing is more important than sediment control to reduction of the run-off of fertilizers, farm chemicals and pesticides in surface waters than the ACP program.

Now perhaps some might say that the ACP program pays farmers to do something which they ought to be doing on their own anyway.

It is not that simple. The government only makes cost-sharing assistance available on conservation practices with a lasting value, practices from which the farmer received no immediate return, and practices which he could not undertake without this assistance.

The government offers cost-sharing up to 50% and the farmer supplies the materials and the labor. Farmers are investing about $2 in labor and materials for each dollar of assistance from the government. So, if the $195 million ACP appropriation is killed, then you endanger about $600 millions in conservation work.

Recently, a National Inventory of Soil

and Water Conservation needs was made public. It indicated that 59% of our national cropland, 66% of the range-land, 68% of the pasture land and 71% of the commercial forest land are in need of conservation treatment.

It may be true that some of this work could be put off, but don't forget that we are falling behind in soil conservation even at present rates—and that we will fall further behind if we cut out the ACP program.

If we choose to delay this conservation work now, it is going to cost much more in the future.

It is relatively cheap to control erosion if you do it at the initial source—on the farm and range lands of the nation.

You can keep soil in its place on the farm with a relatively modest expenditure. The soil specialists feel it takes an expenditure of only 3 to 5 cents a cubic yard to control the sediment on the land.

But, just let erosion take its toll—and when you get downstream and start to dredge it out of the lakes and waterways, it is going to cost you $1 per cubic yard. You are going to have a loss of topsoil on the farm—and it is going to cost you 20 times more downstream to repair things than it would have to maintain the soil where it belonged.

So, we cannot help being dissappointed to hear all the big talk about environmental programs coming out of Washington and the White House and then to hear a recommendation which would cut the heart out of the conservation effort.

The whole problem of stabilizing the soil is crucial to the whole controversy about pesticides and chemical and fertilizer run-off. It is only if you have a serious erosion and run-off, that you are going to have a significant movement of pesticides and chemicals off the farm.

SHAFER, MINN.,
March 13, 1970.

Hon. WALTER MONDALE,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR MONDALE: I am very distressed over the recent budget proposals recommending the dropping of the Agriculture Conservation Program funds. This worthwhile project has provided assistance to farmers and the public in general in conserving natural resources, pollution abatement and sediment control. I cannot understand the idea of administering money for pollution abatement on the one hand and dropping a good conservation practice at the same time.

I sincerely hope that you do everything in your power to maintain and increase funds for ACP.

Sincerely,

DEWEY ROUSH.

JACOBSON, MINN.,
March 14, 1970.

Senator WALTER MONDALE,
Washington, D.C.

DEAR SIR: I would just like to write to you and express my sincere belief in the different farm programs, in my simple way.

I'm a small dairy farmer on 164 acres. I know how much the gov't programs mean to me and the rest of the farmers here in Aitken Co. and all over the Nation.

I would like to urge you very strongly to support especially the Agriculture Stabilization program which is in Congress at present for consideration. The A.C.P.

I am very sure if the A.C.P. is discontinued, the other programs like the Soil and Water Cons program and also the R.C.D. in our areas will be falling to wayside very shortly. These programs are very much dependent on the A.C.P. cost sharing.

Also if the farmer is not protected by the A.C.P. by cost sharing on many different practices, many of us will soon be out of business also.

We are losing the family farmer in my opinion very fast, dangerously fast. I'm beginning to think and I also feel our Senators and Congressmen should think what will be the outcome of this in the next 5 years. I'm afraid our farm commodities are going to be very short and very high in price for the consumer.

I am sure you Mr. Mondale do understand the farm problems, but there are so many that are so ignorant about our farm problems in Washington, and all over the Nation.

Sincerely,

VUPKE NORDBURG.

ZIMMERMAN, MINN.,
February 28, 1970.

Hon. WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SIR: I understand the President intends to cut out the Federal Agricultural Conservation Program (ACP).

I am a forester for the State of Minnesota, and part of my job is to make needs and compliance checks on ACP forestry practices. I am convinced that without the cost sharing incentive, the amount of forestry and wildlife projects would fall off drastically. I deal personally with the applicants, and a large percentage of them can't afford these extra projects without help. We must keep this program to continue to improve our private woodlands, wildlife habitat and field erosion problems.

Cut more spending from military spending, and leave this program alone.

Sincerely yours,

BRIAN L. GARVEY.

REDWOOD FALLS, MINN.,
March 4, 1970.

Senator WALTER MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SIR: I am writing in regard to the reported efforts of the Nixon administration to kill A.C.P.

Men, in general, tend to exploit, rather than conserve which is why the administration contention that soil conservation practices should be privately carried out is absurd to say the least.

I contend that the time is here for compulsory soil conservation practices because our cropland is an irreplaceable national resource, which may have to be used for longer than can be seen ahead. Had we continued to exploit our timber resources, as was done in northern Minnesota, there would not be a forest left standing in the country. This analogy, while not perfect, is a legitimate one and makes a valid point.

The need for increased soil conservation practices out here is becoming more obvious every year. Higher places on rolling cropland are largely devoid of topsoil. Land of this type should be terraced. Grass waterways for runoff should be constructed. Ponds to impound waste runoff from feedlots must be built to lessen pollution of our streams. Shelter-belts to prevent wind erosion and to protect wild life must be planted.

Farmers in general have neither the resources nor the will to carry out these practices without assistance. Furthermore, if cropland is to be considered an irreplaceable national resource, it should be more in the public interest to spend this one-fifth of a billion dollars for A.C.P than for the S.S.T. for example, which is not vital to this generation, much less to future generations. This should be a matter of high priority.

Sincerely,

ROBERT J. BUCKLEY.

1969 AGRICULTURAL CONSERVATION PROGRAM SUMMARY OF PARTICIPATION AND ASSISTANCE BY COUNTIES

PART F—STATE MINNESOTA

County	Participating farms				ECM acres served (acre)	Pooling agreements					
						Regular practices			ECM practices		
	Regular	Once in last 5 years	ECM only	ECM and regular		Agreements	Farms	Cost—shares (dollars)	Agreements	Farms	Cost—shares (dollars)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Aitkin	201	608				1	8	7,200			
Anoka	204	614									
Becker	327	1,351									
Beltrami	297	859									
Benton	208	719									
Big Stone	20	616				3	14	1,639			
Blue Earth	131	2,849				1	2	1,118			
Brown	148	1,003				6	13	12,278			
Carlton	141	559									
Carver	127	455				1	2	1,045			
Cass	221	695									
Chippewa	161	563									
Chisago	201	708									
Clay	362	959									
Clearwater	250	799				1	18	8,000			
Cook	2	6									
Cottonwood	105	859				1	5	420			
Crow Wing	126	374									
Dakota	174	200				1	3	4,370			
Dodge	145	738				12	58	13,645			
Douglas	297	1,316									
Faribault	86	1,351				1	2	968			
Fillmore	240	1,350				1	2	1,507			

1969 AGRICULTURAL CONSERVATION PROGRAM SUMMARY OF PARTICIPATION AND ASSISTANCE BY COUNTIES—Continued

PART F—STATE MINNESOTA—Continued

County	Participating farms				ECM acres served (acre)	Pooling agreements					
						Regular practices			ECM practices		
	Regular	Once in last 5 years	ECM only	ECM and regular		Agreements	Farms	Cost-shares (dollars)	Agreements	Farms	Cost-shares (dollars)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8	(9)	(10)	(11)
Freeborn	275	1,128				3	22	6,617			
Goodhue	194	1,040				6	14	11,735			
Grant	244	661									
Hennepin	93	437									
Houston	207	947				2	4	5,497			
Hubbard	184	523									
Isanti	175	705									
Itasca	146	756									
Jackson	126	1,332									
Kanabec	134	740				2	4	4,690			
Kandiyohi	270	1,563				14	33	3,819			
Kittson	344	812				11	33	2,350			
Koochiching	183	389									
Lac qui Parle	171	1,693									
Lake	24	58									
Lake of the Woods	100	294									
Le Sueur	124	1,013									
Lincoln	176	744									
Lyon	132	955									
McLeod	118	824				1	3	217			
Mahnomen	150	438									
Marshall	798	1,575				2	4	585			
Martin	114	1,364									
Meeker	186	1,082									
Mille Lacs	232	741									
Morrison	298	1,327									
Mower	170	882				9	38	11,910			
Murray	83	1,468									
Nicollet	199	871				3	11	6,943			
Nobles	66	1,181									
Norman	391	1,117									
Olmsted	145	1,083									
West Otter Tail	384	1,723									
Pennington	322	982					12	30	4,627		
Pine	302	1,007									
Pipestone	102	752					1	2	4,508		
West Polk	409	1,277					5	16	1,002		
Pope	269	968					1	4	2,353		
Ramsey	3	26									
Red Lake	149	583					8	23	8,002		
Redwood	224	1,619					2	8	1,155		
Renville	593	1,038					7	15	2,449		
Rice	209	786									
Rock	84	433									
Roseau	417	1,167					12	28	2,264		
South St. Louis	158	436									
Scott	128	670									
Sherburne	236	672									
Sibley	116	858					1	3	381		
Stearns	393	1,402					1	3	6,153		
Steele	246	1,318					3	11	1,032		
Stevens	169	882									
Swift	271	1,226									
Todd	304	1,660									
Traverse	232	565				2	4	548			
Wabasha	159	688									
Wadena	183	603									
Waseca	130	631				1	2	3,150			
Washington	231	865									
Watonwan	13	804									
Wilkin	268	848				1	4	298			
Winona	286	1,126				1	3	6,300			
Wright	167	1,675									
Yellow Medicine	275	1,421				4	19	7,303			
East Otter Tail	506	1,578									
East Polk	209	849									
North St. Louis	173	551									
State total	18,746	82,983				144	468	158,078			

PART G—STATE MINNESOTA

County	Low-income farmers		Regular ACP						
	Number	Cost-shares (dollars)	Net assistance before SCI (dollars)	Amount of SCI (dollars)	Gross assistance to farmers (dollars)	Amount transferred to SCS (dollars)	Amount transferred to other agencies (dollars)	Amount for program services (dollars)	Total gross assistance (dollars)
	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)
Aitkin	11	10,736	57,967	1,120	59,087	2,294	398		61,779
Anoka			47,761	1,190	48,951	2,000	266		51,217
Becker			70,046	2,601	72,647	3,510	690		76,847
Beltrami	68	20,901	75,243	2,303	77,546	2,529	456		80,531
Benton			49,544	1,081	50,625	2,097	402		53,124
Big Stone			15,278	732	16,010	2,605			18,615
Blue Earth			42,635	571	43,206	3,757			46,963
Brown			66,186	630	66,816	4,100			70,916
Carlton			45,765	685	46,450	1,915	361		48,729
Carver	1	2,500	24,788	724	25,512	1,888	200		27,600

PART G—STATE MINNESOTA—Continued

County	Low-income farmers		Regular ACP						
	Number	Cost-shares (dollars)	Net assistance before SCI (dollars)	Amount of SCI (dollars)	Gross assistance to farmers (dollars)	Amount transferred to SCS (dollars)	Amount transferred to other agencies (dollars)	Amount for program services (dollars)	Total gross assistance (dollars)
	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)
Cass			78,093	261	78,354	1,572	150		80,076
Chippewa			31,891	866	32,757	2,885			35,642
Chisago			36,984	1,606	38,590	1,709	341		40,640
Clay			57,195	3,448	60,643	4,269			64,912
Clearwater	1	6	64,721	1,440	66,161	2,082	390		68,633
Cook			2,981		2,981		41		3,022
Cottonwood			41,202	981	42,183	3,313			45,496
Crow Wing			35,752	796	36,548	1,421	345		38,314
Dakota			49,151	1,223	50,374	3,261	400		54,035
Dodge			57,258	794	58,052	3,633	125		61,683
Douglas	4	52	47,531	1,599	49,130	2,381	375		51,866
Faribault			39,665	315	39,980	2,982			42,962
Fillmore			93,925	1,569	95,494	6,000	375		101,869
Freeborn			104,921	1,088	106,009	4,150	80		110,239
Goodhue			96,661	1,449	98,110	5,608	500		104,218
Grant			25,449	2,001	27,450	2,479	496		30,425
Hennepin			22,095	612	22,707	1,387	280		24,374
Houston	3	124	57,169	1,852	59,021	3,101	225		62,347
Hubbard			49,355	1,141	50,496		313		50,809
Isanti			46,290	1,092	47,382	1,739	300		49,421
Itasca			38,696	789	39,485	596	419		40,500
Jackson			35,727	729	36,456	3,535			39,991
Kanabec			41,500	608	42,108	1,854	377		44,339
Kandiyohi			60,652	1,882	62,534	4,015	240		66,789
Kittson			72,117	1,672	73,789	4,224			78,013
Koochching	2	26	36,700	823	37,523	984	330		38,837
Lac qui Parle			35,713	1,437	37,150	3,795			40,945
Lake			8,427	121	8,548	521	104		9,173
Lake of the Woods			24,095	606	24,701	1,313	240		26,254
Le Sueur			33,658	597	34,255	2,376	40		36,671
Lincoln			39,825	816	40,641	3,089			43,730
Lyon			48,983	428	49,411	3,934			53,345
McLeod			23,666	766	24,432	2,486	125		27,043
Mahnomen			39,880	1,094	40,974	1,436	320		42,730
Marshall	2	28	138,371	6,520	144,891	6,446	120		151,457
Martin			37,597	580	38,177	3,653			41,830
Meeker	3	72	31,002	1,039	32,041	2,904	200		35,145
Mille Lacs	1	135	62,935	1,355	64,290	2,038	225		66,553
Morrison			98,427	1,049	99,476	4,126	787		104,389
Mower			57,428	678	58,106	5,335	120		63,561
Murray			38,094	296	38,390	3,818			42,208
Nicollet			69,204	1,663	70,867	3,211	80		74,158
Nobles			27,888	282	28,170	3,355			31,525
Norman			65,892	3,479	69,371	3,617			72,988
Olmsted			52,108	733	52,841	4,582	600		58,023
West Otter Tail			53,070	3,648	56,718	3,281	500		60,499
Pennington			75,505	2,096	77,601	2,981			80,582
Pine			68,511	1,832	70,343	2,237	605		73,185
Pipestone			45,243	499	45,742	2,897			48,639
West Polk			61,220	3,742	64,962	5,577			70,539
Pope			40,021	2,154	42,175	2,699	100		44,974
Ramsey			1,819		1,819	141	28		1,960
Red Lake			50,990	1,111	52,101	2,237			54,338
Redwood			92,804	894	93,698	4,597	120		98,415
Renville			57,267	2,332	59,599	5,080			64,679
Rice			47,013	1,394	48,407	3,239	200		51,846
Rock			33,011	187	33,198	2,884			36,082
Roseau	5	71	113,063	2,298	115,361	4,605	375		120,341
South St. Louis			45,660	791	46,451	1,773	355		48,579
Scott			33,096	763	33,859	2,314	363		36,536
Sherburne			46,332	1,513	47,845	2,283	457		50,585
Sibley			40,977	402	41,379	3,092	250		44,721
Stearns			128,463	2,017	130,480	6,017	600		137,097
Steele			59,236	1,048	60,284	2,729	60		63,073
Stevens			41,264	1,139	42,403	2,452			44,855
Swift			33,085	1,975	34,060	3,757	60		38,877
Todd			59,181	2,062	61,243	3,831	300		65,374
Traverse			27,472	2,173	29,645	2,625	25		32,295
Wabasha			65,375	972	66,347	4,644	500		71,491
Wadena	3	379	62,916	848	63,764	2,124	300		66,188
Waseca			39,533	751	40,284	2,648	160		43,092
Washington			37,741	1,327	39,068	1,915	351		41,334
Watonwan			16,703	331	17,034	2,199			19,233
Wikin			42,474	2,732	45,206	3,505			48,711
Winona			79,547	1,707	81,254	4,297	640		86,191
Wright	2	64	40,590	778	41,368	3,588	120		45,076
Yellow Medicine			69,724	2,162	71,886	3,940			75,826
East Otter Tail	6	65	93,222	3,514	96,736	1,640	300		98,676
East Polk			51,930	1,545	53,475	2,882	150		56,507
North St. Louis			37,628	1,572	39,200	2,087	495		41,782
State total	112	35,159	4,643,773	120,121	4,763,894	266,707	19,250		5,049,698

