TVA board chairman, Aubrey J. Wagner has also suggested that there needs to be a definition between fair profit and excessive profit in the fuel industry.

"Electricity is quite price-sensitive as we have learned in the region TVA services. We just could price it to a point where its tremendous and vital potential to upgrade the overall quality of human life will be denied," the chairman added.

There is no doubt that a portion of the increased cost of fuel, and therefore of electricity, has been caused by efforts to improve the environment and provide for safer working conditions for miners. No one who has testified before the sub-committee has denied that these price increases are justified and necessary.

No one has yet established that the coal, oil, natural gas and other energy companies have violated any laws by merging.

But these facts have been established.

While the United States has less than six per cent of the world's population, it consumes approximately 33 per cent of the world's energy.

In the past decade, electricity experienced a growth rate of over seven per cent, yet by 1970 that rate had increased to over nine per cent per year and it is predicted that the consumption of electricity will double every ten years.

The cost of electricity has increased more than 80 per cent during the past four years in Tennessee Valley and in similar proportions throughout the remainder of the country.

The average cost of coal purchased by TVA in 1971 was 53 per cent higher than the average cost in 1965. Considering new purchases only and not long-term contracts still in force, prices paid in 1971 rose to nearly double those paid for new coal purchased only a year to 18 months earlier.

This increase in cost has been, and apparently will continue to be, passed along by utilities to the consumer.

SENATE—*Monday, November 8, 1971*

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

PRAYER

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

Eternal Father who has watched over us and brought us to this new week, accept the dedication of our souls, minds, and bodies in service to Thee and to our fellow man. Keep ever before us the holy vision of a better nation in a better world. Teach us how to serve Thee as ardently in daily duties as in the time of prayer. Be with all Members of this body and with those who in obscure places assist them. Help us all to exalt the spiritual values, to live a life of prayer, to strive for justice and peace, and in all our ways so to honor Thee that we may be a nation strong in the Lord and in the power of His might. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, November 5, 1971, be dispensed with.

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

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I have some unanimous-consent requests still to make, but yield at this time to the distinguished Senator from Mississippi (Mr. STENNIS).

The PRESIDENT pro tempore. In accordance with the previous order, the distinguished Senator from Mississippi (Mr. STENNIS) is now recognized for 15 minutes.

BUSING COMES HOME TO THE NORTH

Mr. STENNIS. Mr. President, over the past several years, I have been speaking from time to time on this floor regarding the dual standards of school desegregation that exist in our country. I have pointed out the destruction of effective school systems in the South, undertaken in the name of obliteration of de jure segregation, while racial isolation in schools continued in the North on a massive and increasing scale, and was left untouched because it was said to be de facto segregation. I have said that in many places in the North and West, this racial isolation is really de jure segregation because it originated in actual official actions of school boards and local governments, although sometimes subtle and disguised, in establishing school district lines, housing programs, and the like. I have also said that if and when the time should come that the citizens of the North and West should be required to accept the enforced racial balance that is imposed on southern schools, they would reject it out of hand, and would make their views known to Congress. I have expressed the hope and belief that this national hypocrisy will in due time give way to a single national policy; and that, because everyone will have to follow it, it will have to be moderate, practical, sensible, and aimed at the true purpose of schools, which is to educate children.

On February 18, 1970, the Senate by a vote of 56 to 31 passed an amendment which I had introduced to the Elementary and Secondary Education Act. It provided that it is the policy of the United States that guidelines and criteria shall be applied uniformly in all regions of the United States in dealing with conditions of segregation by race whether de jure or de facto in the schools of the local educational agencies of any State without regard to the origin or cause of such segregation. The amendment was lost, in effect, in conference, by the changes made in it.

I offered the same amendment in 1971, this time to the emergency school aid bill. It passed the Senate on April 22. On November 4, the other body passed it, but deleted references to title VI of the Civil Rights Act of 1964 and the Elementary and Secondary Education Amendments of 1966, making it applicable only to the emergency school aid measure.

Mr. President, I mention these matters now because in recent weeks it has become clear that in a number of cities outside the South the matter of busing schoolchildren for racial balance has become an extraordinarily intense issue. This appears to be the case regardless of whether the busing is undertaken by local school boards on their own initiative or required by court order.

Let me review briefly what has occurred in some of these cities. I will begin with Detroit, because it is one of the more recent and more highly publicized cases where there has been a court finding of de jure segregation in schools.

In April of 1970, the Detroit School Board adopted a voluntary plan of partial high school desegregation, to be effective at the beginning of the 1970 fall semester. There were strong protests from white parents and some blacks. The Michigan State Legislature rescinded the plan, and subsequently the Detroit voters recalled and replaced four school board members who had supported the plan.

The NAACP sued in Federal district court. The case went twice to the court of appeals and ultimately was remanded to the district court for trial on the merits of the issue of segregation.

On September 27 of this year, the district court ruled that a de jure segregated public school system is in operation in Detroit.

The court said:

We find that both the State of Michigan and the Detroit Board of Education have committed acts which have been causal factors in the segregated condition of the public schools of the City of Detroit. As we assay the principles essential to a finding of *de jure* segregation, as outlined in rulings of the United States Supreme Court, they are:

1. The State, through its officers and agencies, and usually the school administration, must have taken some action or actions with a purpose of segregation.

2. This action or these actions must have created or aggravated segregation in the schools in question.

3. A current condition of segregation exists.

We find these tests to have been met in this case. We recognize that causation in the case before us is both several and comparative. The principal causes undeniably have been population movement and housing patterns, but state and local governmental actions, including school board actions have played a substantial role in promoting segregation. It is, the Court believes, unfortunate that we cannot deal with public school segregation on a no-fault basis, for if racial segregation in our public schools is an evil, then it should make no difference whether we classify it *de jure* or *de facto*.

On October 4, the court gave the State of Michigan 4 months to develop an integration plan involving both the city and

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its suburbs, which are predominantly white. The Detroit Board of Education was given 60 days to present a plan to integrate the 320 schools within the city. The court has not yet decided what form the final integration ruling will take.

On October 25, protests caused absenteeism as high as 80 percent in Detroit elementary schools.

One Member of Congress from a northern State says:

> That the courts have gone berserk in their orders is no longer a matter of debate. But the fact that they will destroy this nation's public school system is a matter of deep concern to all.
>
> This usurpation of power by courts all over the nation will lead to the only logical alternative, a constitutional amendment prohibiting busing out of neighborhood schools against a child's or his parents' will.

Several Congressmen from Michigan have cosponsored legislation (H.R. 11312) which will act to postpone the effectiveness of a U.S. district court order requiring busing to achieve racial balance until all appeals to that order have been exhausted. This was passed in the other body on November 4, as an amendment to the Higher Education Act.

In Pontiac, Mich., empty schoolbuses were bombed on August 30 of this year. A citizens' group asked court delay of a busing order. School attendance the first day was 60 percent in elementary schools; 65 percent in a junior high school. Fighting between black and white students occurred at a junior high school on September 8. Picketing closed two General Motors plants, and protest marches occurred at schools. The U.S. district judge ordered U.S. marshals to investigate alleged police failure to halt disruption of busing. In the first 3 days of school, 48 people were arrested in antibusing violence and schoolyard violence. The Pontiac School Board said that parents who boycott schools would be subpenaed to juvenile court. On September 16, citizens staged a demonstration in support of the city's policemen, who are under attack for allegedly helping the antibusing parents. On October 25, school absenteeism averaged 32 percent in Pontiac. On October 26, the Supreme Court declined to hear the appeal of the Pontiac School Board against the court-ordered busing plan, thus leaving it in effect.

The Supreme Court has dodged the issue again, refusing to consider a case from the North. The Court has consistently declined to review the countless school cases from the North and West.

In San Francisco, only the school superintendent and the NAACP openly supported court-ordered busing. Schoolteachers demanded that the superintendent resign. Chinese and white parents held protest meetings. The mayor urged that there be no violence but said he encourages democratic dissent from the order. A local newspaper poll showed that those opposed to busing included 96 percent of the Asian population, 88 percent of the whites, 73 percent of the Spanish-speaking people, and 60 percent of the blacks. As school opened, elementary school absenteeism was 41 percent. Chinatown boycotted schools.

In Boston, of 396 white children reassigned to a black school for the purpose of achieving racial balance, only 124 appeared on opening day. Most parents took their children to the schools they attended the previous year, where they were refused registration. The Massachusetts House of Representatives voted to suspend the 6-year-old State law on racial imbalance, under which majority-black schools would lose State funds. On September 22, the Boston School Committee, which is the governing board of schools, abandoned the attempt to bus students to the one majority-black school, and let the students rejoin their old schools.

In Minneapolis, although the city's population has only 5 percent blacks and Indians, the board of education has taken a first cautious step toward desegregation by "pairing" two elementary schools only 1¼ miles apart. Even so, this very moderate effort was the major issue in the school board election during the summer, for two of seven seats on the board. The two losers had supported the pairing plan, and the two winners had vigorously opposed it. Parents who oppose the busing have filed suit against the pairing plan.

In Indianapolis, in August, the district court ruled that the Indianapolis school system had been practicing racial discrimination since 1954. The court also directed the Justice Department to file a motion challenging the right of suburban school districts to remain separate from the Indianapolis city system.

In Grand Rapids, Mich., the NAACP has filed suit against the board of education to integrate the city schools by busing to suburban schools. The court has added 11 suburban school districts as defendants. This case as yet has not been decided.

The situation in Denver, Las Vegas, and Los Angeles could also be discussed, but I think the cases I have cited are enough to indicate the spread of the problem across the North and West from California to the Middle West to New England, with three prominent cases in Michigan.

Going back to the Detroit case, it would be well to look again at the reasoning of the Court in finding that the segregation is de jure. The test applied for a determination of de jure segregation is very straightforward. There must be a current condition of segregation, and it must have been aggravated by a purposeful action by a State or local governmental agency or the school administration.

Mr. President, can it be said that most northern or western cities can pass this test? I submit that there is substantial doubt, to say the very least. Certainly HEW has supplied us with the answer to part of the test—whether there is a current condition of segregation—in the figures released last June 18 on the HEW second national survey of racial and ethnic enrollment in public schools. The figures compared the 1968–69 and 1970–71 school years. They showed steadily increasing segregation throughout the North, while it declined in the South. There can be no question that the segregation does currently exist.

Consequently, to prove de jure segregation in a Northern city, it need only be shown that there was some purposeful action, taken by a school board or other agency that aggravated the condition. In the Pontiac and Detroit cases, the court ruled that this action could be something as simple as the location of newly constructed schools.

The HEW national survey can give us an idea as to whether there have been a great many schools built in the North with the prior knowledge that they would be black-majority schools.

During the 2-year period covered by the HEW survey, school populations did not, of course, remain static. All areas gained in Negro school enrollment. The 32 Northern and Western States had an increase of 186,802 additional Negro students.

The survey also shows that of the 100 largest school districts in the country, in those that are in the 32 Northern and Western States, the percentages of black students enrolled in majority-black schools increased in every category: 50 to 100 percent, 80 to 100 percent, 90 to 100 percent, and even 100 percent Negro. Taking into account the physical increase of tens of thousands of black students, more schools had to be built. What kind of schools did the Northern and Western States build to accommodate these large numbers of additional black students? The increasing rate of segregation shows that they built a large number of schools in locations where it was certain they would be attended almost wholly by Negro students. Thus a condition of de jure segregation is shown.

The fact of the matter is that this segregation in the North and the West has been virtually ignored, while in the South a veritable army of investigators and attorneys have pounced on every school district, with a mass of requirements for the pairing of schools, closing of schools, extensive busing, and many other directives, all in the name of eliminating what they term de jure segregation. I have pointed out time and time again, backing my position with the facts and figures, showing that the same or worse segregation exists in the North and West, fully documenting the case.

I have cited the official figures of HEW which show that segregation now is even more widespread in the North than it is in the South. What has been done about it? The answer is: Practically nothing. Several years ago, in a hearing conducted by the Senate Appropriations HEW Subcommittee, I asked Mr. Leon Panetta, the then HEW expert on school desegregation, why more was not being done in the North. His response was that discrimination was much more difficult to prove in the North. That is an excuse but no real answer. Upon my insistence, and that of several other Senators, HEW did employ additional investigators and attorneys to deal with the situation in the North, but only a mere handful were employed. They have produced almost nothing to show for any effort on their part although they supposedly have been working at it for about 3 years.

When some facts are brought to light showing that there is actual racial discrimination or de jure segregation in a northern school, and a recommendation is made by HEW investigators for action, somehow the case seems to languish in one or another HEW office for months, without any action. In an address before the Senate last year, I mentioned a number of cases which had been recommended by HEW investigations for enforcement action, but after submission to the Office of the General Counsel, were never heard of again. As I understand it, of the investigations conducted by HEW and the Federal Government in the North, only two school districts have been actually charged with discrimination, these districts being Wichita, Kans., and Ferndale, Mich. There are reports that some 48 complaints have been made against school districts in the North, charging discrimination, but only eight of these have been reviewed by HEW, with no public report as to what action has been taken.

It is interesting to note that what few cases have reached the courts in the North and West, dealing with segregation in the public schools, are all the result of actions commenced by private plaintiffs. None of these cases have been initiated by the Federal Government. In view of the uproar which has occurred in Pontiac, Detroit, and other northern cities, including a few where action has only been "threatened," it is easy to understand why the Federal Government has not enforced the law in the North and West. They are afraid to do so. Officials of the Federal Government know that the parents of these children will not stand for such enforcement in the North and the West and will, when it is attempted, create such pressures upon their public officials that only a token enforcement, if even that, will be permitted. In Boston, for instance, an effort was made at the beginning of this school year to comply with the requirements of the law, and the public outcry was so great that the whole matter was postponed for a year. The Federal Government has taken no action whatsoever to correct this situation, and this is only one instance of many.

I have no desire to see any unpleasantness or interference with any school district in any part of the country. I think our public schools should be left alone, and permitted to perform the responsibility for which they were created; that is, to make available to all students a quality education and the best that can be afforded. Unfortunately, our public schools have been made the chopping block for social experiments in the field of race relations and our children have suffered the consequences.

All too many of our children, North and South, are being deprived of a real education or the true academic atmosphere which is so important to have in order that they may have every opportunity to learn. This is a tragic situation, and if some solution is not found soon, our Nation will suffer, as well as our children.

In the recent Detroit case, the Federal court found that de jure segregation existed and that remedial steps must be taken. It is obvious to me, based on the facts which I have and which I reported to the Senate over 2 years ago, that if de jure segregation exists in Detroit now, as the Federal court has determined, that it existed then, and no doubt in 1954, and before, when the case of Brown against Board of Education, and similar cases, was decided by the Supreme Court of the United States. It obviously also existed when the Civil Rights Act of 1964 was adopted by the Congress. The same statement applies to Pontiac, and hundreds more school districts in the North and West.

When the Congress adopted the Civil Rights Act of 1964, with its title IV and title VI, regarding public school desegregation and the cutoff of Federal funds to school districts not in compliance with the act, there was no provision exempting the North and the West from its application. That act applied nationwide. Why has it not been enforced by the Federal Government, except in the South? Soon after the passage of that act, every school district in the South was sent a notice, requiring it to submit a plan for desegregation. Once submitted, the plan was subjected to minute inspection by many HEW attorneys and investigators, and not approved until the orders and directives of HEW were incorporated into the plan. If the school district showed any reluctance, that school district was given notice that its Federal funds would be "deferred" pending a hearing, and those who held out for a hearing and ruling by the Secretary of Health, Education, and Welfare were ruled against in almost 100 percent of the cases.

In the North and West, however, the only form required by HEW from school districts was a mere statement that they were in compliance with the law. There was no investigation or followup. Now, it is apparent that many school districts in the North and West were not in compliance. Detroit was not in compliance, nor was Pontiac, Mich., nor were many hundreds of others.

The fact is that there was a cold, calculated decision on the part of officials of HEW and others in charge at that time, and since, to ignore the North and West and to array the full power and might of the Federal Government against the South. The Civil Rights Act was ignored with impunity in the North and West and only now are those school districts—not in compliance at the time the law was enacted—beginning to feel the impact.

Until now, those in the North and West have tried to say that the segregation practiced there was de facto—not the result of State or official action—and thus beyond the Civil Rights Act and the Supreme Court decisions. The result of my amendment to the two education bills would have been to eliminate the effect of this false distinction, and to require the uniform application of segregation policies throughout the Nation. To its everlasting credit, the Senate approved my amendment in overwhelming votes in 2 separate years, but the House of Representatives did not approve it in its original form. Last year, the amendment was changed beyond recognition in the House-Senate conference, and this year the House committee restricted its application only to the emergency school assistance bill, which is stripped of all the affirmative action provisions of the Civil Rights Act of 1964 and the Elementary and Secondary Education Act of 1965. This is the form in which the amendment passed in the other body last week.

But recent Federal court cases, as exemplified by the Detroit case, have shown that in a countless number of school districts in the North and West, there was no distinction in the first place. The segregation practiced in Detroit was de jure, and I pointed out as long as 3 years ago that in many school districts in the North and West, that was just the case.

In Detroit, and many countless other school districts, de jure segregation exists, and one must wonder why the attention of HEW has not been attracted to them over the years. These schools presumably should have been operating under an HEW-directed or approved plan, long before now.

The confusion, turmoil, and unhappiness among parents, children, and other citizens of Pontiac, Detroit, and other cities in the North and West was inevitable. Unfortunately, those in other parts of the Nation could not realize what the Supreme Court of the United States and the Congress had forced upon those in the South and what irreparable damage was being done to our schools and to our communities until they in the North and West could see and feel at least a small token of the same serious problem.

Fundamentally, there is no clause in the Constitution of the United States, actual or implied, which gives any court the power and authority to compel the busing of schoolchildren away from their own community or neighborhood schools to other schools in other communities and neighborhoods, solely for the purpose of creating some racial balance or ratio in either the school from which these students are transferred, or the school to which they are sent.

To the contrary, the whole spirit of our Government and the basic principles enunciated in our Constitution are just the opposite.

I repeat, there is no authority in the Constitution or any valid law enacted by the Congress, or any other legislative body, which authorizes the transfer or busing of schoolchildren away from their home community or their own neighborhood school against their will or their parents' will in the absence of some dire emergency, health situation, or other compelling reasons.

For all intents and purposes, our neighborhood schools in many areas have been virtually destroyed. Our public school system has been left in a shambles, making it almost impossible for our children to receive the quality education which they need and deserve and for which their parents pay dearly in taxes.

Mr. President, the Congress has attempted on various occasions to forbid the busing of children to create racial balance in the public schools. The Civil Rights Act of 1964 was so written as to forbid such busing. We were assured it

would not take place. Nevertheless, it has been carried out in the South on a massive basis, and now it is a problem that is facing Northern parents and children as well. The way this busing has been done in the South, of course, was by claiming that such busing was required to comply with the Constitution, and that such busing was not to create racial balance. In the North and West, however, this provision of the Civil Rights Act was used as a haven or excuse for not requiring busing. Now, in the light of the Pontiac, Detroit, and other cases, finding that de jure segregation exists, busing has suddenly come home to the North.

From the events that took place in the other body the evening of November 4, it seems that there is no doubt that busing has indeed come home to the North. And I might add that the North is not pleased, and has proceeded with considerable haste to do something about it.

These are the actions taken by the other body, by amendment to the Higher Education Act, on November 4: They:

First. Provided for postponement of any U.S. district court order to force busing until the Supreme Court has had the opportunity to act on any appeal, by a vote of 235 to 125.

Second. Prohibited the use of funds from any HEW program for busing, by a vote of 233 to 124.

Third. Prohibited any officer of HEW or any other Federal agency from requiring expenditures of State or local funds for purposes for which Federal funds cannot be expended, by a vote of 231 to 126.

Fourth. Declined to permit use of Federal funds for busing in school districts that are under a court-ordered desegregation plan, by a vote of 146 to 216.

Fifth. Passed the Emergency School Aid Act, as an added title in the Higher Education Act, by a vote of 211 to 160, after adding a prohibition of use of the funds for busing and a section endorsing the neighborhood school concept.

These provisions will of course be subject to consideration in conference. They will, I am sure, receive the closest scrutiny. I will say at this time only that my efforts in the matter of school desegregation have been aimed at achieving a single set of rules, to be applied uniformly throughout the Nation. I believe firmly that every legislative action pertaining to busing or any other desegregation provision should meet that test.

One way the busing problem can be dealt with completely is, of course, by constitutional amendment. However, in the interim there is no reason why personnel of Federal departments should not be responsive to the will of Congress. The action in the other body last week represents a first step in this direction. The amendment which has been offered by the Senator from Georgia (Mr. GAMBRELL) to the Equal Employment Opportunities Act, embracing similar principles, would enjoin Federal departments, in particular HEW and Justice, from advocacy of busing by reason of color, in or out of court, in HEW plans, in withholding or granting of funds, or in other actions.

To enjoin Federal departments from advocacy of assignment of students to schools by reason of the color of their skins does not affect present or future court cases, nor prevent the filing of private suits. In the North and West, this is the route that has normally been followed in any case, since the Federal Government has not expressed any real interest in enforcing the present law in the North and West. There is no need to compound an already intolerable situation by having HEW or Justice promote more such cases—North, South, East, or West.

Another provision in the proposed amendment offered by the Senator from Georgia would require that HEW accept any court-ordered or court-approved plan as complete and sufficient. This requirement stands on its own merits. Certainly we need no fanatical bureaucrat embellishing court plans with additional impositions on citizens and school children.

There is still another way in which this whole problem may be solved. The Supreme Court of the United States does not have completely unlimited power but only possesses the power, authority, and jurisdiction extended to it under the provisions of the Constitution itself. That Constitution vests the judicial power of the United States in the Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

After enumerating a number of cases in which the Court shall exercise judicial power, article III, section 2, clause 2 provides:

> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, *with such Exceptions and under such Regulations as the Congress shall make.* (Emphasis added.)

There is a well-recognized body of law making clear that the Congress of the United States has the authority to withhold or withdraw from the jurisdiction of the Supreme Court the judicial power to decide cases in certain categories. This procedure has been followed several times in the history of our Nation, and the Supreme Court has recognized in its decisions the power of the Congress to follow this course. It might well be that the present serious problems facing our public schools and especially those problems caused by busing our schoolchildren from one community to another can only be solved by legislation withdrawing from the power of the Court the jurisdiction to hear appeals and to consider such cases.

I am convinced that appropriate legislation can be drafted, within the framework of the Constitution, which will accomplish this purpose, and I think the Congress should give serious consideration to such legislation.

This entire problem is indeed a serious one, and I think the time has certainly come when our Nation must recognize that our public schools must be devoted to educating our children without the interference of Federal bureaucrats and the courts. Our public schools can only be operated on a sound academic basis by our local school boards and the public school officials and faculty which they employ to teach our students. Certainly, the chaos and turmoil which have been experienced in hundreds of school districts across the land must be stopped and our schools permitted to return to the role for which they were created—that of providing an educational opportunity for all of our children.

Mr. President, I ask unanimous consent that three newspaper articles on the Detroit school case be placed in the RECORD at the conclusion of my remarks. They are: An article in the New York Times on September 28, by Agis Salpukas; an article in the Washington Post of the same date, by Robert Popa; and one by Peter Milius, in the Washington Post of October 24; also, the editorial entitled "The Busing Dilemma" which appeared in the Washington Evening Star on October 29; and a copy of the decision of the U.S. District Court, Eastern District of Michigan, Civil Action No. 35257, in the Detroit school case, styled Ronald Bradley, et al., versus William G. Milliken, et al.

Mr. President, I believe the present circumstances throughout the school systems of our country constitute a challenge to the Supreme Court to rule on a desegregation case in a Northern school district. This is essential if some degree of order is to be brought out of the present chaos.

Second, the President of the United States, whoever he may be for the next 4 or 8 years, will have to deal on a regular basis with the busing problem, as one which is very much in the minds of all American parents. It would seem reasonable and proper therefore, that every presidential candidate should make his position known as to whether the United States should have a single uniform policy on the problem applied in every region of this Nation. It would seem proper that they be challenged to say whether or not they back the idea of school busing for racial balance regardless of the origin or cause of the segregation. I make such a challenge now and will repeat it from time to time.

The House and Senate will no doubt have to deal repeatedly with these problems in the future. It would seem to me proper and prudent that candidates for the House or Senate next year should express their views, so that the voice of the people can be clearly heard.

Mr. President, this busing dispute means the dislocation of children from their schools, unhappiness for the children and their families, lost time, lost money, and lost educational opportunities. I say only that the time had to come when the dispute would occur in the North, for its roots are in the same policies that have been enforced in the South for several years. The same kinds of court rulings, controversies, and upheavals that are beginning in Michigan and other States will spread through the North and West. The people are not going to like it. They have shown they do not like it in San Francisco, Pontiac,

Boston, and elsewhere. There should be no need for any violence in showing their displeasure. It would be deplorable, and it is entirely unnecessary. These are areas of great political strength in our country, and they can make their voices heard, according to established democratic processes, as they did in the other body on November 4. I believe that when the full strength of their voices is heard, we are going to be on our way back to neighborhood schools and spending the money to make those schools the very best this country can afford.

Mr. President, I ask unanimous consent to have printed in the RECORD certain documents and newspaper editorials bearing on this subject.

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

[From the New York Times, Sept. 28, 1971]

U.S. JUDGE FINDS DETROIT GUILTY OF PLANNED SCHOOL SEGREGATION

(By Agis Salpukas)

DETROIT, September 27.—A Federal judge found today that Detroit's public school system had been deliberately segregated and he spread the blame to practically all of society.

Judge Stephen Roth put off any specific plans to integrate the schools until further hearings.

Detroit's schools are two-thirds black, and the judge left open the possibility of combining black city schools with white suburban schools through busing, a concept favored by attorneys of the National Association for the Advancement of Colored People.

National R. Jones, general counsel for the N.A.A.C.P., whose Detroit chapter initiated the suit, called the decision "of major significance of bringing about integration in the North."

The decision "shows that you can establish that school systems in the North are not creations of chance but are deliberate, that racial patterns are not happenstance but grow out of state action and are really the result of long history of acts of commission and omission," he said. Judge Roth said two factors had caused the segregation here: a segregated housing pattern and actions by state agencies or the Detroit Board of Education.

"Government actions and inactions at all levels, Federal, state and local, have combined with those of private organizations such as loaning institutions, real estate associations and brokerage firms" to cause housing segregation.

"For many years," the judge said in his ruling, "Federal housing administrators and the Veterans Administration openly advised and advocated maintenance of 'harmonious' neighborhoods, i.e. racially and economically harmonious. The conditions created continue."

BLAME FOR EVERYONE

"There is enough blame for everyone to share," he said, even for blacks who to some degree "like ethnic groups in the past, have tended to separate from the larger group and associate together."

But "state and local government actions have played a substantial role in promoting segregation" of the schools.

He noted that the State Legislature, until this session, would not pay for the transportation of pupils in the Detroit school system regardless of their poverty or distance from the school although it paid for the transportation of students in the generally white suburban and rural school districts.

He noted that the Legislature had also struck down a plan drawn by the city Board of Education last April that would have spread white pupils throughout the city's high schools.

EVIDENCE CITED

He cited the following evidence that the Detroit School Board had encouraged segregation:

The creation of "optional" school zones in changing neighborhoods, allowing pupils to choose between a mostly black or mostly white high school.

The busing of black pupils past or away from closer white schools to black schools and the absence of busing of whites into black schools.

The juggling of school district lines, which the judge said, encouraged segregated schools.

The board "admits at least one instance where it intentionally built and maintained a school and its attendant zone to contain black students," Judge Roth said.

The Detroit School Board was praised by the judge for its efforts "to advance the cause of quality education for all in terms of racial integration and human relations," particularly its effort at faculty integration.

Between 1960 and 1970, the board increased the percentage of black teachers from 23.3 to 42.1 and of black administrators from 4.5 to 37.8, he noted.

Last year, it held open 240 positions in schools with less than 25 per cent black teachers, rejecting white applicants until qualified black applicants could be found, he said.

Judge Roth noted that the board had worked to get black students into skilled trades jobs in industry, had brought about a substantial increase in the number of black students in manufacturing and construction trade apprentice classes and had been a leader in the pioneering of integrated textbooks.

PROPOSALS EXPECTED

At a hearing Oct. 4, both sides are expected to make their initial proposals for integrating the school system.

Louis Lucas, a lawyer for the N.A.A.C.P. Legal Defense and Educational Fund, Inc., who argued the case for the N.A.A.C.P. although the fund is not connected with that organization, said in an interview that any plans for integration would have to involve suburban districts.

He said one reason for involving suburban and city districts in a plan for integration would be to equalize the large differences in the amount spent for education.

In suburban districts, more than $1,000 a year may be spent per pupil for education, while in the Detroit city system about $650 a year is spent.

Mr. Lucas said that in some cases little busing would be needed since an all-black school near the border of the city could be merged with an all-white suburban school.

Mr. Jones said that busing should be put into the plan if necessary.

"We're not frightened of busing," he said. "It's not new to this country, and it's not new to this city."

The integration controversy in Detroit erupted more than a year ago when the Detroit School Board, without warning, juggled boundaries and ordered students to ride miles on city buses to achieve integration. In effect, this was an effort to spread whites into the black schools.

[From the Washington Post, Sept. 28, 1971]

DETROIT SCHOOL SEGREGATION DELIBERATE, U.S. JUDGE RULES

(By Robert Popa)

DETROIT, September 27.—A federal district judge ruled today that the state of Michigan and the Detroit public school system are guilty of deliberately maintaining segregated schools in the city and he said the federal courts must correct the situation.

But Judge Stephen J. Roth said he has not yet settled on an integration plan. He will discuss possibilities with lawyers on both sides next Monday.

The civil suit asking for relief from segregation was filed 13 months ago as a class action by a group of parents and the NAACP.

Roth said the defendants had circumvented integration by building small primary schools, shaping attendance zones in a way geared to maintain segregation, restricting busing funds and using busing to move some black pupils to other black schools rather than white ones.

While Detroit's population of 1½ million was 43 per cent black in the 1970 census, Detroit's public school enrollment of 285,000 is 65 per cent black.

The defendants in the suit are the Detroit Board of Education; the former superintendent of Detroit schools, Norman A. Drachler; Gov. William G. Millikin; Attorney General Frank J. Kelley; the State Board of Education, and John Porter, state superintendent of public instruction.

Roth said segregation in Detroit schools exists "de jure," which means "by law," and must be dealt with in the same way.

De jure segregation contrasts with de facto segregation, which usually develops as an outgrowth of housing patterns.

Roth said 11 of Detroit's schools this year have black enrollments exceeding 90 per cent while one has less than 10 per cent blacks.

Since 1959, the Detroit Board of Education has circumvented integration, he said, by constructing at least 13 small primary schools with capacities of 300 to 400 each.

"This practice negates opportunities to integrate, contains a black population and perpetuates and compounds school segregation," he said.

State officials are guilty of promoting segregation, Roth said, by refusing to provide funds for busing pupils in Detroit although they make money available for busing in many neighboring white suburban districts.

Roth also found the state guilty of promoting segregation by imposing limits on a school district's borrowing power and through the formula it uses for distributing support money to the schools.

Because wealthier suburban districts are able to spend much more tax money for each pupil while making less of a taxing effort, "systematic educational inequalities have been created and perpetuated," said the judge.

At the same time, Roth termed Detroit's assignment of teachers and administrators "superior" from the standpoint of integration. He promised not to interfere with it.

"Detroit's school system has a higher proportion of black administrators than any other city in the country," he said. "Detroit in 1970 was among the 20 largest Northern city school districts in percentage of blacks on the faculty."

Roth found that the Detroit Board of Education was guilty of segregation because it shaped attendance zones along north-south lines. More integration would have been drawn on an east-west basis, he said.

He added that the board is also perpetuating segregation by busing black pupils to less-crowded black schools rather than to predominantly white schools.

Although several points of the Detroit case have been contested and one was taken to the U.S. Circuit Court of Appeals, no one has yet raised the question of the NAACP's right to join the suit as a plaintiff.

After issuing his ruling, Roth said he has reservations about the NAACP's right to participate.

"There is a serious legal question as to whether they can bring this kind of suit," he said.

Still pending is an application by another group, The Citizens Committee for

Better Education (CCBE), which also wants to join the plaintiffs in the suit.

CCBE leaders would question integration in a three-county metropolitan area composed of Wayne, Oakland and Macomb counties. These three counties contain about half of Michigan's nearly 9 million residents.

If Roth accepts the application of the CCBE, a complete upheaval of suburban school racial patterns could follow. Lawyers for the CCBE contend that true integration cannot be achieved in Detroit alone because 65 per cent of the students there are black.

Louis R. Lucas, a lawyer on the NAACP's New York staff, said he was pleased by Roth's ruling. But he declined to describe the type of integration plan he will propose next week.

[From the Washington Post, Oct. 24, 1971]

RIGHTS ADVOCATES RETREAT IN MICHIGAN BUSING FUROR

(By Peter Milius)

H.R. 11312 is the kind of bill that Southerners have been introducing for years on school desegregation: a throwaway, offered up for home consumption rather than with any thought of serious consideration by the House.

Only two things make it remarkable.

The first is that it is a little milder than most bills of its genre. It would only delay the effective date of any busing order handed down by a lower federal court until all appeals had been exhausted.

The second is that it was not introduced by Southerners. The bill bears the names of seven members of the Michigan congressional delegation, two Republicans and five Democrats, certified Northern civil rights advocates and moderates all.

Mississippi's John Cornelius Stennis has been saying in the Senate for three years that Northerners would lose their enthusiasm for school desegregation the day that it reached their front doors. The current philosophical and political rout in Michigan suggests that the senator was right.

Three weeks ago, a federal district judge in Detroit warned that he may soon order integration of that city's majority-black school system with the white schools of the suburbs, a step that presumably would mean some busing. He gave the state government 120 days to come up with such an integration plan.

Earlier in the year, another U.S. district judge ordered crosstown busing to desegregate the schools of Pontiac. His decree took effect in September.

TURMOIL CREATED

The two court orders, one issued, the other only threatened, have created almost total turmoil in the tight Southeastern corner of the state, where both these cities are, and where more than a third of its people live, including most of its Democrats.

Standing-room-only antibusing meetings in school auditoriums have become almost nightly occurrences in the Detroit suburbs. Antibusing groups with acronymic names have been springing up like weeds.

Pontiac, where 10 empty school buses were damaged by dynamite before school opened, where there were white boycotting and picketing after school began, has its NAG, the National Action Group. In the Detroit suburbs there is now also SOC, Save Our Children; RAG, the Roseville Action Group; ROB, Residents Opposed to Busing.

"The Detroit newspapers haven't had anything else in them for two weeks," says Rep. William D. Ford, a Democrat whose district lies in Detroit's Wayne County suburbs.

"There'll be a notice in the paper and they'll turn out 1,500 or 2,000 people just bang," adds Rep. James G. O'Hara, another Democrat, who represents suburban Macomb County.

"You can't really exaggerate the amount of agitation there is out there," concludes an aide to the state's Democratic senator, Philip A. Hart.

The white uproar over just the prospect of busing has had exactly the political effect that John Stennis predicted it would. Here as in other states, the issue may well become a major factor in the 1972 elections.

"It is," Hart's aide notes wryly, "the kind of issue that's awfully hard on the black-working class Democratic coalition."

IF IT IS ONLY WAY

Hart, the most secure of the state's sitting Democrats—his present six-year term has five more years to run—has spoken out in favor of busing "when a constitutional guarantee can't be delivered any other way."

Antibusing groups are circulating petitions to recall him.

That state's other senator, Robert P. Griffin, Republican, a moderate on civil rights in the past, is up for reelection next year. The Democrats were confident they could beat him.

LESS CONFIDENT

He now is sponsoring a constitutional amendment that would bar all busing on racial grounds. The Democrats are no longer so confident.

"It's had a serious impact on the senatorial prospects," one strategist says.

"If the judge orders busing, it'll probably begin next September," says another. "It might as well be Election Day."

The white Democrats in the state's congressional delegation have so far gone Griffin's way rather than Hart's—and the two black Democrats, John Conyers Jr. and Charles C. Diggs Jr. of Detroit, have so far held their peace.

Privately, the white congressmen rail at Griffin. "What he did was an irresponsible political stunt," says one. They are not saying the same thing in public. "It's more than your political life is worth at the moment to even suggest you're not against busing," the same Democrat acknowledges.

O'Hara is a seven-term congressman, former chairman of the activist Democratic Study Group in the House, veteran of civil rights fights in the past. His record has rarely troubled his basically blue-collar constituents; he was reelected last year with 77 per cent of the vote.

THOUSANDS OF SIGNERS

Yet O'Hara in the last three weeks has been handed antibusing petitions that he says "must have had 50,000 to 100,000 names on them."

He has had 2,500 letters on the subject in the same period. "Three," he says, "were in favor of busing." The rest were against.

Many are simply form letters, the handiwork of RAG and ROB and the other groups, handed out at the nightly meetings. "It is with grave concern and special interest that this letter is sent to ask *your* position on busing of students," one begins.

"I need your help and support *now*. You will need my support in the *future*," reminds another.

Others are not mass-produced, nor "from people who write letters all the time," O'Hara says.

HOME OWNERS ALARMED

"We have lived in Enaser (a suburban town) for six months and put all our savings into our new house, says one of these, handwritten on a housewife's stationery. "Now, because of the busing situation, were are afraid . . . We are not against the Negro getting a good education, but feel he should work to obtain the right to live in a good school district, as we have done."

O'Hara has drafted a stock reply.

"In my opinion, court-ordered student busing programs go beyond the requirements of the Constitution and are wrong. The problems facing our schools and our society can best be solved by providing the funds necessary to assure quality education in our neighborhood schools . . . I . . . am prepared to do whatever is necessary by way of further legislation or a constitutional amendment to prevent the implementation of the (Detroit judge's) decision by cross-district busing. Thank you for sharing your views with me."

IS NOT ALONE

O'Hara is not alone. Ford tells inquiring constituents that "Mass busing is an unacceptable, ineffective and self-defeating means of attempting to provide equal educational opportunity."

O'Hara, Ford, Reps. Martha W. Griffiths, John D. Dingell and Lucien N. Nedzi are the five white Michigan Democrats in the House, and the five who cosponsored H.R. 11312.

"When it came to a vote, I don't think any one of them ever went wrong before," says a veteran civil rights lobbyist. He is less sure of the future.

The House Education and Labor Committee has reported out President Nixon's $1.5 billion school desegregation bill, a measure that would not compel desegregation, but finance it. O'Hara and Ford were the only two Democrats on the committee to dissent. They denounced the measure as the "Back Door School Bus Financing Bill of 1971."

Neither man is comfortable in his new position. They and others in their shoes are searching for a philosophical way out, as well as a political one.

O'Hara says his view is that, in urban areas, the courts should require no more than racially neutral neighborhood school networks. He knows the Supreme Court went beyond that point last April, in the decision requiring busing in at least Southern and perhaps many Northern cities as well. "I disagree," he says.

He acknowledges it is not a disagreement he has seen fit to express before.

"I do plead guilty to one thing," he says, "to maybe having been silent before the problem arrived at my doorstep.

"I didn't want to be associated with those segregation forever people. They aren't my kind."

[From the Evening Star, Oct. 29, 1971]

THE BUSING DILEMMA

Federal courts decisions on racial busing are accumulating this season like the autumn leaves. And this probably is just the beginning, because every school district has its peculiar circumstances which need to be interpreted. Local boards all over the country are awaiting clarification of their duties with regard to desegregation. Those responsibilities still are indistinct, despite the deluge of language that has issued from the Supreme Court on the subject.

So the district and appeals courts have a long, hard road ahead, as does the Supreme Court in overseeing what the lower judiciary is doing. The high court has tended to support or at least leave undisturbed the lower courts' busing solutions. To delve into all the details and differentials that are at issue would be like trying to unravel a mountain of spaghetti. Understandably, the justices are restricting their searching examinations to appealed cases that seem ready-made for the laying down of broad, definitive rules.