Note.—Those farmers who established eligibility for increased rates of cost-sharing under the special provision for low income farmers.

MINNESOTA

PRELIMINARY—TABLE 2.—SUMMARY OF THE 1969 AGRICULTURAL CONSERVATION PROGRAM

SEC. 1—PARTICIPATION AND PAYMENTS

Item	Unit	Regular ACP	Naval stores program	ECM F-4	Total regular, NSCP and ECM
Participating farms	Number	18,746			18,746
Farms participating at least once during 1965-69	do	82,983			82,983
Cost-shares	Dollar	4,643,773			4,643,773
Small cost-share increase	do	120,121			120,121

Item	Unit	Regular ACP	Naval stores program	ECM F-4	Total regular, NSCP and ECM
Amount transferred to SCS	Dollar	266,707			266,707
Amount transferred to other agencies	do	19,250			19,250
Amount used or to be used for program services	do				
Total gross assistance	do	5,049,698			5,049,698
Average per farm	do	269			269
Participating low-income farmers [1]	Number	112			112
Cost-shares for low-income farmers [1]	Dollar	35,159			35,159
Pooling agreements:					
Counties	Number	37			37
Agreements	do	144			144
Farms	do	468			468
Cost-shares	Dollar	158,078			158,078

[1] Those farmers who established eligibility for increased rates of cost-sharing under the special provision for low-income farmers.

MINNESOTA

SEC. 2.—CONSERVATION PRACTICES—REGULAR

Practice name	Practice Number	Number of counties	Number of farms	Units	Extent	Cost-shares	Percent of State total	Average rate per unit
Permanent cover	A-2	76	6,031	Acre	105,619	1,342,255	28.92	12.71
Increased acreages of rotation cover	A-3	41	1,476	do	35,498	294,193	6.34	8.29
Contour stripcropping	A-5	41	244	do	8,349	31,211	.67	3.74
Field stripcropping	A-6	21	47	do	3,694	7,579	.16	2.05
Trees or shrubs for forestry purposes	A-7	50	631	do	5,364	103,039	2.22	19.21
Trees or shrubs to prevent erosion	A-8	50	460	do	916	37,842	.81	41.31
	A-8			Acres served	22,069			1.71
Improvement of cover for soil protection	B-1	8	12	Acre	195	2,011	.04	10.31
Reservoirs for agricultural uses	B-7	84	1,016	Number	1,048	386,307	8.32	368.61
	B-7			Acres served	74,327			5.20
Timber stand improvement	B-10	24	48	Acre	505	6,392	.14	12.66
Permanent sod waterways	C-1	68	830	do	1,251	267,320	5.76	213.69
	C-1			Acres served	21,309			12.54
Permanent cover on dams and other problem areas	C-2	35	97	Acre	248	3,836	.08	15.47
	C-2			Acres served	1,848			2.08
Terraces	C-4	36	119	do	2,006	85,469	1.84	42.61
Diversion terraces, ditches, or dikes	C-5	43	226	do	3,851	78,733	1.70	20.44
Erosion control dams storage type	C-6	12	50	Number	47	74,741	1.61	1,590.23
	C-6			Acres served	5,006			14.93
Erosion control dams other	C-6	8	14	Number	14	10,287	.22	734.79
	C-6			Acres served	375			27.43
Mechanical protection of inlets or outlets	C-7	50	378	Number	638	231,048	4.98	362.14
	C-7			Acres served	36,080			6.40
Streambank or shore protection	C-8	13	23	do	736	10,798	.23	14.67
Permanent open drainage	C-9	55	866	do	51,198	158,671	3.42	3.10
Underground drainage	C-10	43	1,887	do	44,111	489,221	10.53	11.09
Shaping or land grading to permit drainage	C-11	8	145	do	7,292	22,325	.48	3.06
Winter cover	D-1	37	1,000	Acre	71,119	104,093	2.24	1.46
Stubble mulching	E-1	36	1,425	do	152,013	77,549	1.67	.51
Contour farming	E-2	19	51	do	1,738	2,930	.06	1.69
Wind erosion control operations	E-3	3	274	do	30,427	22,820	.49	.75
Home gardens	E-5	11	31	do	24	599	.01	24.96
County conservation practices	F-2	5	69	Acres served	1,170	13,585	.29	11.61
Practices to meet new conservation problems	F-3	18	656	do	34,228	184,303	3.97	5.38
Wildlife food plots or habitat	G-1	81	1,865	Acre	9,394	78,972	1.70	8.41
	G-1			Acres served	145,569			.54
Shallow water areas for wildlife	G-2	67	662	Number	1,181	175,573	3.78	148.66
	G-2			Acres served	13,809			12.71
Wildlife ponds	G-3	25	50	Number	49	58,511	1.26	1,194.10
	G-3			Acres served	1,109			52.76
Other wildlife practices	G-4	7	13	do	1,671	990	.02	.59
Conservation practices to enhance natural beauty	H	73	1,286	do	12,388	280,570	6.04	22.65
Total regular		90				4,643,773	100.00	

THE POLITICS OF OCEANS

Mr. HOLLINGS. Mr. President, yesterday Dr. Edward Wenk, Jr., former executive secretary of the National Council on Marine Resources and Engineering Development and now professor of engineering and public affairs at the University of Washington, presented a talk on "The Politics of the Oceans" before the National Association of Broadcasters in Chicago.

Dr. Wenk spoke eloquently of the importance of the oceans to the United States and of the recent history of oceanic affairs in the United States. He pointed out that "it was the Congress rather than the executive branch that exercised the leadership of seeking not only more intensive study but also more productive use of the sea." But despite the clear definition of the benefits to be extracted from the oceans to meet our needs and aspirations, our oceans programs are funded on a base "equal only to the interest on the investment in space."

Dr. Wenk said:

Where are we today? We certainly aren't moving. A superlative guidance system cannot compensate for deficiencies in thrust.

Despite the congressional leadership of the last 10 years, and despite the fact that our ocean programs have probably studied more than any other subject in the past with countless reviews, Dr. Wenk expressed his concern that the Advisory Council on Executive Organization would do the President a disservice. He said:

I am concerned that the Ash Council will inadvertently do him a disservice in not giving the attention to the oceans they deserve, simply because there has not been political pressure to act. . . . The management of marine agencies could be accomplished now by accepting the Stratton Commission recommendations.

Mr. President, we await the recommendation of our Federal civil oceanic and atmospheric affairs. Let us hope that he takes the opportunity to strengthen those programs, by taking the best step that has been offered to date, the creation of an independent National Oceanic and Atmospheric Agency.

I ask unanimous consent that Dr. Wenk's speech be printed in the RECORD.

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

THE POLITICS OF THE OCEANS

(By Edward Wenk, Jr.)

Members of the National Association of Broadcasters, I am singularly honored by this platform and by your invitation to address this distinguished audience. And I am pleased to have received an assignment to discuss "Oceanography." I realize that the term "oceanography" stimulates rich and enjoyable images for most of us: A seductive blue-green background; playful schools of brilliantly colored fish; sunsets mirrored in emerald-cool tropical waters; earnest sailboats tacking in Long Island Sound or a grizzled mariner in oilskins victorious over a howling gale. In a technological age, additional excitement may be generated by visions of research submarines with Owlish eyes and fantastic mechanized arms at work on the previously inaccessible sea bed.

This audience has seen these photogenic portraits often. As men close to communications media, I can imagine your asking "what's new?"

I intend to answer that question. But to

do so means that we must leave behind these romantic images that the oceans are benign.

This address is going to be concerned with the politics of the oceans.

You may be tempted to reject that notion on the grounds that the fish don't vote. What's new is putting people in the oceans. And what is news is that like other human endeavors—there is trouble in paradise.

After years of neglect of our maritime legacy, we began a short decade ago to relate the oceans and the entire marine environment to the social and economic goals of man. And as we made progress in research tools to comprehend the sea and in taking steps for its wise and effective use we have begun to enter a familiar domain of human affairs—that of conflict.

In the short time available in this address I shall try to portray a broad spectrum of uses of the sea; discuss some projections for the year 2000; and to outline some of the issues before the nation.

These issues comprise the politics of the oceans.

The fact that they may have been lost in the noise level is itself a symptom of the problem that, largely hidden, these conflicts not only continue unresolved, but the opportunities to advance this nation to a more durable relationship with our maritime environment may be delayed with serious losses to us and to all mankind.

Recent photographs of the earth from space reveal that the predominant terrestrial feature is the blue of the world's ocean. These pictures confirm what every geographer knows—that the earth is a water planet—that its 330 million cubic miles of ocean cover 70.8 per cent of the earth's surface.

Other statistics on the sea are impressive in terms of its size and content, its ability to absorb energy from the sun and thus energize weather and climate. Its potential sources of food, fuel and minerals are incalcuable; and with our contemporary scientific and technical muscle we can now accomplish things on, in, or under the sea that we have longed aspired to accomplish but have been denied because of the strenuous and hostile nature of the marine environment.

With this frontier stretching out ahead of us, we should recall the eloquent question of the British philosopher, Thomas Huxley, when he visited our West one hundred years ago, he said "I cannot say that I am in the slightest degree impressed by your bigness or your material resources as such. The great issue about which hangs the terror of overhanging fate is what are you going to do with these things?"

What are we going to do with the vast ocean?

How relevant is the sea to meet the disparity between a burgeoning world population and the food supply; to furnish energy and minerals for a voracious appetite of an industrial society; to provide sanctuaries along the coastline for the swelling crowds that seek an escape from the scars of urban living—a population which, incidentally, fouls with pollutants the very waters that it seeks so aggressively for recreation?

And how can the seas foster national understanding and cooperation and become a new avenue toward world order rather than another theater of world conflict?

The sea is a major source of food, particularly protein. Man now harvests about 65 million tons a year; and expanded with care so as not to deplete stocks, productivity of ocean fisheries is estimated to be at least 5 to 20 times larger than today's catch. Add to this opportunity the potential of chemical processes that can convert whole fish to protein concentrate—and meet the tragic permanent disability of underfed populations when children suffer from lack of protein through the age of five. FPC could meet this problem at a cost of perhaps one cent per child per day.

Offshore oil and gas production now accounts for 16 per cent of the world's supply. This development could well triple in the next ten years and increase by a factor of six by the year 2000. With almost 10,000 oil wells already in production, the number could increase by 1,000 a year.

Scientific exploration has indicated that large areas of the seabed are covered with marble-sized nodules of manganese, copper, nickel, and cobalt. In some areas the concentrations become a pavement. While this production now is only in the experimental stages, exploitation of these minerals is assured by the year 2000.

And the sea continues to be a great commercial highway of maritime trade. While prosaic and racked with frustrations among its participants, shipping is of key importance to this nation and to all industrialized nations. U.S. bound commerce has doubled every 20 years. Today it is almost 500 million tons. It will grow well over a billion tons in the year 2000. And by then worldwide shipping will have at least quadrupled to 8 billion tons. Oil, chemicals, and ore can be carried by ship far cheaper than by any other mode. The cost per ton-mile is roughly 1/10 of that by rail, and roughly 1/100 of that by air. This explains why almost every nation has begun its industrial growth around the ports and harbors which have become gateways for its raw materials.

That coastal margin is where "the action is."

This band which stretches 17,000 miles along our coasts and Great Lakes is not only an area where the land and water meet; it is the region where the people and the water meet. The 30 states which border the Oceans and Great Lakes contain 75% of our nation's population and more than 45% of our total population lives in the counties which border the coastline. Almost all of the major megalopolises now projected for year 2000 are in the coastal zone.

Shipbuilding, maritime commerce and the fishing industry of course, could have only developed in the coastal zone. Our naval strength and seaward thrust for offshore oil and gas must be based there. Many industries find it advantageous to be close to ocean transport, labor, and produce markets. And with their growing leisure time and disposable income, the American people increasingly seek the aesthetic pleasures of the coastal zone—its climate and opportunities for swimming, sport fishing, and boating.

In compressing more and different activities into a limited geographical area, it is only natural to find conflicts growing among uses, between those who wish to develop industry, who wish to live, swim, fish, and sail along the Coast, and those who unwittingly dump municipal and industrial wastes into convenient estuarian sinks. Everybody wants "to do his thing" along the Coast, and neither the space nor the ecology can support all these activities.

Dredging and filling of wetlands impairs the capacity of estuaries to support fish and wildlife. Wastes have turned rivers into open sewers and have caused withdrawal of large shellfish areas because of health hazards. Limitations imposed by extensive private ownership have reduced public access to beaches at a time when a population demands more recreational opportunities. Along the East Coast, only 3% of the coastline is accessible to the public.

It takes an oil spill off Santa Barbara or a tanker wreck in Halifax or Land's End, England, or Tampa Bay, or Australia, or San Juan, Puerto Rico, for people to first appreciate how important the coastal regions are to their lives, how delicate is their ecology, how vulnerable they are to accidental damage.

We have only begun to appreciate the potential of the sea:

Only a small fraction of the fishery stocks off our coasts are being fully developed; and with a growing domestic consumption of fish products, only one-third are provided by U.S. fishermen; their catch has remained static while the world catch has more than doubled in the last ten years. Where will our industry be 30 years hence when the world catch is 3 times the present volume? Will our voice be heard at the international conference table when quotas are negotiated?

At present, only 6 per cent of our own international maritime traffic is carried in U.S. flagships. What will our status be in the year 2000 when total world shipping increases by a factor of 4 or more?

And how will we preserve wildlife sanctuaries and deal with the wastes of an affluent society because we erroneously assumed the ocean had an infinite capacity to absorb and dilute any volume and lethality of pollutant?

A few poets and prophets spoke and sang of their visions of the importance of this undersea world to mankind, but it was the scientific community about 11 years ago that—seriously concerned about the feeble financial support for oceanographic research—called the attention of the government to its deficiencies. This deficiency has been under continuous scrutiny ever since.

It was the Congress rather than the Executive branch, however, that exercised the leadership of seeking not only more intensive study but also more productive use of the sea.

The most significant landmark in the development of oceanography—and I would rank it more important in the last decade than any single act of scientific discovery—was the enactment of the marine resources and engineering development legislation in 1966. For the first time in our national history, we had a mandate to employ the seas more effectively. Recognizing that eleven Federal agencies were involved, the act assigned the President responsibility for energizing this disparate effort and leading the Nation to fulfill this marine promise. And it provided him a cabinet-level, policy planning council to help set goals and priorities, coordinate the Federal effort and develop momentum.

This action inadvertently reinforced some of the drumbeating for a crash program in oceanographic research that began to be generated after the Thresher disaster in 1963. In considering massive development of a capability for search and salvage, some of the aerospace industry took fliers in inner-space. And entrepreneurs began to exploit the long-range investment potential of the oceans by suggesting short-range profits on the basis of untold wealth on the bottom of the sea. Neither exaggeration was warranted.

However, we had made great strides in fashioning new research tools—underwater TV, submersibles, buoy networks—and expanding our oceanographic fleet and cadre of oceanographers to decipher the mysteries of the sea. The marine sciences council defined clearly and realistically what benefits can be extracted from the ocean to meet our needs and aspirations—for a wholesome environment, for economic well-being, and to satisfy nutritional deficiencies for less developed peoples, funding under the council has increased every year. But in comparison to the space program it is miniscule—equal only to the interest on the investment in space.

But by a stroke of misfortune, this momentum to move ahead occurred at the same time scientific research across the board was being cut. In the competition for funds, Federal agencies began to practice bureaucratic judo. And under the continuing pressures to control inflation during the last six months, official advocacy has been stilled.

Where are we today? We certainly aren't moving.

It's like having a handcrafted auto and a carefully drafted roadmap toward some long awaited destination, only to have the vehicle ambling along becuse of too little gas in the tank and a lot of quarreling passengers in the car with no one steering.

What's the problem?

First, we have experienced no dramatic threat—real or imagined—such as the Soviet, October 1957 space shot that galvanized the American space program into the largest, most complex technological project the world has ever known. And second, we have lacked any special interest or well-mobilized public interest lobbying for action. It would seem that in the absence of either crisis or political pressure, pure logic won't move this program to meet the opportunities ahead.

And the reason logic alone won't do it is because the retarding forces are exhausting the energies of the few political and scientific leaders who have dedicated themselves to advancing this nation's destiny in the sea.

Let me give you a few examples.

The Administration and the Congress now have a stand-off on the question as to whether the Federal government is well enough organized to provide the leadership necessary to this program. When the Congress assumed initiative to strengthen our oceanographic efforts ten years ago it tried valiantly to give a fragmented, unsteady enterprise some sense of unity and momentum.

In three administrations Congressional recommendations to move ahead have been repeatedly resisted and opposed by the Executive branch!

Congress's first legislative efforts were vetoed in 1963 by President Kennedy on recommendation of the Budget Bureau. Its next wave of effort in 1966 was successful in establishing both a charter and improved governmental apparatus, but over the Bureau's objections. When President Johnson signed the Marine Science Act into law, he asked Vice President Humphrey, as chairman of the cabinet-level Marine Council, to get on with the job. During the Johnson Administration boats were rocked and torpedoes launched despite the stubborn resistance of a ponderous and multi-headed bureaucracy. The Council was able in its first three years to function as a creative activist body. It sharpened goals and priorities to accomplish the social objectives listed earlier; it helped oceanography come of age.

But Congress never intended that as a final solution. It also provided for a Presidential Commission to study what Federal organization was needed in the long run. That Commission was chaired by Dr. Julius Stratton, former President of M.I.T., and composed of distinguished citizens from industry, banking, education, law, science, state and federal government. It included the incoming president of the American Bar Association, the founder of a major oil company and a Florida publisher and owner of a number of radio stations. With only three oceanographers, it can hardly be called self-serving.

The Stratton Commission said that while the council performed well as a steering mechanism for the government, it was inadequate for the job ahead because—like in a rocket—a superlative guidance system cannot compensate for deficiencies in thrust. They recognized that apart from the Navy, many other Federal agencies were involved: Coast Guard; Bureau of Commercial Fisheries; Corps of Engineers; geological survey; Environmental Science Services Administration; National Science Foundation; National Oceanographic Data Center; Federal Water Pollution Control Agency; Maritime Administration; five bureaus in the State Department and others. The piecemeal missions did not add up to a coherent national doctrine or program. In the competitive struggle of the Washington environment, experience proved that only a strong operating agency could meet the future needs. So, over fifteen months ago, they proposed consolidating many of the pieces scattered around the Government into a national ocean and atmospheric agency. They said we need one strong agency, not ten feeble civilian components. They said the new consolidated agency would:

Undertake coastal planning and urgent ecological research, including the coasts, Great Lakes and Arctic;

Foster harvesting of untapped fishery resources, and help rehabilitate our industry;

Take steps to reduce pollution from massive oil spills and to insure safety of life and property;

Plan and undertake systematic rather than ad hoc exploration of the sea;

Develop modern systems for environmental observation and prediction;

Foster efficient distribution of oceanographic data;

Strengthen international cooperation and continue to provide U.S. leadership, such as for the decade of ocean exploration;

Undertake necessary engineering research to improve our civilian marine technology; and

Develop an "early warning system" so as to anticipate inadvertent injurious effects of technology.

In May 1969, five months after coming into office, President Nixon requested his Advisory Council on Executive Organization under Mr. Roy Ash to study this proposal. By September, Mr. Ash responded to a Congressional inquiry by noting that he was about to study whether to study the Stratton Report.

No one knows how often the Ash Council has met to discuss the oceans, or who they talked to. They apparently never talked to any member of the Stratton Commission. It is known that they are largely staffed by Bureau of the Budget and if the past is any portent of the future, the Ash Council may well reflect some of the opposition to oceanography that has characterized the Bureau's little publicized position for ten years.

Preliminary findings of the Ash Council have become known because they have quietly endeavored through Administration staff to lobby for Congressional support. On the grounds of administrative tidiness not to set up any new agency regardless of justification, the Ash Council initially recommended this entire maritime enterprise be turned over to an Assistant Secretary of the Interior! Now the Department of Interior is the *only* civilian agency that this year requested from Congress *less* money for oceanographic affairs than last; they are closing some of their oceanographic laboratories and laying off staff.

There is an ancient adage that where "thy heart lies thy purse lies also." Interior's willingness to support a well-knit maritime "exterior" activity is at least subject to reasonable doubt. In the past, assistant secretaries of interior have had difficulty coordinating even their five bureaus that deal with the sea, much less a larger organization. The secretary himself has had his hands full of oil spills, so much so that he has not had the time to fulfill a responsibility to improve the Federal Government's emergency plan to deal with oil containment after a spill—based on the Santa Barbara experience. The department has yet to develop programs for coastal environmental research that the President announced as vitally needed seven months ago.

In fact, President Nixon has repeatedly stated he is interested in this Nation's maritime future. He gave clear financial support to a major five point program last October that extended goals and fulfilled promises of the Johnson administration, especially focused on maintaining quality of the oceanic environment.

I am concerned that the ash council will inadvertently do him a disservice in not having given the attention to the oceans they deserve, simply because there has not been political pressure to act. They are likely to wait out an issue ready for action in the important but uncertain future of recommendations to reorganize for all environmental problems. The management of marine agencies—to provide better performance, meet the public need and provide a podium for leadership—could be accomplished now by accepting the Stratton recommendations. If a new environmental department eventually emerges, NOAA could be transferred there comfortably.

The only known opposition is that to be expected from Cabinet officers who would lose agencies to NOAA. Yet in testimony before Senator Hollings opposing NOAA, they admitted they had not read the Stratton report!

If this nation is to lead the world in effective use of the sea and coastal zone, a high-level spokesman is needed in the executive branch. So far, agreement on this next major step has not been a partisan issue. The democratic chairmen of the cognizant committee and subcommittees—Senator Magnuson, Senator Hollings, Congressman Lennon—have publicly supported legislation to create NOAA. So have republicans such as Rogers Morton, John Anderson, Bob Wilson, Thomas Pelly, Charles Mosher, George Bush, Norris Cotton, Mark Hatfield, John Tower, and George Murphy.

But in his environmental message in February, the President did not mention the oceans, notwithstanding claims by White House staff that he would deal with the Stratton proposal. Committees in both Houses have delayed action, they say, to extend further courtesy to the President to take a position. They say they are losing patience.

In the present paralysis of official action we face another growing conflict between executive and legislative branches. We may seriously erode the progress of the last four years.

This is a time of fiscal stringency. In the short term this consolidation would assure "more bang for the buck." The three presently uncoordinated oceanographic fleets could be operated as one. Computerized data from different agencies could be made compatible.

We do not need a crash program. But with all these passengers in this slow moving car, we need someone to steer.

Let me conclude by some words of wisdom by one of our elder statesmen—Oliver Wendell Holmes—aimed in his day at the ship of state. They seem so applicable to our present condition of marine science affairs. Said Holmes, "We must sail, sometimes with the wind and sometimes against it—but we must sail, and not drift, nor lie at anchor."

Indeed we are drifting! The world community has responded to U.S. leadership beginning in 1966 to use the seas for the benefit of mankind. They are watching for a credible action to assure that continued interest. Fortunately, neither they nor we consider the budget as the only indicator of support.

In the case of the ocean, literally the medium can be the message.

Enactment of the bills before Congress to establish NOAA are the medium.

This field is too limited to sustain a protracted debate between the two branches.

It is time for the people to speak. It is time for the executive branch—and in this administration—to take this opportunity to join with the Congress, to realize the yet untold engagement of the people and the sea.

RUTH THOMPSON, LATE A REPRESENTATIVE FROM MICHIGAN

Mr. GRIFFIN. Mr. President, I regretfully call the Senate's attention to the death of Ruth Thompson, who for a number of years represented Michigan's Ninth District in the House of Representatives.

Former Representative Thompson died Sunday, April 5, and funeral services are being held today in her hometown of Whitehall, Mich.

Miss Thompson was born in Muskegon County, Mich., in 1887. She graduated from Muskegon Business College in 1905, and studied law while working in a law office from 1918 to 1924.

She was admitted to the Michigan bar and served as registrar of the probate court of Muskegon County for 18 years. She was judge of probate for Muskegon County from 1925 to 1937, then elected to the Michigan House of Representatives in 1939, where she served until the outbreak of World War II. Ruth Thompson came to Washington during the war, worked for the Social Security Board, the Labor Department, and the Adjutant General's Office. After the war she served in the U.S. Headquarters Command in Germany, and in Denmark. When she returned to the United States, she served as a member and chairman of the Michigan State Prison Commission for Women for 4 years before being elected to the 82d, 83d, and 84th Congresses.

Mr. President, Miss Thompson was my predecessor in service as the Representative from Michigan's Ninth District. The people of that district and the State have lost a distinguished public servant.

LET US PERSEVERE IN SAVING THE BIG THICKET AS A NATIONAL PARK

Mr. YARBOROUGH. Mr. President, for many years concerned citizens have called for action to save the Big Thicket. Interest in the Big Thicket and its protection is not a recent thing, it is not a new cause among those who love nature. This is a continuing battle, but the necessity for a timely victory becomes more urgent as mans' destructive forces ravage more and more and of this once great, but now limited, wilderness.

An eloquent plea for the Big Thicket National Park appears in a recent article in the official publication of the Texas Garden Clubs, Inc. It was written by Mrs. Charles Griggs, the conservation chairman of this fine organization. Mrs. Griggs captured the beauty and wonder of the Big Thicket when she wrote:

> To meander through the Thicket is to see miles of wildflowers and crystal clear bubbling brooks; towering majestic, primeval, impenetrable forest; layers and layers of seemingly hundreds of tints and shades of green. This is a place to stand in awe, a place to feel the infinite—a place we cannot allow to be destroyed.

This is indeed a moving statement, inspired by contemplation of the infinite glories of this great gift of nature.

Mr. President, to share this article in its entirety with Senators, I ask unanimous consent that the article, entitled "Our Big Thicket Today—A Shattered Tragedy," published at pages 8–9, in volume 18, of the March–April issue of the Lone Star Gardener—1970—be printed in the RECORD.

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

OUR BIG THICKET TODAY—A SHATTERED TRAGEDY

(By Mrs. Charles Griggs)

Once upon a time (as late as a hundred years ago), the Big Thicket covered three million acres. Today, fewer than 300,000 acres remain, and conservationists claim the existing forest is disappearing at the rate of 50 acres a day.