Such a case was the one emanating from Pontiac, Michigan. This litigation deserved a full hearing and a judgment by the Supreme Court. By declining to review a federal court order for extensive busing at Pontiac the high court allowed the decree to stand and left critical questions unanswered. It missed an excellent opportunity to deal with the boiling issue of busing to create racial balance in Northern schools. In sidestepping at this juncture, it assured that the technique developed in the Pontiac case will be applied elsewhere and added to the difficulty

of any modifications it might decide to sanction in the future.

This was, in fact, the first chance the court has had to rule on a new genre of Northern and Western cases that are moving up the appeals route. Last April it approved of busing as an acceptable implement to achieve desegregation in three Southern cities, where it is presumed that the dismantling of the old *de jure* (officially imposed) segregation system is still in progress. But suits in Northern cities now claim that school segregation, defended as being *de facto* (a consequence of residential patterns), actually is *de jure*—the result of official manipulation. For example, in Pontiac the officials were accused of failing to adjust school district lines so as to attain desegregation, and of building schools in areas that are all-black and all-white with the effect of perpetuating segregation.

Certainly the gerrymandering or freezing of attendance zones to avoid desegregation cannot be tolerated, but this conclusion suggests that busing isn't the only available expedient. Much can be achieved through rearrangement of zones. By no stretch of reasoning, however, should school boards be required to make racial balance their overriding consideration in building new schools.

The school boycott at Pontiac and the busing protest violence that has occurred there are indefensible, but apart from those repugnant spectacles are far-reaching questions of law that must be answered soon in the interest of educational stability. If that interest is to be served, we believe, the court must outline some practical limits on busing.

[U.S. District Court, Eastern District of Michigan, Southern Division]

RULING ON ISSUE OF SEGREGATION

Ronald Bradley, et al., plaintiffs, v. William G. Milliken, et al., Defendants, and Detroit Federation of Teachers, Local No. 231, American Federation of Teachers, AFL–CIO, Defendant-Intervenor, and Denise Magdowski, et al., Defendants-Intervenor, Civil Action No. 35257.

This action was commenced August 18, 1970, by plaintiffs, the Detroit Branch of the National Association for the Advancement of Colored People* and individual parents and students, on behalf of a class later defined by order of the Court dated February 16, 1971, to include "all school children of the City of Detroit and all Detroit resident parents who have children of school age." Defendants are the Board of Education of the City of Detroit, its members and its former superintendent of schools, Dr. Norman A. Drachler, the Governor, Attorney General, State Board of Education and State Superintendent of Public Instruction of the State of Michigan. In their complaint, plaintiffs attacked a statute of the State of Michigan known as Act 48 of the 1970 Legislature on the ground that it put the State of Michigan in the position of unconstitutionally interfering with the execution and operation of a voluntary plan of partial high school desegregation (known as the April 7, 1970 Plan) which had been adopted by the Detroit Board of Education to be effective beginning with the fall 1970 semester. Plaintiffs also alleged that the Detroit Public School System was and is segregated on the basis of race as a result of the official policies and actions of the defendants and their predecessors in office.

Additional parties have intervened in the litigation since it was commenced. The Detroit Federation of Teachers (DFT) which represents a majority of Detroit Public school teachers in collective bargaining negotiations with the defendant Board of Education, has intervened as a defendant, and a group of parents has intervened as defendants.

Initially the matter was tried on plaintiffs' motion for preliminary injunction to restrain the enforcement of Act 48 so as to permit the April 7 Plan to be implemented. On that issue, this Court ruled that plaintiffs were not entitled to a preliminary injunction since there had been no proof that Detroit has a segregated school system. The Court of Appeals found that the "implementation of the April 7 Plan was thwarted by State action in the form of the Act of the Legislature of Michigan," (433 F.2d 897, 902), and that such action could not be interposed to delay, obstruct or nullify steps lawfully taken for the purpose of protecting rights guaranteed by the Fourteenth Amendment.

The plaintiffs then sought to have this Court direct the defendant Detroit Board to implement the April 7 Plan by the start of the second semester (February, 1971) in order to remedy the deprivation of constitutional rights wrought by the unconstitutional statute. In response to an order of the Court, defendant Board suggested two other plans, along with the April 7 Plan, and noted priorities, with top priority assigned to the so-called "Magnet Plan." The Court acceded to the wishes of the Board and approved the Magnet Plan. Again, plaintiffs appealed but the appellate court refused to pass on the merits of the plan. Instead, the case was remanded with instructions to proceed immediately to a trial on the merits of plaintiffs' substantive allegations about the Detroit School System. 438 F.2d 945 (6th Cir. 1971).

Trial, limited to the issue of segregation, began April 6, 1971 and concluded on July 22, 1971, consuming 41 trial days, interspersed by several brief recesses necessitated by other demands upon the time of Court and counsel. Plaintiffs introduced substantial evidence in support of their contentions including expert and factual testimony, demonstrative exhibits and school board documents. At the close of plaintiffs' case, in chief, the Court ruled that they had presented a prima facie case of state imposed segregation in the Detroit Public Schools; accordingly, the Court enjoined (with certain exceptions) all further school construction in Detroit pending the outcome of the litigation.

The State defendants urged motions to dismiss as to them. These were denied by the Court.

At the close of proofs intervening parent defendants (Denise Magdowski, et al.) filed a motion to join, as parties 85 contiguous "suburban" school districts—all within the so-called Larger Detroit Metropolitan area. This motion was taken under advisement pending the determination of the issue of segregation.

It should be noted that, in accordance with earlier rulings of the Court, proofs submitted at previous hearings in the cause, were to be and are considered as part of the proofs of the hearing on the merits.

In considering the present racial complexion of the City of Detroit and its public school system we must first look to the past and view in perspective what has happened in the last half century. In 1920 Detroit was a predominantly white city—91%—and its population younger than in more recent times. By the year 1960 the largest segment of the city's white population was in the age range of 35 to 50 years, while its black population was younger and of childbearing age. The population of 0–15 years of age constituted 30% of the total population of which 60% were white and 40 % were black. In 1970 the white population was principally aging—45 years—while the black population was younger and of childbearing age. Childbearing blacks equaled or exceeded the total white population. As older white families without children of school age leave the city they are replaced by younger black families with school age children, resulting in a doubling of enrollment in the local neighborhood school and a complete change in student population from white to black. As black inner city residents move out of the core city they "leap-frog" the residential areas nearest their former homes and move to areas recently occupied by whites.

The population of the City of Detroit reached its highest point in 1950 and has been declining by approvimately 169,500 per decade since then. In 1950, the city population constituted 61% of the total population of the standard metropolitan area and in 1970 it was but 36% of the metropolitan area population. The suburban population has increased by 1,978,000 since 1940. There has been a steady out-migration of the Detroit population since 1940. Detroit today is principally a conglomerate of poor black and white plus the aged. Of the aged, 80% are white.

If the population trends evidenced in the federal decennial census for the years 1940 through 1970 continue, the total black population in the City of Detroit in 1980 will be approximately 840,000, or 53.6% of the total. The total population of the city in 1970 is 1,511,000 and, if past trends continue, will be 1,338,000 in 1980. In school year 1960–61, there were 285,512 students in the Detroit Public Schools of which 130,765 were black. In school year 1966–67, there were 297,035 students, of which 168,299 were black. In school year 1970–71 there were 289,743 students of which 184,194 were black. The percentage of black students in the Detroit Public Schools in 1975–76 will be 72.0%, in 1980–81 will be 80.7% and in 1992 it will be virtually 100% if the present trends continue. In 1960, the non-white population, ages 0 years to 19 years, was as follows:

[In percent]

0 to 4 years	42
5 to 9 years	36
10 to 14 years	28
15 to 19 years	18

In 1970 the non-white population, ages 0 years to 19 years, was as follows:

[In percent]

0 to 4 years	48
5 to 9 years	50
10 to 14 years	50
15 to 19 years	40

The black population as a percentage of the total population in the City of Detroit was:

[In percent]

(a) 1900	1.4
(b) 1910	1.2
(c) 1920	4.1
(d) 1930	7.7
(e) 1940	9.2
(f) 1950	16.2
(g) 1960	28.9
(h) 1970	43.9

The black population as a percentage of total student population of the Detroit Public Schools was as follows:

[In percent]

(a) 1961	45.8
(b) 1963	51.3
(c) 1964	53.0
(d) 1965	54.8
(e) 1966	56.7
(f) 1967	58.2
(g) 1968	59.4
(h) 1969	61.5
(i) 1970	63.8

For the years indicated the housing characteristics in the City of Detroit were as follows:

(a) 1960, total supply of housing units was 553,000.

*The standing of the NAACP as a proper party plaintiff was not contested by the original defendants and the Court expresses no opinion on the matter.

(b) 1970, total supply of housing units was 530,770.

The percentage decline in the white students in the Detroit Public Schools during the period 1961–1970 (53.6% in 1960; 34.8% in 1970) has been greater than the percentage decline in the white population in the City of Detroit during the same period (70.8% in 1960; 55.21% in 1970), and correlatively, the percentage increase in black students in the Detroit Public Schools during the nine-year period 1961–1970 (45.8% in 1961; 63.8% in 1970) has been greater than the percentage increase in the black population of the City of Detroit during the ten-year period 1960–1970 (28.9% in 1960; 43.9% in 1970). In 1961 there were eight schools in the system without white pupils and 73 schools with no Negro pupils. In 1970 there were 30 schools with no white pupils and 11 schools with no Negro pupils, an increase in the number of schools without white pupils of 22 and a decrease in the number of schools without Negro pupils of 62 in this ten-year period. Between 1968 and 1970 Detroit experienced the largest increase in percentage of black students in the student population of any major northern school district. The percentage increase in Detroit was 4.7% as contrasted with—

[In percent]

New York	2.0
Los Angeles	1.5
Chicago	1.9
Philadelphia	1.7
Cleveland	1.7
Milwaukee	2.6
St. Louis	2.6
Columbus	1.4
Indianapolis	2.6
Denver	1.1
Boston	3.2
San Francisco	1.5
Seattle	2.4

In 1960, there were 266 schools in the Detroit School System. In 1970, there were 319 schools in the Detroit School System.

In the Western, Northwestern, Northern, Murray, Northeastern, Kettering, King and Southeastern high school service areas, the following conditions exist at a level significantly higher than the city average:

(a) Poverty in children.

(b) Family income below poverty level.

(c) Rate of homicides per population.

(d) Number of households headed by females.

(e) Infant mortality rate.

(f) Surviving infants with neurological defects.

(g) Tuberculossis cases per 1,000 population.

(h) High pupil turnover in schools.

The City of Detroit is a community generally divided by racial lines. Residential segregation within the city and throughout the larger metropolitan area is substantial, pervasive and of long standing. Black citizens are located in separate and distinct areas within the city and are not generally to be found in the suburbs. While the racially unrestricted choice of black persons and economic factors may have played some part in the development of this pattern of residential segregation, it is, in the main, the result of past and present practices and customs of racial discrimination, both public and private, which have and do restrict the housing opportunities of black people. On the record there can be no other finding.

Governmental actions and inaction at all levels, federal, state and local, have combined, with those of private organizations, such as loaning institutions and real estate associations and brokerage firms, to establish and to maintain the pattern of residential segregation throughout the Detroit metropolitan area. It is no answer to say that restricted practices grew gradually (as the black population in the area increased between 1920 and 1970), or that since 1948 racial restrictions on the ownership of real property have been removed. The policies pursued by both government and private persons and agencies have a continuing and present effect upon the complexion of the community—as we know, the choice of a residence is a relatively infrequent affair. For many years FHA and VA openly advised and advocated the maintenance of "harmonious" neighborhoods, i.e., racially and economically harmonious. The conditions created continue. While it would be unfair to charge the present defendants with what other governmental officers or agencies have done, it can be said that the actions or the failure to act by the responsible school authorities, both city and state, were linked to that of these other governmental units. When we speak of governmental action we should not view the different agencies as a collection of unrelated units. Perhaps the most that can be said is that all of them, including the school authorities, are, in part, responsible for the segregated condition which exists. And we note that just as there is an interaction between residential patterns and the racial composition of the schools, so there is a corresponding effect on the residential pattern by the racial composition of the schools.

Turning now to the specific and pertinent (for our purposes) history of the Detroit school system so far as it involves both the local school authorities and the State school authorities, we find the following:

During the decade beginning in 1950 the Board created and maintained optional attendance zones in neighborhoods undergoing racial transition and between high school attendance areas of opposite predominant racial compositions. In 1959 there were eight basic optional attendance areas affecting 21 schools. Optional attendance areas provided pupils living within certain elementary areas a choice of attendance at one of two high schools. In addition there was at least one optional area either created or existing in 1960 between two junior high schools of opposite predominant racial components. All of the high school optional areas, except two, were in neighborhoods undergoing racial transition (from white to black) during the 1950s. The two exceptions were: (1) the option between Southwestern (61.6% black in 1960) and Western (15.3% black); (2) the option between Denby (0% black) and Southeastern (30.9 black). With the exception of the Denby-Southeastern option (just noted) all of the options were between high schools of opposite predominant racial compositions. The Southwestern-Western and Denby-Southeastern optional areas are all white on the 1950, 1960 and 1970 census maps. Both Southwestern and Southeastern, however, had substantial white pupil populations, and the option allowed whites to escape integration. The natural, probable, foreseeable and actual effect of these optional zones was to allow white youngsters to escape identifiably "black" schools. There had also been an optional zone (eliminated between 1956 and 1959) created in "an attempt . . . to separate Jews and Gentiles within the system," the effect of which was that Jewish youngsters went to Mumford High School and Gentile youngsters went to Cooley. Although many of these optional areas had served their purpose by 1960 due to the fact that most of the areas had become predominantly black, one optional area (Southwestern-Western affecting Wilson Junior High graduates) continued until the present school year (and will continue to effect 11th and 12th grade white youngsters who elected to escape from predominantly black Southwestern to predominantly white Western High School). Mr. Henrickson, the Board's general fact witness, who was employed in 1959 to, *inter alia*, eliminate optional areas, noted in 1967 that: "In operation Western appears to be still the school to which white students escape from predominantly Negro surrounding schools." The effect of eliminating this optional area (which affected only 10th graders for the 1970–71 school year) was to decrease Southwestern from 86.7% black in 1969 to 74.3% black in 1970.

The Board, in the operation of its transportation to relieve overcrowding policy, has admittedly bused black pupils past or away from closer white schools with available space to black schools. This practice has continued in several instances in recent years despite the Board's avowed policy, adopted in 1967, to utilize transportation to increase integration.

With one exception (necessitated by the burning of a white school), defendant Board has never bused white children to predominantly black schools. The Board has not bused white pupils to black schools despite the enormous amount of space available in inner-city schools. There were 22,961 vacant seats in schools 90% or more black.

The Board has created and altered attendance zones, maintained and altered grade structures and created and altered feeder school patterns in a manner which has had the natural, probable and actual effect of continuing black and white pupils in racially segregated schools. The Board admits at least one instance where it purposefully and intentionally built and maintained a school and its attendance zone to contain black students. Throughout the last decade (and presently) school attendance zones of opposite racial compositions have been separated by north-south boundary lines, despite the Board's awareness (since at least 1962) that drawing boundary lines in an east-west direction would result in significant integration. The natural and actual effect of these acts and failures to act has been the creation and perpetuation of school segregation. There has never been a feeder pattern or zoning change which placed a predominantly white residential area into a predominantly black school zone or feeder pattern. Every school which was 90% or more black in 1960, and which is still in use today, remains 90% or more black. Whereas 65.8% of Detroit's black students attended 90% or more black schools in 1960, 74.9% of the black students attended 90% or more black schools during the 1970–71 school year.

The public schools operated by defendant Board are thus segregated on a racial basis. This racial segregation is in part the result of the discriminatory acts and omissions of defendant Board.

In 1966 the defendant State Board of Education and Michigan Civil Rights Commission issued a Joint Policy Statement on Equality of Educational Opportunity, requiring that

"Local school boards must consider the factor of racial balance along with other educational considerations in making decisions about selection of new school sites, expansion of present facilities . . . . Each of these situations presents an opportunity for integration."

Defendant State Board's "School Plant Planning Handbook" requires that

"Care in site location must be taken if a serious transportation problem exists or if housing patterns in an area would result in a school largely segregated on racial, ethnic, or socioeconomic lines."

The defendant City Board has paid little heed to these statements and guidelines. The State defendants have similarly failed to take any action to effectuate these policies. Exhibit NN reflects construction (new or additional) at 14 schools which opened for use in 1970–71; of these 14 schools, 11 opened over 90% black and one opened less than 10% black. School construction costing $9,222,000 is opening at Northwestern

High School which is 99.9% black, and new construction opens at Brooks Junior High, which is 1.5% black, at a cost of $2,500,000. The construction at Brooks Junior High plays a dual segregatory role; not only is the construction segregated, it will result in a feeder pattern change which will remove the last majority which school from the already almost all-black Mackenzie High School attendance area.

Since 1959 the Board has constructed at least 13 small primary schools with capacities of from 300 to 400 pupils. This practice negates opportunities to integrate, "contains" the black population and perpetuates and compounds school segregation.

The State and its agencies, in addition to their general responsibility for and supervision of public education, have acted directly to control and maintain the pattern of segregation in the Detroit schools. The State refused, until this session of the legislature, to provide authorization or funds for the transportation of pupils within Detroit regardless of their poverty or distance from the school to which they were assigned, while providing in many neighboring, mostly white, suburban districts the full range of state supported transportation. This and other financial limitations, such as those on bonding and the working of the state aid formula whereby suburban districts were able to make far larger per pupil expenditures despite less tax effort, have created and perpetuated systematic educational inequalities.

The State, exercising what Michigan courts have held to be is "plenary power" which includes power "to use a statutory scheme, to create, alter, reorganize or even dissolve a school district, despite any desire of the school district, its board, or the inhabitants thereof," acted to reorganize the school district of the City of Detroit.

The State acted through Act 48 to impede, delay and minimize racial integration in Detroit schools. The first sentence of Sec. 12 of the Act was directly related to the April 7, 1970 desegregation plan. The remainder of the section sought to prescribe for each school in the eight districts criterion of "free choice" (open enrollment) and "neighborhood schools" ("nearest school priority acceptance"), which had as their purpose and effect the maintenance of segregation.

In view of our findings of fact already noted we think it unnecessary to parse in detail the activities of the local board and the state authorities in the area of school construction and the furnishing of school facilities. It is our conclusion that these activities were in keeping, generally, with the discriminatory practices which advanced or perpetuated racial segregation in these schools.

It would be unfair for us not to recognize the many fine steps the Board has taken to advance the cause of quality education for all in terms of racial integration and human relations. The most obvious of these is in the field of faculty integration.

Plaintiffs urge the Court to consider allegedly discriminatory practices of the Board with respect to the hiring, assignment and transfer of teachers and school administrators during a period reaching back more than 15 years. The short answer to that must be that black teachers and school administrative personnel were not readily avaliable in that period. The board and the intervening defendant union have followed a most advanced and exemplary course in adopting and carrying out what is called the "balanced staff concept"—which seeks to balance faculties in each school with respect to race, sex and experience, with primary emphasis on race. More particularly, we find:

1. With the exception of affirmative policies designed to achieve racial balance in instructional staff, no teacher in the Detroit Public Schools is hired, promoted or assigned to any school by reason of his race.

2. In 1956, the Detroit Board of Education adopted the rules and regulations of the Fair Employment Practices Act as its hiring and promotion policy and has adhered to this policy to date.

3. The Board has actively and affirmatively sought out and hired minority employees, particularly teachers and administrators, during the past decade.

4. Between 1960 and 1970, the Detroit Board of Education has increased black representation among its teachers from 23.3% to 42.1%, and among its administrators from 4.5% to 37.8%.

5. Detroit has a higher proportion of black administrators than any other city in the country.

6. Detroit ranked second to Cleveland in 1968 among the 20 largest northern city school districts in the percentage of blacks among the teaching faculty and in 1970 surpassed Cleveland by several percentage points.

7. The Detroit Board of Education currently employs black teachers in a greater percentage than the percentage of adult black persons in the City of Detroit.

8. Since 1967, more blacks than whites have been placed in high administrative posts with the Detroit Board of Education.

9. The allegation that the Board assigns black teachers to black schools is not supported by the record.

10. Teacher transfers are not granted in the Detroit Public Schools unless they conform with the balanced staff concept.

11. Between 1960 and 1970, the Detroit Board of Education reduced the percentage of schools without black faculty from 36.3% to 1.2%, and of the four schools currently without black faculty, three are specialized trade schools where minority faculty cannot easily be secured.

12. In 1968, of the 20 largest northern city school districts, Detroit ranked fourth in the percentage of schools having one or more black teachers and third in the percentage of schools having three or more black teachers.

13. In 1970, the Board held open 240 positions in schools with less than 25% black, rejecting white applicants for these positions until qualified black applicants could be found and assigned.

14. In recent years, the Board has come under pressure from large segments of the black community to assign male black administrators to predominantly black schools to serve as male role models for students, but such assignments have been made only where consistent with the balanced staff concept.

15. The numbers and percentages of black teachers in Detroit increased from 2,275 and 21.6%, respectively, in February, 1961, to 5,106 and 41.6%, respectively, in October, 1970.

16. The number of schools by percent black of staffs changed from October, 1963 to October, 1970 as follows:

Number of schools without black teachers—decreased from 41, to 4.

Number of schools with more than 0%, but less than 10% black teachers—decreased from 58, to 8.

Total number of schools with less than 10% black teachers—decreased from 99, to 12.

Number of schools with 50% or more black teachers—increased from 72, to 124.

17. The number of schools by percent black of staffs changed from October, 1969 to October, 1970, as follows:

Number of schools without black teachers—decreased from 6, to 4.

Number of schools with more than 0%, but less than 10% black teachers—decreased from 41, to 8.

Total number of schools with less than 10% black teachers—decreased from 47, to 12.

Number of schools with 50% or more black teachers—increased from 120, to 124.

18. The total number of transfers necessary to achieve a faculty racial quota in each school corresponding to the system-wide ratio, and ignoring all other elements is, as of 1970, 1,826.

19. If account is taken of other elements necessary to assure quality integrated education, including qualifications to teach the subject area and grade level, balance of experience, and balance of sex, and further account is taken of the uneven distribution of black teachers by subject taught and sex, the total number of transfers which would be necessary to achieve a faculty racial quota in each school corresponding to the system-wide ratio, if attainable at all, would be infinitely greater.

20. Balancing of staff by qualifications for subject, and grade level, then by race, experience and sex, is educationally desirable and important.

21. It is important for students to have a successful role model, especially black students in certain schools, and at certain grade levels.

22. A quota of racial balance for faculty in each school which is equivalent to the system-wide ratio and without more is educationally undesirable and arbitrary.

23. A severe teacher shortage in the 1950s and 1960s impeded integration-of-faculty opportunities.

24. Disadvantageous teaching conditions in Detroit in the 1960s—salaries, pupil mobility and transiency, class size, building conditions, distance from teacher residence, shortage of teacher substitutes, etc.—made teacher recruitment and placement difficult.

25. The Board did not segregate faculty by race, but rather attempted to fill vacancies with certified and qualified teachers who would take offered assignments.

26. Teacher seniority in the Detroit system, although measured by system-wide service, has been applied consistently to protect against involuntary transfers and "bumping" in given schools.

27. Involuntary transfers of teachers have occurred only because of unsatisfactory ratings or because of decrease of teacher services in a school, and then only in accordance with balanced staff concept.

28. There is no evidence in the record that Detroit teacher seniority rights had other than equitable purpose or effect.

29. Substantial racial integration of staff can be achieved, without disruption of seniority and stable teaching relationships, by application of the balanced staff concept to naturally occurring vacancies and increases and reductions of teacher services.

30. The Detroit Board of Education has entered into successive collective bargaining contracts with the Detroit Federation of Teachers, which contracts have included provisions promoting integration of staff and students.

The Detroit School Board has, in many other instances and in many other respects, undertaken to lessen the impact of the forces of segregation and attempted to advance the cause of integration. Perhaps the most obvious one was the adoption of the April 7 plan. Among other things, it has denied the use of its facilities to groups which practice racial discrimination; it does not permit the use of its facilities for discriminatory apprentice training programs; it has opposed state legislation which would have the effect of segregating the district; it has worked to place black students in craft positions in industry and the building trades; it has brought about a substantial increase in the percentage of black students in manufacturing and construction trade apprenticeship classes; it became the first public agency in Michigan to adopt and implement a policy requiring affirmative act of contractors with which it deals to insure equal employment opportunities in their work forces; it has been a leader in pioneering the use of

multi-ethnic instructional material, and in so doing has had an impact on publishers specializing in producing school texts and instructional materials; and it has taken other noteworthy pioneering steps to advance relations between the white and black races.

In conclusion, however, we find that both the State of Michigan and the Detroit Board of Education have comimtted acts which have been causal factors in the segregated condition of the public schools of the City of Detroit. As we assay the principles essential to a finding of de jure segregation, as outlined in rulings of the United States Supreme Court, they are:

1. The State, through its officers and agencies, and usually, the school administration, must have taken some action or actions with a purpose of segregation.

2. This action or these actions must have created or aggravated segregation in the schools in question.

3. A current condition of segregation exists.

We find these tests to have been met in this case. We recognize that causation in the case before us is both several and comparative. The principal causes undeniably have been population movement and housing patterns, but state and local governmental actions, including school board actions, have played a substantial role in promoting segregation. It is, the Court believes, unfortunate that we cannot deal with public school segregation on a no-fault basis, for if racial segregation in our public schools is an evil, then it should make no difference whether we classify it de jure or de facto. Our objective, logically, it seems to us, should be to remedy a condition which we believe needs correction. In the most realistic sense, if fault or blame must be found it is that of the community as a whole, including, of course, the black components. We need not minimize the effect of the actions of federal, state and local governmental officers and agencies, and the actions of loaning institutions and real estate firms, in the establishment and maintenance of segregated residential patterns—which lead to school segregation—to observe that blacks, like ethnic groups in the past, have tended to separate from the larger group and associate together. The ghetto is at once both a place of confinement and a refuge. There is enough blame for everyone to share.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and the subject matter of this action under 28 U.S.C. 1331(a), 1343(3) and (4), 2201 and 2202; 42 U.S.C. 1983, 1988, and 2000d.

2. In considering the evidence and in applying legal standards it is not necessary that the Court find that the policies and practices, which it has found to be discriminatory, have as their motivating forces any evil intent or motive. *Keyes v. Sch. Dist. No. 1, Denver,* 383 F. Supp. 279. Motive, ill will and bad faith have long ago been rejected as a requirement to invoke the protection of the Fourteenth Amendment against racial discrimination. *Sims v. Georgia,* 389 U.S. 404, 407–8.

3. School districts are accountable for the natural, probable and forseeable consequences of their policies and practices, and where racially identifiable schools are the result of such policies, the school authorities bear the burden of showing that such policies are based on educationally required, non-racial considerations. *Keys v. Sch. Dist., supra,* and *Davis v. Sch. Dist. of Pontiac,* 309 F. Supp. 734, and 443 F.2d 573.

4. In determining whether a constitutional violation has occurred, proof that a pattern of racially segregated schools has existed for a considerable period of time amounts to a showing of racial classification by the state and its agencies, which must be justified by clear and convincing evidence. *State of Alabama v. U.S.,* 304 F. 2d 583.

5. The Board's practice of shaping school attendance zones on a north-south rather than an east-west orientation, with the result that zone boundaries conformed to racial residential dividing lines, violated the Fourteenth Amendment. *Northcross v. Bd. of Ed., Memphis,* 333 F. 2d 661.

6. Pupil racial segregation in the Detroit Public School System and the residential segregation resulting primarily from public and private racial discrimination are interdependent phenomena. The affirmative obligation of the defendant Board has been and is to adopt and implement pupil assignment practices and policies that compensate for and avoid incorporation into the school system the effects of residential racial segregation. The Board's building upon housing segregation violates the Fourteenth Amendment. See, *Davis v. Sch. Dist. of Pontiac, supra,* and authorities there noted.

7. The Board policy of selective optional attendance zones, to the extent that it facilitated the separation of pupils on the basis of race, was in violation of the Fourteenth Amendment. *Hobson v. Hansen,* 269 F. Supp. 401, *aff'd sub nom., Smuck v. Hobson,* 408 F. 2d 175

8. The practice of the Board of transporting black students from overcrowded black schools to other identifiably black schools, while passing closer identifiably white schools, which could have accepted these pupils, amounted to an act of segregation by the school authorities. *Spangler v. Pasadena City Bd. of Ed.,* 311 F. Supp. 501.

9. The manner in which the Board formulated and modified attendance zones for elementary schools had the natural and predictable effect of perpetuating racial segregation of students. Such conduct is an act of de jure discrimination in violation of the Fourteenth Amendment. *U.S. v. School District 151,* 286 F. Supp. 786; *Brewer v. City of Norfolk,* 397 F. 2d 37.

10. A school board may not, consistent with the Fourteenth Amendment, maintain segregated elementary schools or permit educational choices to be influenced by community sentiment or the wishes of a majority of voters. *Cooper v. Aaron,* 358 U.S. 1, 12–13, 15–16.

"A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be." Lucas v. 44th Gen'l Assembly of Colorado, 377 U.S. 713, 736–737.

11. Under the Constitution of the United States and the constitution and laws of the State of Michigan, the responsibility for providing educational opportunity to all children on constitutional terms is ultimately that of the state. *Turner* v. *Warren County Board of Education,* 313 F. Supp. 380; Art. VIII, §§ 1 and 2, Mich. Constitution; *Dasiewicz v. Bd. of Ed. of the City of Detroit,* 3 N.W. 2d 71.

12. That a state's form of government may delegate the power of daily administration of public schools to officials with less than statewide jurisdiction does not dispel the obligation of those who have broader control to use the authority they have consistently with the constitution. In such instances the constitutional obligation toward the individual school children is a shared one. *Bradley v. Sch. Bd., City of Richmond,* 51 F.R.D. 139, 143.

13. Leadership and general supervision over all public education is vested in the State Board of Education. Art. VIII, § 3, Mich. Constitution of 1963. The duties of the State Board and superintendent include, but are not limited to, specifying the number of hours necessary to constitute a school day; approval until 1962 of school sites; approval of school construction plans; accreditation of schools; approval of loans based on state aid funds; review of suspensions and expulsions of individual students for misconduct [Op. Atty. Gen., July 7, 1970, No. 4705]; authority over transportation routes and disbursement of transportation funds; teacher certification and the like. M.S.A. 15.1023(1). State law provides review procedures from actions of local or intermediate districts (see M.S.A. 15.3442), with authority in the State Board to ratify, reject, amend or modify the actions of these inferior state agencies. See M.S.A. 15.3467; 15.1919(61); 15.1919(68b); 15.2299(1); 15.-1961; 15.3402; *Bridgehampton School District No. 2 Fractional of Carsonville, Mich. v. Supt. of Public Instruction,* 323 Mich. 615. In general, the state superintendent is given the duty "[t]o do all things necessary to promote the welfare of the public schools and public educational instructions and provide proper educational facilities for the youth of the state." M.S.A. 15.3252. See also M.S.A. 15.2299(57), providing in certain instances for reorganization of school districts.

14. State officials, including all of the defendants, are charged under the Michigan constitution with the duty of providing pupils an education without discrimination with respect to race. Art. VIII, § 2, Mich. Constitution of 1963. Art. I, § 2, of the constitution provides:

"No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriation legislation."

15. The State Department of Education has recently established an Equal Educational Opportunities section having responsibility to identify racially imbalanced school districts and develop desegregation plans. M.S.A. 15.3355 provides no *school* or department shall be kept for any person or persons on account of race or color.

16. The state further provides special funds to local districts for compensatory education which are administered on a per school basis under direct review of the State Board. All other state aid is subject to fiscal review and accounting by the state. M.S.A. 15.1919. See also M.S.A. 15.1919(68b), providing for special supplements to merged districts "for the purpose of bringing about uniformity of educational opportunity for all pupils of the district." The general consolidation law M.S.A. 15.3401 authorizes annexation for even noncontiguous school districts upon approval of the superintendent of public instruction and electors, as provided by law. Op. Atty. Gen., Feb. 5, 1964, No. 4193. Consolidation with respect to so-called "first class" districts, *i.e.,* Detroit, is generally treated as an annexation with the first class district being the surviving entity. The law provides procedures covering all necessary considerations. M.S.A. 15.3184, 15.3186.

17. Where a pattern of violation of constitutional rights is established the affirmative obligation under the Fourteenth Amendment is imposed on not only individual school districts, but upon the State defendants in this case. *Cooper v. Aaron,* 358, U.S. 1; *Griffin v. County School Board of Prince Edward County,* 337 U.S. 218; *U.S. v. State of Georgia,* Civ. No. 12972 (N.D. Ga., December 17, 1970), *rev'd on other grounds,* 428 F. 2d 377; *Godwin v. Johnston County Board of Education,* 301 F. Supp. 1337; *Lee v. Macon County Board of Education,* 267 F. Supp. 458 (M.D. Ala.), *aff'd sub nom., Wallace v. U.S.,* 389 U.S. 215; *Franklin v. Quitman County Board of Education,* 288 F. Supp. 509; *Smith v. North Carolina State Board of Education,* No. 15,072 (4th Cir., June 14, 1971).

The foregoing constitutes our findings of fact and conclusions of law on the issue of segregation in the public schools of the City of Detroit.

Having found a de jure segregated public school system in operation in the City of

Detroit, our first step, in considering what judicial remedial steps must be taken, is the consideration of intervening parent defendants' motion to add as parties defendant a great number of Michigan school districts located out county in Wayne County, and in Macomb and Oakland Counties, on the principal premise or ground that effective relief cannot be achieved or ordered in their absence. Plaintiffs have opposed the motion to join the additional school districts, arguing that the presence of the State defendants is sufficient and all that is required, even if, in shaping a remedy, the affairs of these other districts will be affected.

In considering the motion to add the listed school districts we pause to note that the proposed action has to do with relief. Having determined that the circumstances of the case require judicial intervention and equitable relief, it would be improper for us to act on this motion until the other parties to the action have had an opportunity to submit their proposals for desegregation. Accordingly, we shall not rule on the motion to add parties at this time. Considered as a plan for desegregation the motion is lacking in specificity and is framed in the broadest general terms. The moving party may wish to amend its proposal and resubmit it as a comprehensive plan of desegregation.

In order that the further proceedings in this case may be conducted on a reasonable time schedule, and because the views of counsel respecting further proceedings cannot but be of assistance to them and to the Court, this cause will be set down for pretrial conference on the matter of relief. The conference will be held in our Courtroom in the City of Detroit at ten o'clock in the morning, October 4, 1971.

Dated: September 27, 1971.

STEPHEN J. ROTH,
U.S. District Judge.

PAPER PRESENTED BY MR. KENNETH J. BOUSQUET TO THE SOUTHEAST BASINS INTER-AGENCY COMMITTEE

Mr. STENNIS. Mr. President, on October 20, 1971, Mr. Kenneth Bousquet, who heads the staff of the Public Works Subcommittee of the Senate Appropriations Committee, presented an excellent paper at a meeting of the Southeast Basins Inter-Agency Committee, at Orlando, Fla.

I have received a letter from Mr. J. W. Woodruff, Jr., chairman of the Inter-Agency Committee, addressed to me in my capacity as the chairman of the Public Works Subcommittee. Mr. Woodruff praises Mr. Bousquet's paper for its timeliness and excellence in discussing compelling issues, and suggests that it be included in the CONGRESSIONAL RECORD.

I agree with Mr. Woodruff as to the merit of the paper, and the desirability of including it in the RECORD. I wish to take this opportunity, also to extend to Mr. Jim Woodruff my congratulations on his long and distinguished record as a leader in the water resources field in the South. He has given generously of his time taken from his own busy schedule in the business world to devote to civic endeavor on behalf of the public interest in water resource matters. The people of the South are much indebted to him for his valuable and effective work on their behalf.

I ask unanimous consent to have printed in the RECORD Mr. Woodruff's letter and the paper "Impending Crises in Public Works" by Mr. Kenneth J. Bousquet.

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

SOUTHEAST BASINS
INTER-AGENCY COMMITTEE,
Atlanta, Ga., Nov. 2, 1971.

Senator JOHN C. STENNIS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR STENNIS: Enclosed is a copy of a paper presented October 20, 1971 by Mr. Kenneth Bousquet at a meeting of the Southeast Basins Inter-Agency Committee in Orlando.

His paper is so well-timed, comprehensive in coverage, and the "Impending Crises in Public Works", is such a compelling issue, that I respectfully urge you give consideration to including it in the Congressional Record with such prefatory statement as you deem appropriate.

Cordially,

J. W. WOODRUFF, Jr.,
Chairman.

IMPENDING CRISIS IN PUBLIC WORKS

(By Kenneth J. Bousquet)

I was very pleased when Mr. Woodruff asked me to participate in your meeting. The Southeast Basins Inter-Agency Committee is demonstrating the effectiveness of this type of organization in water resource planning. If other areas of the country were aware of just what you are doing, I believe more areas would seriously consider this type of organization in water resource planning. If other areas of the country were aware of just what you are doing, I believe more areas would seriously consider this type of organization before committing themselves to River Basin Commissions.

Water resource planning and development is a very challenging profession today, and there is every reason to believe it will become more so in the future.

When I joined the Committee staff twenty years ago, Senator A. Willis Robertson of Virginia was a member of the Committee. He had a saying which meant very little to me the first few times I heard it, but after awhile I started to appreciate its full meaning. Let me pass it on to you: "My father used to say, 'As time goes on, things tend to become more so.' " I certainly can vouch for that statement as it applies to water resource development in the past twenty years.

Water is one of our most essential commodities. I am afraid that most of the time the public in general views water wtih contemptuous indifference. It is only during periods of serious flooding or periods of short supply that its destructive force or its real value comes into sharp focus, depending on which phase of the water cycle the area happens to be experiencing at the time. Even then, the period of appreciation of the need for water resource management is relatively short.

The impending crisis in public works, as I see it, will be the result of a two-pronged offensive launched by the opponents, unwittingly supported by the proponents who are unwilling to become involved in the issues; who, by their silence, permit a small minority to exert their will on the country.

Today, the most effective weapon against water resource development is the extreme environmentalist. Accordingly, I will discuss the importance of water and the environment first.

Water should be examined like a vintage wine. It should be held out for all to view, examine, and enjoy. This is part of the role of our future water managers. It is no longer feasible for a technically competent engineer or planner to devise the best water management program for a river system without obtaining public participation and understanding of the problems facing the area, the array of possibilities, and the trade-offs involved.

I suppose water has different connotations to different people. To the housewife it is something which flows out of a faucet when she turns the handle. It is useful for cooking, and is something which keeps her family clean and healthy. To the farmer, depending on its occurrence or lack of occurrence, it means a crop or no crop—a reward for a year's toil, or economic disaster. To the shipper or user of bulk commodities it means the ability to compete in the market place. To the manufacturer it is an indispensable ingredient in his process; and to the chemist it is H_2O, a very effective solvent for many chemicals and compounds.

I believe at this point we must make some very basic decisions. Is it, or is it not, in the public interest to develop our water resources? Just how important is water to our continued economic development—in fact, to our very existence?

How long can we exist without air?
How long can we exist without water?
How long can we exist without food?

The answer to each of the previous questions leads to the conclusion reached by former President Lyndon Johnson when he signed the Colorado River Basin Act and stated that ". . . next to the air we breathe, water is our most precious resource." He continued by saying, "The next fact I would like you to consider is that we have the same amount of fresh water in the world today as we had 5,000 years ago, with a population explosion coupled with technological advances which have greatly increased the per capita consumption of water."