Here, as everywhere in our country, the wilderness is eroding. What remains survives in isolated and glorious patches on mountainsides and remote islands, in dark swamps and deserts. For every strip that is left, there are competing claims. The back country may look serene, but there is little security.

What is left of our Thicket is located in parts of five southeast Texas counties—Polk, Tyler, Hardin, Jefferson and Liberty. Here we find a unique wooded area famous for its vastness. It is an alluvial basin of deep porous, moisture-bearing, sandy clay soil. This is responsible for the luxuriance and variety of its vegetation. It is a biological crossroad, as flora and fauna of the arid Southwest meet and mingle with that of moist Eastern woodlands. Plants from the Arctic Zone thrive along with tropical species. Due to the proximity of the Gulf, there are rarely hard freezes. Ferns (28 species) often grow man high, and the lowlands are dense with giant palmetto. There are more than a thousand species of flowering plants, twenty species of orchids and a thousand varieties of fungi, the latter *not yet classified*. The botanical wonder is furthered with rhododendrons, azaleas, masses of wild honeysuckle, dogwood, great magnolias and wild wisteria growing in profusion everywhere they are allowed peace.

To meander through the Thicket is to see miles of wildflowers and crystal clear bubbling brooks; towering majestic, primeval, impenetrable forest; layers and layers of seemingly hundreds of tints and shades of green. This is a place to stand in awe, a place to feel the infinite—a place we cannot allow destroyed.

The fauna is equally imposing. Three hundred species of birds nest in the Thicket among others, the ivory-billed woodpecker, long thought extinct.

As for the wildlife there are deer, squirrels, turkeys, black bear, puma, panther, red fox, wildcats, wild pigs that grow to three or four hundred pounds, coons, possum, skunk, otters, bobcats, cougars, rattlesnakes, copperheads and water moccasins. Domestic animals have gone feral in the Thicket—cats, goats, cattle and even a herd of jackasses. "The poachers have just about killed all the alligators," according to a Thicket guide, "but there are probably a few left where even those fellows don't like to go."

This same guide claims that only a forty-acre tract along a stream called Beech Creek, bordered with eighty-foot-tall magnolias and beech trees, is the true surviving Big Thicket.

Conservationists everywhere agree with the slogan of the Lone Star Sierran: "Not blind opposition to progress, but opposition to blind progress," and under this banner we must join ranks—if we want to save any of the Thicket at all.

Words from our co-fighters:

Mr. Dempsey Henley, as President of the Big Thicket Association: "Texas has never been concerned about conservaton. We have only ten percent of our natural environment left. We are ten to fifteen years late, and yet the Big Thicket people are totally without ecological conscience," and he mentioned the forty or fifty acres laid to waste every time the saltwater they pump out of an oil field accumulates and the realtors with their everspreading subdivisions.

There is much local opposition to both a National Park and a monument, although the U.S. Park Service insists there will be more available jobs through tourism than through both oil and forestry.

Stan Staton, outdoors writer for the *Houston Post:* "I could suggest a real crusade for those interested in the forest—Save the Hardwood Trees."

A solid stand of pine, which is the ultimate goal of forest management, federal and private, *Is a Biological Desert*.

One lumber company recently sprayed its hardwood trees with a defoliant, and in the process, killed an entire rookery containing hundreds of birds, egrets, herons and their young. Another lumber company used a hormone spray from helicopters on their 7,000 acres. There is not one hardwood tree left—Nor any birds.

Other dead hardwood trees disclose a little chipped place at the base. This is caused by a tree injector, which—in a nutshell—is a needle capable of delivering a lethal dose of poison to a mighty oak.

Senator Ralph Yarborough, D-Texas, feels that the 35,000 acres, suggested as a monument by Texas Forestry Association, is totally inadequate for ecological reasons, and in his bill S 4, introduced to the 91st Congress, he asked for a National Park with at least 100,000 acres. He also implores organizations of any kind or any place "to sign resolutions to save our Big Thicket." (Texas Garden Clubs, Inc., did so in the Spring of 1969.)

Gene Marine, whose book *America the Raped* is must reading for anyone interested in saving this planet: "An engineering mentality permeates our whole way of life, devastating the American continent. This is not confined to dam and highway building."

"It is no longer a luxury item to save our environment," declares Eugene P. Odum, Professor of Zoology and Director of University of Georgia Institute of Ecology. "It is a scientific necessity. Right now we need to hold the line so that our great natural resource is not frittered away for the quick gain. We need to hold the line until we have time to come up with an overall plan."

Dr. Donald J. Weissman, Professor at University of Texas, Austin, talking about interdependence in nature: "The man with the axe comes, then the rain comes, washing the humus away, then the insects go, then the birds and the animals. Nature will again unify, but can man survive n this changed environment?"

The most precious fighter for the Big Thicket, or any other course her valiant heart feels called upon to champion, is little Mrs. Ethel Hill, Woodville. Ninety-three years young, she travels around on buses to give lectures. "I get so mad," she says, banging her cane on the floor, "that when I die, there will be nothing left but a cinder." But what a glorious cinder! She puts us all to shame.

Justice William Douglas in his angry book, *Farewell to Texas*, tells of a bulldozed road in the Thicket. "On the edge of the road, dozens of magnolias lay freshly cut, not cut for flooring, for paneling or railroad ties—they were cut for sheer destruction, and the trunks lay rotting."

Jerry Flemmons, *Fort Worth Star Telegram* travel writer: "Conservationists have failed to have anyone listen to them for three decades, and the U.S. Park Service argues it is too late to save larger pieces of the Thicket." He continues: "If this is true, perhaps a monument is more apt. After all, a monument is a tribute to a dead issue or a lost cause, which seems to be the fate of Texas' Big Thicket."

Hopefully, there are scientists who theorize that through careful protection, the Thicket would come back to original state. The climate, which man has not yet totally destroyed, created the Thicket, and, *once again can do it*.

If one gets an old guide—a man who has lived in and loved the Big Thicket—it is possible to walk to the Witness Tree, a big magnolia, said to be a thousand years, old, that marks the corner where Liberty, Polk, and Hardin Counties meet. The tract, hardly more than a crack in the forest wall, is overgrown with red oak, sweet gum saplings and hedged with broomstick pine. This was the real Thicket—and this is what they want to set aside for the monument. The forest floor is swamped with fallen trees, brush and briar, and sprinkled with holly, dogwood, gum, oak, hawthorne, maple, trailing vines and Spanish moss. You can hear but not see crows, cardinals, white-eyed vireo, warblers and Carolina wrens. There is

no sky, no sun, no sense of direction. A mile and a half away there is a grassy clearing with a fifty-feet-high, four-feet-in-diameter grey stump full of woodpecker holes. This stump is the Witness Tree. "They poisoned it three years ago," says the guide. "I can show you the holes they bored to put in the poison. There isn't any mystery to it—they did it for a warning." "They" are the folks that don't want the monument.

Before it is too late, we must stop and consider what loss of natural environment will mean: animals—from deer to robin, need food and cover, clean waters and room to roam. If they are to survive, spaces for wildlife cannot be treeless subdivisions, cannot be factory sites of drained marshland, cannot be streambeds for sewage or speeding lanes for powerboats.

All this directly involves our own well being—as the perennial quest of man is to renew his spirit on sea and sky, on trees and flowers; to recapture a not-so-long ago happier era, when "cloudy blue" didn't mean smog or pollution, but made one think of forget-me-nots and woodsmoke, of bluebells and summer distances.

Let us persevere in saving the Big Thicket. Then we may, like Apollo XI, proudly proclaim: "It is a short step for man, but a giant leap for mankind."

WHAT'S AHEAD IN THE ASIA-PACIFIC AREA

Mr. FONG. Mr. President, on Friday, April 3, it was my privilege to be guest speaker for the International Night sponsored by the West Honolulu Rotary Club. As Hawaii is a mid-Pacific State with intense interest in the future of this vast area, I chose as my topic "What's Ahead in the Asia-Pacific Area."

Since this is a subject of considerable interest to all Americans, I ask unanimous consent that the text of my address be printed in the RECORD.

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

WHAT'S AHEAD IN THE ASIA-PACIFIC AREA

President Kea, Chairman Au, Founder Dr. Lee, Consuls General, Honored Guests from the East-West Center, Ladies and Gentlemen, Friends: It is a real pleasure for me to be here tonight to break bread with such distinguished company and to take part in the West Honolulu Rotary Club International Night, always one of the highlights of your yearly activities.

After receiving your kind invitation to speak, I did a little research on Rotary Clubs. Although I have long known that Rotary is an international organization, I must confess I was amazed to learn there are more than 14,000 clubs and over 660,000 members in some 140 countries or territories. The sun never sets on Rotary International!

That Rotary should win worldwide respect and adherence is the finest tribute that can be paid to the guiding concept of your clubs: "Service to Others."

It is a tribute to all Rotarians whose high ethical standards in business and profession and whose service to their community, nation and world carries out the Rotary ideal year after year, decade after decade, with exemplary success.

I should like to add my own commendation to Rotary members not only for the tangible and visible services you perform to help others but also for your magnanimous spirit which transcends barriers of language, customs, and distance in a truly international effort to serve your fellow men.

Somehow it seems highly appropriate that the most internationally active Rotary club should be here in Hawaii, the crossroads of the Pacific, and the multi-racial land of Aloha, of brotherhood, and love.

On this International Night in Hawaii, it seems highly appropriate to talk about international events and particularly to take a look at what is ahead in our own Asia-Pacific area.

In a 30 minute talk, I can hardly do justice to all the efforts being made and all the progress under way in the many countries of Asia and the Pacific, to all the forces at work, and to all the possibilities that lie ahead. So if I fail to mention a country that deserves mention or an event that is important, I want to assure you that it is not for lack of interest; it is for lack of time.

Events of the past decade have brought home to all of us the cold reality that we live in a world not of our choosing and not entirely of our making. For Americans, the delusion immediately after World War II that the United States could shape the world has dissipated. Experience has taught us the hard lesson that even the most productive and most affluent nation does not control all the major decisions and major events on this planet.

A few examples from the recent past illustrate that decisions made outside the United States are profoundly affecting the course of events in Asia and the Pacific.

London and *Paris* made the decisions to withdraw from their defense outposts in Asia and the Pacific, thereby greatly altering the Free World posture there.

Hanoi made the decision to occupy Cambodian soil with tens of thousands of troops, eventually precipitating the present crisis in Cambodia.

Moscow and *Peking* made the decisions to stiffen their eyeball-to-eyeball confrontation along their common border, raising the specter of all-out war, only now held off by discussions between the two.

Hanoi made the decision to escalate its military push into Laos, gravely threatening the Laotian government and arousing concern as to how far the North Vietnamese would penetrate.

Moscow made the decision against reconvening the Geneva Conference so that a peaceful settlement in Laos could be worked on.

Knowing that the United States alone does not control events in Asia, our policy must be based on a realistic view of the real world. This is what President Nixon is doing.

In his recent foreign policy statement, President Nixon said the central thesis of his Guam doctrine is that "the United States will participate in the defense and development of allies and friends, but that America can not—and will not—conceive all the plans, design all the programs, execute all the decisions, and undertake all the defense of the free nations of the world."

At the same time, the President emphatically declared: "We have no intention of withdrawing from the world."

President Nixon's pledge is most reassuring to those of us in the Asia-Pacific area, for we know some in Congress and in other places of influence call for the United States to get out of Asia and the Far East and stay out. If we follow their advice, we would revert to isolationism, a Fortress America concept.

Fortunately, President Nixon knows better than to fall into that trap. He has been to most of the countries in this Hemisphere, both in an official capacity and as a private citizen. He knows Asia's people and Asia's problems. No other President has matched his depth of understanding of the massive forces at work in Asia.

But many other Americans have forgotten that our Nation has been deeply involved in Asia and the Pacific from the early days of our Republic. As long ago as 1784, Yankee clipper ships visited the port of Canton, China. Just before the Civil War, Commodore Perry opened Japan to the outside world. At the turn of the century, America acquired the Philippines from Spain, Hawaii by annexation from the Republic of Hawaii, and Alaska by purchase from Russia.

Years of trade and commerce with Asian lands, our governance of the Philippines, World War II in the Pacific, the U.S. occupation of Japan, and the war in Korea further enmeshed America's destiny with Asia. Vietnam is the latest chapter in U.S.-Asian history that dates back two centuries.

With Alaska and Hawaii now States, America is firmly anchored in the Pacific, and our future policy cannot overlook this geographic fact of life. Because of Hawaii's statehood, U.S. boundaries in the mid-Pacific are 2500 miles closer to the Far East than our mainland West Coast. And the U.S. border in Alaska is within two miles of Asia!

To abandon Asia and the Pacific would be to abandon our two westernmost States—and this is unthinkable!

America's presence in this area and our stand against armed aggression are giving Asian nations the time they so desperately need to strengthen their economies, modernize their systems of government, effect badly needed reforms, and build their national identities and independence.

Asian leaders recognize the vital importance of continued American presence in their part of the world. Singapore's Prime Minister Lee Kuan Yew said, "What Southeast Asia needs is a climate of confidence, continuing security, and stability in which constructive endeavor can become rewarding. It also needs to have the spirit of success." He said America is giving Asia the "breathing space" it needs.

President Marcos of the Philippines counseled that the United States should hold "a nuclear umbrela" above small countries and allow them to develop while encouraging training of indigenous troops to fight aggression and subversion directed against their own country.

Just before Prince Sihanouk of Cambodia was deposed, he candidly admitted that if the United States retired completely from Southeast Asia, "we would be obliged, despite ourselves, to become satellites of China. That is, if the Vietnamese Communists permit it, because it seems that they consider Cambodia, just like Laos, their own 'game preserve.'"

Prince Sihanouk also declared that if the United States withdraws from South Vietnam and a Viet Cong-dominated coalition regime takes over, eventually Southeast Asian countries would come under Chinese and North Vietnamese domination. "There will not be much bloodshed," he said, "but we will no longer be ourselves, we will become the Czechoslovaks of Asia."

Last December, Singapore's Foreign Minister Rajaratnam asserted the consequences of an American defeat in Vietnam, accompanied by retreat from the Asian continent, would be "disastrous."

So it goes, in country after country in Asia and the Pacific, America's presence is valued and America's assistance and interest are sought.

This is why the Nixon doctrine, enunciated at Guam last July, received such widespread approval in the Asia-Pacific Basin among nations striving to build nationhood, to retain independence, and to become more self-reliant.

President Nixon reaffirmed his Guam Doctrine in his New Strategy for Peace, saying clearly for all to hear: "we remain in Asia. We are a Pacific power. We have learned that peace for us is much less likely if there is no peace in Asia."

And, while nations of Asia understandably do not want to be caught in any whip-saw between Big Powers, they recognize that the U.S. presence in Asia is essential for the foreseeable future. They further know the United

States is not coveting their territory—as the Communists so obviously are.

America's credentials on that score are good. After World War II, we granted independence to the Philippines, keeping our word to the brave people of those Islands.

And, instead of occupying Japan indefinitely, the United States granted Japan sovereignty in less than seven years, just long enough for Japan to get back on her feet economically and politically. In 1953, we returned the Amami Islands to Japan and in 1968 the Bonins, including Iwo Jima. Many had questioned whether the United States would also return Okinawa, which we had won in World War II and which is so important strategically to us. Late last year, as you all know we did agree to return Okinawa to Japan. Afterwards, Prime Minister Sato said: "For territory lost in war to be regained in peace is a rarity in world history."

By contrast, for fifteen years Japan has sought to negotiate with the Soviet Union for return of the Habomai and Shikotan Islands and the two southernmost Kurile Islands, Kunashiri and Etorofu. But Moscow refuses to talk about it.

Return of land is not the only evidence of U.S. generosity and fair play. Since World War II, the people of the United States have provided $137½ billion in grants and loans to other nations. Another $5 billion are in the pipeline. In addition, $9 billion in estimated donations to overseas areas have been made by churches and foundations in America. Private individuals have contributed untold millions on top of that. Such massive financial aid has no parallel in history!

Having shared so much of our resources for so long, it is only natural that the American people now seek a reduction in foreign aid, so that we can apply more to our own urgent domestic problems.

This then, is a brief sketch of the backdrop against which we look at what's ahead in Asia and the Pacific.

Uppermost in our minds, of course, is Vietnam. President Nixon has begun withdrawal of U.S. troops, with a total reduction in authorized strength of 115,500 scheduled by April 15. As the casualty lists show, South Vietnamese forces are bearing an increasingly larger burden of their own defense. Vietnamization of the war continues and pacification of additional areas in South Vietnam proceeds.

A recently captured Viet Cong document concedes that the South Vietnamese have made significant strides in gaining control in the vital Mekong Delta area. And, although the war is disrupting Vietnam's economic and political life, progress is being made in many areas: in education, in food supplies which are now more varied and nutritious, and in producer and consumer goods which are expanding the people's social and economic horizons. Two weeks ago, South Vietnam's National Assembly gave final approval to a sweeping land reform bill designed to eliminate tenant farming and give privately-owned land to the peasants who farm it. This is a significant step and, if promptly and effectively implemented, will reduce a major source of discontent among the people.

Just when U.S. withdrawal of combat forces can be completed and when peace will come to Vietnam are two very big question marks. Much depends on Hanoi, on the speed with which Vietnamization can be accomplished, on events in Laos and Cambodia, and on more distant developments such as the Sino-Soviet border dispute, which if it heats up, might lead to curtailing of Russian and Chinese war supplies for Hanoi.

With North Vietnam escalating its military attack on Laos and with North Vietnamese and Viet Cong troops refusing to leave Cambodia, the situation in these two countries is indeed cause for concern that the Vietnam war will be widened to plague all of Indo-China. The situation is extremely fluid and there are many crucial questions unanswered.

How well will Laos be able to fend off North Vietnam's advances?

Will Cambodia have to suffer the continued presence of Communist troops on its soil, who might be used to restore Prince Sihanouk to office? Will the new regime in Cambodia repeal the ban on hot pursuit by South Vietnam and U.S. forces against the Reds' privileged sanctuaries in Cambodia?

What will be the response of the United States to these new developments?

What will Communist China and the Soviet Union do? Will they support Hanoi in broadening the war to Laos and Cambodia and step up their arms and equipment to North Vietnam? Will they want to aid and abet Hanoi in widening its sphere of influence in Southeast Asia, where both the Soviet Union and Communist China are rivaling each other and North Vietnam for ascendancy?

Until we get a glimmer of the answers to these and many other pertinent questions, we really cannot speak with precision about the immediate future of South Vietnam, Laos, and Cambodia.

Since up to now there is no evidence that either Moscow or Peking is interested in peace in Southeast Asia, it looks very much as if the Soviets and the Chinese will continue their intransigent attitudes and continue supporting armed aggression in neighboring lands.

Both Russia and China signed the 1954 Geneva accords calling for independence for Vietnam, Laos, and Cambodia and the 1962 Declaration calling for neutrality in Laos.

Yet Russia supplies the overwhelming bulk of the war materiel for North Vietnamese forces attacking South Vietnam and Laos and using Cambodia as a military base. The war's end could come quickly if the Soviets would stop the flow of war supplies to Hanoi and try to influence North Vietnam to negotiate in Paris.

China, too, is supplying Hanoi and, in addition, is training and equipping guerrilla forces in Laos, Thailand, Cambodia, Burma, Malaysia and the Philippines aimed at overthrowing present governments and replacing them with Communist regimes.

Actually, it is Communists who are fomenting war of Asians against Asians. It is Communists who are denying peace to Asia.

The independent nations of Asia and the Pacific are well aware of these facts of life. And they are wide awake to the significance of the Soviet occupation of Czechoslovakia in 1968 and her intensified border dispute with Communist China. They have seen how Soviet military power has been used against Russia's neighbors, even though they are fellow Communists!

It is little wonder the free nations of Asia turned down the Kremlin's proposal last year for a collective security system under Soviet auspices. Thus rebuffed, Soviet leaders doubtless will try to extend their influence in less overt ways. Moscow can be expected to continue vying with Peking and the United States for a major role in the Asia-Pacific arena.

Looking at Communist China, we see a nation now trying to recover from the turmoil and upheaval of the three-year Cultural Revolution, whose excesses disrupted China's economy and isolated China to the point that she was practically bereft of friends in the international community. When border tensions with her powerful northern neighbor increased, China found herself in desperate straits indeed.

In view of the Soviet Union's nuclear superiority and threats to China's nuclear installations, China decided to talk at the conference table rather than to prolong armed confrontations with Russia. At the same time, China made tentative gestures to come out of her shell and deal with the rest of the world. By autumn last year, China's interest in trade negotiations had revived and foreign business was sought. China also agreed to resume the Warsaw talks with the United States, and these got under way in January.

Meanwhile, President Nixon took several steps underlining America's willingness to improve relations with Communist China. American tourists, museums, and others are now permitted to make noncommercial purchases of Chinese goods without special authorization. American passports are being validated for travel to China "for any legitimate purpose."

The Nixon Administration also has given permission to subsidiaries of American firms abroad to engage in commerce between mainland China and third countries.

These are small, but we hope meaningful, steps toward rapprochement with mainland China. As President Nixon said, "sooner or later Communist China will be ready to reenter the international community."

We do not expect instant friendship or a swift turn-around. But I do believe that, in China's own self-interest, her leaders will gradually forego self-isolation for China in favor of trade and commerce and a modus vivendi with other nations. As her present leaders are aged, a change in leadership in China will probably occur in the 1970's. Mao's successors may prove to be less revolutionary and rigid and more pragmatic and adaptable.

As we look ahead in Asia, we see another country emerging into political as well as economic leadership—Japan.

Primarily concerned since 1945 with rebuilding its economy and developing its new government, Japan has made a truly remarkable comeback, now ranking as the third industrial nation in the world, surpassed only by the United States and the USSR. During this time, except for its vigorous drive for trade around the world, Japan's role abroad has been very low key.

But in the 1970's and beyond, Japan will probably undertake leadership responsibilities overseas. Prime Minister Sato has already told his people. "The countries of the world expect Japan, the only advanced industrial state in Asia, to help the developing countries in Asia to stand on their own feet, and it is clear that our country has the responsibility to act in a positive way commensurate with its power."

Already Japan is matching U.S. contributions to the Asian Development Bank, trading heavily with Asian nations, taking part in Asia's largest political grouping, the Asian and Pacific Council, and is a member of the Indonesia and India aid consortium.

Certainly, Japan has the technical and capital resources to help her Asian neighbors in their own economic development. Japan may well quadruple her Gross National Product in the 1970's.

In political and military matters, however, Japan must take care not to arouse old fears of Japan's earlier imperialism.

With a diminished U.S. military posture in Southeast Asia and in Okinawa, Japan will undoubtedly have to strengthen her own self-defense forces. A nuclear capability for Japan appears unlikely, however, despite the prospect that neighboring China may develop an ICBM this year. Foreseeing a triangular nuclear stalemate among the United States, the USSR and Communist China, Japan may decide nuclear arms are unnecessary for her.

Nevertheless, a much larger role for Japan in the affairs of Asia and the Pacific seems destined. I believe this will definitely be in the interest of peace in the Far East.

What role India, with her 550 million people, and Pakistan, with her 121 million people, will play in Asia in the 1970's is far from clear at this time. India is presently preoccupied internally with problems of political factionalism, unrest and revolt in certain areas, lagging industrialization, a race be-

tween food and population, and boundary disputes.

It is also unclear whether India will move toward a role of political leadership in Asia or adhere to the Nehru policy of neutralism, non-alignment, and non-involvement. So it is difficult to assess the future impact of India in Asia.

Pakistan, too, is preoccupied with internal problems of political stability. This year elections are scheduled for a constituent assembly to draft a new constitution, and a dozen parties are competing for votes. While the political situation has been fluid, Pakistan's economy has been performing well, growing about 10 to 12 per cent a year in the 1960's. In her west wing, Pakistan attained food self-sufficiency last year, but still needs grain imports for her east wing.

In view of Pakistan's special relations with Communist China, her improved relations with the Soviet Union, and continuing relations with the United States, Pakistan may find this triangulation inhibits a leadership role with other Asian and Pacific nations. We shall have to wait and see.

Taiwan, however, will continue to play an important leadership role in the Far East. The Republic of China has demonstrated clearly its ability to stand on its own feet and for several years has not received economic aid from the United States. I understand Taiwan now conducts a technical assistance program of its own in 27 other countries. This is a real achievement!

A number of other countries in Asia show economic strength. The Republic of Korea, Thailand, Singapore, and Malaysia have doubled their Gross National Product in the last decade. Korea's annual growth rate of 15 per cent may be the highest in the world! Australia, with the fifth highest per capita income, will probably double her Gross National Product in this decade.

Singapore continues its uninterrupted march toward prosperity, industrializing at about 12 per cent a year and creating urgently needed new jobs. To offset economic losses from Britain's defense pull-out, Singapore recently announced it is making its huge naval dockyards available to Soviet naval ships on the same commercial basis offered to other countries.

Hong Kong's economy advanced about 12 per cent last year and exports rose about 25 per cent. Foreign investments continue to flow into Hong Kong.

Malaysia had a five per cent increase in GNP, with exports up ten per cent last year. Industrialization is rising by about ten per cent a year.

In the Philippines, GNP has been growing by more than six per cent, and the nation registered gains in road construction and schools, in agricultural production, mining, and manufacturing.

In Indonesia, the economy staged a remarkable recovery from the chaos of the Sukarno era. In 1969, the rupiah was stabilized, the cost-of-living rise was slowed, and runaway inflation was brought under control.

Undoubtedly, part of their economic progress is attributable to the huge U.S. spending for the Vietnam war. Tourism in many countries has enjoyed a boom as GI's on leave and on R & R from Vietnam travel in the Far East. U.S. ships are repaired in Singapore, canvas shoes are made in Hong Kong, equipment is produced in Japan, plywood manufactured in South Korea—all for the war effort. Also, Asian goods have been bought by U.S. domestic industries fulfilling military contracts.

An end to U.S. involvement in Vietnam and an end to the war mean a reduction in war-stimulated spending in Asia and the Pacific. But it appears the affected Asian countries are taking steps to offset these losses. And American as well as Asian investors show no discernible loss of confidence in the economic future of the Asia-Pacific region.

On the contrary, the pace of interregional investment is accelerating. Last year Hong Kong capital was invested in Taiwan, Singapore, Indonesia and Australia, as well as in the United States and Europe. In turn, American companies were opening at the rate of one a month in Hong Kong, with investments mounting to more than $150 million by late 1969, about 12 per cent above 1968.

Despite the May riots in Malaysia, U.S. business firms went ahead with establishing a tire-manufacturing plant, a chemical herbicide plant, and petroleum refinery expansion, all requiring multi-million dollar investments.

Notwithstanding the restrictions on foreign investments in Japan, American investments total about one billion dollars. In Singapore, Americans have invested well over $150 million. In India, U.S. investments aggregate about $281 million; in Taiwan over $34 million; and in South Korea $70 million. In fact, U.S. private investment in the Far East totals well above $2.5 billion, with a similar amount invested in Australia alone!

It is apparent businessmen see the end of the war in Vietnam and the growing economies of nations of Asia and the Pacific offering a golden opportunity to develop large numbers of new customers. They see the next big market area is not Latin America or Africa, but Asia and the Pacific Basin, home of half the world's population, the site of the world's third largest economy, the most natural trading partner for the U.S. West Coast and Hawaii, and a region already far ahead of Latin America and Africa in modernizing their economies.

Economic improvement in Asia and the Pacific means more than just better business opportunities. In many countries, it means that the man on the city streets or in the paddy fields is at last receiving a chance to gain a fair share of his country's rising national output, and prosperity. A region for centuries populated only by the very rich and the very poor now shows signs of establishing a middle-income class.

Economic democratization could well lead to political democratization, although this is by no means certain. The two have occurred together in Japan and South Korea, and there are signs this is happening elsewhere.

Along with rising nationalism through internal economic development, there is a willingness in Asia to cooperate on a regional basis. The Asian Development Bank and the Association of Southeast Asia Nations are giving Asians a new sense of confidence in their ability to cope with the future and chalk up even greater gains.