In January of 1970, President Nixon, in his State of the Union Message, said, "Between now and the year 2000 over one hundred million children will be born in the United States." There is increasing concern with population growth rates with increased emphasis on family planning and birth control information and devices. I have no doubt that we will slow down the rate by which our population has been increasing, but I do not see us achieving the zero population growth advocated by some of our planners. Even with a reduced rate of increase in population accompanied by the increase in per capita consumption of water, it will require an increased national effort in the total management of water—control, storage, release, desalination, cloud seeding, sewage treatment, and recycling. I do not see how we can meet the demands of the future unless all methods are used. Destructive flood waters must be conserved for beneficial use during dry periods.

The First National Assessment of our water resources, made by the Water Resources Council in 1968 clearly points to a water crisis in the not-too-distant future. I for one, believe that, if anything, the Council's estimate of our water needs is conservative and believe we should reassess our priorities and provide a greater share of the Federal budget to water resources.

Senator Ellender has devoted a major portion of his public service to conservation and development of land and water resources of our nation. He has frequently made the following statement:

"The benefits that result from completed projects are positive examples of increased national wealth created by such improvements. More startling proof exists in Europe and Asia, where the prosperity of the countries are directly proportional to the efforts expended on projects to conserve soil and water. My recent travels through those areas have convinced me that unless we protect our greatest resource, water, unless we keep it inland and do not let it flow to the sea unused, some day many parts of our great

country may become as barren as the Gobi Desert, or as the lands which I have seen on my travels in old Persia. Our history books tell us that about 500 years before Christ, the entire area of Persia was capable of sustaining the livelihood of 115 million people. Now it adequately can care for less than 14 million."

GROWTH OF PUBLIC INVOLVEMENT IN DECISION MAKING

Years ago, when the Corps of Engineers received authorization for a survey, one of the first things the Corps did was to hold a public hearing to determine the desires of local interests. Then, after completion of the report, the Corps issued a notice advising local interests of its recommendations and indicated where the report could be examined. That notice also advised the local interests that they had 30 days in which to submit their views to the Board of Engineers for Rivers and Harbors and, if they desired, arrangements could be made for a public hearing before the Board in Washington, D.C. In connection with the authorization procedure, the Public Works Committees of the House of Representatives and the Senate held public hearings. That was the extent of public involvement in water resources planning.

Greater consideration of ecological and environmental factors began with the enactment of the Flood Control Act of 1964 which required coordination and consultation with respect to proposed surveys reports with affected Federal agencies and the Governors of affected States. Subsequently, the Fish and Wildlife Coordination Act of 1958 was passed which required the construction agencies to give additional consideration to the impact of a proposed project on fish and wildlife. Also during these years, the Corps developed the practice of holding at least one additional hearing prior to the formulation of their recommendations for the purpose of discussing the actual improvements under consideration. This permitted the public to express their views on specific projects prior to formulation of the recommendations. In addition, in the case of the Connecticut River comprehensive report, a Citizens' Coordinating Committee was appointed to review the report and recommendations of the reporting agency.

More recently, the Congress enacted the National Environmental Policy Act of 1969. Section 102 (2b) of that Act provides that all agencies of the Federal Government shall—

Include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

In my judgment, the initial effect of this Act will not only delay construction of needed water resource projects but will encourage angry confrontations between conservation groups and planners. When the full economic impact of the programs advanced by the extremists is felt their financial contributions will show a marked decrease. Then the public will begin to realize the price it is being asked to pay in the name of environment and ecology. At that point, the public will demand that the conservationists also submit justifications and impact statements for the creation of wild or scenic rivers, parks and recreation areas, and identify the benefits forgone if their project is approved. At this point, I believe, the planners can have meaningful dialogues with the conservation interests—not just the government agencies, State and Federal, but with such organizations as the Sierra Club, the Audubon Society, and similar groups. They will then be able to sit down together, examine the problems, weigh the various solutions, and come up with better projects which have less effect on the values so dear to the conservationists. This, I believe, is the next major area for public involvement in the decision making process.

There will be those who will continue to oppose all types of improvements, but they will no longer have the financial, popular, or political support they now enjoy.

It is frequently stated or suggested that except for *man's* indiscreet actions our environment would remain essentially unchanged. This, of course, is far from the truth. Our ecology and environment underwent great changes before man set foot on this earth, and drastic changes had taken place before the time of recorded history.

Some of today's leaders in the field of conservation would have you believe this is a new awakening. They have forgotten Teddy Roosevelt and others who led the conservation fight at the turn of the century, or they assume that in spite of their efforts we are losing ground.

First of all, I would like to point out that Roosevelt made it clear that conservation includes development and is not limited to preservation. Second, I would point out that as a result of an active conservation program during the past seventy years today we have large game preserves; the population of certain endangered species is increasing; we have more parks and national recreation areas and historic shrines owned, managed, and preserved for the benefits of the public and for the future.

A great deal has been done, and admittedly, much more remains to be accomplished to fully protect our environment and ecology. Both development and preservation must be partners in a balanced program for the use of our land and water resources.

I am afraid that many groups and organizations profoundly concerned with our ecosystem and the environment consciously or unconsciously omit from their interpretations of the requirements of the Act a very pertinent portion of the Declaration of National Environmental Policy, to wit, "The Congress . . . , declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all *practicable* means and measures, including financial and technical assistance in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which *man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.*"

It is quite evident to me that the specific requirements set forth in that Act are intended to be interpreted in consonance with the declared policy of the Congress.

The first official sign that the Administration is aware of the effect unrestrained devotion to the environment will have on our economy, and the ability to raise the taxes necessary to carry on the social programs required to assist the disadvantaged, can be found in the President's Message to Congress on August 6, 1971 transmitting the second annual report of the Council on Environmental Quality. I quote as follows:

"We must recognize that the goal of a cleaner environment will not be achieved by rhetoric or moral dedication alone. It will not be cheap or easy and the costs will have to be borne by each citizen, consumer and taxpayer. How clean is clean enough can only be answered in terms of how much we are willing to pay and how soon we seek success. The effects of such decisions on our domestic economic concerns—jobs, prices, foreign competition—require explicit and rigorous analysis to permit us to maintain a healthy economy while we seek a healthy environment. It is essential that we have both. It is simplistic to seek ecological perfection at the cost of bankrupting the very tax-paying enterprises which must pay for the social advances the nations seeks.

"We must develop a realistic sense of what it will cost to achieve our national environmental goals and choose a specific level of goal with an understanding of its costs and benefits."

We are being subjected to a panic campaign with respect to our environment. Federal, State and local agencies are setting standards which are beyond our technological ability to meet within economical limits. Such standards will unnecessarily increase the cost of all items and products we manufacture or grow. With higher product costs we will find it difficult or impossible to compete in the foreign and domestic markets. The net result will be more unemployment and a further deterioration of our balance of payments position resulting in further pressure on the American dollar.

Let me cite just two examples of what I mean.

Air pollution is a serious problem, particularly in the large metropolitan areas. Drastic and costly steps must be taken to control the emissions from the smokestacks of industry and residences using fossil fuel. But, those standards must be within our technological and financial ability to meet.

For instance, to reduce air pollution in New York City to a level required by a municipal ordinance, the fuel bill would be increased by $500 million a year. On the other hand, 80 percent of the reduction in air pollution could be accomplished for ten percent of that cost. I am certain that more could be accomplished if that saving of 90 percent was applied to sewage treatment works for the City of New York.

If the same standards adopted by New York were applied to Chicago, Detroit, and Pittsburgh, there would not be enough low sulphur coal in this country to meet those standards. We would have to import the coal and that would add to our unfavorable balance of payments.

Last year, the Senate Committee on Appropriations, in its Report 91–1118, with respect to the Federal Water Pollution Control Administration, stated:

"The establishment of unrealistic standards, which are impracticable of enforcement, will adversely affect the program. Recently, the Department of the Interior recommended that water released into Lake Michigan, no matter from what source, could not be more than one degree over existing temperatures at the point of discharge. Certainly thermal pollution must be controlled but the committee is not aware of any evidence that we need such a drastic restriction on the temperature of water discharged into the Lake. In fact, quite the contrary. Recently, the Wall Street Journal, in reporting on the work of a group of scientists, stated, 'Thermal pollution may be bad, but the fish in nearby Par Pond in Aiken, S.C., don't seem to know it. In fact, scientists here say they are finding that the very thermal pollution that threatens fish in some bodies of water seems to make them grow faster and bigger in Par Pond.' Par Pond receives the water discharged by a nuclear plant. Similar studies by a scientist of the effect of increased tem-

peratures in the Connecticut River indicated that temperature increases of up to 10 degrees seemed to benefit fish life in the river. While these studies are not conclusive, nor would they necessarily have general application, they do indicate the need for more scientific data prior to the establishment of drastic restraints on the discharge of heated water into a stream or lake. The collection of adequate data to support such proposed regulations is an absolute necessity.

"Additional studies of the effect of thermal pollution are required and are being undertaken. In fact, this budget includes $2.5 million in the Department of the Interior budget earmarked for the Tennessee Valley Authority to use for the construction of a research facility adjoining the Browns Ferry nuclear plant. The T.V.A. will take heated water under various conditions and subject some of the aquatic life of the reservoir to various rates of increase in water temperature in test channels. The purpose of the research is to obtain better scientific data than we now have on the effect of increased water temperature on marine life in order to assist in setting realistic standards for the discharge of heated water into lakes and streams.

"A restriction, such as the one suggested for Lake Michigan, if enforced, would require communities to provide ponds or cooling towers for the discharge of normal rainfall. In our fight to control pollution certainly the construction of waste treatment facilities for all communities should have priority over the building of structures to cool normal rainfall before discharging it into a lake or stream.

"Regardless of what facilities are eventually required for the control of all forms of water pollution, at this point in time consideration must be given to the cost effectiveness of the facilities we build now so that the greatest reduction in pollution can be achieved at the earliest possible date with the Federal funds which can be made available in the next few years."

The British Isles have been faced with the problem of air pollution for a long time. In fact, a proclamation on air pollution was issued as early as the year 1307.

The manner in which England is approaching this problem, I believe, is much more realistic than our policy of issuing rigid standards. Sir Stanley Brown, C.B.E., Chairman, Central Electricity Generating Board in the United Kingdom, in addressing the Edison Electric Institute Convention in Cleveland, Ohio, in June of 1971, pointed out that his "Board had a dual responsibility at law, and the onus for arriving at a proper balance between economic power and environmental protection lies firmly on us. Between the two extremes of 'the cheapest possible electricity' and 'conservation at any price,' lie a wide range of possible solutions, and the task of making the correct decisions rests in the first place with the Board, although of course our decisions are subject to examination by many interested bodies."

"Almost every human activity has some repercussions on the environment. It can be said that mankind's emergence as a dominant species on this planet and that which sets him apart from other animals has been his determination to change the environment to suit his needs. Pollution is, therefore, not just any change of the environment, but a gross abuse of it to the extent that man himself, and perhaps other species, suffer harm."

* * * * *

"Before discussing individual pollution problems, it is perhaps worth considering briefly the standards of performance in pollution control. It is in this field that attitudes in Britain—of both industry and the regulatory bodies—differ so sharply from those elsewhere, that we sometimes seem to be the only one in the squad that is marching in step. In both air pollution and water pollution control, rigid universal numerical standards of control criteria are suspect in Britain because: firstly, they are too easy to impose arbitrarily without adequate justification on the factual information available; secondly, they are unlikely to be appropriate uniformly in all situations and at all times; thirdly, that once established they may subsequently be difficult to change when further information becomes available; and finally, that having satisfied the standards laid down, there is no incentive for anyone to do any better. Pollution control policy in Britain has, therefore, tended to follow other patterns of which the essential elements are:

"(a) that each pollution problem must be considered in its context;

"(b) that the standard set should be the best that for the time being is both technically and economically feasible and is acceptable to the community—to aim at theoretical perfection can be prohibitively expensive;

"(c) that standards should progressively improve."

* * * * *

COOLING WATER

"As early as the Electricity Supply Act of 1919, the temperatures of cooling water discharges could be limited by law."

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"Considerable research has been undertaken by the Board's staff in an attempt to determine whether the waste heat in cooling water when discharged within conditions set by the Board themselves or prescribed by outside authorities has harmful effects on the environment of ecological systems concerned.

"For example, an extensive marine research project was undertaken in the Blackwater prior to and after the commissioning of the nuclear power station at Bradwell in 1962. Considerable opposition was voiced against the station and one particular fear expressed was that the heated discharge from the station would destroy the oyster industry centered on the estuary. This has not occurred. In fact, during the early months of 1963 the severe cold weather resulted in the destruction of most of the adult oysters but the lowest mortalities occurred nearest the station. Since then the industry has recovered despite the station discharge, which is regulated by the consent stipulation that it shall not exceed the inlet temperature by more than 15 degrees Fahrenheit. A recent survey of the fauna in 1970 carried out as a further ecological check has shown again no discernible effects of the station's discharge.

"Similar long-term ecological studies on a lake as a cooling pond at Trawsfynydd have also shown that the temperature rises resulting from the discharge of a heated effluent can be tolerated. Studies on many rivers support this conclusion, whether they are clean or polluted."

* * * * *

"Because no harmful effects have been detected, and only minor changes found, we conclude that the assumption that heat is necessarily a pollutant is false. The probable explanation is to be found in the temperature changes occurring naturally within ecological systems through the diurnal and seasonal cycles, and some current research studies being undertaken both in marine and freshwater environments are into the temperature fluctuations which occur naturally. These have shown that animals on the shore experience large temperature fluctuations as the tide ebbs and floods, alternatively exposing them to and covering them from the sun's rays. Smaller fluctuations can occur in streams due to sudden rainfalls."

* * * * *

CONCLUSION

"Provision of electrical energy at the increasing levels demanded by an advancing civilization is *not* incompatible with avoidance of pollution and preservation of amenity. Its provision necessarily involves some changes in the total environment, but this is almost a definition of civilization and the changes are not necessarily unacceptable to an enlightened public even those with the highest standards, provided always that sufficient care is taken. Part of that care—possibly the more important and certainly a very laborious part—is meticulous consultation with other interested parties and a readiness to do as much as reasonably can be done to meet their views."

* * * * *

I am sure that we are all aware of the efforts made to reduce phosphates in detergents, only to find that the Public Health Service now states that the substitutes are harmful to our health and has recommended a return to the use of phosphate detergents. This is just another example of our overreaction to a problem prior to achieving the necesssary study and technology.

I believe that I should pause for a moment to be sure that I am not misunderstood. I am for pollution control. It is going to be costly. I am not saying we cannot afford it. Quite the contrary. We cannot afford not to do it. My point is, the job is so vast and so costly that at this particular juncture we must obtain the greatest possible reduction in air and water pollution for every dollar that can be poured into these programs.

PROJECT FORMULATION

The next major constraint in the order of importance to the future development of water resources is the establishment of policies and procedures for the analysis of potential projects.

This constraint has two main facets: (1) the interest or discount rate, and (2) the proper evaluation of all types of benefits.

The water resource program, including the flood control program of the Soil Conservation Service, is the only Federal program which is required to show economic justification prior to authorization and construction. Other programs are based on recognition of needs and arrays of possible solutions. The level of funding is based on subjective judgments or social considerations. Except for the constraints in the declaration of policy for Federal participation in works of improvement for flood control, there is no reason why the water resource program should require individual economic justification. This constraint in the Flood Control Act has been applied to all water resource objectives. This, in itself, is not necessarily bad inasmuch as it becomes an effective means of allocating Federal funds to economically sound projects.

The real difficulty comes in the complete disregard of a portion of that declaration of policy and a very restrictive interpretation of the benefits to be considered.

The declaration of policy reads in part as follows:

". . . that the Federal Government should improve or participate in the improvement of navigable waters or their tributaries, including watersheds thereof, for flood-control purposes if the benefits to whomsoever they may accrue are in excess of the estimated costs, *and if the lives and social security of people are otherwise adversely affected.*"

I stress particularly the phrase "and if the lives and social security of people are otherwise adversely affected." Not only has the Office of Management and Budget, formerly the Bureau of the Budget, ordered Federal agencies to disregard this phrase, but it requires that projects must show economic justification based solely on National Efficiency.

This is a very narrow and unrealistic interpretation of the intent of the Congress. Certainly, the Federal government is not in business to make a profit. It did not develop the Arkansas River Basin for the primary purpose of increasing the national income

account. The project was undertaken primarily to assist the economy of the region—hence, the regional benefits should be of far greater importance than national efficiency in judging the merits of a project. To the extent that a depressed section of the country receives assistance from the nation as a whole which permits the depressed area to become nearly self-sufficient, the economy of the nation as a whole has benefited.

The determination of the proper discount rate to be used in water resources, although technical, is a matter that should be carefully studied and discussed with local interests as a part of the Public involvement.

While I do not have a Ph. D. in economics, I am not inhibited, by that fact, from taking issue with some of the theories put forth by the academic profession. At this point let me throw in parenthetically that the academic economists are not always unanimous in their solutions to our current problems. For instance, three years ago when the President's Council of Economic Advisers recommended a tax increase other economists took the position that a tax increase at that point in our economy was exactly the wrong thing to do. With that off my chest, I would like to comment on the theory advanced by some economists for the use of the opportunity cost of money in evaluating water resource projects. This is not a uniform position inasmuch as some economists are advocating the social rate of time preference, but they are not the ones invited to testify before the Joint Economic Committee.

I have advocated the development of methods and techniques for more effective evaluation of the benefits of water resource projects. I have taken this position because I believe that water resource projects will produce sufficient benefits to justify their construction, using an interest rate which approximates the average rate paid by the government on its long-term investments.

I seriously doubt that all the economic theories which are applicable to private industry apply with equal validity to Federal, State, or local government agencies. However, if serious consideration is given to the opportunity cost of money, several other factors must be taken into account. The opportunity cost of money can be defined as a potential, but unrealized, rate of income than an investor has deliberately renounced by not making an investment in another alternative. The use of the opportunity cost of money for water resource projects has certain inherent drawbacks, the most significant of which is the element of risk. When you discuss 10 and 15 percent return on your money, you include investment opportunities with a degree of risk.

Private capital prudently places a portion of its resources in the so-called guaranteed investments such as preferred stocks, bonds, mortgages and other similar investment opportunities yielding smaller but safer and more assured returns.

If the risk were not proportional to the potential return capital could not be attracted from the private sector to stocks, bonds, mortgages, trusts and other similar investments providing substantially lower yields. In fact, if all private capital were reinvested in industrial plants which would themselves produce an annual return of 10 to 15 percent, the compound effect of such a policy would soon see such an over-production of plant capacity that the bankruptcy rate would approach the records set in the depression of the late twenties and early thirties.

Another important consideration, in weighing the merits of the opportunity rate of interest for government projects, is the social objective to be achieved. The government is not in business to make money or compete with private industry. Government should undertake these activities which private industry cannot or will not undertake, and to promote those conditions and climates which are conducive to the economic development of the nation or region. Our efforts in Appalachia would be a case in point. Many other examples can be cited.

For instance, in order to encourage rural electrification, the Congress determined that R.E.A. loans should be at two percent interest. In this case, no relationship exists between the actual rate of interest paid by the government on the money it borrows and the loans it makes to R.E.A.'s. Similarly, for reclamation projects, the cost allocated to the irrigators is repaid without interest over a period of 40 to 75 years, and represents a subsidy of 50 or more percent. The cost allocated to the irrigator is determined by his ability to pay rather than the value of the irrigation water, with the balance of the subsidy being paid from users of industrial and municipal water and from power revenues over a period of years. This has promoted the development of the West and has greatly increased the economic contribution of the West to the national account.

I am convinced, therefore, that the selection of an interest rate for a particular purpose involves social and other policy questions of such magnitude that they transcend more economic considerations. Since water resource development projects involve to a great extent the preservation of our land and water resources for the benefit of future generations, a case could be made for a social time preference criterion for the determination of an interest rate which might then be between two and six percent. I believe that once we have determined the social and policy objectives the economists can probably give us a fairly accurate rate of interest to apply in order to accomplish those objectives. For instance, if, from a policy standpoint, it was determined that we should consider the social time preference criterion, which takes into account a desirability of postponing current consumption expenditures in favor of future capital investment, the economists might recommend the use of an interest rate even below the rate which would prevail under the formula previously used—possibly as low as the two percent established by law for the R.E.A. loans.

All projects benefits, particularly those which contribute to the achievement of national objectives, should be included. For instance, the Agriculture Act of 1970 specifically sets out population redistribution as a national objective, and the HUD authorization Act includes the creation of new communities as a national objective. Regional benefits are the sole purpose of such programs as Appalachia, as was the TVA of the mid-thirties. While such national objectives are not absent from public works projects, they are ignored in project evaluation.

If we were to adopt an opportunity cost of capital criterion very few projects would be recommended. In the few cases where projects were approved the Federal agencies would design a vastly different project from what they are recommending today. The projects would, obviously, be much smaller and would not only fail to produce the overall benefits being realized by the projects recommended today, but would in many cases forever preempt the full development of the rapidly dwindling number of good dam sites.

The adoption of the opportunity cost of capital for public works projects would be a very shortsighted approach, particularly when you consider the long physical life of the works constructed rather than the arbitrary economic life chosen for the computation of a benefit-to-cost ratio. The effect of high interest rates becomes more pronounced as the period of the physical life of a project lengthens. This would result in a lack of proper consideration of the welfare of future generations. It should be apparent that such a criterion would provide no assurance that the present consumers will make adequate provision for unborn generations.

The problem of an appropriate interest rate for the purpose of evaluating water resource projects became a matter of immediate and urgent concern in January of 1968.

In his budget message to the Congress on January 29, 1968, the President stated, "The Water Resources Council is developing a more appropriate interest rate to be applied in formulating and evaluating water projects. The revised rate will be related to the average estimated current cost to the Treasury of long-term borrowing. It will be higher than the rate now in use for project evaluation. The new rate will be applied to future projects in order to assure the most effective use of Federal funds in the development of the Nation's water resources."

The formula then in use was based on the coupon rate of the interest-bearing marketable securities of the United States which, upon original issue, had terms to maturity of fifteen years or more. The new formula now in use is based on the average cost to the Treasury of long-term borrowing and will be based on the yield rate to the investor.

At the time the new formula was placed in effect, the Water Resources Council announced that they would proceed with the development of standards and criteria for evaluating project benefits. They appointed a Task Force for this purpose.

The Task Force completed its report in July of 1970. That report set up four basic accounts for project evaluation as follows:

A. *To enhance national economic development* by increasing the value of the Nation's output of goods and services and improving national economic efficiency.

B. *To enhance the quality of the environment* by the management, conservation, preservation, creation, restoration, or improvement of the quality of certain natural and cultural resources and ecological systems.

C. *To enhance social well-being* by the equitable distribution of real income, employment, and population, with special concern for the incidence of the consequences of a plan on affected persons or groups; by contributing to the security of life, health, and property; by providing educational, cultural, and recreational opportunities; and by contributing to national security.

D. *To enhance regional development* through increases in the value of a region's income, increases in employment, and improvements in its economic base, environment, social well-being, and other specified components of the regional objective.

"The definitions of objectives are believed to be theoretically sound and workable. The regional development objective includes other components in addition to regional income. Further, the Task Force believes that national economic development, as now defined, provides a more valid basis for evaluating national economic efficiency aspects of resource development than the national income concept used in the earlier report."

During the past year there were a series of negotiations between the Office of Management and Budget and the Water Resources Council which completely emasculated the Task Force report. The final draft eliminates social well-being as an objective; requires economic justification to be based on the national account only, unless there is a specific directive to include the regional account; adopts the principle of the opportunity cost of money but, as an interim measure, directs the use of a 7 percent discount rate for the next five years.

The modified report was set in type for publication in the *Federal Register* for September 8, but it was suddenly recalled.

I doubt if any water resource project purpose other than domestic water supply could be justified under the standards and criteria

approved by the Office of Management and Budget.

The discount rate plays a central role in benefit-cost analysis since it provides a mechanism for comparing benefits which occur in future years with the current cost of the proposed project.

In the economic analysis of a water resource project, an increase in the interest rate has a double-barrelled effect on the benefit-to-cost ratio. First, the cost side is affected. As the interest rate goes up, the interest charge on the borrowed money increases and, therefore, the annual charge increases. This, however, is a relatively minor effect compared to what happens on the benefit side when a substantial portion of the benefits increase over the life of the project.

In computing flood control benefits, for example, the Corps prepares a damage curve based on estimated damages from floods of certain magnitudes and on their probability of occurrence. The sum of all the estimated damages over the assumed economic life of the project is then averaged and reduced to a present worth by use of an appropriate interest or discount rate.

IMPACT OF INCREASED DISCOUNT RATES ON FUTURE BENEFITS

Benefit in 50th year of project life	Worth in 50th year	Present worth if discounted at—						
		3 percent	4.5 percent	6 percent	7 percent	8 percent	10 percent	15 percent
$100	$100	$22	$11	$5.40	$3.40	$2	$0.90	$0.09

If we are to use a more realistic interest rate in economic analysis, we should also use a more realistic evaluation of benefits. The Corps has been notoriously conservative in evaluating primary benefits and has never attempted to evaluate secondary or social and expansion benefits. It must be recognized that the Corps of Engineers is just as wrong when it underestimates the benefits of a proposed project as it would be if it overestimated the benefits.

Senator Proxmire, at one of the hearings on the discount rate, stated, "I think the difficulties, however, are that the benefits may very well have been underestimated for water projects, in which case I think we should do a better job of estimating the indirect as well as the direct benefits. Then you are in a position to make your evaluation."

This is precisely the position the Senate Subcommittee on Public Works of the Committee on Appropriations has taken for a number of years. Both in the hearings and reports, the Committee has urged the Corps of Engineers to continue its efforts to devise methods and criteria for evaluating secondary benefits which Senate Document No. 97, 87th Congress, 2d Session, recognizes as proper in the economic analyses.

During the hearings before the Joint Economic Committee, Senator Symington stated, "It would appear we get more benefit from water development than from some other aspects of the Federal budget." He then cited the following case:

"For example, in my state, we had a close question on a certain project when it came to cost-benefit ratio. As a result, we finally built a dam; and whereas nearly every rural county in Missouri has lost population and lost income, this particular group of counties, as a result of this dam, has had a tremendously increased economic gain, to the point where bank deposits are now over 300 percent more than they were a few years ago.

"This, of course, creates a much-needed additional tax base, not only for the State but for the Federal Government."

Senator Symington has put his finger on one of the real secondary benefits which the Corps does not take into account in its project evaluation.

Several interesting insights into the Corps' analysis of its projects has come to light during hearings before the Subcommittee. The Chairman asked the Corps about the amount of traffic that had developed on the project—Delaware River, Philadelphia-to-the-Sea. At the time of authorization the project had a stated benefit-to-cost ratio of 1.9 to 1, based on estimated commerce of 12,700,000 tons. However, the average commerce for the five-year period (1962–1966) was 18,900,000 tons, or nearly fifty percent greater than that assumed at the time of authorization.

In other cases, the procedures used to evaluate benefits are not predicated on a sound theoretical basis. For example, water quality benefits at the present time are computed on the basis of the least costly alternative with no attempt being made to measure the economic value to be realized from a cleaner river.

In the case of levee protection for flood control, the levee is built based on a project design flood of a certain magnitude but in the estimate of damages prevented they do not assume that the design flood will occur during the life of the project. It seems that if there is sufficient probability of a flood occurring to justify the design to protect against it, it is reasonable to assume that that flood would occur some time during the life of the project.

These are but a few of the examples where primary benefits were left on the table in computing the benefit-to-cost ratios. In addition, all of the secondary benefits were completely ignored. With increased pressure of other programs for the budget dollar we can no longer enjoy the luxury of understating the benefits of land and water resource projects.

WATER SUPPLY BENEFITS

The present method of evaluating water supply and water quality control benefits does not take credit for all the primary benefits. The current procedure is to assume the benefits are equal to the cost of the least costly alternative method of supplying the needed water. With the previous discount rate, in most cases the alternative is a single-purpose reservoir and the assumption is that such a single-purpose project always has a benefit-to-cost ratio of 1 to 1. This assumption has many basic omissions or shortcomings. With the use of a higher interest rate the benefits increase and other alternatives could appear to have an advantage over the single-purpose water supply reservoir.

For example, development of a series of wells, which could be installed in stages according to demand schedules, might well appear to have an economic advantage over the reservoir with a high initial capital investment because of the option available to defer expenditures. While this solution may be satisfactory for a small community, ever increasing areas of the country are finding that extensive withdrawals of ground waters which have accumulated over thousands of years are lowering the water table which necessitates continual deepening of the wells resulting in final exhaustion of the supply. Conversely, the development of a multiple-purpose reservoir stores destructive flood waters for subsequent release for the generation of power, low-flow augmentation for many purposes, including enhancement of fisheries and dilution of pollution and navigation, as well as specific reservation and withdrawals for water supply.

For an example of the effect that increased interest rates could have on the selection of the least costly alternative for water supply, let us consider the hypothetical case of a community that will have an increasing demand for municipal water supply increasing to 50 m.g.d. over a 50 period project life. To meet these demands over the 50-year period, local interests could implement any one of the three following alternatives:

1. By the construction of a single-purpose reservoir in project life year zero, sized to yield 50 m.g.d.

2. By construction of a single-purpose reservoir in project life year zero, sized to yield 20 m.g.d. but designed so that additional capacity could be provided during project life year 30 to yield a total of 50 m.g.d. Assume that extra costs for lands, wider base for the embankment; et cetera, would accrue in year zero at $5 million, and that it would cost (at today's prices) $8 million in year 30 to complete the project.

3. By installing a well system according to the demand schedule in increments of 10 m.g.d. in each of the years zero, 15, 30, 40 and 45.

For the first alternative, i.e., construction of a single-purpose reservoir sized to yield 50 m.g.d., the construction cost is assumed to be $17,650,000, with annual cost of operation and maintenance of $240,000.

For the second alternative, i.e., construction of a single-purpose reservoir sized to yield initially 20 m.g.d., but with provisions to permit raising the dam in project year 30 to yield 50 m.g.d., the construction cost is assumed to be $11,170,000 plus $5,000,000 for project lands, increased width of embankment, and other provisions, or a total initial cost of $16,170,000. The estimated cost of future raising (at today's prices) is $8,000,000. The annual cost of operation and maintenance would be $160,000 for the first 30 years and $240,000 thereafter.

For the alternative of installing wells of 10 m.g.d. capacity, each with a cost of $8,000,000 in the years zero, 15, 30, 40 and 45 and for the purposes of the economic evaluation, the assumption is made that the cost of installing the wells will increase over the next 45 years. The annual cost of maintenance and operation of each of the well fields is assumed to be in accordance with the following schedule:

Years and well field O&M $/year including pumping charges

5–15	250,000
15–30	350,000
30–40	420,000
40–45	470,000
45–50	500,000

In order to proceed with the economic evaluation in accordance with procedures used in Public Works projects, all costs must be brought back to the same time base, project year zero, and "spread out" over the economic life of the project on an average annual equivalent basis. For the purpose of discounting future costs discount rates of 3, 4, 5 and 8 percent were used.

On the basis of this analysis, using a discount rate of 3 percent, the cheapest alternative is a single-purpose reservoir that would yield 50 m.g.d. and the benefit that would be credited to the water supply feature of a multiple-purpose reservoir would be $927,000 annually.

When the discount rate is raised to 4 percent, the cheapest alternative is a single-purpose reservoir built in two stages of development, and the benefit that would be credited to the water supply feature of a

multiple-purpose reservoir that would yield 50 m.g.d. would be $1,042,000 annually.

At 5 percent interest, apparently the most economic alternative would be the installation of five wells, as needed, and the benefit which would be credited to the water supply feature of a multiple-purpose reservoir which would yield 50 m.g.d. would be $1,147,000 annually.

There are basic errors in this type of analysis. First, it is assumed that construction costs will remain constant; whereas, as a matter of fact, construction costs have been rising at the rate of 5 percent a year. This would indicate that the $8,000,000 required for the second stage construction in the 30th year may be as high as 430 percent of the current cost, or $34,560,000. If we assume that the rate of increase is reduced 50 percent, the cost would still be a little over twice the current cost. In other words, the cost of the two-stage development would be $16,170,000 initially, with a future cost in the range of $16,784,000 required in the year 30 for completion. On the other hand, the added cost for operating and maintaining the single-stage reservoir over the two-stage development project would be $80,000 per year. This figure properly discounted to its present worth value at a comparable 2½ percent would represent an equivalent capital outlay of $1,674,000. Thus, an equivalent saving of $3,154,400 today in construction and operation and maintenance costs could necessitate a future expenditure of $16,784,000 some thirty years hence.

The effects of inflation and increased earning power are assumed to be compensated for by saying we are considering constant dollars. Assuming that all should remain valid. In the case of a flood control project, for instance, increased construction costs are balanced by increased costs of repair or replacement of damaged facilities. Therefore, the benefit-to-cost ratio used at any point in time in making a decision as to the economic efficiency of a project should remain substantially unchanged since we are considering constant dollars. These constant dollars must fully reflect adequate allowances for increased earning power and inflation if the analysis is to be meaningful, because the investment is made with borrowed money at one point in time while the benefits are realized at another. I seriously doubt the adequacy of the allowances presently being made for this purpose. If adequate allowance is not made for the cost of repair and reconstruction of flood damaged areas which reflect future costs, the procedure for discounting future benefits will result in an understatement of those benefits.

In arguing against the Social Rate of Time Preference Theory, the Joint Economic Committee stated in part, ". . . The wisdom of imposing additional sacrifice on the current population (with a per capita income of $4,250) to increase the wealth of future citizens whose per capita income will be $10,000 in the year 2000 even without additional transfers is highly questionable." For an easily understood example, we could consider the purchase of a home some 20 years ago requiring a monthly payment of $105, at a time when the purchaser's income was $9,000 per year. Recognizing that this involved a decision to invest capital (the down payment) and that there are associated costs such as taxes, insurance, and maintenance and repairs, today the purchaser is still paying $105 a month out of a yearly income of $32,000. The burden of these obligations is much less now than at the time the purchase was made because current payments are being made out of more plentiful dollars.

A high discount or interest rate tends to result in the selection of low capital investments with high annual costs rather than those involving high capital investments and low annual costs. Thus, a high interest rate used in making the decision on the advisability of home ownership might have led to a decision to rent. We all know what has happened to rents during the last twenty years.

The same situation applies with respect to the well fields in our water supply example where, assuming an annual increase in the cost of construction of 2½% over the next 45 years, the first costs in the years made without regard to the time value of money would be:

Year 1	$8,000,000
Year 15	11,584,000
Year 30	16,784,000
Year 40	21,480,000
Year 45	24,304,000
Total	82,152,000

Total expenditures made for operation and maintenance for the 50-year period would be:

(a) Reservoir—$240,000 times 50 years equals $12,000,000.

(b) Reservoir—$160,000 times 50 years equals $9,600,000.

Stage construction 80,000 times 20 years.

(c) Well Field—$250,000 times 15 equals $3,750,000; $350,000 times 15 equals $5,250,000; $420,000 times 10 equals $4,200,000; $470,000 times 5 equals $2,350,000; $500,000 times 5 equals $2,500,000; totals $18,050,000.

In this connection, it should be noted that from the 45th to the 50th year the annual cost of operation and maintenance of the well field would be $500,000 a year compared with an annual cost of $240,000 for operation and maintenance of the reservoir. After the 50-year period used for the economic analysis, assuming no substantial depletion of the ground water supply, either facility would continue to serve a useful purpose in meeting the water needs of the area, but the cost of operation and maintenance of the well field would continue at more than twice the cost of the reservoir. However, it must be realized that in many areas of the country we are experiencing an alarming drop in the water table which could easily result in either sinking deeper wells or abandoning the well fields some time during the assumed economic life of the project and resorting to an alternate supply of surface water.

The purpose of this exercise is to demonstrate the sensitivity of even a slight increase in interest rates in the selection of alternatives.

PUBLIC RELATIONS

I imagine I enjoy a meeting of this type about as much as anyone present. At the same time, I believe I realize more than anyone else here that, to a great extent, our time and efforts are being wasted when water resource proponents talk to water resource proponents. We have to communicate with other groups, non-aligned organizations, and, the enemy, if you please.

I am convinced that many people have been taken in by propaganda of the extremists.

Today, if a speaker wants to gain the support of his audience, he is for the environment and for improving the quality of life. Immediately his listeners are with him with applause, or shouts of "Right on!" He has instant communications—he has closed the generation gap.

But has he, really?

Perhaps he and I have different sets of values—perhaps I have a different concept of what will improve my quality of life. For example, the speaker who was going to improve the quality of my life may have had in mind a system of wild and scenic rivers that he and his family could occasionally visit and enjoy; whereas, my quality of life would be improved if the floods of April and May were released in July and August to assure a harvest in September and October.

Any consideration of environmental factors naturally embraces air and water pollution controls. One source of air pollution results from the burning of fossil fuels to produce electricity which has relieved all of us of hard and boring tasks.

I believe it might be interesting if, when the gentlemen here return home, they greet their wives something like this. "Honey, I am going to improve your quality of living. I have a device which will reduce air and water pollution." No doubt such an announcement would be welcome—until you presented her with an old-fashioned washboard and a cake of Fels Naptha soap. The reply would probably be—"You are out of your ever-loving mind."

A somewhat similar reaction could be obtained by telling your teen-age son that he has convinced you of the need to protect the environment and improve his quality of living. With such an announcement, the son reacts with the thought—"Gosh, the old man is really with it, he digs what's happening today." So he says, "What are you going to do, Pop?" Obviously, your reply is—"Give me the keys to the car."

I would like to refer back to the example I cited with respect to the emission standards from the smokestacks in New York City. We want and need air pollution control. We can and must pay the cost of say $50 million a year for 80 percent reduction in the pollution. Neither New York nor the Nation can afford $450 million a year for a further reduction of 20 percent in the pollution. The financial burden of the final increment of air pollution control would force certain marginal businesses out of New York City, thereby increasing the unemployment rolls, decreasing the tax base, and increasing the tax burden on the remaining properties.

The people cannot and will not support idealistic but impractical air and water standards. Unfortunately, the public appeal for stiff standards is emotional and, until this lesson is brought home to the American people, both the public and the elected officials will continue their all-out support of the unrealistic standards being proposed for the protection of environmental and ecological values.

Concomitantly, I believe it is becoming clearly evident that the planners, both Federal and non-Federal, must find the best, and the most constructive, ways of keeping the economy moving. We must seek an accommodation. It is not a question of shall we have either industrial and economic development or shall we have a quality environment. We can have, and we must have, both. I submit that the wise application of technology will make it possible to have both.

Certainly, we are going to have to make the environment a full partner in future planning for resource development. We are going to have to have *all* the facts; we are going to have to *know* what the trade-offs are. Only then can we make the intelligent decisions that will be required for our continued growth.

The answer to these problems must be based on facts, an understanding of alternatives, and above all, a willingness on both sides to achieve an accommodation. I would like to close by quoting a portion of a letter from a 13-year-old boy:

"An active populace is the backbone of democracy, and a passive citizenry is on the road to internal destruction. The time is gone when one could say, 'But I'm only one person. I can't change anything.' "

Unless we seek the facts and become involved, a small very vocal faction will speak for all of us, not only on environmental matters but on many other problems facing the country.

Unless those of you here today, and similar other groups, are willing to get out and address yourselves to these problems before women's clubs, service organizations, and conservation groups, our meeting today may have been interesting but it will not be productive.

WAIVER OF THE CALL OF THE CALENDAR

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

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

DEATH OF SPESSARD L. HOLLAND, FORMER SENATOR FROM FLORIDA

Mr. MANSFIELD. Mr. President, I have received the following telegram from Mrs. Spessard Holland:

I am saddened to inform you and the Congress that my beloved husband and your former colleague, Spessard Lindsey Holland, died November 6. Services will be held at the First United Methodist Church, Bartow, Fla., at 4 p.m. Monday, November 8.

MARY HOLLAND.

Mr. President, may I say that the Senate has missed deeply the outstanding service of the distinguished former Senator from Florida, Spessard Holland, since his voluntary retirement and his return home.

His loss will be even more deeply felt, now that he has passed to his just reward.

Spessard Holland was a man of integrity, unstinting patriotism, and dedication to duty. He was a man who represented his State with great distinction, a man who was a U.S. Senator in the best meaning of that term.