Astonishing improvements in agriculture also give Asians new hope for the decades ahead. There is a "green revolution" under way with miracle wheat and miracle rice. Lands whose people since time immemorial have lived under the threat of famine and mass starvation can see the day coming when they will be able to feed all their people.

It is not, however, so simple a matter as just planting these new high-yield seeds into the ground and reaping the bonanza. Fertilizer is needed, irrigation works must be installed in dry areas, new farming techniques must be learned, and new strains must be developed to withstand the rigors of varying weather conditions, such as the monsoons in India.

In addition, government farm programs and land reforms are needed to give peasants a fair deal in the market. Otherwise, large landowners can increase their output, depress the market price for the small grower, and the peasants find themselves no better off than before.

So we see, in looking at what's ahead for Asia and the Pacific, the picture is a mixed one. There are huge question marks in Southeast Asia, Communist China, and the Soviet Union. Yet heartening economic progress is gaining momentum, and technological and agricultural break-throughs portend even greater advances in the years to come. Hopefully, political democracy will be an important by-product of economic democratization.

There is no question but that, as Asia's nations improve their agriculture and their industries, incomes will rise; standards of living for the average family will improve; an enormous market for exchange of goods and services will be created; international trade, travel, and communications will mushroom; and gradually barriers of language and customs will crumble as people come to know and deal with one another.

Technological advances in communication and transportation will bring new services to the Asia-Pacific Basin and, bit by bit, distances and differences will shrink. There are exciting proposals to use manmade satellites for voice communications. The University of Hawaii, for example, has a concept whereby various universities in Asia and the Pacific can be linked to each other by satellite and instruction and information exchanged throughout the entire network.

In Alaska, a research program is under way using a NASA satellite to put sick residents of remote areas in speedy voice contact with doctors, hospitals, or other health agencies in the nearest community. Isolated communities in almost every nation in the vast Asia-Pacific region have a need for prompt diagnosis and medical advice.

In transportation, supersonic aircraft will reduce travel time over the vast reaches of the Pacific and Asia and give us all a greater feeling of proximity.

As East and West make friends with one another through business and travel, through education and all the other fields, I believe we will be laying the foundation on which we can build a real Pacific community, with common goals and mutual objectives in an atmosphere of peace.

Under President Nixon, America will not abandon the Asia-Pacific area. Ties of history, friendship, trade, and a deep desire for peace will keep America playing an important role there. It will be a different, but constructive, role based on partnership with Asian and Pacific peoples.

I envision it as a partnership open to all, including the Soviet Union and Mainland China, provided they respect the territorial integrity and right of self-determination of other nations. Should the Communists persist in their present role of supporting wars of aggression and, in the case of China, fomenting internal subversion, there is all the more urgency for non-Communist nations—through their own efforts, through regional arrangements, and through U.S. and other assistance—to strengthen their economies and their governments.

I do not minimize the disparities that exist and the animosities that must be overcome. But I do believe that some day, all men must acknowledge the central truth that we are all members of the human family . . . with basic aspirations very much the same no matter what race, what color, what culture, what religious faith we may be.

When all is said and done, the human family round the world seeks an opportunity to earn its way through life; sufficient income from its labors to provide food, shelter, clothing, and other necessities; a real voice in its own government; a status of dignity and respect; and hope for the future.

As long as we remember these basic aspirations of all mankind, we shall progressively shrink the distances and differences that separate and divide us. On this fundamental understanding, we can build not only a Pacific community, but a world community, of nations that can live in peace.

You who are Rotarians know this is possible. For on a smaller scale, you are patiently and diligently fostering international friendship, understanding, and good will . . . the building blocks of a world community at peace.

As you persevere and as America and our friends in other lands persevere with stamina and endurance in behalf of fair and just

relations, we shall turn the wheels of progress and advance the cause of peace for all mankind.

Thank you, goodnight, and Aloha.

KENNEDY CENTER FOR THE PERFORMING ARTS

Mr. PERCY. Mr. President, in October, Congress approved the final Federal appropriation for the construction of the Kennedy Center for the Performing Arts. In so doing, we made a wise investment in the continued development of the arts in this country.

Mr. Julius Duscha recently published an article in the Washingtonian analyzing the role of the Kennedy Center in promoting the performing arts and stimulating new approaches to them. I ask unanimous consent that the article, entitled "The Kennedy Center: Cultural Bonanza or White Marble Elephant?" be printed in the RECORD.

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

THE KENNEDY CENTER: CULTURAL BONANZA OR WHITE MARBLE ELEPHANT?

(By Julius Duscha)

The three thousand words that follow are dedicated to the quite unfashionable proposition that the John F. Kennedy Center for the Performing Arts will succeed. It will become a world-famous center where the best in music, opera, ballet, theater, and film will be presented and where new ideas and new approaches to the performing arts will be tried.

The center, however, will never be self-supporting. No one involved in the construction of the building or in the planning for its programming and other activities has ever expected the center to pay its own way.

And why should it? Municipal auditoriums and baseball and football stadiums have seldom made money; yet they have been lavishly supported by state and local governments.

Success is more than just making money. For the Kennedy Center, success, should be measured in terms of the excellence of its programming, the boldness of its efforts to encourage new developments in the arts, and the willingness of the center's Board of Trustees to develop such ancillary activities as a conservatory of music, a national theater company, national ballet and opera companies, and a really good symphony orchestra.

To help pay for such programming and activities, the Kennedy Center will need help from both private and federal sources. A relatively few million dollars a year will probably be enough, and if the center's leadership turns out to be as good as it now seems to be, there is every reason to believe that Congress and private philanthropy will make sure the center succeeds. It is certainly more deserving of subsidy than, say, the oil millionaires or the factory farmers.

The leaders of the Kennedy Center come to their jobs with first-rate credentials. Roger L. Stevens, chairman of the center, is a successful Broadway producer and theater owner who understands both the practicalities and the potential of the theater. Stevens is largely responsible for raising the more than $20 million in private funds that have been contributed to the center. Without his interest and work, the center would never have been built. Once the center is in operation, Stevens probably will take on the added duties of theatrical advisor.

General director of the center is William McCormick Blair, Jr., an associate of the late Adlai Stevenson, a respected lawyer, and like Stevens a man of imagination and flair.

George London, the operatic and concert singer, is the center's artistic administrator. He is well known in Europe and the United States and is highly respected throughout the musical world.

London is working under Julius Rudel, conductor and general director of the New York City Opera, who is the Kennedy Center's musical advisor. The forty-nine-year-old Rudel, born in Vienna and now an American citizen, is internationally recognized as one of the great conductors and outstanding leaders of the musical world.

The only publicly announced programming for the center is its plan to open in September 1971 with a festival of music and drama to be highlighted by a new work by Leonard Bernstein and by a festival of great American orchestras.

It is still chic to argue at Georgetown or even Bethesda cocktail parties that (a) the Kennedy Center should never have been built; (b) if it had to be built it was put in the wrong place; (c) there should have been three or four smaller buildings rather than one huge, 630-foot-long structure; (d) the whole thing smacks of official culture; and (e) who needs it in these days of pop art and free-form entertainment?

However smart these arguments may sound when mixed well with martinis, they are irrelevant in 1970. The center is almost two-thirds completed. Enough Federal and private money is available to finish construction at an estimated total cost of $66.4 million.

The question that ought to be occupying the self-appointed leaders and guardians of the performing arts in Washington and elsewhere in the country is how best to use Edward Durell Stone's marble building on the banks of the Potomac.

The facilities will rank among the best in the world. In the center of the building will be a 2,300-seat Opera House designed for productions ranging from opera and ballet to musical comedy. On one side of the Opera House a 2,700-seat Concert Hall is being built, and on the other side the 1,100-seat Eisenhower Theater for drama is taking form. Above it will be a 500-seat theater primarily for film but also for lectures and chamber music. On the same roof-terrace level as the film theater will be space for receptions, band concerts, and meetings as well as room for an art gallery and restaurant facilities.

Each of the three major halls will have the finest in stage equipment, acoustics, and soundproofing. The seating capacity of the Opera House, for example, has been held down so that it will be an optimum size for singers. Behind both the Opera House and the Eisenhower Theater will be rehearsal halls.

A grand foyer—with floor-to-ceiling windows rising six stories and providing a dramatic view of the Potomac, Roosevelt Island, and the Virginia skyline—will connect the three principal auditoriums. They will be separated by a Hall of States and a Hall of Nations leading from the center's entrance plaza on the side of the building opposite the river. Beneath the center is a three-story garage with room for 1,600 cars.

Encased in white marble—a gift from Italy in memory of John F. Kennedy—and surrounded by soon-to-be-bronzed steel pillars, the Kennedy Center is already becoming as familiar a part of the Washington skyline as the nearby Lincoln Memorial—which some felt it would overshadow, but doesn't—and the Washington Monument.

The center's location, controversial since it was selected by Congress in 1958, has turned out to be as good a spot as could have been found. The center will be easily accessible from Rock Creek Parkway, Virginia Avenue, and the Inner Loop Freeway, which connects with the Theodore Roosevelt Bridge. If the center had been located near downtown, as the merchants there wanted it to be, it would now be facing the same problems as the rest of the center city at night. It will be a long time before Washingtonians go downtown the way they used to after dark.

Okay, so the building may turn out to be beautiful and may even get a few kind words from Wolf Von Eckhardt and Ada Louise Huxtable, but doesn't everyone know that the real problem with a cultural center only begins once the palace for the performing arts is finished? How in the world is anyone going to keep this newest monument solvent? Congress doesn't like ratholes, even when they are surrounded with Italian marble.

Remember what happened to the mere $13 million Atlanta Memorial Arts Center? The Atlanta Municipal Theater was in deep financial trouble soon after it began its productions in the fall of 1968. Don't forget either the problems of the $35 million Los Angeles Music Center, which must rely on substantial subsidies from private sources. And even baseball fans know of the struggles of the $175 million Lincoln Center in New York, where deficits run to $11 million or so each year.

But the Kennedy Center will have important advantages over the centers in Atlanta, Los Angeles, and New York. It is in the nation's capital and will be truly a national center. It will command the attention of the President, the Congress, and the country. The millions of tourists who come to Washington each year will be attracted to the center not only because of its location and newness but also because of the mystique of the Kennedy name.

As a national institution, the Kennedy Center should expect to get operating money from Congress. The center's Board of Trustees should make it clear from the very beginning that Federal operating money will be needed and expected. Rep. Frank Thompson (D-N.J.), responsible for getting the legislation establishing the center through a balky House of Representatives in 1958, says, "I expected then and I expect now that the center will operate at a deficit. But that doesn't bother me in the least. I think the government has an obligation to make it run because in a sense we will have a national workshop here."

Yes, but who wants some Congressman from Pocatello telling us tastemakers what we should present at the Kennedy Center? This question is about as irrelevant as the continuing discussion over whether the center should have been built.

Congress and the Federal government are already hip deep in the Kennedy Center. The center would never have been built without Congressional approval and appropriation of Federal funds. The center is in fact a unit of the Federal government. Although it operates under the guidance of a forty-five-man Board of Trustees representing a wide variety of cultural and political strains in the country, the center is a part of the Smithsonian Institution. The construction of the center is being supervised by the General Services Administration. Of the $66 million cost, $23 million is being met by Federal grants and another $23 million by Federal loans. The loans are being used for the parking garage, which will be available by day to Federal employees and others who work near the center, and which presumably will earn enough money to pay off the loans.

But no one on Capitol Hill has put on a hard hat and supervised the construction of the center. Nor are members of Congress likely to become artistic directors for the center. The legislation which created the center laid down guidelines spelling out the center's purposes as a national institution to enhance the performing arts. It is the center's Board of Trustees and not Congress that will make the ultimate decisions about what the center does and how it responds to national interests, and the thirty private citizens on the board are appointed by the President for ten-year, politically-safe terms. The other fifteen members are government

officials who serve as long as they hold their jobs.

Members of the board include such Washingtonians as businessman Floyd D. Akers and lawyer Ralph E. Becker; Broadway types such as Richard Adler, Robert W. Dowling, and Richard Rodgers; such friends of the Kennedys as K. Lemoyne Billings, Arthur M. Schlesinger, Jr., and William Walton; and of course Sen. Edward M. Kennedy and Mrs. Stephen E. Smith, sister of the late President, Mrs. Aristotle Onassis is an honorary chairman of the board.

Mrs. Onassis, widow of the late President, has not shown much interest in the center since her remarriage, although several years ago she did get involved in the center's programming plans. For example, she tried to get Leonard Bernstein to take on the job of artistic director for the center.

Mrs. Onassis also made a last-minute effort in 1964 to try to change the center's location from Foggy Bottom to a site on the Mall near the National Gallery of Art, but by then plans for the center were too far along to change them without causing a sharp rise in costs. It is generally thought that Walton, who has always opposed the center's Foggy Bottom site as well as the concept of a cultural center, persuaded Mrs. Onassis to try to change the location.

There also have been disagreements on the board between some of the grand-design oriented members and the more practical directors, such as Stevens and Becker, who have been immersed in the project since its beginnings and have insisted that the board take one step at a time, concentrating all its energies first on raising money for the building, and then moving on to the even more difficult problems of finding money to pay for programming.

The board, in fact, is just now getting into programming matters, which are likely to be far more controversial than the tough but more mundane problems of putting together enough public and private money to construct a building. There is general agreement among board members, however, that the center must do a great deal more than just provide dull nights out for tired and bored businessmen, members of Congress, and Cabinet members and their socially ambitious and overdressed wives.

James E. Allen, Jr., U.S. Commissioner of Education, who by virtue of his office is a member of the board, is now conducting some preliminary studies of the kind of programming the center might do to attract ghetto youngsters—and their parents—as well as others who might otherwise never think of going to a cultural center.

S. Dillon Ripley, II, the secretary of the Smithsonian Institution and an ex officio member of the board, is also interested in the educational aspects of the center's programming. Ripley's detractors think he would like to take over the Kennedy Center, should it fail. At the very least, it is thought that Ripley's ambitions are to run the educational programs of the center. "But never underestimate the energies of Dillon Ripley," one member said in discussing the disagreements over programming that are expected on the board.