To Mary Holland, to her family, and to the friends of our late colleague, Spessard Holland, I wish to extend, on behalf of the Senate, our deepest condolences and to say that Mrs. Mansfield and I hope and pray that his soul will rest in peace. He has earned his reward many times over.

Mr. SCOTT. Mr. President, I join with the distinguished majority leader in expressing our sadness at the passing of our recent and well beloved colleague, the former Senator from Florida, Spessard Holland.

He was a man whom we all honored and respected. We grieve with the family in this tragic loss.

Mr. President, I shall have more to say at a later time, and yield back the remainder of my time.

Mr. GURNEY. Mr. President, the State of Florida and we here in the U.S. Senate were profoundly saddened to learn this weekend of the death of a great former member of the Senate and a man whom I considered my personal friend, the Honorable Spessard L. Holland, formerly U.S. Senator from the State of Florida.

Senator Holland served at every level and in every branch of government, from county prosecutor, to judge, to a member of the State of Florida's Legislature, to Governor of the State of Florida, to U.S. Senator.

In every aspect of a lifetime of public service he served with distinction. Indeed, in every endeavor he undertook he served with distinction: whether it was his performance as a flyer during World War I, which resulted in his being awarded the Distinguished Service Cross by General Pershing; or whether it was his performance during his collegiate days when he was elected to Phi Beta Kappa for high scholastic achievement and recognized as a star athlete earning him many letters in varsity sports activities, and an offer to play big league professional baseball.

His long fascination and concern with the protection of Florida wildlife places future generations of Americans in his debt. While Governor of Florida, Spessard Holland established the game and fresh water fish commission which has done much in preserving Florida's environment on the State level.

He was the father of the Everglades National Park, responsible for its first acquisition by the State of Florida, then turning it over to the Federal Government for a national park.

He was a leader in the legislative process and best known for his authorship of the amendment which abolished the poll tax.

This good man, this man of quiet power, who carried his abilities, leadership, and power in the most courtly of manners is no longer with us, and all of us in Florida, and all of us in the Senate Chamber, and all of us in this country are the poorer for it.

We mourn his passing, but we rejoice in recognizing and honoring his splendid life of public service which gave so much to his State and Nation.

Our hearts go out to his wonderful wife, Mary, who was a most important part of his great life. They were indeed partners in public service in the finest tradition of American politics and government.

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the Executive Calendar, under "New Reports."

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

The PRESIDENT pro tempore. The nominations on the Executive Calendar, under "New Reports," will be stated.

NOMINATIONS PLACED ON THE SECRETARY'S DESK—IN THE COAST GUARD

The second assistant legislative clerk proceeded to read sundry nominations in the Coast Guard, which had been placed on the Secretary's desk.

The PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc; and, without objection, the President will be immediately notified of the confirmation of these nominations.

LEGISLATIVE SESSION

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

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

SUSPENSION OF DUTIES ON CERTAIN CLASSIFICATIONS OF YARN OF SILK

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 419, H.R. 1680.

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

The assistant legislative clerk read as follows:

A bill (H.R. 1680) to extend for an additional period the existing suspension of duties on certain classifications of yarn of silk.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the bill was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–425), explaining the purposes of the measure.

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

PURPOSE

The purpose of H.R. 1680, as reported, is to continue for 2 years, until the close of November 7, 1973, the suspension of duties on certain classifications of spun silk yarn which is due to expire on November 7, 1971.

GENERAL STATEMENT

The duties on spun silk yarns have been suspended by various public laws since the original duty suspension was enacted by Public Law 86–235, approved on September 8, 1959. The suspension of the duties on spun silk yarns was last extended by Public Law 91–28 for a 3-year period from November 7, 1968, to November 7, 1971.

Spun silk yarns are of two principal types: Standard spun silk (schappe) yarn and silk noil (bourrette) yarn. Standard or schappe spun silk yarns for general textile use are manufactured from long parallelized silk fiber stock recovered from waste cocoons and silk filature waste and are used for making sewing thread, decorative stripings for fine worsteds, lacing cord for cartridge bags, and, in combination with other fibers, certain

types of necktie fabrics, shirtings, dress, and suiting fabrics, upholstery, and drapery materials.

The silk noil type of yarn is made from shorter length, and hence cheaper, silk fiber stock than schappe and must be spun on wool-spinning machinery. The material used consists of silk noils discarded as byproducts in preparing silk waste for spinning in standard spun silk yarns.

The suspension of the duty was made in order to enable domestic producers of fine yarn fabrics to import fine silk yarns free of duty in order to make it more economical to produce fine yarn fabrics in competition with imported similar fabrics. The committee is advised that the same reasons which justified the original suspension of the duty justify the continuation of the suspension.

No objection to the continuation of the suspension of duty has been brought to the committee's attention.

EFFECT ON THE REVENUES OF THE BILL AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the effect on the revenues of this bill. The committee estimates that the extension of the existing suspension of duties on certain classifications of spun silk yarn provided by the bill will not result in any additional revenue loss or administrative costs.

In compliance with section 133 of the Legislative Reorganization Act of 1946 as amended, the following statement is made relative to the vote by the committee on reporting the bill. This bill was ordered favorably reported by the committee without objection. No rollcall vote was taken.

The committee is unanimous in recommending the enactment of this bill, as reported.

EIGHTH ANNIVERSARY OF ASSASSINATION OF PRESIDENT NGO DINH DIEM OF VIETNAM

Mr. MANSFIELD. Mr. President, 1 week ago last Monday marked the eighth anniversary of the assassination of the late President Ngo Dinh Diem of Vietnam.

With that tragedy began the troubles which have engulfed the United States in that part of the world.

I have long felt that this was the watershed, the tragedy, the assassination of this man who had done so much for his country, which had achieved a degree of stability it has not known since, nor had it known before, a man who could have kept the people of Vietnam together, who could set the stage in time, for the kind of Asian democracy which the people of that ill-fated land could well understand.

I am indeed sorry that this tragic event occurred, 8 years ago last Monday. I rise at this time again, as I have many times since that time, only to express my regret and my sadness over a man who had much in the way of accomplishment to his credit, a man who had much still to offer his country, a man whose regrettable death marked the opening of the floodgates of U.S. military involvement in Vietnam.

He has been missed these years. The South Vietnamese people are beginning now to recognize his true value and his great worth.

Mr. President, I did not want to let this occasion go unnoticed.

ORDER OF BUSINESS

The PRESIDENT pro tempore. Under the previous order, the distinguished Senator from Virginia (Mr. BYRD) is now recognized for not to exceed 15 minutes.

AGREEMENT WITH JAPAN CONCERNING THE RYUKYU ISLANDS AND THE DAITO ISLANDS

Mr. BYRD of Virginia. Mr. President, tomorrow the Senate will be called upon to ratify or reject the proposed agreement for the reversion of Okinawa to the administrative control of Japan.

This proposed agreement would be a change in the terms of the Treaty of Peace of 1951 between Japan and the United States.

Under terms of the peace treaty, the United States has unrestricted use of military bases on Okinawa. The United States has invested hundreds of millions of dollars there—and the replacement cost would approach $3 billion.

Two years ago, when official discussion began concerning the proposed reversion of Okinawa, I sponsored legislation that called upon the President to submit any agreement changing the status of Okinawa to the Senate for advice and consent. This legislation was approved by the Senate, and now the question of ratification by the Senate must be decided.

After long consideration, I have concluded that I cannot support the agreement for reversion of Okinawa, which proposal would give Japan a veto over the use by the United States of its facilities on Okinawa.

It is not my intention to organize opposition to the agreement. I wish, however, to make my own views known.

I shall vote against the proposal, even if I be the only Senator to cast such a vote.

I am among those who believe that the United States has become overcommitted around the world. We have mutual defense agreements with 44 different nations.

More than 25 years after the end of World War II, the United States maintains 310,000 men in Europe, including the 2d Fleet in the Mediterranean; and in Southeast Asia and the West Pacific, the United States has 370,000 troops on duty.

I do not believe the United States can continue indefinitely to carry so heavy a military responsibility. It is essential that other nations make a greater contribution to their own security.

But, at the present time, our military commitments are a fact.

Among the areas in which we are most heavily committed is Asia. Not only is the United States engaged in a shooting war in Vietnam, but the Nation is also committed to the defense of South Korea, Taiwan, Japan, the Philippines, Australia, New Zealand, Pakistan, and Thailand.

We must view the Okinawa proposal within the framework of existing treaty obligations.

First, it must be understood that it is the 1951 Treaty of Peace between the United States and Japan which confers upon the United States the unrestricted use of military bases on the island of Okinawa.

The Treaty of Peace is entirely separate from the Mutual Security Treaty of 1960 between the two nations. The two agreements should not be confused.

Agreement by the United States to turn over administrative control of Okinawa to the Japanese is a change in the Treaty of Peace. It does not affect the Mutual Security Treaty.

The reversion of Okinawa to the control of Japan would involve surrender by the United States of its unrestricted use of the Okinawa bases. No one disputes that statement.

I think that in considering whether or not the reversion agreement should be approved, Members of the Senate should give careful consideration to the extensive defense commitments which we have in Asia.

We must bear in mind that all of our Asian commitments were undertaken on the assumption that unrestricted use of Okinawa would be available to the United States.

Can we afford to go on guaranteeing the defense of so many Asian nations, if we are to surrender an important part of our military capability in the Far East?

Besides our Security Treaty with Japan, we have commitments to 10 Asian nations under the Southeast Asia Treaty Organization Agreement of 1954.

The Sato government in Japan has assured the United States that it will cooperate in permitting this Nation to use Okinawa in order to fulfill our obligations. Those in the State Department who favor having Okinawa revert to Japan put great stress on this.

But once reversion is accomplished, the final decision on the use of Okinawa in each contingency will rest not with the United States, but with Japan—which may or may not be under the rule of the Sato government at the time. In fact, Sato very likely will be out of office in a matter of months.

In any case, the United States would be dependent on—if not at the mercy of—another nation in our operations from Okinawa.

I want to see our commitments in Asia reduced.

But no proposal has been made to reduce our commitments.

The only proposal is that we voluntarily give up the unrestricted right to use our greatest military base complex in the Far Pacific.

Japan is seeking, and would be getting, control over our military base. At the same time. Japan would have a pledge from the United States to guarantee the freedom and security of Japan.

To state it another way, the Japanese Government wants the United States to continue to guarantee the safety of Japan; to continue to guarantee the safety of Okinawa; to continue to spend hun-

dreds of millions of dollars on Okinawa—$260 million last year. But it seeks to put restrictions on what the United States can do.

The activities of the United States constitute 42 percent of the economy of the island of Okinawa.

Japan wants a veto over any U.S. action affecting Okinawa. It specifically wants the right to deny to the United States the authority to store nuclear weapons on Okinawa and would require prior consultation before our military forces based there could be used.

In other words, the United States no longer would have unrestricted use of Okinawa.

Our role as the defender of the Far East has enabled Japan to avoid the burden of rearmament—only about 1 percent of her gross national product is spent on defense and thus concentrate on expanding and modernizing its domestic economy.

In defense matters, the Japanese have gotten a free ride. As a direct result, Japan's present gross national product ranks third in the world, behind only the United States and the Soviet Union.

While the peace treaty with Japan gives the United States unrestricted rights on Okinawa, the 1960 Mutual Security Treaty provides that our military forces based in Japan cannot be used without prior consultation with the Japanese Government.

Under the agreement which the Senate must soon vote on, Japan would have a similar right of consultation with regard to American forces on Okinawa.

Whether the United States should continue to guarantee the defense of Japan and the vast areas of the West Pacific and Southeast Asia is open to question.

But at the moment, the United States is committed to the defense of these regions. And it is only commonsense, in my view, that so long as these commitments continue in force, then it is only logical and responsible that this country retain the unrestricted use of its greatest base in the West Pacific; namely, Okinawa.

I agree that eventually Okinawa and Ryukyu Islands will revert to control of Japan. But I think it unwise to turn over such control at a time when the United States remains committed so deeply to the defense of Asia and the West Pacific.

It would be foolhardy, in my opinion, for the United States to continue its commitments to the defense of Asia and the West Pacific while at the same time giving up the unrestricted use of the military complex on Okinawa.

It is vitally important that public attention be focused on this issue of unrestricted use of our bases on Okinawa.

I speak as one who is not sympathetic to our deep involvement in Southeast Asia, one who from the beginning regarded it as an error of judgment to become involved in a ground war there.

I speak as one who questions the wisdom of our country's committing itself to mutual defense agreements with 44 different nations.

I speak as one who feels that we cannot logically be the world's policeman.

If by the act of granting Japan administrative control over Okinawa, the United States could insure a multinational defense structure in the Far East, with increased participation by Japan—if this action would relieve our country of a measure of its heavy international responsibilities—then, I would support a reversion of Okinawa to Japanese control.

But this is not the case.

Quite the contrary. Surrender of control over Okinawa would only make more difficult our role in the Pacific.

In fact, should the treaty for reversion of Okinawa be approved, then I believe the United States would be well advised to take steps to reduce its commitments in the Asian and Pacific areas.

Surely we cannot continue indefinitely to carry the chief burden for defense of Asia and the West Pacific while giving up the unrestricted use of our most strategic base.

In the long run, I believe we must reduce our Asian commitments.

When this has been done, then it would be proper to turn over Okinawa to the control of Japan.

But in the short run, the commitments of this Nation in the Asian and Pacific areas remain in force.

And so long as this is the case, I cannot support an agreement which sacrifices the unrestricted right of the United States to use its bases on the island of Okinawa.

DEATH OF FORMER SENATOR SPESSARD L. HOLLAND

Mr. BYRD of West Virginia. Mr. President, I am greatly distressed to learn of the death of a beloved former Member of the Senate, Spessard L. Holland, of Florida. I have a very deep spot in my heart for Senator Holland. I greatly enjoyed my close association with him during the time we served together in this body. He was, in my judgment, an outstanding Senator. I never met a more fair-minded individual, one more dedicated or more conscientious in serving the people than Spessard Holland. He has been missed in the Senate since he voluntarily retired at the beginning of this year. He will be missed not only by his former colleagues but also by his many friends as a result of his death yesterday.

PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order there will be a period of 30 minutes for the transaction of routine morning business, with statements limited to 3 minutes.

Is there morning business?

QUORUM CALL

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Wisconsin is recognized.

(The remarks of Mr. PROXMIRE when he introduced S. 2818 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON OVEROBLIGATION OF AN APPROPRIATION

A letter from the Deputy Director, Office of Management and Budget, Executive Office of the President, reporting, pursuant to law, that the appropriation to the Department of Agriculture for "Forest Protection and Utilization", Forest Service, for the fiscal year 1972, had been reapportioned on a basis which indicates the necessity for a supplemental estimate of appropriation; to the Committee on Appropriations.

REPORT ON FEDERAL CONTRIBUTIONS PROGRAM EQUIPMENT AND FACILITIES

A letter from the Director of Civil Defense, reporting, pursuant to law on Federal Contributions Program Equipment and Facilities, for the quarter ended September 30, 1971; to the Committee on Armed Services.

REPORT ON STATUS OF INTERCITY RAILROAD ACT OF 1971

A letter from the Acting Secretary of Transportation, transmitting, pursuant to law, a report on Status of Intercity Railroad Passenger Service, dated November 1971—with an accompanying report; to the Committee on Commerce.

PROPOSED TRANSPORTATION ASSISTANCE ACT OF 1971

A letter from the Acting Secretary of Transportation, transmitting a draft of proposed legislation to assist railroads in acquiring and utilizing rolling stock, to proscribe disproportionate taxation of certain interstate carriers' property by State or local governments, and for other purposes—with an accompanying paper; to the Committee on Commerce.

PROPOSED ADDITIONAL ASSISTANT SECRETARY OF COMMERCE

A letter from the Secretary of Commerce, transmitting a draft of proposed legislation to authorize an additional Assistant Secretary of Commerce—with an accompanying paper; to the Committee on Commerce.

PROPOSED TRANSPORTATION REGULATORY MODERNIZATION ACT OF 1971

A letter from the Acting Secretary of Transportation, transmitting a draft of proposed legislation to amend the Interstate Commerce Act, as amended, and Acts amendatory and supplemental thereto to provide for increased reliance on competition in the establishment of carrier rates, charges and practices, to liberalize entry and exit in the several modes of surface transportation, and for other purposes—with accompanying papers; to the Committee on Commerce.

PROPOSED ADDITIONAL JUDGESHIPS

A letter from the Director, Administrative Office of the U.S. Courts, Washington, D.C., transmitting a draft of proposed legislation to authorize additional judgeships for the U.S. courts of appeals—with an accompany-

ing paper; to the Committee on the Judiciary.

PROPOSED AMENDMENT OF ACT RELATING TO SERVICE AS CHIEF JUDGE OF A U.S. DISTRICT COURT

A letter from the Director, Administrative Office of the U.S. Courts, Washington, D.C., transmitting a draft of proposed legislation to amend the act of August 6, 1958, 72 Stat. 497, relating to service as chief judge of a U.S. district court—with an accompanying paper; to the Committee on the Judiciary.

TEMPORARY ADMISSION OF CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders relating to the temporary admission of certain aliens—with accompanying papers; to the Committee on the Judiciary.

REPORT ON ADJUSTMENT OF STATUS OF CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, reports on the adjustment of status of certain aliens—with accompanying papers; to the Committee on the Judiciary.

REPORTS ON DEFECTOR ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, reports on certain defector aliens—with accompanying papers; to the Committee on the Judiciary.

REPORT ON EDUCATION OF GIFTED AND TALENTED CHILDREN

A letter from the U.S. Commissioner of Education, transmitting, pursuant to law, a report on the education of gifted and talented children—with an accompanying report; to the Committee on Labor and Public Welfare.

PETITIONS AND MEMORIALS

Petitions and memorials were laid before the Senate and referred as indicated:

By the PRESIDENT pro tempore:

A resolution of the Legislature of the State of Georgia; to the Committee on the Judiciary:

"A RESOLUTION

"Ratifying the amendment to the United States Constitution relative to 18 year old voting; and for other purposes.

"Whereas, the Ninety-Second Congress of the United States of America adopted a proposal to amend the Constitution of the United States of America as follows:

"'JOINT RESOLUTION

"'*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein)*, That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as a part of the Constitution when ratified by the Legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"'"ARTICLE

"'"Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

"'"Section 2. The Congress shall have the power to enforce this article by appropriate legislation."

"Now, therefore, be it resolved by the General Assembly of Georgia that the aforesaid amendment to the Constitution of the United States of America is hereby ratified.

"Be it further resolved that the Governor shall transmit a certified copy of this Resolution to the Administrator of General Services, Washington, D.C.; to the President of the United States Senate; to the Speaker of the United States House of Representatives; and to each member of the Georgia Congressional Delegation.

"BEN W. FORTSON, Jr.,
"Secretary of State."

A resolution adopted by the American Woman's Society of Certified Public Accountants, Chicago, Ill., relating to equality of rights under the Constitution; to the Committee on the Judiciary.

The memorial of Lois Ballard, of Port Clinton, Ohio, remonstrating against legislation relating to "Parent Replacement Program"; to the Committee on Labor and Public Welfare.

A memorial from various citizens of the United States, remonstrating against legislation relating to "Parent Replacement Programs"; to the Committee on Labor and Public Welfare.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. FONG (for Mr. MCGEE), from the Committee on Post Office and Civil Service, with amendments:

S. 2722. A bill relating to comparability adjustments in pay rates of Federal employees (Rept. No. 92-428).

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

S. 2672. A bill to permanently exempt potatoes for processing from marketing orders (Rept. No. 92-429).

By Mr. HARTKE, from the Committee on Veterans' Affairs, without amendment:

S. Res. 185. Resolution to provide additional funds for the Committee on Veterans' Affairs (Rept. No. 92-430); referred to the Committee on Rules and Administration.

By Mr. FULBRIGHT, from the Committee on Foreign Relations:

S. 2819. An original bill to provide foreign military and related assistance authorizations for fiscal year 1972, and for other purposes (Rept. No. 92-431), together with supplemental views.

S. 2820. An original bill to provide foreign economic and humanitarian assistance authorizations for fiscal year 1972, and for other purposes (Rept. No. 92-432), together with supplemental views.

A REPORT ENTITLED "MENTAL HEALTH CARE AND THE ELDERLY: SHORTCOMINGS IN PUBLIC POLICY"—REPORT OF SPECIAL COMMITTEE ON AGING (S. REPT. NO. 92-433)

Mr. CHURCH. Mr. President, I submit a report from the Senate Special Committee on Aging entitled "Mental Health Care and the Elderly: Shortcomings in Public Policy."

The PRESIDING OFFICER (Mr. TUNNEY). The report will be received and printed.

EXECUTIVE REPORTS OF COMMITTEES

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

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

William J. Bauer, of Illinois, to be a U.S. district judge for the northern district of Illinois;

Herbert J. Stern, of New Jersey, to be U.S. attorney for the district of New Jersey;

Thomas E. Ferrandina, of New York, to be U.S. marshal for the southern district of New York; and

James R. Thompson, Jr., of Illinois, to be U.S. attorney for the northern district of Illinois.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, or reported, read the first time and, by unanimous consent, the second time, and referred or placed on the calendar, as indicated:

By Mr. PROXMIRE (for himself, Mr. MCGOVERN, Mr. BAYH, Mr. CASE, Mr. Moss, and Mr. RIBICOFF):

S. 2818. A bill to amend the Federal Food, Drug, and Cosmetic Act to prohibit the administration of the drug diethylstilbestrol (DES) to any animal intended for use as food, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. FULBRIGHT (from the Committee on Foreign Relations:)

S. 2819. An original bill to provide foreign military and related assistance authorizations for fiscal year 1972, and for other purposes. Placed on the calendar.

S. 2820. An original bill to provide foreign economic and humanitarian assistance authorizations for fiscal year 1972, and for other purposes. Placed on the calendar.

By Mr. MOSS:

S. 2821. A bill to provide for a study by the Secretary of the Interior of methods of control of predatory animals and birds on the public lands of the United States. Referred to the Committee on Commerce.

By Mr. FONG:

S. 2822. A bill for the relief of Alberto Rodriguez. Referred to the Committee on the Judiciary.

By Mr. DOMINICK:

S. 2823. A bill to amend the Foreign Assistance Act of 1961. Referred to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PROXMIRE (for himself, Mr. MCGOVERN, Mr. CASE, Mr. Moss, and Mr. RIBICOFF):

S. 2818. A bill to amend the Federal Food, Drug, and Cosmetic Act to prohibit the administration of the drug diethylstilbestrol—DES—to any animal intended for use as food, and for other purposes. Referred to the Committee on Labor and Public Welfare.

LEGISLATION TO BAN THE USE OF DIETHYLSTILBESTROL IN PRODUCTION OF ANIMALS FOR HUMAN CONSUMPTION

Mr. PROXMIRE. Mr. President, I am introducing legislation for myself and for Senators MCGOVERN, CASE, Moss, and RIBICOFF to ban the use of diethylstilbestrol—DES—to artificially stimulate the growth of livestock destined for America's dinner tables. This controversial drug is a proven carcinogen, or cancer causing agent, yet it is currently used to promote weight gains in cattle and sheep slaughtered for human consumption. The only requirements imposed by the Department

of Agriculture and the Food and Drug Administration are that dosage not exceed 20 milligrams per head per day and that dosage be discontinued 7 days—until recently, 48 hours—before slaughter. Despite these precautions, traces of DES continue to be found in beef and sheep livers. I am convinced that the only answer is an outright ban on the use of DES.

DES is a synthetic estrogen, a hormone that is used in cattle and sheep feed to increase body weight and lower feed requirements per unit of gain. It has been in use since 1954. However, this drug also can cause cancer when fed to mice in quantities as small as 6.25 parts per billion.

Cancer causing agents are particularly lethal because over time their cumulative effect can be devastating, while small doses initially seem to have little impact. Consequently, cases of cancer occurring today may reflect exposure to carcinogenic agents, such as DES, that first occurred 15 or more years ago. When we reflect that DES has been used to fatten livestock for only the last 15 years or so, it is obvious that the impact of its use may just be on the verge of surfacing.

The most significant study linking the ingestion of DES with cancer in human beings seems to bear this delayed reaction theory out. The study appeared in the New England Journal of Medicine in April of this year. It indicated that women taking DES in the late 1940's during pregnancy had children with an unusually high incidence of cancer of the vagina—a condition which did not become evident until the children were between 15 and 22 years of age.

In fact, the extreme danger of carcinogenic additives in our food supply was recognized by the Congress in the Delaney amendment (21 USC § 348(c)(3)(A)) which prohibits the use of food additives found to induce cancer in man or animal. How, then, can DES be used to fatten livestock? Because of a 1962 addition to our food and drug laws (21 USC 360b(d)(1)(H)) that permits the use of cancer causing additives in feeding animals if no residue is found after slaughter in any edible portion of the animal.

The question of whether the present use of DES complies with this law is about to receive a court test. Two citizens groups have brought suit against the Federal Government to halt the use of DES because, as evidence I am about to allude to makes clear, residues of DES are being found after slaughter and there is no reason to believe that the prescribed withdrawal period is being followed by livestock producers.

My bill is meant in no way to supersede the efforts of these citizens groups. Rather, it is a supplement to the court action. My hope is that the Congress will, in its wisdom, act quickly to prohibit the use of DES so that a long drawn-out court battle can be avoided.

Does DES leave a residue in livestock after it has been slaughtered for human consumption? Without doubt, the answer is yes. Both the Food and Drug Administration and the Department of Agriculture have tried to minimize the importance of the findings but tests administered by the Department of Agriculture have consistently turned up DES residues in the livers—twice in the muscle tissue—of slaughtered animals.

The latest tests were completed in September and announced a little over a week ago. They disclosed DES residues in two tissue samples substantially exceeding the 2 parts per billion minimum—in one case the residue level was 4.8 parts per billion and in the other 8 parts per billion. Earlier this year, residues of as high as 36.9 parts per billion in sheep and 15.4 parts per billion in cattle were found. This residue problem is not confined to a single state or region. Of the first 10 contaminated animals detected under the testing program this year, two were located in Minnesota, and the other eight were found in California, Ohio, Nebraska, Washington, Arizona, South Dakota, Illinois and Indiana.

It is worth noting that despite the fact that the 1962 law prohibits any residue of a carcinogenic agent in animals meant for human consumption, the present DES tests will only show results if there are at least 2 parts per billion of the drug present. Furthermore, the analysis required to detect growth-promoting hormones, such as DES, has been described as recently as 1970 in the Journal of the Association of Official Analytical Chemists as a regulatory control chemists' "nightmare." In fact, the tests thus far this year have failed to detect any residue smaller than 3.7 parts per billion—almost twice the two parts per billion standard.

It seems strange that the Food and Drug Administration's reaction to the continued presence of DES in liver samples was a decision to set the period for withdrawal of DES from livestock feed prior to slaughter at 7 days rather than the existing 48 hours. This is like attempting to stop speeding violations by decreasing the speed limit. If the 48-hour withdrawal period is not being followed, what reason do we have to think that a 7-day period will be honored? And if a 48-hour withdrawal period is inadequate, why did not the FDA move sooner?

In fact, the withdrawal program has been impossible to police. The Department of Agriculture has sharply increased the number of carcasses inspected this year. It plans to test 6,000 samples in 1971 as compared with 192 samples last year. Yet, this 6,000-sample cross section represents only one-fiftieth of 1 percent of the 30 million cattle slaughtered under Federal inspection. If we assume that half of the samples are taken from sheep, only one one-hundredth of 1 percent of federally inspected cattle are being tested.

The voluntary certification program, under which cattle producers were to agree to certify that their animals have been taken off DES 48 hours prior to slaughter—prior to promulgation of the 7-day rule—has been a distinct flop. In a letter to me dated August 31, the Department of Agriculture admitted as much in these words:

> The actual percentage of cattle producers using the Animal Drug Certification Program is not available. However, a recent survey conducted by our regional offices indicates in general that slaughter establishments in the Southeastern, Mid-Atlantic and Northeastern regions receive very little participation; those in the Central, Northern and North Central regions receive intermittent or limited participation; and those in the Southwestern and Western regions receive moderate participation in the voluntary certification program.

The failure of this voluntary program is amply attested to by the Department of Agriculture's October 12 announcement of the planned implementation of a mandatory certification program.

Mr. President, the DES control program has been marked by one failure after another followed by announcements of increased inspections, tougher withdrawal standards and mandatory controls. Another recent welcome anouncement was that steps were being taken by FDA to prosecute offending producers—the first time that the Federal government has decided to go into the courts to enforce the law. But all of this is too little and too late. The problem will continue to exist and we must face up to it as many other countries have done, including the two largest beef producing countries outside of the United States—Argentina and Australia—as well as the Common Market countries, by completely banning the use of DES in promoting the growth of livestock.

Last summer the Department of Agriculture put out a press release claiming that a ban on DES would cost the consumer an additional 3½ cents per pound of beef. However, there should be an intensive effort to explore alternative means of cutting the costs of producing wholesome—and I put the emphasis on the word "wholesome"—meat. For instance, the Department could consider the impact of giving a higher USDA designation to baby bull calves whose meat has not yet reached the degree of toughness that maturity brings. Certainly an extensive study of ways to introduce economical practices into the retailing of meat, an area in which progress has been very limited over the years, could bring substantial dividends in the form of reduced costs.

There is evidence that meat grown without the artificial aid of DES may be better meat. DES treated meat tends to be tougher according to many experts. It has less marbling, and it is this marbling that increases the grade of meat. Consequently, although the consumer might be paying more, he would in all likelihood be getting more.

In the last analysis, however, cheap beef or lamb is a very bad bargain indeed if it brings with it the threat of poor health. This is what my bill to ban DES is meant to avoid. It will provide the consumer with a bargain his dollars cannot now buy—the assurance that the beef and lamb he eats is uncontaminated by an artificial hormone.

By Mr. MOSS:

S. 2821. A bill to provide for a study by the Secretary of the Interior of methods of control of predatory animals and birds on the public lands of the United States. Referred to the Committee on Commerce.

PREDATOR CONTROL STUDY ACT OF 1971

Mr. MOSS. Mr. President, today I am introducing the Predator Control Study Act of 1971. I do this because I am convinced that much more research needs to be done on predators, on the environmental effects of the present programs, and on alternative methods of predator control.

Recently grave questions have arisen concerning the Department of the Interior's predator control programs. For one thing, it is contended that they are not working.

This belief seems to be borne out by a look at the recent reports of the Bureau of Sport Fisheries and Wildlife for my State of Utah. Over the last 5 years total predator control funds for Utah have increased more than 20 percent. So have predator losses. In fact, sheep losses in Utah were 33 percent higher, lamb losses 40 percent higher, and total value of livestock 39 percent higher in 1970 than 2 years before. Clearly, if present programs were effective this would not be happening.

There is other evidence that the programs are not working. In Utah, extensive areas are controlled for coyotes and bobcats. But they also have to be controlled for ground squirrels, mice, marmots, prairie dogs, pocket gophers, porcupines, rabbits, skunks, commensal rats, and field rats, who eat crops, destroy range, and damage structures.

These animals, of course, are the ones that would be controlled naturally by coyotes or bobcats. The effect of controlling large predators may be simply to increase the populations of smaller predators, who then in turn must be controlled. And when the small predators are controlled too successfully, the larger predators must go after sheep in search of food. A program that produces such irrational results ought surely to be reexamined.

But the issue goes much deeper than that. Recently serious questions have been raised concerning the effect of predator control on our wildlife population in general. The survival of large numbers of native animal species is being endangered by man's activities. Some of these are predators, some are not, but all are part of our national heritage. Not all of the losses can be attributed to predator control programs, but they undoubtedly play a part.

The most troubling, and the most publicized, evidence of this is the plight of the bald eagle, our national symbol. Certainly no species is more worthy of our careful protection than our national birds. But they have been shot and poisoned by the hundreds in the name of predator control. This slaughter is made all the more tragic and irrational by the fact that there are no reliable independent studies to show that eagles are a significant source of predation of livestock.

A final, and still more troublesome aspect of the programs, is the ultimate effect on human health and welfare. Thousands of tons of deadly poisons are spread over our land each year. What is their ultimate effect, as they are washed by rains into our rivers and streams, and into our water supply? Or as they are ingested by cattle and sheep, or incorporated into the tissues of plants that are later used for human food? Almost nothing is known about the long term effects of subtoxic doses of 1080, strychnine, and cyanide on human health.

Indeed, the whole field is characterized by lack of knowledge. Little is known about the habits and life cycles of predators themselves. Of course, this knowledge is essential to a coordinated, sensible, and environmentally sound method of predator control. But we simply do not have it.

The present programs are an outgrowth of our ignorance. They are not effective in controlling predators, and they are significantly altering the natural environment in ways we have yet to fully understand.

Because of these concerns, the Salt Lake Tribune, in an editorial on September 22, 1971, called for a comprehensive study on predator control. The editorial said in part:

> The controversy (over predator control) has raged ever since the first cattle moved onto the western ranges and the first band of sheep was set out to graze. Only now are the first faint serious objective, scientific efforts being made to enumerate the dollars and cents costs of predator attacks, as well as determine such things as predator food demands, their frequency of attacks or ultimately their role in the balance of nature. The whole matter of predators is cloaked in a kind of folk lore, that has become tantamount to the truth.

The editorial suggested that bills presently in Congress be amended to "provide for an overall look at the predator problem, if it truly exists, that should have been done years ago and ought to be started soon."

Today, I am asking the Congress to authorize a full study, to be conducted by the Department of the Interior, on the question of predator control. The Department has taken some commendable steps in the field recently, including the appointment of a task force to study the present programs. But the task force was given only 3 months to complete their study. The complexity of the field, the need for primary data and careful evaluation, require a more comprehensive study.

I think it is also important that such study have congressional authorization and funding. Besides assuring adequate resources, the passage of this bill would be a demonstration that Congress is actively concerned in this important problem. Furthermore, it would assure that Congress would have access to the full results of the study, which may well form the basis for future legislation.

At this point, I ask unanimous consent that the text of this bill and the editorial from the Salt Lake Tribune be printed in the RECORD.

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

S. 2821

A bill to provide for a study by the Secretary of the Interior of methods of control of predatory animals and birds on the public lands of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Predator Control Study Act of 1971."

DEFINITIONS

SEC. 101. As used in this Act—

(1) the term "livestock" means cattle, sheep, swine, horses, mules, or goats;

(2) the term "poison" means any substance (liquid, solid, or gaseous) which by reason of an inherent deleterious property tends to destroy life or impair health; and

(3) the term "Secretary" means the Secretary of the Interior.

STUDY-AUTHORIZATION

SEC. 102. (a) The Secretary is directed to make a full and complete study to determine the need for predator control programs on the public lands of the United States. In conducting such study the Secretary shall consider, in addition to other matters he deems appropriate, the following—

(1) the cost of predator control to the Federal government, the efficiency of present programs, the value of livestock killed by predatory animals and birds, and the effects of predator control on the environment;

(2) the possible alternative methods of controlling the population of predatory animals and birds including the use of poison; controlled hunting, killing, and trapping; and biological controls;

(3) who should bear the cost of predator control programs;

(4) the long term dangers to human health and welfare from using poison in predator control; and

(5) the feasibility and desirability of establishing a permanent indemnification program for livestock lost to predators in lieu of a predator control program.

(b) The Secretary shall submit to the President and the Congress, within two years after the date of enactment of this Act, a report containing the results of the study directed by this title together with such recommendations as he deems appropriate.

ADVISORY COMMITTEE

SEC. 103. (a) The Secretary is authorized to establish an Advisory Committee (hereinafter referred to as the "Committee") composed of not more than five members. Persons appointed to the Committee shall have a recognized interest and expertise in the subject of predator control. It shall be the function of the Committee to aid and advise the Secretary in conducting the study authorized by this title. Members of the Committee shall be appointed so as to achieve maximum representation of groups representing a diversity of views on the question of predator control, including, but not limited to, representatives of livestock owners and conservation groups.

(b) The Committee may, for the purpose of conducting the study authorized by this title—

(1) hold such hearings, take such testimony, and sit and act at such times and places as it deems advisable. Any member may administer oaths or affirmations to witnesses appearing before the Committee;

(2) consult with any other department, agency, or instrumentality of the Federal government and any interested State or municipal agency and with any other person concerned with the control of predatory animals and birds;

(3) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 a day for individuals.

SEC. 104. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

[From the Salt Lake Tribune, Sept. 22, 1971]

BILL TO INCREASE EAGLE KILL PENALTIES POINTS TO NEED FOR PREDATOR STUDY

Nixon administration endorsement of legislation to stiffen penalties for the illegal killing of eagles is most welcome, but one wonders if the current concern over the plight of eagles isn't focusing on too narrow a seg-

ment of the whole matter of predator control.

The bill now under consideration by the House subcommittee on fisheries and wildlife conservation would impose $5,000 fines and one-year prison terms for first offenders and $10,000 fines and two-year prison terms for subsequent offenses. These are stiff penalties and would go far in deterring repetition of such wanton killing of eagles as took place in Wyoming and Colorado last fall.

But wholesale killing of predators is not confined to eagles. Many other predators, principally coyotes and cougars and to some extent bear, are also the targets of those who claim they suffer huge economic losses because of these animals. Wildlife conservationists doubt the claims and point to many instances where indiscriminate and unrestricted eradication of predators has resulted in ecological upsets as economically detrimental to cattlemen and woolgrowers as predator attacks.

This controversy has raged ever since the first cattle moved onto the western ranges and the first band of sheep was set out to graze. Only now are the first faint serious objective, scientific efforts being made to enumerate the dollars and cents costs of predator attacks as well as determine such things as predator food demands, their frequency of attacks or ultimately their role in the balance of nature. The whole matter of predators is cloaked in a kind of folk lore, that has become tantamount to the truth.

The House subcommittee considering Congressman John D. Dingell's, D-Mich., bill to strengthen eagle killing penalties would be doing an even greater service if it were to amend the Dingell bill to incorporate authorization of an exhaustive study of the whole matter of predator control aimed at answering such questions as:

Who pays for predator control? Is it solely the responsibility of the cattle and sheep raisers. Or must the sportsmen continue to support the program with part of their license fees, collected ostensibly for protecting and managing the wildlife resources?

What is the role of predators in the economics of cattle and sheep raising? Just how much dollar damage do predators really do to cattle and sheep crops?

If predator control is found to be necessary to assure continued economic health of the livestock industry, are killing and trapping the best ways to do it? Or are there nonlethal control methods available? If not, can they be developed and effectively, efficiently and safely applied?

The Dingell bill and a similar one in the Senate by Sen. Gale McGee, D-Wyo., are needed stopgaps to curtail the killing of eagles, but they should also provide for the over-all look at the predator problem, if it truly exists, that should have been done years ago and ought to be started soon.

By Mr. DOMINICK:

S. 2823. A bill to amend the Foreign Assistance Act of 1961. Referred to the Committee on Foreign Relations.

Mr. DOMINICK. Mr. President, I introduce for appropriate reference a bill to amend the provisions of the Foreign Assistance Act of 1961 dealing with prohibitions against furnishing assistance. Specifically, this amendment would strengthen the so-called Hickenlooper amendment, which essentially requires the President to suspend aid to any country which expropriates property owned by American citizens unless "appropriate steps" to pay full compensation are taken within a reasonable time.

Although the Hickenlooper amendment ment was intended to be a strong deterrent against confiscation of American-owned properties, I do not think it has been effective, primarily because of the substantial loophole the "appropriate steps" language creates. "Appropriate steps" is broad enough to include any token action by the expropriating government whether or not it indicates a real intent to pay adequate compensation. For that reason, the sanctions in the Hickenlooper amendment have been rarely invoked. In fact, while there have been at least 20 instances of expropriation of American-owned properties since it was adopted in 1962, to my knowledge, the Hickenlooper amendment has been invoked only once—against Ceylon in 1963. Many of these takeovers have been accomplished without any payment let alone "speedy compensation equivalent to the full value" of the property as required by Hickenlooper. I ask unanimous consent to have inserted at this point in the RECORD a chart prepared by my staff summarizing the expropriations of American-owned properties since 1962. The chart indicates the expropriating countries, the dates, the estimated value of the properties taken—where such figures are available, the status of the claims, and the amount of U.S. aid the expropriating countries have received since 1946.

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

EXPROPRIATIONS OF AMERICAN-OWNED PROPERTIES SINCE 1962

Country and date	Properties and estimated value (if known)	Status of claims[1]	Total foreign aid (1946–70) (millions)
Brazil: 1962	ITT ($10,000,000)	Settled	$3,974
Ceylon: 1962	Esso and Caltex gas stations ($4,000 000)	do	167.1
United Arab Republic: 1961–64	40 companies in various industries ($6,500,000)	Unsettled	912.2
Argentina: 1963	Petroleum contracts of 10 companies nullified	Settled	911.6
Algeria:			
1963	19 companies in various industries ($2,000,000)	Unsettled	180.4
1967	Mobil, Esso, Sinclair Oil	do	
1970	Phillips Petroleum Co	do	
Iraq: 1964	Procter & Gamble	Settled	101.9
Haiti: 1964	Valentine Petroleum & Chemical Corp	Unsettled	122.6
Syria: 1965	Mobil & Standard of New Jersey	Settled	60.6
Indonesia: 1965	U.S. Rubber, Goodyear Tire and Rubber	Expropriated under Sukarno; restored under Suharto	1,338
Peru:			
1968	IPC (subsidiary of Standard of New Jersey) ($200,000,000)	Unsettled (Velasco deducted claims from "illegal profits" earned)	772.5
1969	Cerro de Pasco Mining, W. R. Grace	Unsettled	
Zambia: 1969	Roan Selection Trust, Ltd., Mobil, Caltex, Standard Oil (California), Standard Oil of New Jersey.	do	40.9
Bolivia:			
1969	Gulf Oil	do	549.1
1970	Gulf Oil	Settled	
Southern Yemen: 1969	Shell, Mobil, Esso, Caltex	Unsettled	
Libya: 1970	Esso	do	230
Chile: 1971	Kennecott, Anaconda, Cerro ($550,000,000), ITT[2] ($150,000,000) Bank of America.	do.[3]	1,703

[1] "Settled" does not mean adequate compensation was paid for the expropriated properties.

[2] About $275,000,000 of ITT and copper investments covered by OPIC. OPIC has reserves of $170,000,000. Thus, American taxpayers may be asked to pick up the difference—$105,000,000.

[3] Allende announced claims will be deducted from "excess profits" earned.

Mr. DOMINICK. Mr. President, the "appropriate steps" loophole permitted Peru to avoid a suspension of aid in 1968, when it expropriated a subsidiary of Standard Oil of New Jersey and "deducted" its $200 million value from "illegal profits" it had earned there. Peru has received almost $800 million in U.S. aid since 1946. Recent actions by Chile are startingly similar. In accordance with proposals made during the election campaign, the Allende government is executing a program to nationalize American-owned properties there. It announced recently that claims for American-owned copper properties valued in excess of $600 million would be set off against $774 million in "excess profits" earned over the last 15 years. Chile has received about $1.7 billion in U.S. aid since 1946, and an additional $10.8 million is now in the pipeline. Although State Department officials have made some fairly tough comments, no action has been taken to suspend assistance to Chile. In fact, Allende stated recently on "Meet the Press" that his government had received no communication whatsoever from the United States regarding expropriation of the copper properties.

Mr. President, I ask unanimous consent to have printed at the conclusion of my remarks several excerpts from "Foreign Broadcast Information Service" reports of recent comments by Chilean

officials on the nationalization of American copper properties, and the Senate's rejection of the foreign aid bill. In addition to providing an interesting look at the hostile attitude toward the United States which has developed in spite of—or because of—the $1.7 billion in aid we have given them since 1946, these comments show that more expropriations of American-owned properties can be expected in Chile.

My amendment would tighten this loophole by requiring that, in order to avoid a suspension of aid, an expropriating country would have to enter an agreement within 6 months committing itself to pay full compensation for the property taken, and would have to carry out the agreement within a reasonable time. The agreement would outline specifically the procedure, as well as the timetable, to be followed in carrying it out. If an agreement were readied and the President found that satisfactory progress were not being made to carry it out, he would be required to suspend assistance until such progress were made.

This new requirement would limit to some extent the executive's discretion in determining whether to suspend aid to an expropriating country. I do not, however, feel it is too much to require a country receiving American tax dollars to enter an agreement commiting itself to pay for American property it has expropriated, as a condition to continuing to receive those dollars. The Senate recently adopted an amendment in this regard which would eliminate the executive's discretion entirely—by requiring a suspension of assistance immediately upon expropriation—Amendment No. 540 to H.R. 9910, the Foreign Aid bill, which was subsequently defeated.

The amendment I am offering is entirely consistent with U.S. policy with respect to expropriations. That policy, in simplified terms, is that the sovereignty of a nation carries with it the right to expropriate property owned by foreign citizens, provided the expropriation is carried out in accordance with international law, that is, first, the property must be taken for a public purpose; second, American citizens must not be discriminated against; and, third, just compensation must be paid promptly. This amendment is intended only to provide for fair treatment, consistent with international law, of American investments abroad. It should be kept in mind that any deterrent effect of this amendment on expropriations without payment of adequate compensation would benefit all American taxpayers, not just those who invest abroad. Many American investments abroad are insured against expropriation by the Overseas Private Investment Corp. Where unpaid claims arising from expropriation of insured property exceed OPIC's reserves, Congress may appropriate funds from the U.S. Treasury to pay the difference. For example, OPIC presently has reserves of about $170 million. About $275 million of the American investments recently expropriated by Chile are reportedly covered by OPIC. American taxpayers may therefore be asked to pick up the difference—$105 million.

In conclusion, Mr. President, I think recent events in Peru and Chile show that this bill merits our prompt consideration as a possible deterrent to similar actions by those and other countries in the future.

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

ALLENDE DISCUSSES FOREIGN POLICY, COPPER SITUATION

SANTIAGO, CHILE, Octobre 28.—Speaking yesterday with Chuquicamata mine workers, President Salvador Allende emphasized that this government will inexorably carry out the nationalization of copper and other points of the program his government promised the voters.

Concerning the imperialist offensive against his administration on the nationalization of U.S. copper companies. Allende said that "we will relentlessly continue, under this constructional amendment, to fulfill the obligation of insuring for Chile what should have belonged to it many years ago, and regardless of where the threats come from, the Chilean people and the conscience of the Chilean people will be our best defense against foreign pressure."

EL SIGLO COMMENTS ON U.S. FOREIGN AID DECISION

SANTIAGO, CHILE, November 1.—The U.S. Senate decision to halt aid to underdeveloped countries lays bare the true nature of U.S. aid, which is nothing but a form of political pressure.

This statement is contained in today's editorial in the communist newspaper El Siglo. The editorial, headlined "Criminal Reprisal," says:

The U.S. Senate, in a decision which caused great surprise throughout the world, resolved to halt U.S. economic aid to developing countries. The measure was viewed everywhere as an action of reprisal against the majority of the nations that voted for China's entry into the United Nations and the consequent expulsion of Taiwan, the U.S. aircraft carrier in the China Sea.

As could be expected, reaction was not long in coming. The Vatican diplomatically stated with painful surprise—and the European press in general has pointed out—that the decision is a severe warning to small countries which rebel against U.S. impositions. For many it was also a two-edged measure akin to childish hysteria, which may heap on the United States the greatest dose of repudiation it has received in a long time.

In Lima, where the Group of 77 comprising developing nations from throughout the world is meeting, the repercussions were much more explosive and may be summarized in this statement by an African delegate: It is an irresponsible stand. For the Hindu delegates, the halt in aid will seriously harm the poor countries, especially their balance of payments, because of the sudden manner in which it was adopted. In the midst of alarm and indignation, the Group of 77 resolved to weld together the Asian, African, and Latin American blocs to adopt a forceful position vis-a-vis Washington's rebuff.

The 25-year-old foreign aid program, was not an act of good will or a gesture of solidarity by a huge power toward needy countries, it was simply a way to save face and create a generous image of the United States at a time when U.S. imperialism was ravaging small countries under its influence throughout the world. It was a demagogic way to give back a crumb in compensation for the barefaced and unscrupulous exploitation to which it subjected these countries, especially their basic wealth.

The vote to stop aid serves the aims of a very aggressive sector of imperialism to punish other countries not only for their position on the Chinese case but also for the overall awakening of these countries to claim their rights, demand their economic independence—and especially demand the right to own their basic wealth. This awakening has undoubtedly influenced the dignified, brave and patriotic attitude of the Chilean Government, which has set a magnificent example for developing countries of the just and irreproachably legal procedure to nationalize the great national wealth in foreign hands.

It is too optimistic of the U.S. Senate, of course, to believe that with this type of reprisal it is going to halt or weaken the movement of liberation underway everywhere in exploited countries, and which in Latin America in particular is increasingly more firmly and surprisingly manifest.

Moreover, the senate's decision lays bare the true nature of U.S. aid, which is nothing but a form of political pressure and something which imperialism may cut off at any moment and at will without caring at all for the consequences that this curtailment may bring to the small countries affected.

REACTION TO U.S. SENATE DECISIONS REPORTED: HICKENLOOPER AMENDMENT

SANTIAGO, CHILE, October 29.—Several Chilean congressmen commented on the U.S. Senate approval of an amendment to the Hickenlooper law which forces President Nixon to end all aid to a country until it has paid acceptable compensation to companies which have been expropriated.

Senator Rafael Tarud, of the government's Independent Popular Action Party, pointed out that "it presents a new situation in which the United States changes the rules of the game. We can also change them according to the nation's interests." Continuing, he said that in his opinion it definitely is a return to the U.S. big stick policy, and though it represents serious difficulties for countries affected by the amendment, such as Chile which has included this aid in its budget, it is no less true that this will create the unity of all Chileans in defense of our legitimate interests.

With regard to the Socialist Party's proposal to apply a moratorium on the foreign debt, Senator Tarud specified that the government will not take such a step without full approval of the parties in the Popular Unity coalition.

The Communist Party's Political Committee said this U.S. measure constitutes aggression by imperialism against the sovereign will of the people of Chile. In conclusion, the communists say they will not accept this measure.

FOREIGN AID PROGRAM

SANTIAGO, CHILE, October 31.—Foreign Minister Clodomiro Almeyda has described the U.S. Senate decision to end the U.S. foreign aid program as an incomprehensible and desperate gesture. The foreign minister made this statement on his return to Chile from Lima, Peru, where he participated in the meeting of the Group of 77.

When he was asked to discuss the attitude of the U.S. Senate majority, he added that it was a demonstration of confusion which, in the long run, will have negative results for the United States. The foreign minister was asked whether the nations represented at the Lima meeting had adopted any concrete resolution concerning the U.S. decision. He indicated that the deliberations were still in the initial stage, but that it was his impression that some decision on the matter would come out of it. "There is still much work ahead in Lima," he said, "but the atmosphere is right for an answer to the U.S. Senate." In any case, all of the ideas expressed make results in his area and in attaining the objectives sought promising.

Almeyda was also asked whether he knew about the rumors which have circulated in the United States concerning the possible

application of the Hickenlooper amendment to Chile, following its copper nationalization. He said that this amendment in no way affects Chile because no project covered by the Hickenlooper amendment is being carried out here.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 2709

At the request of Mr. HATFIELD, the Senator from Montana (Mr. MANSFIELD) and the Senator from Colorado (Mr. DOMINICK) were added as cosponsors of S. 2709, to permit American citizens to hold gold in the event of the removal of the requirement that gold reserves be held against currency in circulation.

ESTABLISHMENT WITHIN THE BUREAU OF THE CENSUS OF A NATIONAL VOTER REGISTRATION ADMINISTRATION—AMENDMENTS

AMENDMENTS NOS. 607 AND 608

(Ordered to be printed and to lie on the table.)

Mr. GOLDWATER submitted two amendments, intended to be proposed by him, to the bill (S. 2574) to amend title 13, United States Code, to establish within the Bureau of the Census a National Voter Registration Administration for the purpose of administering a voter registration program through the mail.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971—AMENDMENTS

AMENDMENT NO. 609

(Ordered to be printed and to lie on the table.)

Mr. ERVIN submitted an amendment, intended to be proposed by him, to the bill (S. 2515) to further promote equal employment opportunities for American workers.

AMENDMENT NO. 611

(Ordered to be printed and to lie on the table.)

Mr. DOMINICK. Mr. President, on behalf of myself, Mr. BAKER, Mr. BROCK, Mr. BUCKLEY, Mr. ERVIN, Mr. FANNIN, Mr. HOLLINGS, and Mr. TOWER, I introduce for printing and future appropriate consideration an amendment to S. 2515, the Equal Employment Opportunities Enforcement Act of 1971. Essentially, the amendment strikes all language vesting the Equal Employment Opportunity Commission with cease and desist powers and substitutes therefor language giving the EEOC power to bring employment discrimination disputes to Federal court for resolution.

The amendment does not affect present bill language which: first, improves the respondent's rights of due process by requiring a 10-day notification of the filing of a Commission charge and a 2-year limitation of back pay liability; second, provides procedures whereby approximately 10.1 million State and local government employees and 2.6 million civil service and postal workers can redress their employment discrimination grievances through Federal district courts; third, expands the coverage of Commission jurisdiction to those private employers of eight or more employees; fourth, does not limit aggrieved employes to only title VII remedies or limit class action; and fifth, transfers the Justice Department's "pattern and practice" suit jurisdiction and the Labor Department's Office of Federal Contract Compliance to the EEOC.

Mr. President, what this amendment would do is to guarantee the protection of both parties' rights through fair, effective, and expeditious Federal court machinery. It would avoid the legendary vicissitudes of presidentially appointed boards and vest adjudicatory power where it belongs—in impartial judges shielded from political winds by life tenure. Judges who render their decisions in a climate tempered by judicial reflection and supported by a historical judicial independence influenced only by stare decisis. This amendment permits the aggressive and active advocacy of equal employment opportunity so necessary at the investigatory and prosecutory levels, yet preserves the impartiality of the courts at the adjudicatory level.

Mr. President, effective protection of the rights of all parties also demands a speedy resolution of a dispute. A court approach, rather than a cease and desist procedure, better serves this goal. Only one step—a district court order that is immediately self-enforcing and backed by the court's contempt powers—is needed. A commission cease and desist order, on the other hand, must be brought to a court of appeals before it achieves similar sanction powers. Additionally, the judge who is enforcing his own orders rather than those of some commission will be more determined that such orders are obeyed.

The determination of how best to fulfill our national commitment to the elimination of all forms of employment discrimination must be determined by clear consideration of the alternatives. If the issue is examined objectively, I believe my colleagues will agree that a court approach provides the best and fairest machinery for providing hope for the future of all Americans.

Mr. President, I ask unanimous consent that the text of the amendment be printed at this point in the RECORD.

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

AMENDMENT NO. 611

On page 33, after line 24, insert the following:

"SEC. 4. (a) Paragraph (6) of subsection (g) of section 705 of the Civil Rights Act of 1964 (78 Stat. 258; 42 U.S.C. 2000e–4) is amended to read as follows:

"'(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General under section 707, and to recommend institution of appellate proceedings in accordance with subsection (j) of this section, as redesignated by section 4(d) of the Equal Employment Opportunities Enforcement Act of 1971, when in the opinion of the Commission such proceedings would be in the public interest, and to advise, consult, and assist the Attorney General in such matters.'

"(b) Subsection (h) of section 705 of such Act is amended to read as follows:

"'(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, except that the Attorney General shall conduct all litigations to which the Commission is a party in the Supreme Court or in the courts of appeals of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the Commissioner.'"

On page 34, beginning with line 1, strike out through the end of the parenthetical in line 3 and insert in lieu thereof:

"(c) Subsections (a) through (e) of section 706 of such Act."

On page 38, beginning with line 7, strike all through line 7, page 50, and insert in lieu thereof the following:

"(f) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to obtain voluntary compliance with this Act, the Commission may bring a civil action against the respondent named in the charge. If the Commission fails to obtain voluntary compliance and fails or refuses to institute a civil action against the respondent named in the charge within one hundred and eighty days from date of the filing of the charge, a civil action may be brought after such failure or refusal within ninety days against the respondent named in the charge (1) by the person named in the charge as claiming to be aggrieved or (2) if such charge was filed by an officer or employee of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) of this section or further efforts of the Commission to obtain voluntary compliance."

On page 50, beginning with line 8, strike all through line 19, and insert in lieu thereof the following:

"(d) (1) Subsections (f), (h), (i), (j), and (k) of section 706 of such Act, and all references thereto, are redesignated as subsections (h), (j), (k), (l), and (m), respectively.

"(2) Subsection (g) of such section 706 is redesignated as subsection (i), and a new subsection (g) is inserted as follows:

"'(g) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.'

"(e) Subsection (i) of section 706 of such Act, as redesignated by paragraph (2) of section 4(d) of this Act, is amended to read as follows:

"'(1) If the court finds that the respondent has engaged in or is engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.'"

On page 56, beginning with line 7, strike all through line 19.

On page 56, line 20, strike out "Sec. 8" and insert in lieu thereof "Sec. 7".

On page 60, beginning with line 3, strike all through line 9, page 61.

On page 61, line 10, strike out "(h)" and insert in lieu thereof "(f)".

On page 61, line 13, strike out "Sec. 9" and insert in lieu thereof "Sec. 8".

On page 62, line 18, strike out "Sec. 11" and insert in lieu thereof "Sec. 10".

On page 65, line 21, strike out "(q)".

On page 65, strike out lines 23 and 24.

On page 65, line 25, strike out "(e)" and inert in lieu thereof "(d)".

On page 66, line 6, strike out "Sec. 12" and insert in lieu thereof "Sec. 11".

On page 66, line 14, strike out "Sec. 13" and insert in lieu thereof "Sec. 12".

CONSUMER PRODUCT WARRANTIES AND FEDERAL TRADE COMMISSION IMPROVEMENTS ACT OF 1971—AMENDMENTS

AMENDMENT NO. 610

(Ordered to be printed and to lie on the table.)

Mr. HARTKE submitted an amendment, intended to be proposed by him, to the bill (S. 986) to provide minimum disclosure standards for written consumer product warranties against defect or malfunction; to define minimum Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes.

REVENUE ACT OF 1971—AMENDMENTS

AMENDMENTS NOS. 612 THROUGH 614

(Ordered to be printed and to lie on the table.)

Mr. WILLIAMS. Mr. President, I submit today three amendments to H.R. 10947, a bill "to provide a job development investment credit, to reduce individual income taxes, to reduce certain excise taxes, and for other purposes."

Essentially, my amendments would first, remove the limitations on deductibility of medical expenses, second, allow a deduction with certain limitations for the money paid by the taxpayer for transportation to and from his place of residence and place of employment, and third, amend the Internal Revenue Code to encourage the construction of housing facilities for agricultural workers by permitting the amortization over a 60-month period of the cost of constructing such facilities.

Mr. President, I know that everyone is anxious for early enactment of this legislation which has been designed to take meaningful action in response to the President's tardy but welcome call for a new national economic policy. The bill as it came from the House of Representatives provides for a renewal of the 7-percent investment tax credit, for a modification of the administration's accelerated depreciation program, for the removal of the 7-percent automobile excise tax, and for a speedup of personal income tax exemptions which were first enacted in the 1969 tax reform bill.

Yet, it is my feeling that more must be done to provide relief for the "little guy," the taxpayer who shoulders the largest burden in our revenue system. Persons with smaller incomes tend to pay a higher tax rate and they need additional relief, particularly in view of the experience of the past two years which has seen local property taxes sky-rocketing and additional tax burdens levied by the States.

While I do not feel that the Revenue Act of 1971 should be expanded to include an unlimited number of reform provisions, I do feel that the three amendments which I propose today will target relief where the need is critical.

ELIMINATION OF THE 3-PERCENT FLOOR ON MEDICAL EXPENSES AND THE 1-PERCENT FLOOR ON DRUG EXPENSES

We have all been talking during this past year of the health care crisis in America. We know that hospital costs have skyrocketed. We know of the financial disaster which confronts any individual who is stricken with serious illness, and we know that the President has established a special arm of his new Cost of Living Council designed to pay special attention to rising prices in the health services industry. Thus, the adoption of this amendment would benefit all taxpayers. Virtually all of the approximately 30 million taxable returns which are currently itemized would show tax reductions for medical expenses below the current 3-percent floor. In addition, the removal of the floor would provide incentive to itemize for an estimated 5 million taxpayers filing returns and now using the minimum standard deduction. Most of these returns will be filed by young couples who earn above $10,000 and who heretofore were unable to claim any medical deduction because they were unable to get in under the floor imposed by existing law.

While we in the Congress are currently debating the best way to make health care a right for every American, to make health care less expensive and more available, and to improve the quality of the delivery system, I feel strongly that we must at this time allow for the deduction of all medical and drug expenses. Perhaps when more comprehensive legislation is enacted, this action will be unnecessary; but for the present, we can brook no further delay.

COMMUTING EXPENSES

This proposal would allow a taxpayer to deduct the money he spends on transportation to and from work. The transportation deductions would be limited to the lower of $400 or 5 percent of the taxpayers' adjusted gross income. The deduction would further be limited to one 40-mile round trip per day.

The general rule is that commuting expenses back and forth from work are not deductible items. This rule, however, has its natural string of exceptions. Thus, if one drives his car to work in order to carry heavy or bulky tools the Internal Revenue Service may allow a deduction for such use if the car would not otherwise have been used. Some courts have been even more liberal and have allowed deductions where the car would have been used even if no tools would have been transported. The courts have made another exception to the commuting rule and permitted deductions if the taxpayer has to travel by car to a remote place of employment.

Mr. President, the days of walking to work are gone forever. People are spending more time and more money on transportation between home and job. Transit fares alone have tripled since 1948. I do not feel it is fair to require the millions of taxpayers who travel great distances to work each day to haul tools or live in remote places before they can claim a deduction for commuting expenses. Relief in this area is long overdue, and I think my amendment provides a fair and equitable formula.

FARM LABOR HOUSING

This amendment would permit any individual who constructs a certified housing facility for agricultural workers to claim a deduction with respect to amortization based on a 60-month period. In effect, this amendment will encourage those agricultural employers who use farm labor to provide desperately needed housing for their workers. In the 10 years during which I served as chairman of the Migratory Labor Subcommittee we saw time and again the horrid conditions facing the migrant farm laborer. If a migrant worker was fortunate enough to be provided housing by his employer, it was substandard at best and most often did not meet the standards of our worst urban slums. Yet, tragically and unconscionably we seem not to care at all about the conditions which they face as they move from far to farm. My amendment is designed to encourage a change in this condition—a change which is long overdue.

AMENDMENT NO. 621

(Ordered to be printed and to lie on the table.)

Mr. BAYH. Mr. President, on Wednesday the Senate will consider a series of tax proposals designed to stimulate the economy and get us on the high road to recovery from the Nixon recession. Unfortunately, the President's proposals and the House-passed bill are both inadequate and inequitable. First, they fall about four to six billion dollars short of the fiscal stimulus needed to spark a recovery and cut into the unemployment rate. Second, the package is heavily weighted in favor of permanent tax breaks to corporate America.

Therefore, I am today submiting an amendment to H.R. 10947 that would make the personal income tax cuts originally scheduled for January 1973—and

moved to January 1972 by the House—effective January 1971. The time for a stimulus to consumer spending is now.

EXTENSION OF ECONOMIC STABILIZATION ACT OF 1970—AMENDMENTS

AMENDMENTS NOS. 615 THROUGH 620

(Ordered to be printed and referred to the Committee on Banking, Housing and Urban Affairs.)

Mr. STEVENSON. Mr. President, I am today submitting several amendments to S. 2712, a bill to extend and amend the Economic Stabilization Act of 1970.

The President has requested that Congress pass legislation which would provide him the authority to impose economic controls unprecedented except in time of war. Indeed, S. 2712 would allow the President, devoid of the scantiest congressional guidance, to exercise nearly total control over prices, wages, salaries, rents, interest rates and dividends. I fear that unless the Congress seizes this opportunity to provide guidance, clarification, and procedural safeguards, the President's proposal may turn out to be the economic equivalent of the Gulf of Tonkin resolution.

My first amendment would require that all members of any boards or commissions set up to administer economic controls must be confirmed by the Senate. Members of these bodies will possess tremendous power over the economic well-being of every American—far more power than members of independent regulatory agencies or assistant secretaries of the departments possess. Yet we require Senate confirmation for these offices. Indeed the Congress required Senate confirmation of all members of the tripartite wage stabilization board during the Korean war period. Why is it desirable to allow the President to bypass Congress totally now when it was not deemed necessary to do so during wartime?

Members of these bodies—regardless of whether they are drawn from labor, business or other sectors—will be making policy decisions for the entire society. They will be exercising a vastly important governmental function and I hope the Senate will not abandon its constitutional role of advice and consent in these circumstances.

Because it is imperative to move without delay from phase I to phase II, my amendment would allow members already appointed to the Price Commission and Pay Board to continue to serve with full legal authority on an interim basis. However, no member would be allowed to continue to serve if he were not confirmed by the Senate within 45 Senate workdays—allowing for the scheduled Senate recess—after passage of the act.

My second amendment would provide clearer congressional guidance for orders and regulations the President could issue under the authority of the Economic Stabilization Act.

First, it would eliminate the provision that prices, rents, wages, and salaries must be stabilized at levels not less than those prevailing on May 25, 1970. This date is a completely arbitrary reference point and one which in some cases might not provide the President with the legal authority to reduce the prices of a firm which has reaped windfall profits as a result of economic controls. S. 2712 provides that interest rates, corporate dividends, and similar transfers may be standardized at levels "consonant with orderly economic growth" and my amendment would apply the same standard to prices, rents, wages, and salaries. It would also specify that regulations must be fair and equitable, giving due consideration to levels prevailing on May 25, 1970—essentially the same language which was found constitutional during World War II.

Second, it would require rather than allow the President to issue orders for "such adjustments as may be necessary to prevent gross inequities."

Third, it would exempt from regulation under this act any worker earning "substandard" wages. The precise determination of what constitutes a substandard wage would be left to the President or bodies set up by him under the authority of this act. However, the amendment specifies that the definition shall not be below the official Government poverty line, and I personally hope that "substandard wage" would be defined to be above the poverty level.

Another amendment would eliminate section 213 which would have Congress ratify all "regulations, rules, orders, guidelines, interpretations, and circulars" promulgated during phase I. There are thousands of these rulings, some of which are now being tested in the courts, and a blanket congressional set of approval on all of them would be foolhardy. We simply have no way of knowing what we would be ratifying.

In its present form, S. 2712 contains a provision making the Administrative Procedure Act inapplicable to official actions taken during phase II. It is true that the stabilization legislation in effect during the Korean war also made the Administrative Procedure Act inapplicable, but that legislation established a detailed alternative mechanism to insure procedural fairness at every stage. Because this legislation fails to do that, it has been criticized by the American Bar Association, former OPA General Counsel David Ginsberg, and many others. I, therefore, also introduce an amendment making it clear that the Administrative Procedure Act is applicable. I ask unanimous consent that the American Bar Association's excellent testimony setting forth the reasons why the APA should be applicable be printed at this point in the RECORD.

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

STATEMENT OF MILTON M. CARROW, CHAIRMAN, SECTION OF ADMINISTRATIVE LAW OF THE AMERICAN BAR ASSOCIATION BEFORE THE SENATE BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE, NOVEMBER 3, 1971

My name is Milton M. Carrow. I am a lawyer in New York City and chairman of the Section of Administrative Law of the American Bar Association. I have with me Franklin M. Schultz, the last retiring chairman of the Section, and Ben Fisher, the Section representative to the House of Delegates of the American Bar Association. We appear here as Section officers, and it is our understanding that this statement reflects the general policy of the American Bar Association.

Our interest in this bill centers about Section 207 which excludes the functions to be exercised thereunder from the operation of the Administrative Procedure Act. (5 U.S.C., Sec. 551 et seq.) We object to such exclusion (The bill does not exclude the operation of the public information provision of the Administrative Procedure Act, 5 U.S.C., Sec. 552, and we do not object to this.)

We recognize the importance of swift implementation of the rules and orders expected to be issued under this bill, but we believe such objections will not be effectively accomplished by excluding the operation of the Administrative Procedure Act.

The Administrative Procedure Act was enacted in 1946 after a long legislative history and after one of the most comprehensive underlying studies by an eminent committee of scholars. (Administrative Procedure Act, Legislative History, 1944–46, Senate Document No. 248, 79th Cong., 2nd Sess.; Report, Attorney General's Committee on Administrative Procedure, Senate Document No. 8, 77th Cong., 1st Sess.) In view of the diversity of subjects covered it was carefully drafted to provide for exceptions and exemptions which then seemed appropriate and for emergency action where needed. Although there was some initial opposition, the agencies accommodated their procedures to its reasonable requirements, and I believe it fair to say it is now supported throughout the federal government. It might also be noted that because of changing circumstances serious consideration is being given by the Administrative Conference of the United States and our own Section, pursuant to resolutions adopted by the House of Delegates, to proposed amendments which would eliminate some of the exceptions and exemptions and make other improvements in the Administrative Procedure Act.

To exclude the application of the minimal procedural safeguards of the Administrative Procedure Act is to invite extended litigation challenging the validity of the many rules and orders which we anticipate will be issued. The bill itself provides that rules may be challenged in the courts which are "in excess of the agency's authority," or "arbitrary and capricious", and orders may be challenged where the facts are "not supported by substantial evidence". (Section 208(f)).

The bill does not require as would be required under the Administrative Procedure Act either the President or his designated agencies (The proposed Wage Board and Price Commission) to provide for notice or opportunity to be heard to those affected by the rules or orders. In our view this increases the probability that the agencies will not have considered all the pertinent facts and data prior to the issuance of the rules or orders. This in turn could have two proximate consequences: (1) a reason on the part of those affected to comply, and (2) a constantly increasing number of enforcement proceedings. (The bill provides that these proceedings be brought in the district courts of the United States (Section 208(a)) and the sanctions sought would be either criminal fines or civil penalties (Section 204). Also, injunction proceedings may be instituted against violators upon the request of an agency to the Attorney General. This may invite selective enforcement proceedings.)

Because there is not agency hearings process, the enforcement proceedings would be tried *de novo* in the district courts. In view of the many areas, industries and individuals affected, the district courts could be inundated with enforcement proceedings.

The bill itself reflects an ambivalence on this subject. On one hand it provides that agency rules may be set aside if they are ar-

bitrary and capricious, and that orders can be set aside if they are not supported by substantial evidence. Yet, no provision is made for any process whereby such infirmities can be avoided. On the other hand, the bill also recognizes the potential of increased caseloads by establishing on the appellate level only, a new court, the Temporary Emergency Court of Appeals, (Section 208(c)), but it ignores the far greater burden that may be thrust on the district courts.

The inequities and cumbersomeness of such developments could be serious. If a substantial number of final judgments are issued by the courts setting aside rules or orders, they would have to go back for reconsideration by the President and the agency involved. Changed rules and orders would have to be issued. During the litigation interval, which could be lengthy, the general public would be in a state of uncertainty, and the affected parties or industry would have been subject to onerous requirements.

It is hard to see how the public interest can be served in those circumstances. Initially, the public may be temporarily lulled into a belief that effective action has been taken, but if a significant number of judicial determinations set aside the rules and orders, there could be a serious breakdown of confidence. Here truly would be an example of haste makes waste.

As regards the rulemaking functions, it may be argued that notice of intended price or wage rules could induce an upward spiral prior to issuance. However, the Administrative Procedure Act specifically provides for such contingencies in its emergency rulemaking provisions, which a number of other federal agencies have effectively employed. (Section 553(b)(3)(B) provides that the rulemaking procedures do not apply "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest".)

In view of these considerations, we recommend that Section 207 be deleted from the bill, and that to the extent it is not inconsistent with specific provisions of the bill, the Administrative Procedure Act be made applicable to the exercise of the pertinent function.

Mr. STEVENSON. Mr. President, another amendment is designed to clarify and expand the rights of individuals to assure they have their day in court. On November 1, 1971, Assistant Attorney General Gray told the Senate Banking Committee that section 208(a) of S. 2712 does not eliminate the right of a defendant in a State court proceeding to raise as a defense the violation of this legislation or any order or rule issued thereunder. Mr. Gray also stated that S. 2712 intended to confer on aggrieved individuals the right to bring actions in the Federal district courts for declaratory relief, injunctive relief and damages. The amendment simply makes it clear that these rights do indeed, exist.

In addition, the amendment provides that persons intentionally overcharged on certain sale and rental transactions may recover attorney fees, court costs and treble damages with a minimum recovery of $100–$1,000 for damages. These provisions are quite similar to the rights of plaintiffs in antitrust cases and the rights which overcharged consumers enjoyed under the Defense Production Act of 1950. In view of the fact that the administration is not setting up an apparatus for full-scale government enforcement of price restrictions, the least we can do is give the consumer a fair opportunity to protect himself, and in the process to help enforce the law.

Mr. President, I ask unanimous consent that the text of my amendments be printed at this point in the RECORD.

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

AMENDMENT NO. 615

On page 2, line 6, insert the following: "(a)" immediately before "Section 203";

On page 2, line 20, insert before "to", ", by and with the advice and consent of the Senate.".

On page 3, after line 8, insert the following: "(b) Any persons serving on such boards, commissions, or similar entities prior to enactment of this act may continue to serve with full legal authority on an interim basis for a period extending through the end of the 45th calendar day in which the Senate is in session after enactment. At the expiration of this period, no person who has not received the advice and consent of the Senate may continue to serve as a member of any board, commission, or similar entity established under the authority of this act.

AMENDMENT NO. 616

On page 2 strike out from line 7 through "growth" on line 13, and insert in lieu thereof:

"The President is authorized to issue such orders and regulations as he may deem appropriate, accompanied by a statement of reasons for such orders and regulations, to stabilize prices, rents, wages, salaries, interest rates, and corporate dividends and similar transfers at levels consonant with orderly economic growth and which are fair and equitable giving due consideration so far as possible to levels that were prevailing on May 25, 1970."

AMENDMENT NO. 617

On page 2, line 3, strike all after the period through line 15 and insert in lieu thereof:

"Such orders and regulations shall provide for the making of such adjustments as may be necessary to prevent gross inequities. No such order or regulation shall apply to the wages or salary of an individual with substandard earnings, until such time as his earnings are no longer substandard. In no case shall 'substandard earnings' be interpreted to mean a wage or salary rate less than that which, on an annual basis, would yield an income less than the official government poverty line for a family of four. Appropriate adjustment shall be made in the case of workers employed part time or in seasonal occupations."

AMENDMENT NO. 618

Strike out everything from line 20 on p. 13 through line 6 on page 14, and re-number subsequent sections accordingly.

AMENDMENT NO. 619

(a) On page 5, strike lines 20–24 and insert in lieu thereof the following:

"The functions exercised under this title shall be subject to the Administrative Procedure Act, section 551, et seq., title 5, United States Code, except that the requirements of section 705 of that Act shall not be applicable to functions exercised under this title."

(b) On page 8, line 5, substitute a comma for the period and insert immediately thereafter the following:

"or is otherwise unlawful under the criteria set forth in section 706(2) of the Administrative Procedure Act, 5 U.S.C. 706(2)."

(c) On page 8, line 7, substitute "findings" for "facts".

AMENDMENT NO. 620

SEC. 1. On page 6, line 7, substitute a semi-colon for the period and insert the following immediately thereafter: "provided that nothing in this paragraph or in paragraph (j) of this section shall affect the right of any person to interpose any defense (other than a defense based on the unconstitutionality of this Act or any action taken thereunder) in any judicial proceeding."

SEC. 2. On page 6, strike lines 8–11 and insert in lieu thereof the following:

"(b)(i) Persons with a cause of action arising out of this title or out of any order, regulation or other act issued under this title may, notwithstanding the amount in controversy, bring actions in the district courts of the United States for all appropriate relief, including declaratory judgments, injunctive relief (subject to the restrictions of this title), and damages.

(ii) In actions brought under subparagraph (i) of this paragraph against a renter of real or personal property or a seller of goods or services, any such seller or renter found to have overcharged any person shall be liable for reasonable attorney fees and costs, plus whichever of the following sums is greater: 1) an amount not more than three times the amount of the overcharge or overcharges upon which the action is based, as the court in its discretion may determine; or 2) not less than $100 or more than $1000, as the court in its discretion may determine. *Provided*, that in cases where the seller or renter establishes that the overcharge was not intentional and resulted from a *bona fide* error notwithstanding the maintenance of procedures reasonably adapted to the avoidance of such error, the liability of the seller or renter shall be limited to the amount of the overcharge.

(iii) For purposes of this paragraph, the word "overcharge" shall mean the amount by which the consideration for the rental of real or personal property or the sale of goods or services exceeds the applicable ceiling.

(iv) If the Attorney General brings an action under Section 205 of this Act in which restitution for overcharges is sought, all actions brought by private parties on the basis of the same overcharges (and pending in the district courts of the United States) shall be stayed or consolidated, as the court in which the Attorney General's action was brought may determine.

EDUCATION AMENDMENTS OF 1971—AMENDMENTS

AMENDMENTS NOS. 622 THROUGH 627

(Ordered to be printed and to lie on the table.)

Mr. ERVIN (for himself, Mr. ALLEN, Mr. ELLENDER, Mr. GAMBRELL, Mr. GURNEY, Mr. BAKER, Mr. BROCK, Mr. BYRD of Virginia, Mr. EASTLAND, Mr. HOLLINGS, Mr. JORDAN of North Carolina, Mr. LONG, Mr. MCCLELLAN, Mr. SPARKMAN, Mr. STENNIS, Mr. TALMADGE, Mr. THURMOND, and Mr. TOWER) submitted six amendments, intended to be proposed by them, jointly, to the bill (S. 659) to amend the Higher Education Act of 1965, the Vocational Education Act of 1963, and related acts, and for other purposes.

ADDITIONAL COSPONSORS OF AMENDMENTS

AMENDMENT NO. 475

At the request of Mr. PEARSON, the Senator from Delaware (Mr. BOGGS), the Senator from North Dakota (Mr. BURDICK), the Senator from Kansas (Mr.

DOLE), the Senator from Maryland (Mr. MATHIAS), the Senator from Pennsylvania (Mr. SCHWEIKER), and the Senator from Missouri (Mr. EAGLETON) were added as cosponsors of Amendment No. 475, to the bill (H.R. 10947) to provide a job development investment credit to reduce individual income taxes, to reduce certain excise taxes, and for other purposes.

ADDITIONAL STATEMENTS

SPESSARD LINDSEY HOLLAND

Mr. ELLENDER. Mr. President, for many years I counted among my closest friends in the Senate Spessard Lindsey Holland. I always looked upon him as one of the Senate's most intelligent, dedicated, and steadfast Members.

Senator Holland was known as a friend of Florida, a friend of the South, and a friend of American agriculture. It was my pleasure and privilege to serve with him on two of the Senate's most important committees—the Committee on Agriculture and Forestry and the Committee on Appropriations. By close association with him and by work on a day-to-day basis, I came to admire Senator Holland and to appreciate the judgment of the people of Florida for sending him to represent them in Washington for so long a period.

Senator Holland first joined the Senate in September of 1946 and gave us the benefit of his wisdom and judgment until his decision to retire January 3, 1971. It was a wisdom and judgment amassed throughout a lifetime of public service to the people of his State and Nation. For that reason, I can give assurance that his opinions were valued highly by those of us privileged to serve with him, and he was known always as one of the Senate's most effective Members.

Seventy-nine years ago he was born in the small town of Bartow, Fla. During his career he served as a schoolteacher, practicing lawyer, prosecuting attorney, and county judge until his election in 1932 to the Florida State Senate. There he served two terms, leaving in 1940 to take a step up the ladder into the governorship of Florida. His record in the Florida legislature and as Governor is still remembered for his interest and effective work in Florida education.