Although Mrs. Onassis shows little interest in the center, Ted Kennedy and Jean Smith are interested and do attend Board meetings. Bill Blair makes certain that the Senator and Mrs. Smith are kept informed on all developments as they occur and is quite solicitous of them and their involvement in the center.

John F. Kennedy himself was never particularly interested in the performing arts or in other cultural activities. But if the center had not been designated by Congress early in 1964 as the official memorial to John F. Kennedy in the District of Columbia, it probably never would have been built.

What is now the Kennedy Center was originally the National Center of the Performing Arts. Authorized by Congress in 1958, the National Center was to have been built entirely with private funds on a seventeen-acre site in Foggy Bottom put together by the Federal government. (Most of the land was already Federal property.) But until the center was renamed for John F. Kennedy and Federal funds were made available, private contributions proved hard to get. "The assumption was that this was a Federal project that didn't really need private money," Roger Stevens has noted.

Ironic, too, was the decision by the center's trustees last year to name the theater after President Eisenhower, another nontheatergoer and non-culture-lover who happened to sign the original bill providing for a National Center of the Performing Arts. But it is certainly useful for fund raising and other purposes to have a bit of bipartisanship injected into the center's nomenclature.

Although the Kennedy name has helped far more than it has hurt the center, there are still plenty of Kennedy-haters around and at times the name has carried some disadvantages with it. In the spring of 1968, for example, when it became clear that additional Federal funds would be needed to complete the center, Roger Stevens decided to wait a year before asking Congress for the money because of the heat then being generated by the late Robert F. Kennedy's campaign for the Democratic presidential nomination. When Stevens finally brought a request for an additional $7.5 million in Federal funds before Congress in 1969, he got the money but he also was criticized by some members for waiting to go to Congress until practically all the available funds were already committed to construction contracts, in effect giving Congress no choice but to ante up the needed money.

About $20.4 million of the center's funds are from private sources and foreign governments. A total of $9 million has been contributed by foundations and $5 million by corporations. All but $2.5 million of this $20.4 million has been raised. The largest private gift came from the Ford Foundation, which donated $5 million. The Rockefeller Foundation gave $1 million, the Old Dominion Foundation $500,000, and the Joseph P. Kennedy, Jr., Foundation $500,000. Almost 400 industrial and business firms have made contributions. Only $2 million in private contributions has come from residents of the Washington area. One of the largest contributions in the Washington area came from the Hattie M. Strong Foundation.

Italy donated all of the marble needed for the exterior and the interior of the building, a gift valued at $1 million. From Austria will come a huge crystal chandelier for the center's Opera House. The Danish government will decorate and furnish the north lounge of the Opera House. The German government is donating bronze panels for the center's entrance area. Ireland is giving a crystal chandelier for the presidential lounge of the Opera House. From Japan the center will receive a red and gold silk curtain for the Opera House. Norway is donating eleven crystal chandeliers for the center's Concert Hall. Sweden is giving fourteen crystal chandeliers for the center's grand foyer.

The delays in the construction of the center have resulted, however, in a doubling of the original cost estimates. In a decade the center's price tag has increased from $31 million to $66.4 million. Most of the increase can be attributed to inflation, but some is due to faulty estimating. The steel work, for example, cost over $2 million more than originally estimated because of just bad arithmetic. Another $1 million was added to the costs when jets were allowed into National Airport and more soundproofing materials had to be built into the center, which is just off the final approach pattern to the airport.

It would have been nice to have had the center in operation for the last decade, but delay in its construction and opening has meant that Stevens and his aides can benefit from the mistakes and lessons of the Lincoln Center, the Atlanta Center, and the Music Center in Los Angeles. And the principal lesson to be learned from the troubles of the existing centers is the importance of starting slowly and of making certain that money is in hand before commitments are made for attractions, programs, and festivals with interesting artistic possibilities but murky commercial outlooks.

Stevens is very much aware of the importance of having money in hand before committing the center to big programming ideas. When pressed for details on the center's plans for noncommercial attractions, Stevens replies, "If people want public service operations, they've first got to find a way to pay for them."

Stevens also is determined that the center not take on the financial problems of such organizations as the Washington National Symphony. If the National Symphony presents its concerts at the center instead of at Constitution Hall, this does not mean that the center will provide an economic umbrella for the Symphony's money problems.

During its first year or two the Kennedy Center will rely heavily on established commercial attractions in all of its halls. There will be some noncommercial programming such as the American College Theater Festival, which the Friends of the Kennedy Center sponsored last spring at Ford's Theater, and a tent theater on the Mall, and probably a similar jazz festival.

Although Stevens says he has commitments for a million dollars or so in operating capital, there is not yet money in sight for ambitious programming that would make it possible for the center to sponsor an opera company or a national theater company. In the meantime, Stevens believes that it is of the utmost importance for the center to make a good beginning with commercially sound attractions, and when money is forthcoming, to go on from there to experimental and riskier ventures.

In the first years, for instance, the Opera House will be used for opera and ballet no more than six months of the year. The Metropolitan Opera and distinguished European companies will perform in the Opera House. The rest of the year it will be available for musical comedies either on their way to Broadway or touring after a successful New York run.

"The musical comedies will be commercial and money-making ventures," George London acknowledges, "but this is defensible artistically, too, because the musical at its best is the great American lyric form."

In addition to housing the National Symphony, the Concert Hall probably will be the site of the many concerts by well-known musical artists now presented by Patrick Hayes and others in Constitution Hall and Lisner Auditorium.

In the Eisenhower Theater, six months of each year will be given over to Broadway plays, and the other six months will be available for such noncommercial programming as the College Theater Festival.

The film theater will be used largely for experimental work, and it is expected that George Stevens, Jr., the son of the eminent director, a filmmaker in his own right and director of the American Film Institute, will be in charge of the film programming.

What about pop culture, rock music, and off-Broadway kinds of productions? "If Janis Joplin wants to play the Kennedy Center, we would be happy to book her in," Roger Stevens says, "but I don't really think the Kennedy Center is the place for *Oh! Calcutta!*"

"Our main concern will be with good things," London says in summing up his approach to programming. "If it's new it isn't necessarily good. Art has to have discipline. Sure, we're going to play it close to the vest, because we also want to stay alive. But the sky's the limit if we have the money."

Impresario Patrick Hayes thinks that too many Washingtonians are concerning themselves only with what the center is going to do in its first year or two rather than looking at the center in the perspective of ten to forty years. Within such a period, for example, Hayes sees the center as becoming the home of a great conservatory of music.

There are, of course, critics of the center's leadership, and one of the most articulate is Ralph Black, manager of Washington's National Ballet and a former manager of the National Symphony.

"Six months opera, six months musical comedy," comments Black. "I think that's just tragic. I'm not opposed to musicals, nor am I a snob about them. I just don't think the Opera House should be a Broadway house. I don't have any question that it can be filled with artistic works. You're building audiences today."

Another critic is Richard Pearlman, the manager of the Washington Opera Society and a former stage manager for the Metropolitan Opera, who asks, "What could be more dead end than bringing musicals to the Kennedy Center? Artistically musicals are at a dead end in this country."

Rather than staging Broadway musicals at the Kennedy Center or even presenting opera in a familiar setting and a traditional way, Pearlman believes that the center should experiment by perhaps trying to combine opera, Broadway, and rock in a new kind of musical and by "scraping off the barnacles from existing operas to see what is really there" instead of "just grinding out sausages from a machine and thinking that a production is all right as long as no one falls off the stage."

However critical men like Black and Pearlman may be of the center, they and almost everyone else in Washington looking for a showcase for singers, dancers, musicians, or actors want to get on one of the center's stages. Black, for example, has had a long argument with Stevens over whether the National Ballet ought to be the resident ballet company at the center. But Stevens has stuck to his 1968 decision making the American Ballet Theater of New York the resident company. It will play at the center for a few weeks in both the spring and the fall.

The New York City Opera is expected to be named the resident opera company for the Kennedy Center. Julius Rudel, conductor of the City Opera, is already the center's musical advisor. But Pearlman, like Black, thinks his group should be the resident company because it is actually headquartered here while the New York City Opera, like the American Ballet Theater, remains a New York-based company and will be in residence in Washington only a few weeks of every year. Artistically, of course, the New York groups are superior to the Washington companies.

Washingtonians look on the center as their own bauble, but Stevens, Blair, and London continue to emphasize its national character. And they are right. The center would not have been built without $46 million in Federal funds collected from all the taxpayers, not just those in the Washington area. Only five percent of the $20.4 million raised so far from private sources has come from Washingtonians.

"Everybody will want to play in the place," Patrick Hayes says. "The magnificence and beauty of the center will attract people. And given a good show, people will storm the doors."

There is apprehension about the center among such people as Scott Kirkpatrick, the manager of the National Theater, and Tom and Zelda Fichandler, who have built the Arena Stage into a nationally known theater. And what about Constitution Hall and Lisner Auditorium? Will they be dark and deserted once the Kennedy Center opens?

The National Theater and the Kennedy Center will be competing for Broadway shows. But the National, with its 1,700 seats and excellent acoustics, will still be a formidable competitor for plays with the 1,100-seat Eisenhower Theater. Those 600 extra seats each night will look awfully good to the producer of a hit. The Kennedy Center's Opera House undoubtedly will drain away musicals from the National. But the affluent Washington area ought to be able to support more than one theater for Broadway productions. Furthermore, the Kennedy Center will be in the Broadway business no more than half of each year.

As for the Arena, it has developed a loyal audience by presenting old and new plays which often are not directly competitive with Broadway. The noncommercial attractions at the Kennedy Center will be more directly competitive with the Arena, but again there would seem to be room for such competition.

Constitution Hall and Lisner will not be as busy as they are now, but Patrick Hayes, for one, believes that both will be heavily booked within five years of the opening of the Kennedy Center. Hayes thinks that the cultural boom of the post-World War II years will continue and that the Kennedy Center will by no means be able to handle all of it. And as for Sol Hurok and others who bring expensive attractions to the United States from abroad, Constitution Hall will still look good with its 3,800 seats compared with the 2,700 seats in the Kennedy Center's Concert Hall or the 2,300 seats in its Opera House.

The Kennedy Center itself also ought to turn a lot more Washingtonians into theatergoers and concertgoers. The newness of the center and the mystique of the Kennedy name will be as attractive to Washingtonians as it will be to tourists. Conscious of the large amount of Federal money that has already gone into the center and the need for additional Federal funds to help meet operating deficits, Stevens, Blair, and London seem determined to make good on the center's slogan: "The Kennedy Center is for everyone."

Tickets will be made available at low prices to students and others who cannot afford the regular scale. Special programs will be put on for school audiences. The center's three major halls are equipped for live television broadcasting and for filming and taping.

The Kennedy Center will, of course, have its troubles and frustrations. Its deficits will be decried in the halls of Congress. Rival impresarios will accuse the tax-free, subsidized Kennedy Center of unfair competition. And the center will surely be picketed from time to time by confrontation-prone, pop-culture militants.

There may be plain old structural and logistical problems, too. Some people are still worried over the sufficiency of the center's soundproofing. The self-park garage also could result in jarring traffic jams, but Roger Stevens believes there will be enough entrances onto Rock Creek Parkway, Virginia Avenue, and the Inner Loop to empty the garage in the fifteen minutes the engineers who built it claim it will take. Staggered curtain times will be used so that more than 6,000 persons won't be converging on the place at the same hour.

All new buildings and all ambitious new projects encounter problems when getting under way, and there will be troubles for the Kennedy Center. But by being in the nation's capital and by already having the Federal government deeply involved, the center's chances for success and for continued Federal financial support are excellent. And this is why it will become one of the world's leading cultural centers.

REPORT OF COMMITTEE FOR ECONOMIC DEVELOPMENT

Mr. JAVITS. Mr. President, the Committee for Economic Development, comprised of distinguished members of the business and academic communities has issued a comprehensive policy report recommending a federally supported program to provide a national minimum income and endorsing the administration's Family Assistance Act as a "very important first step forward in revising the present welfare system."

The statement sets forth a number of basic principles that the committee feels should underlie an equitable system of welfare. Among its recommendations are the following: First, that working single-person families and working childless couples should be included in any new federally aided programs designed to benefit the poor; second, that a program of income incentives to work should be made a basic component of any new welfare system, coupled with positive measures to increase opportunities for private or public employment for those able to work; third, that requirements for training or work be a part of any income maintenance system only if a proper manpower program is developed to make such a requirement meaningful and that certain safeguards be built into the structure; fourth, that neither training nor work should be made a condition for continuance of public assistance to women heads of households; and fifth, that there be established a federally supported national program of day-care centers enabling mothers receiving public assistance to augment their incomes through training and jobs. The committee views "as practical and realistic" the administration's minimum of $2,400 in cash and food stamp benefits.

Mr. President, I believe that Senators should have these and other recommendations in mind as they consider the administration's family assistance plan, which I have cosponsored. Accordingly, I ask unanimous consent that pertinent excerpts from the report of the Committee for Economic Development, entitled "Improving the Public Welfare System," be printed in the RECORD.

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

THE SCOPE OF THIS STATEMENT

This statement concentrates on one segment of the welfare problem. It is concerned primarily with the improvement of those programs coming under the category of public assistance, which extend direct payments to people on the welfare rolls. These programs comprise mainly the federally-financed categories of Old-Age Assistance, Aid to the Blind, Aid to the Permanently and Totally Disabled, and Aid to Families with Dependent Children, as well as the general assistance category financed by state and local governments. We believe that the improvement and reform of these programs is of the utmost urgency because of the pressing need to alleviate the deprivation of millions of poor Americans in the most direct and efficacious way available. By itself, however, such a revision obviously cannot eliminate the problem of poverty in this country.

This study, centered on the development of a national system of direct payments to the poor, does not treat of a vital and broad array of social services provided by innumerable private and public welfare agencies. Such services include family counselling, physical and mental health assistance, child guidance, and legal aid, to name just a few. Though a substantially higher proportion of the financing of these services, where

provided by public agencies in particular, will undoubtedly move to the federal level, the administration of the programs will preferably remain at the local level. In a prior statement we have pointed out that the local agency is "in a better position to provide services beyond the monthly welfare check" and could become "the advocate of those welfare recipients who believe they are not being properly treated by the system." [1]

To be truly effective, reform of the welfare system must be accompanied by measures that will provide the poor with the requisite education and training which will open the doors of opportunity to jobs offering adequate compensation. There is little question that the public school system has failed to serve those at the bottom of the economic and social ladder, with the result that the disadvantaged cannot command the modicum of education required in the nation's evolving job market.[2] These problems are being studied by a CED Subcommittee on Education for the Urban Disadvantaged.