This was an interest he maintained throughout his life, I might add, serving as trustee and on the governing bodies of several of the State's well-known institutions of higher learning.

In the U.S. Senate, Senator Holland rose to the position of ranking member of the Committee on Agriculture and Forestry, where it was my privilege to serve as chairman during much of his tenure. On the Appropriations Committee, he rose to the chairmanship of the subcommittee having a primary responsibility for agriculture programs and agriculture-related policies.

Throughout his service in these areas, his activities were marked by a consistent desire to serve the American farmer and the American consumer. I can state without qualification that he performed this task extremely well. Each year he sought to produce legislation in the Agriculture Committee and push forward policies through his position on appropriations that would inure to the benefit of agriculture and the Nation as a whole. I was able to join him in many of these efforts and I sincerely believe that the Nation is better off today for the work that he performed so well and so ably.

He and I worked together hand in hand for the protection and preservation of our two most important resources—land and water. I am certain that today he would be the first to admit that much remains to be done. It is my hope and desire, as well as ambition, to carry forward from where we left off.

Senator Holland also provided much of the spark and much of the leadership that assisted the National Aeronautics and Space Administration to begin and continue its work. He had an advanced insight into what this effort would mean for future generations. He foresaw the importance that this Nation's reaching out for the stars and planets would hold for us. I believe his judgment has again proved correct and his faith will be justified and amply vindicated in the years ahead.

I would like to close on that note. I believe that Spessard Holland was a man of the future, with his feet firmly planted in the present, and with the needs that must be met today to improve our people's way of life. The policies that he and I both believed in and worked for will go forward far beyond the present. There is an old saying that all anyone can work for in this world is to "leave the woodpile a little higher." The contributions of Senator Holland will leave our people much better prepared for the winter times ahead and better able to enjoy the spring times that surely follow.

I extend my condolences to his belowed wife, Mary. In her bereavement she should find much solace because her beloved husband shared the friendship and respect of thousands of Americans.

Mr. TALMADGE. Mr. President, I am saddened by the passing of my good friend Spessard Holland, the late distinguished Senator from Florida.

It was my pleasure to know and work with Senator Holland for some 30 years. Our warm association went back to the time when he was elected Governor of Florida, after a distinguished career in the State Senate.

We almost proudly claimed Spessard Holland as a Georgian. His father was born in Carroll County, Ga., and Senator Holland graduated magna cum laude from Emory College, at Oxford, Ga. He served as a trustee of Emory University in Atlanta. His first position after graduation from college was in Warrenton, Ga., as a schoolteacher. So Spessard Holland's roots went deep in Georgia. I am proud to count him as one of my warmest longtime friends, and many, many Georgians will long honor his memory.

It was my privilege, before his retirement from the Senate, to serve on the Committee on Agriculture and Forestry with Senator Holland for 14 years. He was one of the ablest Senators I have ever known, and one of the hardest working. He was on the floor of the Senate more than any other Member, except the leadership.

Senator Holland tirelessly dedicated himself to service to his Nation and the State of Florida. He distinguished himself in the Senate as a man of great courage and conviction on all legislative issues. His devotion to duty in the Senate over the years characterized him as a champion of the strength, security, and well-being of the United States and all its citizens. Senator Holland was a source of inspiration and leadership to us all.

I will dearly miss my good friend, and Mrs. Talmadge joins me in extending our deep, heartfelt sympathy to the late Senator's family.

COMMUNIST DOMINATION OF WORLD SOCIETY IS THE ULTIMATE GOAL

Mr. GOLDWATER. Mr. President, we hear in a good many speeches made around the country and read in not a few articles that communism has mellowed and that Communists no longer seek the domination of the entire world society. Naturally, we have the right to believe or not to believe it; and frankly, as an individual Senator or as an individual American, I have seen nothing in the activities of communism, whether it be Russian, Red Chinese, or whosoever, that there has been any dimunition in the idea that some day the revolutionary spur of communism will chase capitalism off the face of the globe.

Certainly a man who understands the Russians as well as any American alive today is the Honorable Foy Kohler, who has written an article, published in Ordnance for September–October 1971, which gets to this point in a succinct and understandable way. So that Senators may have the benefit of his words and wisdom, 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:

THE COMMUNIST OBJECTIVE: DOMINATION OF THE ENTIRE WORLD SOCIETY IS THE ULTIMATE GOAL

(By Hon. Foy D. Kohler)

Having lived through the era when nobody ever read "Mein Kamp"—as they might have, and learned a good many lessons about Adolf Hitler's plans for the world from it—I always like to go back to the fundamentals and remind people that Soviet leaders, too, over the years, have not been at all reticent about their intentions, their objectives, their goals, and their concepts.

Back in 1918, Lenin himself laid down the basic proposition when he said: "We are living not merely in a state but in a system of states, and it is inconceivable that the Soviet Republic should continue to exist for a long period of time side by side with imperialist states. Ultimately, one or the other must conquer."

Shortly after Lenin's death in 1924, Stalin expanded the theme, saying:

"Lenin never regarded the Republic of the Soviets as an end in itself. To him, it was always a link needed to strengthen the chain of the revolutionary movement of the countries of the West and the East—a link needed to facilitate the victory of the working peoples of the whole world over capitalism."

Khrushchev picked up the refrain in his speech to the Supreme Soviet in 1957 when he said:

"We have retained the great revolutionary spirit, and we assure the comrades in the struggle for the cause of the working class that we shall always be true to the principles of Marxism-Leninism—to the principles of proletariat internationalism—and that we shall, in the future as in the past, consider ourselves as the vanguard which raised high the Leninist banner and, led by Lenin, has successfully carried this banner for the past forty years. We give assurances that we shall . . . confidently march toward the victory of Communism and shall persistently struggle for peace throughout the whole world."

Ten years later, speaking at the fiftieth anniversary of the Bolshevik Revolution in the Soviet Union (November 1967), the present Secretary General of the party, Brezhnev, was perhaps even more explicit than his predecessor.

"We must never forget," he said, "that the mission that falls to the Communist Party is the grandiose, complex mission of revolutionary transformation of the entire world society. The process of changing humanity from capitalism to socialism is a complex and varied process. In its path are hidden certain failures, temporary retreats, and even defeats for individual parts of the struggle.

"The Communist movement draws its lesson from this. Experience has shown that it is possible to defeat such a strong and perfidious opponent as imperialism only by confronting it with sober political calculations, coldbloodedness and tenacity, as well as decisiveness and selfless preparation for struggle. The Communists are confronting this opponent with a strategy that is supported by scientific analysis of the correlation of forces, both within countries and in the international arena. . . .

"The struggle for peace remains for us, even today, a task filled with profound class-revolutionary content, since to fight for peace means to isolate the most militant and aggressive circles of the imperialist bourgeoisie, to turn public opinion against them and wreck their anti-people plans."

I would like at this point to give a little lesson in how to read Communist literature and Communist pronouncements, with particular reference to the repeated use—especially by Khrushchev and Brezhnev—of the term "struggle for peace." The source of this lesson is Communist.

The April 1949 issue of the official journal of the French Communist Party, *Les Cahiers du Communisme* (The Notebooks of Communism), published a speech of Soviet Politburo Member and then Foreign Minister Molotov, in which at one point he referred to the "victory of peace." Since many members of the huge Communist Party in France were not too well up on Marxist doubletalk, the journal made the meaning clear by inserting in brackets after Molotov's phrase, "the victory of peace," the interpretative words, "that is to say, 'the victory of Communism'."

In recent years, there has been a lot of talk of "convergence" occurring between the Communist and capitalist pathways. It is true that, as the Soviet economy has grown more complex, it has been forced to adopt—or try to adapt, or steal—Western managerial methods and even some of the terms like "interest" and "investment" and so forth that are fundamentally repugnant to Marxism.

But there is no "convergence" in the sense that there is no change in the fundamental fact of state ownership of all the means of production.

There is even talk of dissent and dissatisfaction inside the Soviet Union. It is true that there has been a remarkable underground press; it is true that there have been defectors getting out to the West; it is true that there has been a ferment, stemming from the World War II contacts, from the accessibility of Soviet citizens to foreign radios, and a few things like that.

It is even true that Moscow has lost much of its control of the previously monolithic Communist world. Furthermore, it also is true that Communist ideology visibly is no longer the instrument of political power inside the Soviet Union.

What is the visible effect of all this? The effect is that the more the ideology declines in effectiveness as an instrument of political power, the more the leadership feels obliged to claim its own validity and to force its acceptance—even in startling ways—as we saw in the Soviet invasion of Czechoslovakia a couple of years ago and as we see today in the repression of dissidents inside the Soviet Union itself.

What is the explanation? It is this—and it is one that must always be kept in mind about the Soviet Union: This is a country run by a minority that has seized, and that maintains a monopoly of the political power. The Communist Party numbers only 5 per cent of the people of the Soviet Union.

One of the great philosophers of the last century in Russia, Alexander Herzen, predicted that a Communist revolution in Russia would be the aristocracy turned inside down. This is almost visibly true today, as is seen in the new ruling class, the new elite. But there's a difference, and the difference, and the difference resides in a very important word: legitimacy.

The Czars ruled Russia in the name of the accepted doctrine of the divine right of kings—and were regarded as legitimate rulers. In the Western democracies we have our constitutions, our freedom of choice by free elections, and these are the source of the legitimacy of our governments.

But those in the Kremlin today have to justify their minority rule of the majority in terms of Marxist-Leninist ideology, which is materialistic in concept, conspiratorial in nature, authoritarian in practice, and messianic in spirit, and which proclaims as a matter of historic inevitability that this system is destined to rule the world.

What are the international consequences of that claim? One thing is absolutely required by the theory: that there be a capitalistic, materialist opponent abroad, to vie with and to overthrow. There is no suitable candidate for this position except the United States of America. Thus, as long as the Communists are in power and must continue to justify their rule, this will be the case.

Another very important thing to keep in mind about this society is that it didn't start only 50 years ago. So much of what the Communist leaders say and do today is conditioned by the events, prejudices, and traditions of a long, turbulent Russian history.

For example, you can't live in the Soviet Union without realizing the profundity of the antipathy between Russians and Chinese. You come to realize—in fact, it's made very clear to you by their literature, their opera, their ballet, their history—that this goes back to the Mongol-Tartar invasion seven centuries ago. And the Mongol-Tartar occupiers of that country, the despoilers of Russian lands for the next three centuries—these are the Chinese.

There is a similar and valid fear of Germany as the result of World War II. But when the war came, do you think Stalin appealed to these people to defend Holy Russia, Mother Russia, in the names of Marx and Lenin? No. He appealed to them in terms of their own historic heroes: of Alexander Nevsky who threw back the Teutons in the thirteenth century; of Dmitri Donskoi who beat back the Tartars in the fourteenth century; of Minin and Pojarsky, who defeated the Poles in the sixteenth century; of Suvorov and Kutuzov, who threw back Napoleon in the last century.

And what does this mean, in terms of how they see things, how they think and react? It means the Russian has a deep sense of the historical insecurity of this great open land mass on which he lives.

You have to realize that Russia is just a vast plain extending for 6,000 miles, with natural defenses only in the south and southeast. This accounts for a lot of their military and strategic thinking—for the "strategic retreat" policies and the "scorched-earth" policies they followed at the time of the Napoleonic invasion and again in the time of Hitler.

More than that, it has accounted for a centuries-old drive to expand their borders, to get a sense of security in depth, to make sure of an outlet and room for maneuvering in the warm seas.

This is what led the Czars to Siberia and central Asia; this is what led to the endless wars with the Turks and the taking over of the Crimea and the Black Sea; this is what led to Stalin's demand, after World War II, for parts of Iran and of the Turkish territories that control the straits.

Another peculiarity of the Russian mentality, as a result of their long experiences, is a sense that we don't really have—a sense of the relativity of power: you are stronger if your opponent is weaker. This is why they support in a meaningful way Communist "fifth columns" and Communist parties around the world, plus an assortment of "front" organizations. It also explains their attempts to sow discord in the West by cultivating one leader of a nation today, his successor tomorrow, and their proposals to get the United States out of foreign bases (while they remain secure in the European heartland).

Finally, the Russian sense of vulnerability also accounts for their defense-oriented thinking. The tremendous investment they've put into their fighter aircraft and wiring the country for radar is fantastic. They began building an ABM system, even though their first version was something less than perfect, at the time when Robert McNamara's Pentagon computers were saying that this was decidedly the wrong way to go about it.

Economic reality is another factor. Here is a country that is nearly three times the size of the United States. It is true that a lot of it is barren, and some of it is in the Arctic Circle, but for the most part it is only underpopulated and underdeveloped and has great need for capital—capital to invest—to develop.

Yet the Soviets try to rival us in their military and space programs, on which they spend nearly as much as we do.

They try to do this on a base that is less than half of ours—the 1969 estimates of Russia's gross national product were about $440 billion against our $890 billion. This equation is one reason why Khrushchev is out, and why some of his successors will be out.

But, with their controls, they are able to establish priorities in a way that we are able to do only in wartime. Their priority has always gone to the basic heavy industry that underlies defense—so that in steel and coal, for example, they are either equal to us or perhaps better, while gas and hydro power production are very high. In general, their economy is leaner and more muscular than ours.

They produce something over one-half the general industrial products that we do but only a third as much consumer goods. This means that, on the domestic scene, the leadership is subject to great pressures, as vested-interest groups have grown up, clamoring for their shares in the distribution of extremely limited resources. These vested-in-

terest groups have grown more powerful in recent years, and this is one of the reasons why, for example, we have been able to get, first of all, a test-ban treaty; then, a ban on weapons in outer space; and, finally, the Strategic Arms Limitation Talks.

This economic reality is also one reason why the rising curve of war-materiel production in the Soviet Union is not going to continue to rise indefinitely; if you start the curve going up at a 45-degree angle, you get over the curve of the Soviet GNP. However, this is not to say that we should discount the Soviet threat.

The Soviets will have a mix of weapons that are calculated to match or—they hope—to outmatch us. Their overt military budget under Khrushchev ran at a level of about 13 billion rubles a year, and he was trying to hold it there.

The new Soviet leadership is much more military-oriented. Brezhnev himself, for example, was a political commissar with the armed forces during World War II. The current regime is beholden, furthermore, to the military forces for their cooperation in the ousting of Khrushchev.

Consequently, Russia's overt military expenditures have actually gone up to a level of about 18 or 19 billion rubles a year.

Actually, a recent analysis indicates that their total expenditures amount to 13 per cent of their GNP, as against ours at 8.7 per cent (roughly $59 billion for Russia versus $81 billion for us—and ours includes not only Defense, but NASA and AEC also).

If you take account of their lower personnel costs, etc., it means that despite all our spending on the Vietnam war, the Russians are certainly—in terms of their total effort—matching if not surpassing us.

The Cuban crisis was a great shock to the Kremlin. They learned that they can't bluff on the basis of potential—that they must have forces in being. The new leaders set out to correct the situation and to develop, not just the image of power with which Khrushchev was satisfied, but the reality of power.

When we were first sure about the Russian deployment of an ABM system, it fell to me in Decemmber 1966 to get Soviet Ambassador Dobrynin in for a talk, which led to the start of the SALT negotiations. I said, "How about talking about this, before we get into a brand-new spiral?" And he said, "What do you want to do, freeze us into a position of inferiority?"

Even so, within the Soviet leadership an economic manager like Kosygin saw that the idea had some meaning from their point of view. So they came back shortly afterward and said that they accepted in principle, provided the negotiations would apply to both offensive and defensive weapons. However, it was more than two years before we could get them to agree to a date to sit down and talk in Helsinki.

What happened in those two years? Obviously, they decided they would put on a crash program to get their ICBM level up. They were putting in SS–11's and S–9's rapidly, so that they could talk with us with what they considered a feeling of equality at least in that field.

The effort cost them something, because it is perfectly evident that in this period they were forced to cut down a certain amount on their capital investment in general industry. This is why I wouldn't suppose that their ICBM curve will go up as fast now as it has been going up the last couple of years.

There already are some indications that their next major effort is going into their over-all navy program—particularly submarines—Yankee-type subs to match our Polaris, and so on.

We also know that their ground forces are feeling neglected; they have said that we were developing conventional weapons and getting conventional experience in Vietnam of the kind they haven't had since World War II. So we know there are some pressures from that side.

We also know that the Soviet Air Force has put on some pressure for new equipment, since a good many of their bombers can be considered obsolescent. We have learned from the SALT negotiations that they are stil very much impressed by our Strategic Air Force, in spite of all their air defenses. They themselves—this is my own prognostication—now will go for a considerable bomber force.

In conclusion, I would like to comment on the military-diplomatic aspect. We have had the naive tradition in American history that if we get into a conflict we go for some unlimited military objective—unconditional surrender, complete victory, or the like. And then, having achieved this objective, what do we do? We immediately pull out the military, disband our forces, and leave the poor diplomats to pick up the pieces and clean up the mess.

A diplomat is no better than the forces behind him. I hope we will keep those forces strong, because while it may be the diplomat's job to extend the right hand, he wants to know that our left guard is up at the same time.

ETHNIC AND MINORITY STUDIES IN WISCONSIN

Mr. PROXMIRE. Mr. President, this past July, the Wisconsin State universities system established an Ethnic and Minority Studies Center headed by Prof. Norman Lederer. This center is one of the few in the United States which is devoted to a furthering of an awareness of the historical and cultural contributions of all ethnic and minority groups in Wisconsin and the Nation. Its purpose is to instill an understanding and pride in the many groups which have helped to form our country.

In a speech delivered to the WSU System Council of Academic Vice Presidents on October 4, Professor Lederer told of the origins and hopes of the center. It began, not as a reaction to the demands of any group, but out of a desire by the university system to allow people to become more aware of various cultural heritages. It is being designed to reach all students in the WSU system, not just the members of any particular group.

Mr. President, I ask unanimous consent that Professor Lederer's speech be printed in the RECORD.

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

SPEECH DELIVERED BY NORMAN LEDERER

Gentlemen: The melting pot has not melted. Despite the assertions of generations of publicists and spokesmen for America's dominant white Anglo-Saxon Protestant culture, the United States has been and will continue to be a pluralistic society in which ethnic and minority peoples differ in their life styles from those of middle class America. As a matter of fact, the last ten years has seen what can be called an "ethnic renaissance." Following the thrust of the Blacks to assert their self-identity and culture, the Indians, Mexican-Americans, Puerto Ricans and those of immigrant stock have brought their cultural uniqueness and their accomplishments to the fore. There is pride in being Black, but there is also pride in being Chicano, Indian, Puerto Rican, Polish-, German-, and Chinese-American. Ethnic and minority groups are realizing that there is virtue in being "different" and that there may very well be considerable merit in remaining somewhat nonengaged with a majority culture plagued with war, economic depression, crime and racism.

In July, as you all know, the Board of Regents of the Wisconsin State Universities system made known its commitment to the creation of a state-wide coordinated effort to further understanding of ethnic pluralism in the state of Wisconsin. The Regents resolution created an ethnic and minority center at WSU-Platteville having the purpose of establishing a pilot program which could be adapted in whole or part or adapted to fit local program needs, in the State University system. I am exceedingly fortunate in being associated with this new, exciting program.

The ethnic and minority studies center will be involved in the development and coordination of curricula of an ethnic minority nature on the various state campuses. It will act as a clearinghouse for statewide information concerning ethnic and minority studies and groups and as a catalyst for action in bringing into being new programs and new approaches in order to define and analyze America's and Wisconsin's ethnic and minority heritage. A statewide communications network will be established involving those on the various campuses concerned with ethnic and minority studies in which regular mailing and a newspetter will be used in an attempt to tie together the disparate strands dealing with cultural pluralism. There will be every effort made to involve members of ethnic and minority groups in the planning and implementation of this program. Students of an ethnic or minority background will, it is hoped, be trained as analysts of their group background, bringing to bear their special insights into their own cultural milieu.

This program is not, however, one designed "for" various ethnic and minority groups. It is not an attempt to segregate academically any students on the WSU campuses by providing courses which someone or another thinks those students want. The ethnic and minority studies center is concerned with *all* of the students in the WSU system in seeking to make available to them a wide variety of courses and approaches which will explain to them the positive contributions of American pluralism and the special uniqueness of ethnic groups on the American landscape.

In conclusion, it should be further stressed that this center is not a reaction to anything or anyone. It is the result of the dawning of the realization that America's strength and character is based to a considerable extent on the special contributions—the blood, sweat and tears, if you will—of millions of non-white, non-Anglo-Saxon, non-Protestant peoples in the American past and present. Their past and continued contributions must be recognized and understood by the Wisconsin State Universities system if it is to be truly a "People's University." This emphasis is not only an obligation; it is a privilege; it is a way of attempting to open channels of communication and understanding in a society ridden by alienation and polarization. It may very well be, gentlemen, part of the solution to the immense problem of whether or not this country will endure.

INEQUITY IN RURAL HOUSING

Mr. McGOVERN. Mr. President, at a time when we are striving to improve conditions in rural America in order to reverse outmigration and redress population imbalance in this country, it is disturbing to note that the Department of Housing and Urban Development is not making allocations of its resources on an equitable basis among the several States.

Writing in the Journal of the American Institute of Planners, for September 1971, Associate Prof. George M. von Furstenberg of Indiana University, rightfully calls our attention to a disparity that exists in Federal programs for federally assisted rental housing projects.

He points out that the States of South Dakota, North Dakota, Idaho, Iowa, Kansas, Maine, Montana, Oklahoma, Utah, Vermont, West Virginia, Wisconsin, and Wyoming have not, on the basis of need, shared equitably in these programs.

Because I believe that his article will be of interest to Congress and to those who share our concern regarding rural housing, I ask unanimous consent that the article be printed in the RECORD.

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

DISTRIBUTION OF FEDERALLY ASSISTED RENTAL HOUSING

(By George M. von Furstenberg)

Major federally assisted rental housing programs fall into two classes. Public housing and rent supplement projects primarily serve *low-income* families, 50 percent of whom had total annual incomes of less than $3,000 in 1969–70. Families with median incomes of $5,000 to $6,000 are the intended beneficiaries of *moderate income* housing. This includes both the Section 221 (d) (3) below-market interest rate (BMIR) program, involving up to 100 percent mortgage financing at 3 percent interest, and the more recent Section 236 program, in which interest costs are lowered further to 1 percent. In spite of the differences in tenant incomes, it has been estimated that annual subsidies of between $600 and $900 per household are required under all programs.[1]

Although income redistribution has been identified as the primary objective of these heavily subsidized rental programs,[2] assisted housing services are supplied unevenly to different groups of eligible citizens. Interprogram differences in the demographic composition of tenants, for instance by age, race, or size of family, have been commented on elsewhere.[3] However, inequalities in the *geographic* coverage of each program, and of all programs combined, in relation to need, have received little attention.

It can be argued that in all housing markets containing a significant number of low-income families, at least some federally assisted rental housing should be supplied both to supplement the private market and to serve as a vehicle for income-transfer. It is insufficient to assume an objective of serving poor people throughout the nation without regard to location, since people generally do not migrate beyond local areas to take advantage of subsidized housing. The more that assisted housing is offered in one locality to the neglect of any other, the lower the marginal net benefits which may be expected. The program might reach well down the hierarchy of needs in one area, while, in another, even the most pressing needs go unanswered. Hence, spatial balance in the distribution of housing assistance is not only of political interest as a matter of regional equity in the federal system, but it may also involve important dimensions of program efficiency.

Footnotes at end of article.

THE RECORD OF ASSISTED HOUSING PRODUCTION

As of September 30, 1969, just over 900,000 households were living in federally assisted rental housing under the main subsidized programs. Public housing, which goes back to 1937 but now includes projects acquired through leasing and Turnkey methods, accounted for 78 percent of the total, while the 3 percent BMIR mortgage-insurance program authorized in 1961 accounted for 18 percent. The newer rent supplement and Section 236 programs, dating from 1965 and 1968 respectively, each contributed around 2 percent of the total volume. Under the last two programs, rents to be charged to tenants are reduced to 25 percent of family income, but to no less than 30 percent of full-cost rent or costs remaining after mortgage financing at 1 percent interest.

The number of units occupied under each of these programs in the fifty states and the District of Columbia is shown in Table 1. While it is interesting to observe, for instance, that no rent supplement units at all had been provided in some states, this table of absolute numbers of units supplied is used mainly as an input for later comparisons with needs.

The provision of assisted housing units in relation to needs is given in Table 2. Since housing assistance is not strictly limited to low-income urban populations,[4] several definitions of eligibility are assumed. The corresponding fractions actually being reached in any state are established (columns 3 and 6 of Table 2) and then tested to determine how sensitive the ranking of states by relative service levels is to variations on the definition of the target group.

TABLE 1.—FEDERALLY ASSISTED UNITS UNDER THE MAIN RENTAL HOUSING PROGRAMS: UNITS OCCUPIED AS OF SEPT. 30, 1969, BY STATES [1]

	Public housing (1)	Rent supplements sec. 221(d)(3)MR (2)	Sec. 221(d)(3) BMIR [2] (3)	Sec. 236 (4)	Total (5)
Alabama	29,214	90	638	----	29,942
Arizona	3,468	86	615	70	4,239
Arkansas	7,789	528	644	----	8,961
California	40,883	895	13,064	2,541	57,383
Colorado	4,371	308	702	----	5,381
Connecticut	13,118	6	7,534	----	20,658
Delaware	1,909	----	253	----	2,162
Florida	22,007	2,159	1,760	470	26,396
Georgia	37,616	108	3,929	102	41,755
Idaho	336	----	32	----	368
Illinois	54,448	----	15,298	219	69,965
Indiana	8,479	70	8,475	2,453	19,477
Iowa	902	352	382	347	1,983
Kansas	1,778	550	2,505	149	4,982
Kentucky	15,516	12	1,099	573	17,200
Louisiana	19,521	726	2,159	62	22,468
Maine	657	----	471	----	1,128
Missouri	12,838	150	5,337	713	19,038
Massachusetts	25,403	772	13,146	----	39,321
Michigan	15,552	525	12,674	1,402	30,153
Minnesota	9,750	121	1,518	22	11,411
Mississippi	6,189	252	344	----	6,785
Missouri	12,053	118	5,689	----	17,860
Montana	1,007	60	73	----	1,140
Nebraska	5,497	40	844	120	6,501
Nevada	2,176	100	772	----	3,048
New Hampshire	1,970	----	----	150	2,120
New Jersey	38,138	309	5,911	----	44,358
New Mexico	2,070	645	694	140	3,549
New York	89,593	568	11,141	134	101,436
North Carolina	17,735	144	2,176	400	20,455
North Dakota	755	----	44	----	799
Ohio	30,280	1,098	3,952	1,106	36,436
Oklahoma	3,004	196	2,023	481	5,704
Oregon	4,313	304	536	92	5,245
Pennsylvania	51,730	131	3,652	238	55,751
Rhode Island	6,317	94	1,204	40	7,655
South Carolina	6,777	384	572	688	8,421
South Dakota	785	198	50	----	1,033
Tennessee	25,542	2,014	2,252	219	30,027
Texas	37,175	2,809	11,351	2,802	54,137
Utah	30	45	----	----	75
Vermont	330	----	336	----	666
Virginia	13,669	125	2,997	276	17,067
Washington	9,244	1,107	2,084	1,334	13,769
West Virginia	2,791	----	----	----	2,791
Wisconsin	6,448	163	1,007	104	7,722
Wyoming	55	60	----	----	115
Alaska	620	----	56	----	676
Hawaii	3,502	----	1,859	126	5,487
District of Columbia	10,321	66	3,399	----	13,786
Total	715,671	18,488	157,253	17,573	908,985

[1] The source for col. 1 was USHA Run 223.0, table 7, "Units Occupied by Tenants or Project Employees Required to Live in Public Housing as of Sept. 30, 1969." The distribution in col. 2 gives insured rent supplement projects with units under payment as of the same date. Units in projects with insurance in force as of Mar. 31, and Feb. 28, 1970, are given in cols. 3 and 4, respectively. Sources for cols. 2 through 4 were the "02" reports of HUD, specifically, 302, 2102, and 3602.

[2] BMIR signifies below-market interest rate financing at 3 percent in contrast to the rent supplement program under the same section which involves market rate (MR) insured mortgage financing.

TABLE 2.—THE DISTRIBUTION OF FEDERALLY ASSISTED RENTAL HOUSING IN RELATION TO THE NEEDS OF LOW-INCOME PERSONS OR FAMILIES, BY STATES

	Concentration of low-income males		Federally assisted rental units in relation to distribution of low-income males			Federally assisted rental units in relation to low-income urban families and unrelated individuals		
	Poverty index [1] (1)	Concentration rank [2] (2)	Percent assisted (3)	Service index (4)	Rank [3] (5)	Percent assisted (6)	Service index (7)	Rank [3] (8)
Alabama	140	43.5	8.28	134	40.0	10.83	191	49.0
Arizona	87	12.5	3.92	64	22.0	3.58	64	17.0
Arkansas	174	50.0	3.54	58	17.5	5.93	105	33.0
California	79	7.0	5.09	83	29.0	3.47	61	15.0
Colorado	95	19.0	3.70	60	19.0	3.13	55	14.0
Connecticut	67	3.0	14.02	227	49.0	10.63	186	48.0

	Concentration of low-income males		Federally assisted rental units in relation to distribution of low-income males			Federally assisted rental units in relation to low-income urban families and unrelated individuals		
	Poverty index[1]	Concentration rank[2]	Percent assisted	Service index	Rank[2]	Percent assisted	Service index	Rank[2]
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8
Delaware	78	6.0	7.14	114	36.5	7.28	126	38.0
Florida	100	23.0	5.71	92	31.0	3.99	70	18.0
Georgia	127	39.0	9.68	157	42.0	12.24	215	50.0
Idaho	111	26.0	.62	10	3.0	.87	15	3.0
Illinois	83	10.0	10.51	170	45.0	7.86	139	40.0
Indiana	91	14.5	5.78	93	33.0	5.52	97	29.0
Iowa	125	37.5	.78	13	4.0	.94	17	4.0
Kansas	116	30.0	2.54	41	14.0	2.79	50	12.5
Kentucky	149	47.0	4.89	79	27.0	8.31	147	42.0
Louisiana	117	31.5	7.01	114	36.5	6.87	121	36.0
Maine	133	40.0	1.19	19	5.0	1.44	24	5.0
Missouri	75	4.0	9.27	150	41.0	8.44	148	43.0
Massachuestts	87	12.5	11.33	183	47.0	7.44	132	39.0
Michigan	83	10.0	5.66	92	31.0	5.20	92	26.5
Minnesota	112	27.0	3.78	61	20.0	4.48	79	22.0
Mississippi	182	51.0	2.16	35	11.0	4.27	76	19.5
Missouri	122	36.0	4.32	70	24.0	4.32	76	19.5
Montana	121	34.5	1.88	32	10.0	2.43	45	8.5
Nebraska	125	37.5	4.91	80	28.0	6.02	107	34.0
Nevada	59	1.0	15.47	262	50.0	13.85	243	51.0
New Hampshire	92	16.5	4.41	70	24.0	4.39	77	21.0
New Jersey	65	2.0	13.04	211	48.0	8.65	153	44.0
New Mexico	104	24.5	4.73	76	26.0	5.27	93	28.0
New York	77	5.0	9.90	161	43.0	5.79	102	32.0
North Carolina	140	43.5	3.84	62	21.0	6.67	118	35.0
North Dakota	153	48.0	1.17	20	6.0	2.50	45	8.5
Ohio	82	8.0	5.66	92	31.0	4.66	82	23.0
Oklahoma	134	41.5	2.28	37	12.0	2.38	42	6.5
Oregon	99	21.5	3.55	58	17.5	3.52	62	16.0
Pennsylvania	91	14.5	7.10	115	38.0	5.57	98	30.0
Rhode Island	104	24.5	11.05	179	46.0	6.97	124	37.0
South Carolina	141	45.0	3.03	49	16.0	5.03	89	24.0
South Dakota	158	49.0	1.35	21	7.0	2.49	42	6.5
Tennessee	144	46.0	7.20	117	39.0	9.75	172	45.0
Texas	114	29.0	5.82	94	34.5	5.19	92	26.5
Utah	83	10.0	.12	2	1.0	.11	2	1.0
Vermont	118	33.0	1.73	27	9.0	2.72	47	10.0
Virginia	117	31.5	4.29	70	24.0	5.14	91	25.0
Washington	96	20.0	5.81	94	34.5	5.62	99	31.0
West Virginia	134	41.5	1.57	26	8.0	2.70	48	11.0
Wisconsin	99	21.5	2.52	41	14.0	2.81	50	12.5
Wyoming	113	28.0	.45	6	2.0	.55	8	2.0
Alaska	121	34.5	2.62	41	14.0	9.14	140	41.0
Hawaii	92	16.5	10.26	169	44.0	10.20	185	47.0
District of Columbia	93	18.0	25.30	408	51.0	10.21	180	46.0
Total average	100		6.17	100		5.66	100	

[1] The poverty concentration index is derived by dividing the fraction of all U.S. low-income males living in any State by that State's share of the national population, and multiplying by 100. An index number above 100 indicates above-average frequency of poverty.

[2] Ranked are 51 units, or the 50 States and the District of Columbia. The rankings are from lowest incidence of poverty (in col. 2) and lowest relative frequency of housing assistance (in cols. 5 and 8).

Column 4 of Table 2 presents indices of the provision of federally assisted rental units in relation to the 1959 interstate distribution of income-earning males at least fourteen years of age whose income was less than $2,000. Such males are regarded as potential household heads. For column 7, the number of families and unrelated individuals living in urban areas and having a total annual income of less than $4,000 in 1959 is used to define need base. In either case, the interpretation of the indices is simple. An index above 100 indicates relative oversupply of assisted rental units, while an index below 100 signifies undersupply in relation to the average frequency of housing assistance for all low-income population units nationwide. A number of 150, for instance, means that service levels in relation to needs were 50 percent higher in a particular state, than on the average for the nation, that is, a low-income household in that state is 50 percent more likely to receive housing assistance than the typical low-income U.S. household. In Maryland, for example, the number of assisted rental units was equal to 9.27 percent of the number of low-income males in that state, compared to 6.17 percent on the average for the nation. Dividing 9.27 percent by 6.17 perecnt and multiplying by 100 yields the service level index of 150.

The latest income distributions available in this detail are from the 1960 census, and some risk is involved in assuming that they have remained sufficiently constant over time to establish the need distributions relevant to the stock of assisted housing existing in 1969. Also, no adjustment is attempted for equivalence—the different incomes required by families of varying size and in different places to support a given standard of living.[5] Furthermore, the choice of appropriate income cutoffs is inevitably somewhat arbitrary, though it must be kept in mind that 1959 incomes of $4,000 would correspond to more than $5,500 in 1970, because of inflation alone.

Not surprisingly, a disproportionately large population of poor persons in any state also implies a disproportion of poor families. Little variation in the interstate distribution of low-income households is observed if the poverty threshold is varied in either direction. The coefficient of rank correlation between the order of states by the index of assisted housing provision in relation to low-income males (column 5 of Table 2) on the one hand, and in relation to poor urban families and unrelated individuals (column 8) on the other, for example, is 0.87 with standard error of 0.14. Hence, we do not believe that our results are overly sensitive to variations in definitions and concepts within the relevant range.

There are several reasons why "imbalance" as evidenced by the chosen criterion may be perfectly desirable. For instance, if the price of rental housing services relative to that of other "necessities" is unusually low in any particular area, the case for federal assistance and additions to supply is correspondingly weak. We doubt, however, that variations in excess demand are nearly as wide and policy-significant over areas as large as states, as they would be for individual locations. Intrastate variations are likely to be much greater than interstate variations, though differences in regional vacancy rates are substantial and tend to persist.[6]

It can also be argued that if the percentage of households with low incomes is exceptionally small in any state, filtering is much more likely to produce an adequate supply for them, since there is more housing to filter down and fewer low-income households to filter to. In addition, certain external costs imposed by the poor on each other and on the rest of society may be expected to increase more than in proportion to their population share in any area. Much current thinking on shrinking local tax bases, "tipping points," and the breakdown of municipal services and school systems depends on such notions.[7] Within HUD, the popularity of "open communities planning" and the fostering of social, economic, and racial mix reveals a similar conviction.

Accepting this premise, we postulated that the percentage of the low-income population served should be higher in relation to the average service ratio, the greater the share of poor persons in the total population of any state. This normative expectation was not upheld by the date: the coefficient of rank correlation between the orderings in columns 2 and 5 of Table 2 is significantly negative (−0.53), rather than positive. Doubling the percentage of low-income persons in a state does not cause the supply of assisted rental housing to double, let alone more than double as we had hoped. Instead, it appears to imply a significant reduction in the proportion of the poor supplied with assisted housing.[8] Our index of the provision of federal housing in relation to need is about halved as the low-income population share

Footnotes at end of article.

(the denominator) doubles. Recall that the service level index is derived by taking the ratio of the number of assisted rental units to the number of low-income households in any state, and then dividing by the equivalent ratio for the nation.

While there are wide and, as yet, unexplained variations, total population size, regardless of the extent of poverty, provides the best predictor of how federally assisted housing is allocated to states. Thus, most low-income states are undersupplied in relation to need while high-income states are oversupplied. For example, Connecticut and Nevada and the District of Columbia had the highest ratios of federally assisted rental units in relation to need (an average of twice the ratio experienced throughout the nation) and had relatively low concentrations of poor people. On the other hand, taking the mean of the service indices in columns 4 and 7, the frequency of housing assistance is found to be less than half of the national level in the states of Idaho, Iowa, Kansas, Maine, Montana, Oklahoma, the Dakotas, Utah, Vermont, West Virginia, Wisconsin, and Wyoming. Their average rank of 34 (out of 51) indicates that, on average, they have a relatively high concentration of low-income persons.

On the basis of total population irrespective of income, significant differences still remain when large regions, rather than states, are considered. The New England states (HUD Region 1, Boston), for instance, have a service level index of over 130, while Northern Mountain states (HUD Region 8, Denver) have an index of less than 40. The regions thus identified on the basis of population as experiencing relative oversupply or undersupply are similar to those identified on the basis of number of poor people.

POLICY CONSIDERATIONS

On the average for the nation, there are about six units of assisted rental housing available for every 100 low-income households. However, in states like Utah, Wyoming, and Idaho, there is only one-half unit per 100. By contrast, in Connecticut, Nevada, and the District of Columbia, at least twelve units per 100 households are available, or around twenty-five times as many as in the least supplied states. Hence, the probability of a low-income family receiving federal housing assistance varies drastically from state to state. In general, the richer the state, the more assisted housing units are provided for its (relatively fewer) low-income families, and the poorer the state, the fewer units provided.

In terms of regions, there appears to be a systematic undersupply in the West and an oversupply in relation to needs in the East.[9] The middle tier of states, from the Great Lakes to the Gulf, is about average. Regions also differ in their use of the various rental programs. There is a remarkable inverse relation between public housing and rent supplement units and the concentration of BMIR units in the North Central region. While public housing is heavily concentrated in the Northeast, the rent supplement program is primarily serving the South and the Southwest. Given these differences, changes in the relative importance of programs will affect the regional incidence of housing assistance benefits in a manner which should be anticipated in policy planning.

For reasons of both equity and efficiency, it seems imperative that the spatial distribution of housing assistance should more closely reflect the distribution of low-income families. The probability of a low-income family receiving housing assistance should not depend on where it lives. The distribution of substandard housing units may perhaps be used as a secondary criterion in funding, since its adoption would serve, in effect, to give added weight to heavy concentrations of low-income households. Since any adjustment in the existing housing stock—now seriously unbalanced in relation to needs—can be achieved only gradually, a long-term plan is required first to compensate for past "mistakes," and then to maintain a better balance between changing needs and long-lived stocks. On the part of HUD, this requires active management of the spatial distribution of the annual additions to supply, rather than passive reliance on application backlogs, past funding and performance, and "local interest."

FOOTNOTES

[1] Averaged over the life of the projects on the assumption that existing Section 221 (d) (3) projects will eventually be converted to Section 236 status. These estimates were prepared in 1970 under Sol Ackerman, until recently with the U.S. Department of Housing and Urban Development (HUD).

[2] In HUD's program memoranda, income redistribution has long been identified as the principal objective of the assisted programs, while the stated objective of those programs not involving major planned subsidies is to supplement the private market. See, William B. Ross, "A Proposed Methodology for Comparing Federally Assisted Housing Programs," *American Economic Review, Papers and Proceedings* (May 1967), pp. 91–100.

[3] See, for instance, Walter Smart, *et al.*, *The Large Poor Family—A Housing Gap*, Research Report No. 4 (Washington, D.C.: The National Commission on Urban Problems, 1968). Also, see the author's "The Impact of Rent Formulas and Eligibility Standards in Federally Assisted Housing on Families of Different Size," in Report of the President's Committee on Urban Housing, *Technical Studies*, Vol. 1: *Housing Needs and Federal Housing Programs* (Washington, D.C.: 1968), pp. 103–112.

[4] For instance, by 1970, 1,805 units of assisted housing were available for occupancy on Indian reservations in Region 8, while 1,260 units were available in Region 6. HUD Region 8 (Denver) includes Montana and the Dakotas, while Region 6 (Fort Worth) contains Oklahoma and New Mexico. "Indian Housing" is included in the respective program totals. Much of it is provided under Low-Rent Public Housing—Turnkey III.

[5] Some more attention is given to the problem in a longer paper, available upon request, on which this report is based.

[6] These differences seem to have narrowed in recent years. For instance, in 1964, rental vacancy rates in the Northeast, North Central, South, and West were 4.7 percent, 7.3 percent, 8.2 percent, and 10.5 percent, respectively. Corresponding estimates for 1970 are 2.5 percent, 5.4 percent, 6.6 percent, and 5.3 percent. It should be noted that differences in vacancy rates do not necessarily allow one to infer equivalent differences in excess supply, since normal (equilibrium) vacancy rates must be expected to be higher in regions with greater gross and net rates of population movement.

[7] Jay W. Forrester, *Urban Dynamics* (Cambridge, Mass.: MIT Press, 1969), especially pp. 65–101.

[8] This conclusion cannot be fully substantiated with rank correlation analysis alone. Rather, it is based on an ordinary least squares regression of the service level index (*SLI*) in column 4 on the poverty concentration index (*PCI*) in column 1 of Table 2. With the standard error in parentheses, the results were: $SLI = 240 - 1.339\ (0.335)\ PCI$, $r = -0.50$, F—Value = 1b, $S_e = 66$, $n = 51$. A distribution strictly in proportion to population implies that a one point increase in *PCI* reduces *SLI* by about the same amount. In fact, the absolute value of the coefficient of PCI is even greater than unity, though not significantly so.

[9] A longer paper, available on request from the author, discusses regional differences in more detail

THE REPUBLIC OF CHINA LEAVES THE UNITED NATIONS

Mr. GOLDWATER. Mr. President possibly the only element of dignity and decency in the recent debacle at the United Nations was when the representative of the Republic of China made the statement that his Government would no longer take part in the proceedings and left the hall.

The head of the Chinese delegation, Mr. S. K. Chow—who was, up until May of this year, the Ambassador to the United States—released a statement which I believe not only sums up the history of the Chinese Red aggressors, but also serves as a prophecy of what we may expect in days to come, now that the Reds have been invited in.

Mr. President, I ask unanimous consent that the statement made by Chow Shu-kai, Minister of Foreign Affairs for the Republic of China, be printed in the RECORD.

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

STATEMENT OF HIS EXCELLENCY CHOW SHU-KAI

On behalf of the Government of the Republic of China, I wish to make the following solemn declaration:

The Republic of China—a participant in the Dumbarton Oaks talks, one of the four sponsoring Powers and the San Francisco Conference, a Charter member of the United Nations, a permanent member of the Security Council—has now decided to withdraw from the Organization which it helped establish.

For the establishment of the United Nations mankind has paid a terrible price. The price was the blood of millions of men and women who had lost their lives during the Second World War.

That unprecedented tragedy was brought about by statesmen who had been in a special position to shape the destiny of the world but whose political short-sightedness and lack of moral courage, whose preoccupation with what they had considered to be the interests of their respective countries of that time, whose timidity in the face of war threats, whose willingness to buy peace at any price, had made war inevitable. The League of Nations, deserted by those States who had brought it into being, was unable to act while time remained. The world thus drifted into disaster.

When Neville Chamberlain returned from Munich in 1938 he told the world that he had brought peace with honor. What he had in fact brought was not peace, still less honor, but the prelude to an unprecedented war. This lesson of history should never be forgotten.

During the Second World War more than ten million Chinese people lost their lives. The destruction of property was incalculable. It was due to the firm and farsighted leadership of President Chiang Kai-shek and the determination and indomitable courage of the Chinese people that the war in the Pacific was finally won. Magnanimous towards the defeated countries after the achievement of victory and desirous of bringing about lasting peace in the world, President Chiang worked hard for the establishment of the United Nations. It was not without reason that the Republic of China was specified in Article 23 of the Charter as a permanent member of the Security Council.

For twenty-six years the Republic of China has faithfully discharged its Charter obligations. It has played not a negligible part in the decolonization process. It has cooperated

with other members of the United Nations in the economic, social, cultural, educational and health fields. No one can gainsay the fact that the Republic of China has been a loyal member of the Organization. To deny the Republic of China of its rightful position in the United Nations is to violate the Charter and negate the noble and sacred principles and purposes upon which the United Nations was founded.

Those who advocate the seating of the Chinese Communist regime base their argument on what they regard as realism. But the existence of the criminal Communist regime is one thing and the acceptance of that criminal regime as a member of the United Nations is quite another. The purpose of the United Nations is to suppress the crime of aggression and not to allow the aggressor to get away with impunity, still less to bow before force and thus forfeit its own *raison d'etre*.

The anti-Communist struggle of the Republic of China has a two-fold objective: on the one hand to protect the fundamental rights and freedom of the Chinese people and on the other to preserve the peace and security of the world as a whole. Today, although the Chinese mainland is under the occupation of a rebel regime, the Government of the Republic of China continues to exercise its sovereignty on Chinese soil, continues to struggle for the deliverance of the enslaved millions from Communist tyranny, and continues to work for the preservation of international peace and security. Those who press for the so-called "restoration of lawful rights" of the Communist regime in the United Nations is to deny the Government of the Republic of China of its right to liberate the enslaved Chinese people on the mainland, to allow the Communist regime to use the 700 million captive people as an instrument to threaten international peace and security, and thus to act as accomplices of aggression.

During the war years, the Chinese Communists, instead of fighting the enemy, used the opportunity to expand their own forces. At the end of World War II, they received huge quantities of captured Japanese arms and ammunition from the Soviet occupation forces in Manchuria. They were then ready to challenge the authority of the Central Government and eventually to occupy the whole of the Chinese mainland. In the twenty-two years since the establishment of the Communist regime, they have committed innumerable crimes against the Chinese people, the likes of which Chinese history has never known. Some of the most heinous ones are as follows:

1. The Communist regime has murdered over fifty million innocent people and confiscated all their properties. Under its tyrannical rule, the people have lost all their basic rights and fundamental freedoms: their dignity as human beings, their right to pursue happiness, even their freedom to cry and to be silent. The farmers have been reduced to serfs, workers to slaves, and traders to criminals.

2. It created the so-called Red Guards at the height of the so-called Great Cultural Revolution. The same Red Guards have now become targets of persecution. Those who have survived the struggles are being sent to the countryside for re-education through hard labor.

3. It has denied to the people their freedom of worship. Churches and mosques have either been destroyed or confiscated; both the clergy and the laity have been persecuted and imprisoned.

4. It has destroyed the Chinese family system. It has forced the separation of husbands and wives as well as their children. It has thus demolished the basis of Chinese culture and reduced human beings to the level of the inmates of a zoo. It has transformed the 700 million people of the mainland into instruments of aggression.

5. It has subjected the ethnic minorities to inhuman oppression. Tibetans and the Uighurs of Sinkiang now face the danger of extinction.

6. It participated in the aggression against the Republic of Korea and was branded in 1951 by the General Assembly as an aggressor.

7. Its aid to Hanoi has expanded and prolonged the war both in Vietnam and Laos. It has fomented unrest and "people's war" in many parts of Southeast Asia. It has, on the mainland of China, training centers for guerrilla warfare, with young men from various parts of the world being trained in subversive tactics for eventual use in their own countries. Its subversive activities have already been extended to the Middle East, Africa, North and Latin America.

8. It is one of the biggest suppliers of narcotics. The foreign exchange thus obtained has been used for subversive purposes in various countries.

9. The purposes of its education has been both chauvinistic and xenophobic, with the objective of militarizing the whole population. It has publicly proclaimed that it would not hesitate to sacrifice one half of China's population in a nuclear war.

10. In its Party Constitution it has made anti-U.S. imperialism, anti-Soviet revisionism and anti-all reactionary forces the basis of its foreign policy. In other words, it intends to overthrow all those who refuse to adhere to Maoism. In has never concealed the fact that its present gestures of goodwill is part of the "enlarged and strengthened international united front of anti-imperialist struggle." If we are not short-memoried, we should remember that more than a decade ago Mao Tse-tung's slogans were "lean to the side of the Soviet Union" and "Five Principles of Peaceful Co-existence." The culmination of the "peaceful co-existence" period was the convening of the Bandung Conference. It did not take long for the Soviet Union to become an implacable enemy and the countries which participated in the Bandung Conference to become the targets of subversion and even armed attacks.

The Chinese Communist regime is oppressive at home and aggressive abroad. It has publicly proclaimed it intends to "thoroughly reform" the United Nations or else to establish a new one. Once it has been seated both in the General Assembly and on the Security Council, it will surely transform the United Nations into a Maoist front and a battlefield for international subversion. It will use the veto as an instrument for the protection of its subversive activities and for undermining the Western democracies. The United Nations would then be a center for the promotion of war and aggression.

The Communist regime is a rebel set-up. It is based on force and violence. It has never had the moral consent of the Chinese people. That it was an aggressor in Korea is still on the books of the United Nations. To have it replace the Republic of China as a member of the United Nations and as a permanent member of the Security Council is to have a murderer sit as judge in a criminal court. By so doing, the United Nations will spell its own doom.

There are those who think the participation of the Communist regime will enhance the prospect for peace. The idea is to subject the aggressive regime to the discipline of international public opinion. This is dangerous nonsense. It is like to tie a tiger with a straw rope.

The Republic of China cannot let the majestic headquarters of the United Nations become the place where justice and law yield place to lawlessness and injustice. It has therefore decided to withdraw from the Organization of which it was one of the founders. The responsibility for this state of affairs must be borne by those who have sacrificed the lofty principles of the Charter on the altar of expediency. They will have to answer to the judgment of history and posterity.

The Government of the Republic of China wishes to take this opportunity to express its profound appreciation of the support given to it by friendly governments during the past twenty-two years. It can assure them that it will continue to struggle for the realization of the purposes and principles enshrined in the Charter.

I wish to state once again that the Chinese Communist regime is the enemy of the Chinese people, the enemy of international peace. Internally, the power struggle goes on with unabated ferocity. It is a regime unsupported by the people. Its so-called Chief of State has long ago disappeared. It cannot possibly represent the 700 million people in the international community. It is illegal for the United Nations to let it occupy the seat of China.

To overthrow the rebel Communist regime and restore freedom to the Chinese people is the common objective of all Chinese. It is also the unshirkable responsibility of the Government of the Republic of China. The Government of the Republic of China, in order to realize the aspirations of the Chinese people, will struggle on until the Communist regime is overthrown. The admission of the Communist regime to the United Nations will in no way affect the determination of my Government to liberate the mainland.

The Republic of China is fighting for law and justice. It has done so many times before, often without allies and without outside aid. It is our firm conviction that right will eventually triumph over might and justice will sooner or later prevail over injustice.

KENNEDY ADDRESS ON CHINA

Mr. McGOVERN. Mr. President, on last Friday, October 29, the Senator from Massachusetts (Mr. KENNEDY) delivered what I consider to be an immensely important address on U.S. relations with the People's Republic of China.

Since the United Nations General Assembly vote on seating the People's Republic of China, I have maintained that the only defeat involved was a rejection of the strategy adopted by the Nixon administration. As Senator KENNEDY pointed out:

> Far from being an unmitigated defeat, the vote last Monday is full of hope for virtually everyone. It is full of hope for the U.N., which now becomes for the first time in more than twenty years an organization which is truly representative of all the major nations of the world.
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> It is full of hope for world peace, which cannot help but move ahead, as China begins to participate in the important councils of the world. And it is full of hope for the thrust of President Nixon's China policy, which is clearly looking to the future and to the development of broad relations with Peking on every front.

Our greatest need now is to abandon the bitterness and intemperance which has characterized the administration's response thus far, and then get on with the task of accepting the reality which most of the world has adopted before us. We must reject the counsel of the true isolationists, who would grasp the vote as cause for slashing American support for the United Nations, and catch hold of this opportunity to build a truly effective organ for world peace and justice.

Mr. President, I ask unanimous consent that Senator KENNEDY's address be printed in the RECORD.

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

ADDRESS BY SENATOR EDWARD M. KENNEDY—THIRD NATIONAL CONVOCATION: THE CHALLENGE OF BUILDING PEACE

I am honored to be here with you today and to have the opportunity to address this important, and, as it turns out, extremely timely international convocation on United States-China relations.

Rarely, I think, has a single China conference commanded so much attention in America and throughout the world, or attracted so many distinguished participants from this country and overseas.

Already, in the brief period since the Fund for Peace began this imaginative series of convocations on the challenge of building peace, these annual meetings have made important contributions to some of the most difficult issues of foreign policy facing America and the world community.

Last year's symposium, held in April 1970, was an important step in the development of improved relations between the United States and the Soviet Union. It was a welcome example of accommodation between our two nations, coming as it did at the especially difficult time of escalating American military involvement in Cambodia and escalating Soviet involvement in the Middle East.

Today, we meet at another difficult time, a time of rapid change in relations between the United States and China, a change accelerated by the sudden dramatic vote in the United Nations General Assembly last Monday evening to admit Peking and expel Taiwan.

By the accident of timing of the vote, we have a magnificent opportunity at this Convocation today to define the policies we shall need in the future, as we seek to dispel the confusion and emotion surrounding Monday's vote, and adjust ourselves to the new reality of Peking in its rightful place as a legitimate member of the United Nations and the world community.

In thinking about this address in recent weeks, I had hoped to come here today to speak about some of the long-run aspects of America's unfolding relations with the People's Republic of China.

I had hoped to discuss with you the difficult path America will have to chart in the months and years to come, if President Nixon's pending visit to Peking is to be a fixed star on the road to peace instead of a passing comet in an American election year.

I had hoped to deal briefly with the United Nations issue, and then turn to what I see as three of the deepest and most complex problems we now face with China—the establishment of diplomatic relations between the United States and Peking, the status of Taiwan, and the future of America's defense commitment to the Island.

But that was before the vote last Monday. In the wake of America's stunning defeat in the General Assembly on the issue of China's representation, a new and much more immediate issue has arisen—the danger that the rising tide of domestic passions unleashed in this country in many quarters in the aftermath of the vote will so impair the participation of the United States in the United Nations that the organization itself will cease to have an effective role in American foreign policy.

The pages of the Congressional Record this week fill me with distress. Senator after Senator, liberals and conservatives, Republicans and Democrats alike, rose to castigate the vote, in terms that left no doubt of their view that the United Nations had treated America badly and deserved a reduction in our support.

Congressman after Congressman spoke with special bitterness about nations who had eagerly pocketed American foreign aid and then opposed us on the vote. The distinguished leader of the President's own party in the Senate, renowned as a China scholar in his own right, ridiculed the small nations who opposed us in language entirely inappropriate to the Congress of the United States, and Vice President Agnew gave vent to his own special brand of right-wing rage.

The Senate of the United States last night had the good sense to defeat Senator Buckley's anti-U.N. amendment by a margin of nearly 2–1. I hope that any additional votes we have today on similar amendments likely to be offered by Senator Buckley and Senator Dominick will meet the same defeat.

The danger, I fear is that the rhetoric is only now beginning. Talk of reprisals fills the air. An unseemly search begins for the nations that "did us in." Unless responsible public officials and private citizens act swiftly to stem the tide, the passions will grow stronger. They will shake the very foundation of America's role in the organization which we helped to launch at San Francisco in 1945 and which, in spite of all its faults has become the world's best hope for the generation of peace we all desire.

Yet, forces have been loosed in America today that would turn the clock back fifty years in our struggle to bring the law of nations out of the jungle and into the sunlight of mutual and effective international cooperation. Not since the aftermath of World War I and Woodrow Wilson's long and losing struggle to bring America into the League of Nations has there been such a running tide of powerful conservative and isolationist opinion in this nation. And the controversy will grow worse so long as men of good will of every political persuasion in America continue to keep silent.

Tragically, the world now has the image of America as a giant in trouble thrashing about in all directions, condemning its friends, threatening retaliation, playing the role of the pitiful helpless giant we vowed we would never be.

In recent weeks, we have all become accustomed to the continuing appearances of President Nixon on television, as he announced good news in areas of foreign and domestic policy. We watched his effective and persuasive statement as he announced his dramatic trip to China. We watched the various statements on his important programs dealing with our economic crisis. We watched his recent effort to rally support for his Supreme Court nominations.

And yet he failed us this week when the need was greatest. Last Monday, a stunned America learned the outcome of the most important single vote in the entire twenty-five year history of the United Nations, a vote with profound significance for the peace of America and the world.

Why, it is fair to ask, why did President Nixon not take the obvious opportunity to go again before the nation to ease the shock, to explain the vote, and to call for understanding by our people?

Instead at first, he stood aloof. For a full day following the vote while the storm clouds gathered, every public inquiry was referred to the State Department. The President himself stayed silent. The leadership we needed was not there. Instead, the bitter initial reaction that set in began to grow worse. It was clear that a far greater effort than before would be needed to head it off.

And when, at last, the President's comments were reported, two days past the vote, his words were not the soothing call for understanding we hoped to hear, but a petty condemnation of the conduct of some nations on the floor of the General Assembly, because they reacted with too much "glee" at the announcement of their success.

And so, as in the case of his comment on the Calley trial, we had the spectacle of our President playing to the worst instincts in his party and the nation, pouring fresh fuel upon the fire, inciting further passions against the United Nations, abdicating his responsibility at the very time the need was clearest.

What a magnificent occasion he missed to demonstrate the wisdom, vision, and leadership that millions of Americans were seeking at this moment of doubt and confusion over the China question in American foreign policy, an issue which has plagued us since the end of World War II and which has always generated deep conflicting emotions in our people.

How easy it would have been to reassure us all about the real significance of the action by the General Assembly. How easy it would have been to emphasize that, regardless of the vote, America's historic deep commitment and friendship with Taiwan stood unimpaired. How easy it would have been to focus the attention of our people on all the new horizons opened to us by virtue of Peking's entry into the world community.

We know that the participation of Peking is essential if we are to make any real progress on all the great international issues of our time, especially in areas like nuclear arms control, disarmament, international economic affairs and world development, the international crisis in refugees, problems of pollution and poor health, poverty and disease.

We know that arms control agreements can never be completely adequate until they have the signature of China as a nuclear power.

We know that in East Bengal and other troubled areas, no permanent solution is possible so long as China remains an outcast in the world community.

Above all, we know that in Vietnam and the rest of Indochina, no permanent settlement for peace can be reached without Chinese participation and acceptance.

Instead, so far, the President has let the opportunity pass, and the consequences have been severe. Doesn't he realize that even his dramatic visit to Peking has been tarnished?

We see the damage all around us. Know-nothings in America give vent to tirades that would topple the foundation of the United Nations if they could.

Two decades of American financial assistance to every corner of the world are jeopardized as our entire foreign aid program hangs in the balance on the floor of the Senate of the United States.

Where is the vision we had in other days? Where are the voices of men like those who created the Marshall Plan and helped rebuild a scarred and frightened world in the aftermath of World War II? Where is the spirit of the leaders we used to have, who forged the bonds that brought America out of its isolation of the past, and gained us the respect of other nations as a giant with a difference, a giant with the compassion to use our power wisely, for the benefit of mankind everywhere?

All we see now is retaliation and retrenchment. And so, when men in high positions abdicate their true responsibility, it falls to others to fill the gap, and lead America back to the role we ought to play.

If any real and lasting good, therefore, is to come from this important convocation today, it should be to teach America the lesson that now we have a new and far deeper responsibility than ever before in the United Nations, if only we can find the restraint and understanding to meet the challenge.

Far from being an unmitigated defeat, the vote last Monday is full of hope for virtually everyone. It is full of hope for the U.N., which now becomes for the first time in more than twenty years an organization that is truly representative of all the major nations of the world.

It is full of hope for world peace, which

cannot help but move ahead, as China begins to participate in the important councils of the world. And, it is full of hope for the thrust of President Nixon's China policy, which is clearly looking to the future and to the development of broad relations with Peking on every front.

Equally important, the vote is not really a disaster or even a defeat of any devastating consequence for the people of Taiwan. It is certainly not the end of the world for Chiang Kai-Shek and his government. The deep and longstanding relations between the United States and Taiwan remain firm and undiminished. The growing economy of the Island remains strong and active.

Nor does the vote even mean the permanent end of representation in the United Nations for the people of Taiwan.

Inevitably, in the months and years to come, Taiwan and Mainland China will resolve their mutual hostilities and antagonisms.

I am confident that when that day arrives, the people of Taiwan will again be represented in the United Nations, in accord with whatever status the Island finally acquires.

And if, in some small way, the shock of this week's vote can contribute to that process of peaceful change and accommodation for Taiwan, then years from now, history may well record that the vote was not really a defeat at all for the people of Taiwan, but the first and most important step forward on the long and difficult and peaceful journey to a settlement of the status of that divided nation.

I would also like to discuss a number of additional observations about the recent vote. They help, I think to see the issue in its real perspective, free of the strong emotions that cloud it now.

First, to me, the overriding meaning of the vote is that, after 22 years of effort, the sand had finally run out of the American hourglass in our resistance to U.N. representation for the People's Republic of China. For a generation, the United States had pursued a rigid and backward policy of unrealistic diplomatic, political and economic isolation toward Peking. Finally, the irresistible logic of the reality of Mainland China and its 800 million people had become too strong to be denied.

Second, it helps, I think, to understand the vote, if we see the legal issue as so many other nations saw it—not as a question of the expulsion of a member state, but as a question of a change in the government of a nation that has undergone a civil war.

The membership of China as a sovereign nation in the General Assembly was never in any question, and the action is clearly not a precedent for the expulsion of any state. The only issue the Assembly really had to face was the question, who represents China, or, put a different way, who won China's civil war—Peking or Taiwan?

For more than two decades, the United States had pursued a policy that said Taiwan was China, and that Peking did not exist. We pursued a one China policy, but always, it was the wrong China.

Now, at last, when the old order has given way, we can hardly condemn the majority of nations who embraced a one China policy that has the right China.

It is significant that at the end of the debate, as it had repeatedly throughout the weeks of controversy, Taiwan itself refused to give up its claim to be the one China. It still maintained its right to speak for the hundreds of millions of Chinese on the Mainland.

In 1971, nearly a quarter of a century after the Nationalists had retreated from the Mainland to Taiwan, they still maintained the fiction that they governed all of China.

In that pretension lay the fundamental logical flaw of our dual representation position. The nations of the General Assembly were wise enough to spare the United Nations the prospect of seating two rival claimants in the China seat. In a very real sense, it was Taiwan itself that framed the issue, undercutting the American Rhetoric, and compelling the Assembly to choose between one China and the other—Peking or Taiwan, the right China or the wrong China—as the sole legitimate government of China. For 22 years, the answer had been Taiwan, and now it was time for Peking.

Even the most superficial reading of the debates on the floor of the General Assembly in the past two weeks demonstrates the grave doubts shared by many of our allies on the merits of the two China position we sought to put across.

For them, the American position offered the shadow of compromise, but not the substance. Call the roster of nations abstaining or voting against the American position, and you find the names of the overwhelming majority of our oldest and closest friends—nations like Britain, France, Norway, Sweden, Denmark, Belgium, the Netherlands, Austria, Italy, Canada, India and Ireland.

That's an impressive array of opposition by any standard, and they marshalled impressive arguments against the American position, arguments that are impossible to explain away on the basis of pique against America, special interests, or international power politics alone.

Rarely, however, has there been an issue in foreign policy in which the logic, reality, history and experience of the situation ran so deeply against the grain of the American people. We know that countless other governments have changed hands in other nations and have been accepted in the U.N. without bitterness or controversy. And yet, by reason of history, emotion, and a generation of petrified policy, China's civil war was different. However easy the answer may have seemed to many of our allies, it was not an easy answer for America, and it will be the task of scholars and public officials in the months and weeks to come to help America understand.

It also helps, I think, to emphasize that the U.N. vote was decided, as it should have been, by the will of a majority of the members of the General Assembly.

In the end, the so-called "important question" tactic, by which the United States sought to compel a two-thirds majority for the vote, came to naught, since most nations undoubtedly treated the procedural vote as a vote upon the merits.

If anything, the important question tactic probably contributed in a minor way to the outcome of the vote since for many nations, the tactic raised unpleasant memories of its annual use by the United States throughout the decade of the sixties to prevent representation for Peking.

As such, it had become a discredited device, akin to the filibuster rule in the United States Senate, whose only purpose was to frustrate the will of the majority.

The margin of the roll call vote itself was narrow—59–55, or, stated in percentage terms, 52%–48%. But if you weight the vote in accord with the populations of the nations voting, the margin becomes much wider—62% to 38% against the American position.

In other words, we lost the vote by a significantly larger margin when we look at the size of the nations voting against us. As we analyze our defeat in the days and weeks to come, it will be well to bear in mind that our greatest support tended to come from the smallest and weakest nations of the world, whereas the largest and most powerful nations tended to be against us.

The third point I would like to make is that, in spite of the admirable efforts of Ambassador Bush, it is impossible to say that the Administration's heart was really 100% in the fight to save Taiwan. Of course, in votes as close as the "important question" issue, it is impossible to single out one or another factor as the one that determined the result.

Inevitably, however, President Nixon's twin decisions to send Mr. Kissinger to Peking early in July and again six days before the U.N. vote were factors that must have weighed heavily in the vote of many nations. It is inconceivable that the President's decisions were reached lightly or without due regard for the risks they would entail for the U.N. vote.

We shall never know the full considerations that prompted the timing of the second Kissinger mission, at a juncture so absolutely critical for the U.N. issue. Perhaps the timing was a coincidence, and perhaps not. We shall probably never know whether this was a gesture exacted by Peking as the price of the President's coming visit, prompted in part as an antidote to the unfavorable publicity caused by the earlier reports of wide disturbances in China.

What we do know is that many nations might legitimately have felt that America had placed its first priority on our own bilateral accommodation with Peking, and that, at best, the issue of U.N. representation for Taiwan was a satellite concern. To put it a slightly different way, if Kissinger I was a shock to the credibility of America's commitment to keep Taiwan in the General Assembly, then Kissinger II delivered the coup de grace.

It seems, therefore, that President Nixon and his Administration have only themselves to blame for the outcome of the vote and the distressing passions that have now been aroused in the United States. The tragedy is that it never had to be this way.

It could all have been handled so very differently. Perhaps the Administration underestimated the strength of the conservative backlash that might ensue in a losing effort, when they allowed a football stadium atmosphere to surround the struggle over the U.N. resolution.

In a very real sense, Ambassador Bush was calling the signals in New York, but a different and louder signal was being called from Washington. Other nations saw it, and cast their votes accordingly. As a result, the passions and excitement aroused in the United States on the U.N. issue are a product more of our sporting spirit of identification with the underdog Taiwan, than of any realistic assessment of the issue or the true long-term interests of the United States and the world community. Carried away with our enthusiasm in the struggle, we ran with the ball in the wrong direction.

To me, the Administration's U.N. effort was doomed to failure from the beginning, because the price we would have had to pay for victory was too high. No one denies that in the intense lobbying of recent weeks, the United States has squandered enormous diplomatic capital among the nations of the world in the futile effort to hold back the tide of change. We shall never know the full price we had to pay to get the support of the 53 other nations who went down on the ship with the United States and Taiwan on the 'important question' vote. How deeply have we obligated ourselves to regimes whose policies we disapprove? What will be the cost in military and economic aid? What other promises have we made? How long will it take to heal the bruises we have left in nations like Italy and Mexico?

In some cases, at least, the price already seems clear. We know that on the vote last Monday, Greece, along with Luxembourg and Portugal, were the only NATO nations that took the American side. Ten other NATO nations were against us. Is it merely a coincidence that the same newspaper

which brought the headlines on the U.N. vote also carried front page stories announcing that a $50 million aerospace plant in Greece would be built with American financial aid?

Or take Japan. A long line of news reports last summer amply documented the intense pressures against Japan to cosponsor the ill-starred American resolutions. The newest parliamentary crisis in Tokyo this week is but the latest fruit of all that pressure.

Japan was the only other major power in the world to cosponsor our resolutions. Now that the resolutions have failed, increasing local pressure in Japan is being brought against the Sato government, not only from opposition parties in Japan united on this issue, but also now from strong and influential leaders within Mr. Sato's own party.

We had already seen three previous American shocks this year that severely jolted Japan—the announcement last July of President Nixon's visit to Peking, the imposition last August of the 10% surcharge on foreign imports into the United States, both of which took place without consultation with Japan, and the American ultimatum this fall that led to the recent textile quota agreement.

It is easy to see, therefore, why our U.N. policy and our other actions have jeopardized our long-term interest in stable relations with Japan. It is easy to see the heavy price we have had to pay in terms of our relations with our most important Asian ally.

No one can contemplate the crisis of the Sato government with anything but apprehension. If the government should fall, it would introduce drastic new uncertainties in the Japanese scene, and lead to the first real period of governmental instability there in many years.

Surely, if, as virtually everyone conceded, the U.N. issue was sure to be lost in 1972, if not in 1971, it is legitimate to ask whether the potential turmoil in Japan and the further embarrassment of Japanese-American relations was a price we had to pay this year.

Even if we had won the 'important question' vote this week, even if we had succeeded in preserving Taiwan's seat, it would have been a pyrrhic victory. The virtually unanimous support for Peking's representation by the 130 members of the United Nations would have been an empty gesture in the face of Peking's clear refusal to accept dual representation as a condition of her membership.

We may regret that Peking chose to be so adamant on this point. We certainly regret the unnecessary harsh and unconscionable language in which the Albanian resolution was cast.

But we could not doubt the strength of Peking's opposition to dual representation, or the sincerity of her clear refusal to enter the U.N. on that basis.

From the beginning, even before they were introduced, there was never any doubt that Peking would refuse to accept the American resolutions. As Allen Whiting has persuasively shown, that position had been stated clearly and unequivocally by Chou En Lai, and there was no real doubt that Peking would ever acquiesce in a two China policy. In essence, the President chose a "no-win" policy on the U.N. issue, and it is not surprising that so many nations refused to go along.

In closing, let me return once more to the theme with which I began. It is long past time for the Administration to act to end the appalling vacuum of leadership it has allowed to develop in the aftermath of the vote.

America and the United Nations stand at a turning point in history that holds extremely important consequences for the peace of every American and every citizen of every nation of the world. Only the President has the true capacity to bring our divided nation together. Only the President has the capacity to extinguish the passions he has helped inflame. Only the President has the capacity to make America understand. The times cry out for his healing leadership, and I hope that all of you who are here today, from so many different areas of public and private life, will join me in a call for prompt and effective action.

My own view is clear. The United Nations is more important to America today than it has ever been. There is no justification, no justification whatever, for us to reduce our financial support for the U.N. or any of its supporting agencies in these difficult and turbulent days.

The United States is not even the largest per capita contributor to the budget of the United Nations. There are at least six other nations—Canada, the Netherlands, Sweden, Denmark, Norway, and even the tiny Maldive Islands, about whom so much was heard in connection with the vote in the General Assembly last Monday—whose per capita contributions to the U.N. budget in 1970 surpassed the contribution of the United States.

America is big enough to accept the U.N. vote, without stooping to any mean and petty retaliation against the organization we helped to found. The principle of retribution has no place in American policy toward the United Nations. If we allow our passions to go unchecked, if we yield to the base instincts now so widely reported in the press, if we lash out against the United Nations in our frustration about the vote, millions of innocent people throughout the world—especially the children—will suffer as their lifeline to decent health and welfare through U.N. programs is cut off. But it is America herself who will suffer most. It is our own people who will be the poorer.

The United Nations has now matured into a world organization with a life of its own, independent of the domination of any world power.

Some may regret the passing of the era in which the United Nations was the New York Annex of our State Department. Others may regret the complications Peking will bring to U.N. life.

But no one who believes in the principle of a community of nations can doubt that is now a stronger and more viable institution.

Perhaps America could have afforded to let the League of Nations go its separate way half a century ago, but we cannot do the same today. The simple fact is that America needs the United Nations more than the United Nations needs America. All our hopes for harmony, prosperity, and future peace hang in the U.N. balance. In a word, the U.N. is now a better investment for America than it has ever been before.

The real question we have to ask ourselves is whether America is great enough to accept defeat with grace, and join hands with other nations as their equals, not their masters. I am confident that we can answer that question wisely, but only if we have the sort of leadership that can teach us to see the issue clearly.

PARALLELS BETWEEN THE GENOCIDE CONVENTION AND THE FUR SEAL CONVENTION

Mr. PROXMIRE. Mr. President, on January 30, 1964, the Senate by a vote of 80 to 0 gave advice and consent to the ratification of the Interim Convention on Conservation of North Pacific Fur Seals. This is a multilateral treaty among the United States, Canada, Japan, and the Soviet Union. Except for its subject matter it is similar in certain aspects to the Genocide Convention. Both treaties establish a crime, define the crime, call for enacting legislation, and establish the procedures for arrest and trial. The powers conferred and the obligations entailed by both are similar.

Some of the provisions of the Genocide Convention which have caused concern to its opponents have been law in the United States through the Fur Seal Convention for 7 years. To the best of my knowledge no party to the Fur Seal Convention has ever abused that treaty. As I hope to show, its existence and success speak in favor of ratifying the Genocide Convention.

Many questions have been raised about the Genocide Convention. Does it take authority away from the States and give it to the Federal Government? Is there an unconstitutional delegation of power to an international body? Will the American people be denied the protection of the Constitution? A comparison of the Fur Seal Convention and the Genocide Convention will shed some light on these questions and assist us in answering them. Such a study will help us see that there are no risks but rather many benefits to our ratifying the Genocide Convention.

Mr. President, the purpose of the Genocide Convention is to protect people, including the American people, from the horrors of mass murder. It is my desire that the American people and people throughout the world be protected and allowed to prosper in peace. That is why I support the Genocide Convention. That is why I believe that the Senate should ratify it.

EIGHTH ANNUAL CONGRESSIONAL CUP INVITATIONAL DEBATE TOURNAMENT

Mr. SPARKMAN. Mr. President, as a trustee of the American University here in Washington, I am pleased to call attention to the Eighth Annual Congressional Cup Invitational Debate Tournament, to be held on the campus of the American University on March 18 and 19, 1972. I take great pride in the accomplishments of this great university. This debate tournament is another of the wonderful events that American University has throughout the year. Since its inception in 1964, the tournament has attracted some of the best collegiate debaters in the Nation to match minds in reasoned discourse on a topic of national import. This year, tournament officials hope to attract over 50 two-man varsity teams, who will debate on both sides of the national collegiate debate topic, "Resolved: That greater controls should be imposed on the gathering and utilization of information about U.S. citizens by Government agencies;" a topic of current national concern and an issue which may have great impact on our Nation's future.

The schedule of events at the tournament includes six preliminary rounds of debate, culminating in a final round between the top two teams. The first two rounds of the tournament will be paired on a regional dispersal system, pitting teams from widely separated parts of the country against each other in competition. The last four rounds will be power-paired, matching strong teams against strong and weak against weak, on the

basis of their performance as the tournament progresses. The final round of the tournament, to determine the 1972 champion, will be between the two teams with the best records after six rounds, and may be judged by a panel of debate coaches and Members of Congress.

The winning team will be awarded possession of the 38-inch high rotating congressional cup complete with its traditional split of champagne, and will be able to display the cup at their school during the ensuing year. Previous winners of this trophy include Boston College, Massachusetts Institute of Technology, George Washington University, Rutgers University, Stanford University, University of Maryland, and the University of Richmond. In addition, this year's winner will be awarded a permanent trophy which it may display in its debate office. Second, third, fourth, and fifth place team awards will also be presented. The top five individual speakers will be given silver brandy snifters to indicate their accomplishments in the forensic art.

Overall, the Congressional Cup Invitational Debate Tournament seems to be a very worthwhile activity, allowing some of our country's top students an opportunity to meet and discuss a national problem in a constructive way, and I heartily endorse this means of self-expression.

INCREASING IMPORTANCE OF COMMUNITY COLLEGES

Mr. FANNIN. Mr. President, of all our concerns none is more important than our educational endeavors. We may question and debate what should constitute national priorities, but education would be included without serious dissent. If there is one subject which engages the daily attention of governments, governmental officials at all levels, parents, and many other citizens, it is the quality of our educational institutions. Our society, in short, has placed great emphasis on education believing it to be in our national interest to have a strong and viable educational system.

As a component of our educational endeavors the institutions of higher learning represent an example of how important we view education. No other nation surpasses our deep commitment to provide additional education to all its citizens beyond high school. And the opportunities to realize that commitment have been expanded in recent years and will, in all probability, continue to expand.

In 1957 we were spending $5.3 billion on higher education as compared to $18.8 billion at the end of 1968. Clearly, there was growth, not only in expenditures, but in increased enrollments, in physical plants, in programs and in curriculum. Yet, while we have relied on these customary measurements to demonstrate expansion in higher education, there was a movement to diversify and extend the programs of higher education to satisfy more special needs. The development of the junior or community college system was in direct response to such needs. The community college system according to a 1970 Carnegie Commission report could:

> Offer more varied programs for a greater variety of students than any other segment of higher education. They provide a chance for many who are not fully committed in advance to a four-year college career to try out higher education without great risks of time or money. They appeal to students who are undecided about their future careers and unprepared to choose a field of specialization. And last, but by no means least, they provide an opportunity for continuing education to working adults seeking to upgrade their skills and training.

In further amplifications the Committee on Labor and Public Welfare in a report accompanying S. 659, the Education Amendments Act of 1971, noted that:

> Community colleges are of particular appeal to students because of their proximity to those they are designed to serve, because of their flexible admission arrangements, and their strong counselling and advising services. They offer a greater number of programs for a wider variety of students and the curriculum of a community college grows out of the needs of society, the community it serves, and of the needs of its students. They have designed their course offerings to meet personnel requirements in such diverse fields as medicine, engineering, and social service. In addition, they provide new directions in urban education as well as offering promise in job preparation and cultural, academic, and remedial education.

The increasing importance of community colleges is attested to by rising enrollments—nearly a 400-percent increase between 1960–70. In fact, it is estimated that about half of the first year students enrolled in institutions of higher learning are attending junior colleges. In Arizona the enrollment growth rate in all institutions of higher learning has been 50 percent greater than that of the entire Nation and in the junior college system alone they have experienced a 116.2 percent increase in just 5 years. Nationally, the figure was 68.5 percent. In addition, the number of Arizona community colleges increased from 2 to 12 in the period between 1960–70 with two opening just last year. Indications are that two additional plants will be added before the decade is out.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD two tables showing the growth in community college enrollment.

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

ENROLLMENT GROWTH IN INSTITUTIONS OF HIGHER LEARNING, ARIZONA AND THE UNITED STATES

	1965	1970	Percent change
In 4-year institutions:			
United States	4,103,000	5,116,000	+24.7
Arizona	51,809	68,791	+32.8
In junior colleges:			
United States	841,000	1,417,000	+68.5
Arizona	20,019	43,287	+116.2

Source: Statistical Abstract of the United States; Arizona Board of Regents; Arizona State Board of Directors for Junior Colleges; Registrar's Office, Grand Canyon College, Navajo Community College, Prescott College.