Insofar as training for specific job skills is concerned, the nation faces a task of very great magnitude. While training opportunities in major remedial programs number in the low hundreds of thousands, the need numbers in the millions. These and associated concerns will be examined in a forthcoming statement on the problem of urban poverty and jobs now being prepared by another CED subcommittee.

Federal programs affecting the poor include not only those designed specifically for their assistance through direct or in-kind payments or through various services, but also such programs as Social Security that serve the board spectrum of the population. (Figure One shows only that portion of such funds going to those below the poverty threshold.) The total amount of all this assistance to those officially defined as living in poverty will come to an estimated $29.7 billion in fiscal 1970. Cash payments under public assistance programs by the federal government will amount to $3.9 billion, plus a similar amount by state and local governments. Income maintenance and supplementation, coupled with improvements in education and manpower policy, should provide a much needed new mechanism for the improvement of the "welfare" segment of this array of programs. But the elimination of poverty in the United States will require coordination and improvement throughout the entire structure of federal programs affecting the poor.[3]

Changes anywhere within the structure of assistance to the poor will increasingly have effects elsewhere. The interrelationship of the public assistance system and the Social Security system, for instance, is demonstrated by the decrease in the number of those technically described as poor brought about by the 15 per cent across-the-board increase in old-age insurance benefits. Further improvements in Social Security payments could have a similar effect, reducing the number of those receiving public assistance. Likewise, improvements in Medicare health programs, providing greater coverage and protection than is now afforded, could prevent families from falling into the public assistance category because of crushing expenses resulting from medical emergencies. At the same time, the establishment of an income supplementation program would have consequences elsewhere in the structure by bringing into existence what, in effect, is a second system of unemployment compensation. As pointed out by the Council of Economic Advisers, income maintenance and supplementation would "greatly [reduce] the danger that poor people who had not been covered by unemployment compensation would be seriously injured by an increase in unemployment, or that workers with large families would find themselves in difficult straits in periods of temporary unemployment." [4]

AID TO THE POOR IN FEDERAL PROGRAMS [1]

[Billions of dollars]

	1970 (Fiscal)	1971 (Fiscal)
Social security	10.0	[2] 9.9
Welfare:		
Public assistance	3.9	4.5
Family assistance plan		.4
Nutrition:		
Food stamps	.6	1.3
Child nutrition	.5	.6
Health:		
Medicare	2.4	2.6
Medicaid	2.1	2.3
OEO programs	.1	.2
Employment:		
Manpower development	1.0	1.2
Unemployment insurance	.6	.6
Employment service	.2	.3
Work incentives	.1	.2
Education and youth:		
Disadvantaged children	1.1	1.2
Educational opportunity grants	.1	.2
Other	.5	.6
OEO programs	.5	.5
Housing:		
Public housing and rent supplements	.3	.4
Model cities and other	.2	.3
Other:		
Veterans Administration	3.0	3.0
Other HEW programs	1.3	1.3
Other agencies	.5	.6
Other OEO programs	.5	.5
Indian affairs	.1	.1
Rural poverty	.1	.1
Total	29.7	32.9

[1] The poverty threshold used in calculating this table is $3,400 annual income or less for a family of 4.

[2] The increase in the level of social security payments has lifted many persons above the poverty threshold, hence the drop from 1970 to 1971 in total payments to the poor.

Sources: U.S. Bureau of the Budget and Office of Economic Opportunity.

NEED FOR RESEARCH

For all these reasons, this Committee believes that the reform of the welfare system, as proposed in this statement, is only the beginning of long and searching studies that will have as their purpose the development of an integrated approach to the problem of poverty in the United States.

Very little indeed is known about the factors that lead people in and out of poverty, or the determination of the most appropriate methods to provide genuine help to those in deepest poverty.

Little public or private philanthropic money has yet been made available for studies of these questions. Less than one-tenth of 1 per cent of the billions now being spent for welfare programs, for example, is spent for research. Consequently, little is known about such vitally important matters as why the numbers on assistance keep rising. While there are many theories about the reasons for this increase, as noted later in this statement, no data available from responsible public sources can identify the basic causes. Nor is it known with certainty to what extent higher welfare payments or better job opportunities are the reasons for the migration from the South into the northern cities; or to what degree the lower criteria for eligibility, the efforts of the welfare rights organizations, an increase in benefit levels, or other factors account for the sharp increase in the case load.

Rarely has so costly a program operated with so little hard data. A major evaluation and research component is clearly needed. Badly lacking are yardsticks to measure the relationships of employment, education and training, health, housing, law enforcement, adequate income, social skills and attitudes, discrimination, stability of family unit, public transportation, recreational and cultural facilities, schools, and hospitals. We believe that such measurements, by giving a clearer and fuller picture of the problem as a whole, will ultimately help develop and evaluate alternative approaches to the elimination of poverty.

SUMMARY OF RECOMMENDATIONS

Following are the recommendations made by this Committee in seeking ways to extend public assistance to *all* Americans living in want—a goal having high priority among the many goals being sought by this nation.

Barred from participation in the welfare system, without access to whatever benefits it does confer, are millions of Americans living on a subsistence level. The major group excluded from receiving public assistance are those who participate in the labor force, even though only part-time or at very low levels of pay. Such a disqualification in itself is not only unjust but also works against the establishment of a sound national policy that might eventually lead to the eradication of poverty. We recommend a federally-supported program to provide a national minimum income with eligibility determined solely on the basis of need, whether need results from inadequate earnings or inability to work. Also, we recommend specifically the inclusion of working single-person families and working childless couples in any new federally-aided programs designed to benefit the poor.

We believe that the assurance of a minimum income must be coupled with arrangements that provide strong incentives to work for all who are capable to work or of being trained for work. We urge that a program of income incentives to work should be made a basic component of any new welfare system, coupled with positive measures to increase opportunities for private or public employment for those able to work.[5] The measures needed for accomplishing this will be discussed in the aforementioned statement on poverty and jobs under preparation by a CED Subcommittee on Problems of Urban Poverty.

The question arises whether, in addition to income incentives, a training or work requirement for those who are able to work is either a desirable or practicable feature of an income maintenance program. As a matter of principle, we believe that those who are able to work should work, and that even though such a requirement is difficult to apply, the principle should not be abrogated on that account. We recommend the incorporation of a requirement for training or work for the able-to-work as an integral element of any income maintenance system provided that a proper manpower program is developed to make such a requirement meaningful and that safeguards are built into the organizational and appeals mechanisms to assure individual dignity and rights.

In developing a national manpower and training program, we believe that special attention must be given to the problem of women who head households. This involves a consideration of whether the family's and society's longer-range interests are better served in individual instances by the presence of a mother in the home or by additional family income acquired through outside work. We believe that neither training nor work should be made a condition for continuance of public assistance to women heads of households.[6]

However, in order to facilitate jobholding where this is desirable, we recommend the establishment of a federally-supported national program of day-care centers that will enable mothers receiving public assistance to augment their incomes through training and jobs. We also urge the development of

Footnotes at end of article.

a federal program to assist with the construction of day-care centers.[7]

Furthermore, we strongly urge that the age of eligibility for inclusion in any such day-care program be extended down to include two-year-olds, and that the program should be broad in concept so that instead of being merely custodial in nature the centers provide an educational experience and enrichment for young children along the lines of Head Start.

Since the evidence indicates that the number of children is much higher in poor families than among affluent families, we are concerned that family planning assistance be made available equally to all regardless of income. We strongly urge that more money be provided, both to government and private agencies, so that family planning programs can be expanded in order to ensure that information is easily and readily available to all families.

As we have stated, we believe that a uniform national approach to the problem of welfare is essential to the reform of the system. We view as practical and realistic the proposal that the level of federal income maintenance be set to provide a minimum of $2,400 for a family of four at the present time.[8] The $2,400 figure for a family of four could consist of $1,600 in cash allotments with the remainder being provided through the Food Stamp Program, which we believe offers promise as a practical means for supplementing the nutrition of the poor. We approve the use of the Food Stamp Program as additional to the welfare cash allotment and believe that it should be extended for the immediate future to all who qualify for income supplementation. However, we recommend that it be subject to periodic review and evaluation in order to ascertain whether the efficiency of the program can be improved and also whether cash payments might not better achieve the objectives of the program.[9]

Because the addition of the Food Stamp Program to the cash allotment has the effect of reducing the incentive for earnings, some changes would be required to preserve an adequate work incentive. We recommend that in combining welfare cash and food subsidy programs for income maintenance, the incentive element be set so that the recipients retain an adequate percentage of earnings (centering around approximately half of earnings) above a minimum allowance (such as $720 a year) up to an appropriate cutoff point.

Inasmuch as a minimum income of $2,400 for a family of four hardly provides a subsistence level of living, we believe that a priority claim against future available federal funds should be invoked to raise total assistance to more acceptable levels. Furthermore, as the minimum income is raised toward a more realistic level, regional distortions very likely will begin to occur. Therefore, we recommend that as the minimum income level rises, consideration be given to adjustments for cost differentials where appropriate between various regions of the country and between urban and rural communities.

A corollary of a truly uniform national system of public assistance based on income maintenance is that the federal government not only assume an increasing share of the necessarily increasing cost, but that it eventually undertake the entire burden. As an objective to be attained as soon as fiscally feasible, we recommend that the federal government undertake a substantially higher proportion of the financing of public assistance with a phased take-over by the federal government of state and local public assistance costs over the next five years as the goal.[10]

Furthermore, we recommend that as the federal government takes over responsibility for financing public assistance payments, it likewise assume a commensurate responsibility for administering such assistance in order to assure efficiency as well as to provide all recipients equitable, uniform treatment.[11]

It should be remembered that for the able-to-work, welfare is available only in the absence of a suitable or job training. The present procedures for investigating and determining the qualifications of individuals for public assistance programs are not only demeaning but also cumbersome, costly, and time-consuming. The present system should be replaced by a far simpler and more direct method of certification by affidavit, which has now been adequately tested but which should be subject to periodic review. We support the certification method of determining welfare eligibility for both federal and state portions of the system.

Present methods of certification and payment are particularly onerous, needless, and wasteful where the aged, blind, and disabled are concerned. We recommend that the administration of the assistance programs for the aged, blind, and disabled be handled within the Department of Health, Education, and Welfare by federal payments in a manner similar to that used for Social Security payments.

We are most concerned that adequate job and wage standards for determining initial and continuing eligibility of persons for public assistance be included in the training-job component of any proposed welfare system. We recommend that a specific safeguard for the federal level be included to insure the following:

a. Uniform local administration in determining eligibility in conformance with standards set by federal law, particularly those specifying wages and other conditions pertaining to a suitable job.

b. Prevention of punitive actions by local administrators in the termination of eligibility of local recipients.

c. Establishment of machinery for appeal of local administrative decisions, concerning eligibility outside the administering local department, with details of these procedures clearly stated to each recipient.

FOOTNOTES

[1] *Reshaping Government in Metropolitan Areas*, a Statement on National Policy by the Research and Policy Committee, Committee for Economic Development, New York, February 1970, p. 53.

[2] See Memorandum by Mr. John A. Perkins, p. 64.

[3] See Memorandum by Mr. Robert R. Nathan, p. 64.

[4] Economic Report of the President (Washington, D.C., 1970), p. 64

[5] See Memorandum by Mr. George C. McGhee and by Mr. Robert R. Nathan, p. 65.

[6] See Memorandum by Mr. Donald S. Perkins, p. 65.

[7] See Memorandum by Mr. John R. Perkins, p. 66.

[8] See Memorandum by Mr. George C. McGhee, and by Mr. Robert R. Nathan, p. 66.

[9] See Memorandum by Mr. Charles Keller, Jr., p. 67.

[10] See Memorandum by Mr. George S. McGhee, p. 67.

[11] See Memorandum by Mr. John A. Perkins. p. 67.

AMENDMENT OF RAILWAY LABOR ACT—BILL PLACED ON CALENDAR

Mr. BYRD of West Virginia. Mr. President, a message from the House has been received on H.R. 15349, an act to amend the Railway Labor Act in order to change the number of carrier representatives and labor organization representatives on the National Railroad Adjustment Board, and for other purposes.

Inasmuch as this matter has been cleared on both sides, I ask unanimous consent that the bill go directly on the Calendar.

There being no objection, the bill was read twice by its title and placed on the Calendar.

SUSPENSION OF FURTHER DEPLOYMENT OF OFFENSIVE AND DEFENSIVE NUCLEAR STRATEGIC WEAPONS SYSTEMS

Mr. BYRD of West Virginia. Mr. President, what is the pending business?

The PRESIDING OFFICER. If there is no further morning business, the Chair lays before the Senate the unfinished business, which the clerk will state.

The BILL CLERK. Senate Resolution 211, seeking agreement with the Union of Soviet Socialist Republics on limiting offensive and defensive strategic weapons and the suspension of test flights of reentry vehicles.

The Senate resumed the consideration of the resolution.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, as a reminder to Senators, the Senate will adjourn until 9:30 tomorrow morning, and immediately after disposition of the reading of the Journal, the Senator from Wyoming (Mr. HANSEN) will be recognized for not to exceed 45 minutes. He will be followed by the senior Senator from South Carolina (Mr. THURMOND), who will be recognized for not to exceed 25 minutes. He will be followed by the senior Senator from Maryland (Mr. TYDINGS), who will be recognized for not to exceed 30 minutes.

Thereafter a period for the transaction of routine morning business will ensue with statements therein limited to 3 minutes, following which the unfinished business will be laid before the Senate.

ADJOURNMENT TO 9:30 A.M.

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 9:30 o'clock tomorrow morning.

The motion was agreed to; and (at 6 o'clock and 36 minutes p.m.) the Senate adjourned until tomorrow, Thursday, April 9, 1970, at 9:30 a.m.

REJECTION

Executive nomination rejected by the Senate April 8, 1970:

SUPREME COURT OF THE UNITED STATES

George Harrold Carswell, of Florida, to be an Associate Justice of the Supreme Court of the United States.