GROWTH OF JUNIOR COLLEGE ENROLLMENT IN ARIZONA

County	1965–66	1970–71	Percent change
Apache		512	
Cochise	1,215	1,767	+45.4
Graham	890	1,736	+95.1
Maricopa	16,244	28,827	+77.5
Pima		3,530	
Pinal		2,891	
Yavapai		1,006	
Yuma	1,670	3,018	+80.7
Total	20,019	43,287	+116.2

Source: Arizona State Board of Directors for Junior Colleges; Registrar's Office of Navajo Community College.

Mr. FANNIN. Mr. President, it is clear that the junior college system has emerged as a significant educational force—one which is contributing much to realizing our highest expectations for education.

As this emerging institution grew, changed, and expanded, problems became inevitable. The list is all too familiar:

The mounting pressures for more community colleges.

Inadequate funding for physical plants, curriculum innovation, community service efforts, and vocational education.

Sustaining the work and educational contributions of the community college would mean identifying other resources to provide financial assistance to these worthwhile institutions. Obviously, one resource would be the Federal education dollar, of which less than 6 percent of the Office of Education budget in fiscal year 1971 was allocated to junior colleges.

In recognition of this deficiency, Senator WILLIAMS, chairman of the Senate Labor and Public Welfare Committee proposed legislation to provide grants for:

Planning, establishing new community colleges, expanding present community colleges.

These grants would aid in expanding their enrollment capacities, establishing new campuses, and altering or modifying their educational programs; leasing facilities.

This commendable proposal was incorporated in S. 659, the Education Amendments of 1971, which was passed by the Senate on August 6 by a vote of 51 to 0.

I supported S. 659 because of the assistance it would provide to Arizona and its young energetic community college system. It is estimated that Arizona could receive, over a 3-year period, $1,205,104 in grants under the provisions for establishing and expanding community colleges.

These resources, coupled with imaginative and innovative financial administration at the local and State level will, I am sure, help to strengthen the community college system. It is a program worthy of our support.

Mr. President, knowing of the potential of this program and the opportunities it will afford the junior college system, I was distressed to learn that the

House version of the Education Amendments Act of 1971—H.R. 7248—did not contain the comprehensive provisions as contained in the Senate bill. Instead, the House bill provides assistance only for planning. In my estimation, the comprehensiveness of the Senate proposal, which includes planning grants, is far more preferable.

My purpose today is to express once again my complete support for the Senate provisions and to urge the Senate-House conferees to accept the Senate proposal.

This is an important program as our system of education needs a strong community college system.

MORE ON QUALITY OF SCIENTIFIC PRESENTATIONS

Mr. HANSEN. Mr. President, a little more than a month ago, on October 1, with unanimous consent I had placed in the RECORD a news story from the front page of the Washington Post entitled "Colleagues Criticize Anti-ABM Scientists."

The story, reported by Michael Getler of the Post staff, stated:

> Prominent scientists who led the attack 2 years ago against the Safeguard ABM project have now been criticized for the quality of their presentations before Congress and in the press during the ABM debate.

Mr. President, the writer was not referring to criticisms from politicians who supported the ABM, but to the findings of the seven-member Ad Hoc Committee on Professional Standards of the Operations Research Society of America.

Yesterday, November 7, the following banner headline was in the Washington Post: "H-Bomb Exploded; No Damage Noted." I know that there were many people in the United States who were relieved to read this headline over the story reporting the success of the safely conducted Amchitka nuclear test. All of us are familiar with the unfavorable publicity against the Nation's most credible nuclear scientists and the Atomic Energy Commission, which preceded the test.

The fact is that the wild allegations hurled at those conducting the test prior to the event were not based on fact; but such charges are misleading and upsetting to large segments of the American public. Such false accusations certainly do not inspire confidence in government. Therefore, it is somewhat gratifying that the people of the United States can determine from the results of the test how attempts were made by some to mislead them on the probable aftereffects of the test.

Mr. President, the Washington Post today has published a column by Joseph Alsop that discusses the importance of scientific accuracy and fairness. He makes the point that the security of the Nation relies heavily upon the quality of scientific data. I ask unanimous consent that the article be printed in the RECORD.

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

[From the Washington Post, Nov. 8, 1971]

MISLEADING SCIENTISTS

The clamor surrounding the underground nuclear test at Amchitka is a very good reason for offering an extremely solemn warning. On such occasions, a great deal of the more leftwing "scientific" evidence must now be expected to be as crooked as a ram's horn.

Some attention has already been given to the so-called ORSA report that contains the proofs of the foregoing extremely grave statement. But no one has even begun to grasp the full seriousness of this solid, stolid, unimpeachably factual report. So it deserves re-examination.

ORSA, in brief, is the Operations Research Society of America, with a membership of about 8,000 scientists doing defense and industrial research and analysis. One of the society's stated original aims was to establish uniform standards and guidelines for this new and growing branch of research.

Hence, the society was interested when one of its members, Dr. Albert Wohlstetter of the University of Chicago, asked for a panel to judge the standards of research and analysis displayed in the bitter debate about the "Safeguard" antiballistic-missile system in the Senate in 1969. Essentially that meant a panel to judge between ABM supporters like Dr. Wohlstetter, and its chief scientific opponents, such as the new president of MIT, Dr. Jerome Wiesner, and Drs. George Rathjens and Stephen Weinberg.

The ABM opponents were invited to make any contribution they chose, and also to nominate a member of the proposed panel. They haughtily refused to have anything to do with the inquiry. And they added a wholly groundless charge that the inquiry "could well appear to the nation as an ugly resurgence" of McCarthyism—but they ducked using the actual word.

A six-man panel of industrial and academic scientists was none the less formed, under the leadership of Thomas E. Caywood, past president of ORSA. The panel included men who had opposed the ABM in 1969, as well as men who had been for it. At least one former panel member, Dr. Howard M. Berger, of Xerox, "still hasn't made up his mind."

The results were devastating. "Analyses" that were "often inappropriate, misleading, or factually in error"; failure to meet "elementary standards for proper presentation of results to permit verification"; failure to "distinguish properly between the roles of analyst and advocate"—these were the main phrases in the summary of findings.

Dr. Rathjens was held guilty of "specific abuses of professional standards" in the ABM debate. He was further condemned for selecting his material in a most peculiar manner, mostly by omitting "data (that) would have substantially weakened his case." Other highly partisan inaccuracies were also found in his ABM testimony and in his subsequent exchanges with Dr. Wohlstetter.

Drs. Wiesner and Weinberg were found to have "ascribed official validity" to calculations which had no such validity. They were further found to have made extremely nasty false charges against the chief scientist of the Defense Department, Dr. John S. Foster.

Drs. Wiesner, Rathjens and Weinberg were jointly held to have been guilty of "misuse of source material" in the study of the ABM in a critique of the Pentagon's ABM position that was circulated by Senator Edward Kennedy. The same "misuse" was also found in the work done for Senator Kennedy by Dr. Wiesner and ABM charges throughout the ORSA report.

Thus placed in the dock and found guilty and crooking the evidence and purposeful prevarication, the anti-ABM scientists finally condescended to notice ORSA more seriously. They issued a reply, admitting some mistakes, yet claiming they were right about what mattered. To this Dr. Rathjens added the charge that the neutral panel member, Dr. Herbert Berger, secretly harbored personal animus against himself.

To this charge, Dr. Berger has now replied, in effect, that Dr. Rathjens is again prevaricating, and again, Dr. Berger's evidence is solid, stolid and unimpeachably factual, like the ORSA report itself. No open-minded person can fail to read either report without concluding it is too true, both in detail and in broad outline.

It needs only to be added that the supposed "mistakes" proven in the report were at the very heart of the ABM debate. In sum, warning.

AFL–CIO COMMITTEE ON POLITICAL ACTION—SALARIES OVER $10,000

Mr. FANNIN. Mr. President, the AFL–CIO Committee on Political Education reported to the Clerk of the House of Representatives that it spent $969,328 in 1970.

This almost $1 million is a lot of money for COPE to spend on political activities during a year in which there is no presidential election. But this figure obviously does not really tell the full story.

The $969,328 reported to the Clerk of the House does not include the salaries of COPE officials. To ascertain the 1970 salaries of the top COPE workers, one must go to the Department of Labor.

A check of records at the Department of Labor reveals that higher echelon COPE officials were paid $443,862.95 in salaries and expenses for 1970.

Mr. President, I ask unanimous consent to have printed in the RECORD the list of COPE salaries over $10,000 as shown in reports filed with the Department of Labor.

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

Director, C.O.P.E.: Alexander Barkan	$30,510.00	$9,583.98	$40,093.98
Deputy director, C.O.P.E.: Joseph Rourke	22,950.00	2,383.52	25,333.52
Assistant director, C.O.P.E.: John Perkins	18,234.00	11,026.48	29,260.48
National field director, C.O.P.E.: W. C. Young	16,676.40	12,737.44	29,413.84
Campaign director, C.O.P.E.: William Gilbert	16,225.00	5,584.19	21,809.19
C.O.P.E. area directors:			
Clement Dowler	15,574.00	10,177.93	25,751.93
Richard Fallow	17,172.50	8,072.25	25,244.75
Frank McGrath	17,122.50	8,288.67	25,411.17
Charles McMahon	15,361.50	9,137.20	24,498.70
Raymond Alvarez	15,814.80	6,529.51	22,344.31
Research director, C.O.P.E.: Mary Zon	19,791.00	2,730.32	22,521.32
Assistant research director, C.O.P.E.: Margaret Cronin	$15,366.50	----------	$15,366.50
Research employee, C.O.P.E.: Frances Kanin	10,786.20	----------	10,786.20
Publicity director, C.O.P.E.: Bernard Albert	19,791.00	$2,353.54	22,144.54
Minorities representative, C.O.P.E.: Fannie Neal	17,685.00	11,123.05	28,808.05
Staff representative, C.O.P.E.: Walter Bartkin	17,685.00	63.56	17,748.56
Field representative, C.O.P.E.: Severiano Merino	15,549.00	7,824.25	23,373.25
Accounting employee, C.O.P.E.: Margaret Laddbush	11,155.60	----------	11,155.60
Data processing director, C.O.P.E.: Walter Markham	19,791.00	3,005.06	22,796.06
Total			443,862.95

Mr. FANNIN. Mr. President, these COPE salaries are included in the reports that the AFL–CIO and all labor unions are required to file with the Department of Labor. I emphasize that this includes only salaries of more than $10,000. COPE workers earning less than that are not included in the reports. These salaries do not include legislative representatives which are political and perhaps should be considered with COPE.

Mr. President, these two sets of figures raise very serious questions.

If these 19 employees shown on the Labor Department report were working full time for COPE, why were their salaries not listed in the report filed with the Clerk of the House?

Even more important, just where are the funds coming from to pay the salaries of these 19 COPE officials and other COPE employees who earn less than $10,000 per year?

One can only assume that the salaries are coming from the AFL–CIO general fund. And the AFL–CIO general fund comes from the dues of the labor union members. Most of these dues are compulsory. Workers are forced to contribute if they want to work and support their families.

Mr. President, the unions are not living up to the letter or the spirit of our laws regulating the use of union dues and the reporting of funds used in political activities.

The reporting system is a sham.

Union members are being denied the right to know how their contributions to unions are being spent. Instead of spending less than $1 million as the COPE report to the Clerk of the House would indicate, the political arm of the AFL–CIO spent at least $1.5 million.

It is illegal to use involuntary union dues for political purposes, yet we have ample evidence that union bosses are ignoring the law. Union members are being forced to contribute funds that are used to support political candidates that they may oppose.

In addition to supplying millions of dollars for campaigning, union bosses are also misusing the other vast resources of their unions.

This is the most serious threat to our political system today. It must be corrected by the passage of effective legislation to stop the misuse of union money and resources for political purposes.

OKINAWA REVERSION TREATY

Mr. FULBRIGHT. Mr. President, at the recent hearings on the Okinawa Reversion Treaty, the junior Senator from California (Mr. TUNNEY) presented a comprehensive statement supporting the Treaty. I ask unanimous consent that it be printed in the RECORD.

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

OKINAWA REVERSION TREATY

(By John V. Tunney)

Mr. Chairman, I am delighted to have this opportunity to testify today before the Senate Foreign Relations Committee on a subject which I consider to be of vital importance to the United States, the ratification of the treaty calling for the reversion of Okinawa to the Japanese.

We should be utterly clear that the decision of the Senate whether or not to ratify this treaty promptly will be a turning point in Japanese-American relations and will therefore be decisive with respect to our deepest national interests in the Far East during the 1970s and after. American-Japanese relations have had a tangled and at times a tragic history during this century, and there seems to me no more important task at this moment for us in the Far East than to treat our relations with Japan with the greatest care. We are undergoing vast changes in our policies toward Southeast Asia and the People's Republic of China. These changes are founded on an overdue recognition of political realities in that area of the world. It is essential that during these changes we remain firmly in touch with the ultimate reality facing American policy in the Far East: that we can and must maintain a firm alliance with Japan.

Since the impact of any decision to ratify or not to ratify this treaty will have so large an impact on Japanese-American relations, I will point out some of the central political, economic and military questions in our Japanese policy which the treaty raises. From these perspectives, we can talk plainly about Japanese-American relations generally; about the role of the reversion of Okinawa within those relations; and about the consequences of the proposed treaty for our deepest interests of national security.

I. JAPANESE-AMERICAN RELATIONS

First, then, I shall discuss our relations with Japan. Here we must remember above all that our relations with Japan are more important than our relations with any other Asian nation, including China. The administration has appeared to have lost sight of that fact in the past few months. Yet it is a fact that must not be forgotten.

The benefits of good relations with Japan are substantial, and they touch on vital elements of American policy. Japan and the United States are each the other's largest overseas trading partner with a total annual volume of over $8 billion dollars. Japan is the only Asian nation with the capacity to support substantially the economic and political development of smaller countries in Asia whose economic and political stability are vital goals of American policy. And American bases in Japan serve not only to strengthen the American deterrent against China and the Soviet Union but also to allow Japan to maintain a credible defense posture without developing an independent nuclear capability.

Hence, Mr. Chairman, it is evident that the dangers of a deterioration in relations between the United States and Japan are considerable. A trade war would be costly. It would not only affect our economic relations. It could also be expected to lead to political competition with Japan; competition which might cause Japan to distrust American military guarantees. Such a trade war could escalate into a determination by Japan that she needed a vast increased defense effort, that she could no longer rely upon the American nuclear umbrella.

While a deterioration in Japanese-American relations is hardly inevitable, Mr. Chairman, preventing it will require careful American attention and a major change in the manner with which we deal with the Japanese.

In the past several months, however, we have witnessed a classic example of how *not* to deal with Japan. The manner in which President Nixon advised the Japanese government of his August economic proposals reflected a callous disregard for the sensitivities of our Japanese friends. And President Nixon's failure to consult with Japan before announcing his visit to Peking is inexcusable—especially after the United States had been responsible for Japan's initial decision to recognize Taipei rather than Peking and had convinced Japan that U.S. policy toward China would be coordinated with Japan. It reflected an insensitive style of diplomacy that is inappropriate and unproductive.

Consequently, Mr. Chairman, I believe that a *new diplomacy* is necessary in the Far East. This diplomacy requires a recognition that American policy in the Far East affects Japanese interests as dramatically as it affects American interests.

This diplomacy requires a recognition that—if stability in Asia is to be maintained—the cooperation of four nations is critical. These four nations are the United States, Japan, the Soviet Union and the People's Republic of China.

This diplomacy requires a recognition that we have made a profound moral commitment to Japan; that we have dissuaded Japan from developing an independent nuclear deterrent; and that, consequently, in this quadrangle of four Asian super-powers, three of which possess nuclear weapons, the United States assumes the role of military and nuclear lynchpin between Japan, on the one hand, and Russia and China, on the other hand.

Accordingly, Mr. Chairman, this diplomacy requires a recognition that, to ignore our relationship with our Japanese ally is to ignore the security, stability, and peace of the Far East. It is deleterious to our own interests to take actions which jeopardize our relations with Japan and which threaten the stability of Asia.

Therefore, I believe that this new diplomacy requires that the United States should take no action which affects the security of the Far East without close consultation with Japan; should consult fully with Japan on all matters of vital interest to her; and, if possible, should move in those areas only in full agreement with Japan.

II. IMPACT OF OKINAWA REVERSION ON JAPANESE-AMERICAN RELATIONS

It is from within this general context of Japanese-American relations that the Okinawa reversion treaty must be viewed.

Within that context, the most outstanding fact that we must continuously remember is that the United States has always acknowledged Japan's residual sovereignty over Okinawa. On September 5, 1951, at the San Francisco Peace Treaty Conference, Ambassador John Foster Dulles first enunciated that doctrine, and Presidents Eisenhower, Kennedy, Johnson, and Nixon have reaffirmed it.

And still, more than a quarter of a century after the end of the Second World War, the United States continues to occupy the territory of Okinawa and an American General exercises executive authority over one million Japanese people. It is hardly startling that the Japanese people insist upon the termination of this inappropriate relationship.

The Agreement itself is hardly a one-sided document. It is the careful product of long negotiations and it involves compromise by both sides.

The United States has clearly compromised in voluntarily granting reversion of those islands which constitute Okinawa, the Ryukyu and Daito Islands, to Japan.

The Japanese have also compromised. They have granted the United States the continued use of military facilities in Okinawa; they have agreed to pay the United States $320 million to compensate us for costs we are expected to bear and for the transfer of assets to Japan; and they have agreed to a communique which linked the security of Japan to the security of Korea and Taiwan.

Mr. Chairman, Japan has also set forth, in a letter of June 17, 1971, from Minister of Foreign Affairs Aichi, important assurances to the American business community in Oki-

nawa. I trust that the Japanese government recognizes the importance of those assurances and will not allow them to be modified in a way which will be detrimental to American investment.

III. OKINAWA REVERSION AND AMERICAN NATIONAL SECURITY

As I mentioned earlier, important military consequences also attach to the ratification of the reversion treaty. The military consequences both of reversion and of refusal should be considered. If the reversion treaty is ratified, no one has seriously suggested that American security interests would be damaged. The support of the Joint Chiefs of Staffs for ratification should be sufficient proof that the reversion agreement is in America's security interest and does not threaten our ability to meet our commitments.

But, what are the military consequences of non-ratification? Those consequences could be devastating.

For, it must be recognized that the United States could not, in the 1970's or beyond, effectively use bases in Okinawa without Japan's consent—with or without the ratification of the treaty. The United States can effectively maintain an overseas base in any given country only so long as that country believes that it is in its interests to have a base there.

It makes no political or military sense to attempt to occupy a base in another sovereign nation against the will of that nation. Such a course of action would require force and would destroy amicable relations between the two countries.

Yet, such a posture would be necessary if we were to attempt to continue to occupy our bases in Okinawa in the absence of reversion. That posture would be untenable.

Furthermore, if we were to hold Okinawa against the wishes of Japan and also against the wishes of the Okinawan people, Japan could retaliate by abrogating the Mutual Security Treaty and expelling us from the home islands. That result would jeopardize our ability, not only to protect Japan, but to meet many of our other military commitments to Asia.

Mr. Chairman, we have nothing to gain—and much to lose—in the way of national security by retaining title to Okinawa.

IV. THE END OF THE POSTWAR ERA

One additional fact cuts through all the others and it is the final argument I wish to stress. Prime Minister Sato has stated that the reversion of Okinawa will mark the end of the postwar era in Japanese-American relations. He has argued that reversion will remove the last remaining tangible reminder of war between the United States and Japan.

Mr. Chairman, even if this belief is primarily psychological, even if we believe that the postwar era has already ended, it is well that both sides put that period to rest.

It is well that both sides remove from their relations all vestiges of the war; that they each determine that they are prepared to begin to develop a full partnership with each other; and that the prompt ratification of this treaty signal the inception of that postwar relationship.

We in the United States will welcome a full postwar relationship with Japan. We should encourage its inception. We should anticipate a fuller partnership in that period—not just politically and militarily, but economically as well. We should now expect Japan to increase her contribution to the economies of the developing countries.

While the American nuclear shield and military presence contributes to Japan's security, it also contributes to Japan's prosperity. The American defense umbrella has spared Japan considerable defense burdens.

It is in Japan's interest as well as ours to divert some of those into projects which will aid the less developed countries of Asia. For stability in Asia will contribute to maintaining the peace in Japan.

Consequently, Mr. Chairman, with the ratification of this treaty and the reversion of Okinawa, I believe that we should expect Japan to expand her economic contributions to the development of less developed Asian nations.

Mr. Chairman, for all of those reasons—and to indicate that the United States Senate attaches very high priority to our relations with Japan—I urge prompt reporting and ratification of the reversion treaty.

Thank you.

IMPORTS LINKED TO U.S. WOES

Mr. HANSEN. Mr. President, since the President announced his new economic plan, which included a 10-percent surtax on imports into the United States that are not under quota, there has been a great outcry from those who advocate free trade that the President's action will trigger an international trade war. The advocates of unfettered free trade predict dire consequences, including retaliation by the countries whose exports to the United States have been affected.

Mr. President, other things being equal, I also advocate free trade but other things are far from equal. The principal inequity against which U.S. industry must compete for, not only in the world market but for the U.S. market, as well, is the inequity of wage scales in other countries as compared with the United States.

In an article published by the Washington Post, on October 31, O. R. Strackbein, president of the Nationwide Committee on Import-Export Policy, summarized the problem of unchecked imports that prompted the President to impose the surtax.

It is gratifying, Mr. President, that since the imposition of the surtax, some of our trading partners have become more amenable to negotiated agreements on some reasonable limitations to a continuing flood of cheaply produced foreign products which were forcing the export of more and more U.S. jobs to cheap labor countries and the displacing of thousands of U.S. workers.

Mr. President, Mr. Strackbein in few words has put the issue of free trade versus fair trade in its proper perspective.

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:

IMPORTS LINKED TO U.S. WOES

(By O. R. Strackbein)

(Mr. Strackbein is president of the nationwide Committee on Import-Export Policy which argues the case for protection of American industry.)

In recent years imports have become a challenge to our economy in a new and unforeseen posture. Ironically our domestic economy, unique in the world the past seventy-five years, is now being flailed from abroad by the very virtues that carried this country to world industrial leadership.

A brief review: This country "invented" mass production. The Sherman Anti-Trust Act of 1890 showed that we distrusted monopoly and upheld fair competition as the best means of carrying to the people the lower prices made possible by mass production. After the turn of the century we also saw the dependence of mass production on mass consumption. Henry Ford carried the torch by instituting the $5 per day wage. He saw clearly that without rising consumer purchasing power the virtues of mass production were doomed.

His product was the pioneer of what was to be a vast proliferation of goods of all varieties produced on the same principle as the automobile. The common denominator was an elastic demand, i.e., lower prices would attract more and more customers. Ford saw that the wish to buy was not enough. Cash was needed, and he saw the tens of millions of workers as a potentially rich market. China with her hundreds of millions is by far a lesser market than this country with one quarter her population. Why? Lower productivity and very low wages in China.

Following the success of the automobile which did strike the mass market, with Ford in the lead, other industries followed suit, centered on the nonessentials that were attractive and catered to ease and comfort, convenience, pleasure and prestige. The telephone, radio, household appliances, television, luxury apparel, phonographs, motor lawn mowers, cigarettes, carpets, and all else that we see about us in profusion, came tumbling off the production lines. Oddly enough we needed no import competition to drive for the mass market with ever lower prices. Hope of tapping the national market with its tens of millions of potential customers was the motivating force.

We filled the landscape; overfilled in some instances.

Then something happened. But first a look-back. After the Great Depression numerous legislative controls and regulations were adopted, moving away from the free play of market forces. Nearly all the cost factors were rendered inflexible or nearly so. 80% of the corporate cost of production, but wages could not be reduced. Competitively there was little room left for maneuver, other than displacement of workers by more productive machinery.

Meantime we began in 1934 to reduce our tariff bringing it down by some 80% from the high of about 50% to 9% today on dutiable products.

After the war we helped the war-torn countries rebuild and infused their capital structure with modern machinery. They were willing customers and eager emulaters of our system outside of Russia. In two decades they were on our heels in point of productivity. They had "bought" our system but were laggard in accepting Ford's vision of mass purchasing power. While foreign wages rose proportionately more than ours, the wage gap continued wide. Higher wages in keeping with the higher productivity would have brought them a richer home market with less dependence on exports. This is a hard lesson to learn.

In order to meet this challenge our industries poured $75 billion into foreign investments, branch plants and joint ventures and also licensed use of our patents; i.e., they went to where the low wages are.

American industry soon found itself outsold both at home and abroad. Our exports fell into a deficit position not reflected by acceptive official trade statistics until recently. We continued to reduce the tariff. Today exports of machinery and transport equipment are 45% of our total exports, and this machinery continues to bolster the foreign competitive prowess.

Had Ford encountered the kind of import competition we face today, which soon makes a wallflower of our new products (such as radio and television sets) our system could not have been launched. Foreign producers could have beat him to the mass market that drew him on like a magnet and left him to one side. Had the other countries come along with us from 1900 on we could not now be in

the position of being victimized by the virtues of the system we gave to the world; but they did not do so.

Now, if we are to get back to a growing economy we must restore the climate in which alone a system based on confidence in the future can endure. We cannot stand still, we cannot stagnate lest we fall and system with us. That is the choice.

The maladjustment is systemic, not merely functional. Therefore it is not negotiable. We must solve the problem ourselves. Otherwise full employment will continue rainbow fashion to elude us.

AUSTRALIANS AND NEW ZEALANDERS IN CAMBODIA

Mr. CASE. Mr. President, will Cambodia become another Vietnam? I certainly hope not, and I believe my view is shared by the overwhelming majority of the American people.

Unfortunately, we keep getting ominous signs of deja vu.

Most recently, there has been a flurry of press reports about possible Australian and New Zealand assistance to the Cambodian Government. This in itself should pose us no problem, for it is unquestionably the right of one Asian country to assist another.

Yet with memories of Vietnam still fresh in our minds, I cannot help but think of the revelations that came out several years after the fact of secret deals made with the Thai, Korean, and Filipino Governments for the United States literally to buy the use of their troops in Vietnam. Originally, the Congress and the American people were led to believe that concerned Asian countries were coming to the aid of a beleaguered Vietnam. Not until the Symington subcommittee report in 1969 did we learn that the United States was paying the bill and that in some cases foreign troops were receiving larger combat allowances from the U.S. Government than U.S. soldiers.

There is no evidence that similar financial arrangements were made with either the Australian or the New Zealand Governments in return for their support of the Vietnamese. Yet we did learn from the Pentagon papers that the primary impetus for Australian and New Zealand actions in Vietnam came from the United States.

Returning to the present, in a November 2 dispatch from Washington, Reuters reports that the United States, New Zealand and Australia have agreed to set up a training program for Cambodian forces in Vietnam. Reuters continues that Australian Prime Minister McMahon, then in Washington:

Said after a meeting with President Nixon that he did not know whether the Cambodians had asked for this type of assistance—an indication that the initiative came from the United States.

In an October 15 dispatch from Phnom Penh, AP reports that—

The U.S. Army plans to get around the Cooper-Church amendment's ban on American military men in Cambodia by hiring $200,000 worth of foreigners for non-combat work. American officials report. "They are people who can do under contract what we are forbidden to do," a U.S. source declared. Another source said they would be cheaper than American civilians.

And in the October 27 Auckland, New Zealand, Star:

The Nixon Administration has sounded out New Zealand and Australia on their willingness to send military advisers to Cambodia as part of an effort to assist the beleaguered Cambodian army in its fight against Communist troops. Political insiders on Capitol Hill . . . saw the Administration's move in the context of an effort to offset the potential effects of Congressional action to limit American involvement in the Cambodian conflict.

There would seem to be no question that the United States is involved in discussions to enlist the support of certain Asian countries in Cambodia. But the Congress and the American people should not have to get their information on such an important question through the newspapers.

On my part, I have been concerned about the possibility of a U.S. buildup by proxy in Cambodia. Thus, Senator SYMINGTON and I have submitted an amendment which would put an absolute ceiling on U.S. expenditures and personnel in Cambodia. This amendment is in no way intended to limit the President's flexibility in protecting American troops withdrawing from Vietnam. What I want to prevent is a long-term involvement in Cambodia itself—an involvement which could continue well beyond the time when all Americans are out of Vietnam.

Included in the Case-Symington amendment is a limitation of 50 third-country personnel who could be paid by the U.S. Government in Cambodia. This provision was upheld by a 52-to-35 Senate vote on October 28, so I am hopeful that our amendment will be included in any foreign aid legislation passed by the Senate. The Case-Symington limitation would of course not preclude other nations from acting independently of the United States to take action in support of Cambodia.

The United States must not repeat the mistake of backing into a war without the American people having any idea of what they are getting into.

Mr. President, I ask unanimous consent that certain newspaper articles pertaining to this matter be printed in the RECORD.

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

[From Associated Press, Oct. 15, 1971]

CAMBODIA

PHNOM PEHN.—The U.S. Army plans to get around the Cooper-Church amendment's ban on American military men in Cambodia by hiring $200,000 worth of foreigners for noncombat work, American officials report.

"They are people who can do under contract what we are forbidden to do," a U.S. source declared. Another source said they would be cheaper than American civilians.

Cooper-Church, passed by Congress last year, bars American military advisers, training personnel and combat troops from Cambodian soil.

The sources said the foreigners, known in official circles as "third country nationals," would supplement the American military equipment team which is responsible for handing over arms and ammunition to the Cambodians but is forbidden to show the Cambodians how to use the equipment.

Headed by Brig. Gen. Theodore Mataxis, the team's current strength is 113 men, with 50 officers and enlisted men assigned to the Cambodian Capital and the rest in Saigon.

The Senate Foreign Relations Committee on Thursday voted to limit to 50 the number of foreigners hired in Cambodia. Most likely they will be Koreans, Nationalist Chinese, Australians or New Zealanders experienced in dealing with the American military in South Vietnam or Laos, where some have been engaged in hazardous undercover work for the Americans.

[From the Washington Post, Nov. 4, 1971]

REQUEST CAUSES ROW IN AUSTRALIA

(By Bruce Grant)

MELBOURNE.—The U.S. request for Australia to train Cambodian troops in South Vietnam has erupted into a political row here overshadowing Prime Minister William McMahon's visit to Washington.

The immediate cause of the furor was the revelation that although the request came through the U.S. embassy in Canberra, on Sept. 20, McMahon did not know about it when he left for the United States on Oct. 27.

A cabinet meeting was hurriedly called to authorize McMahon to discuss the subject with President Nixon when they met yesterday.

Under intensive questioning by the Labor Party opposition in Parliament, Defense Minister David Fairbairn revealed an administrative bungle that made front-page lead stories in this morning's newspapers.

CONTRADICTORY POSITION

Government spokesmen tried to suggest that the reason for the delay was that the request had been treated as a low-key affair, but they could not explain why, if this was the case McMahon regarded the request as a matter of such importance that the cabinet had to clear it for his talks with President Nixon.

But the question which played most on Australian minds, and the one that the government did not satisfactorily answer, was why the request came from the United States at all, rather than from Cambodia.

This question touched a sensitive nerve, for the central issue about Australia's military commitment to Vietnam is that although it was made formally at South Vietnam's request, its primary political purpose was thought to be to please the United States.

APPARENT MOTIVE

The Canberra Times noted that if Australia agreed to the request while McMahon was in Washington, it would appear to be doing so in deference to a great and powerful ally, not for the sake of the embattled Cambodians.

A motion of no confidence in Fairbairn, for incompetence, was defeated in Parliament, by a 56–51 vote along party lines.

The government had already announced that it was considering leaving a training team in South Vietnam after Australian ground forces leave by the end of this year. It had also offered to train Cambodian officers in Australia. The new request meant only that the Australian training team in South Vietnam would need to be slightly larger to handle Cambodians as well as South Vietnamese.

But a series of garbled news reports * * * were allowed by the government to remain uncorrected. McMahon uninformed on the issue and concerned about his visit to Washington, overreacted.

The result was a cabinet meeting in full publicity over a matter that would normally have been handled through diplomatic channels, two embarrassing days in Parliament for the government, and a revival of public suspicion about the roles of Australia and the United States in Indochina.

[From Reuters, Nov. 2, 1971]

WASHINGTON.—The United States, New Zealand and Australia have agreed in principle to set up a training programme for Cambodian forces in South Vietnam, Australian Prime Minister William McMahon said today.

Mr. McMahon said after a meeting with President Nixon that he did not know whether the Cambodians had asked for this type of assistance as indication that the initiative came from the United States.

Several U.S. Senators have expressed fears that the U.S. involvement in Cambodia is growing and could turn the country into another Vietnam.

Military observers said the Cambodian forces would presumably return to Cambodia to fight the North Vietnamese when they finished their training in South Vietnam.

Mr. McMahon, addressing a press conference on his talks in Washington, said U.S. naval forces would like to use bases in western Australia.

This matter came up during talks on the growth of the Soviet Navy in the Indian Ocean, Mr. McMahon said. He had been assured that the United States was watching the situation.

[From the New York Times, Nov. 2, 1971]

AUSTRALIA IS SAID TO PLAN TO AID IN TRAINING CAMBODIAN TROOPS

WASHINGTON.—Australia has agreed to provide instructors and facilities in South Vietnam for the training of several battalions of Cambodian troops, informed sources said today.

William McMahon, the Australian Prime Minister, who is visiting Washington, was reported to have discussed the arrangement today with President Nixon. The two leaders met for nearly two hours at the White House.

About 125 Australian instructors will reportedly train the Cambodian troops at Muidat, a jungle warfare training center near Saigon, as part of an allied effort to enlarge and equip the Cambodian Army.

The Australian instructors will remain behind after the departure of the 8,000 Australian troops currently serving in South Vietnam. Mr. McMahon announced in August that all Australian combat units would be home by Christmas.

The Cambodian armed forces now number approximately 180,000, according to American sources, compared with the 38,000-man force that was in existence in March, 1970, at the time of the overthrow of Prince Norodom Sihanouk as Chief of State. The goal for 1972 is 220,000 men.

A total of 60 battalions of Cambodians have been trained so far by the South Vietnamese in South Vietnam and have been equipped by the United States. Five other battalions have undergone training in Thailand and three others were given instruction by Central Intelligence Agency units in southern Laos last spring.

Charles W. Bray 3d, the State Department spokesman, confirmed today that the United States was discussing the possibility of assistance for the Cambodians, including the training of Cambodian troops. He said that no final decisions had been reached.

Mr. Bray said the discussions had preceded and were in no way related to the rejection of the foreign aid authorization bill by the Senate last week. Australia is expected to cover the expense of the training program herself.

PARLIAMENTARY EXCHANGE IN NEW ZEALAND PARLIAMENT, NOVEMBER 1, 1972

Hon. David Thomson (Minister of Defense) replied—I welcome the opportunity this question gives me to clarify New Zealand's position on aid to Cambodia. Press reports such as the one quoted do not attempt to cover the whole subject of aid to the Republic and leave a lopsided effect. The Republic, as Hon. Members know, has been the victim of Communist invasion for a decade. When the Republic's Foreign Minister, Mr. Koun Wick, visited New Zealand last February he referred publicly in appreciative terms to New Zealand aid undertakings and had discussions with Government on the Republic's needs. In response to the Republic's request New Zealand has to date sent medical and refugee accommodation aid and aid in military equipment. We are sending soon logistic support aid in the form of New Zealand made jet barges. We have indicated our readiness to look at the training in New Zealand of Khmer pilots, though the number we could handle is small, and have been examining the question of other training assistance sought by the Republic.

When I was in Vietnam earlier this year I explored with our own and allied representatives there the nature of this requirement. Since then there have been discussions at official levels between the allies on the subject.

It is clear from my study that any such assistance New Zealand might give should be of the instructional course type already being provided by our training teams in Vietnam. It is also clear to me that any offer the cabinet might authorise should be limited to training courses in New Zealand or Vietnam, with the approval of the government of the republic of Vietnam. This means there is no intention to station New Zealand servicemen in Cambodia.

[From the New Zealand Herald, Nov. 3, 1971]

ROW BREWING OVER "AID" TO CAMBODIA

The Government refused last night to deny continuing reports that New Zealand is to train Cambodian soldiers.

A New Zealand Press Association reporter in Washington yesterday quoted sources close to the Australian Prime Minister, Mr. McMahon, who is visiting America, as saying that Australia expects New Zealand to assign troops to help to train Cambodian soldiers sent to South Vietnam.

Mr. McMahon had discussions yesterday with the United States Secretary of Defense, Mr. Melvin Laird.

Sources close to Mr. McMahon indicated the Australian Cabinet was about to make a decision in Canberra on the assignment of an Australian military team to help Cambodian forces sent to a training camp in South Vietnam.

They expected that the decision, if not already made, would be in favour of the move.

This Australian involvement in training Cambodian military units would be undertaken in addition to the training of forces from the Southeast Asian nation in Australia, a commitment already announced, they said.

INSTRUCTORS

It is expected that the Australian training team will consist of about 120 men.

In United States military circles it is expected that New Zealand will probably decide to commit a number of military instructors to work alongside the Australian training team.

A suggestion has been raised that Wellington may also agree to accept a number of Cambodian Air Force pilots for special flight training in New Zealand.

Militarily, this appears less acceptable because of potential language difficulties and the vast difference of climatic and operational conditions between New Zealand and Cambodia.

Earlier in the day Mr. Laird said he would discuss in Vietnam this week the training of Cambodian forces by New Zealanders and Australians.

He declined to say whether he regarded the discussions between the United States, Australia and New Zealand on the training of Cambodian forces by Anzac troops more important because of the recent vote to end United States foreign military and economic aid.

INTENTIONS

In Wellington yesterday, writes a Herald staff reporter, the Leader of the Opposition, Mr. Kirk, assailed the Government over reports that New Zealand was to train Cambodian soldiers and its refusal to spell out its intentions.

The Minister of Defense, Mr. Thomson, again last night refused any comment on the Washington reports, until he replies to a question on the matter to be asked in the House of Representatives today by Mr. E. E. Isbey, Opposition MP for Grey Lynn.

Mr. Kirk said if Washington reports were true, "the Government of New Zealand has learned nothing in five bitter years in Vietnam."

"The Americans announced their intention to disengage and so did the New Zealand Government," he went on.

"It is abundantly clear from the election in South Vietnam and the dismissal of the elected assembly in Cambodia that the involvement now has nothing to do with democracy or practical reality.

"Such a step (the training of Cambodians) rather than improved relations will be another impediment to this objective."

He termed "highly unsatisfactory" the Government refusal to make any statement about the matter.

"It (the Government) is not entitled to conceal from the people of New Zealand its intentions in a matter so serious," Mr. Kirk said.

"Immediate steps should be taken by the Government to tell the people of New Zealand what it is doing.

"We know what it should not be doing and it is about time the minister and the Government stopped treating the public in such a cavalier fashion.

"China is seated at the United Nations and the Government is talking cheerfully about improving relationships, but apparently it intends to engage in activity that, if anything, can only make more difficult efforts to improve relationships."

A Canberra report yesterday said the Australian Defense Minister, Mr. Fairbairn, revealed that Mr. McMahon was not told of an American request for Australian advisers to train Cambodian and Laotian troops in South Vietnam until last week—almost one month after it was made.

MESSAGE

The Deputy Prime Minister, Mr. D. Anthony—acting Prime Minister in Mr. McMahon's absence in Washington—added that the Prime Minister did not hear about the request until after he left Australia to see President Nixon last Wednesday.

The two ministers made the revelations under heavy questioning in the House of Representatives (Lower House) from members of the Labour Opposition.

Mr. Anthony said he had discussed the American request with other ministers at a Cabinet meeting in Canberra and had passed on a message to Mr. McMahon in Washington. He expected the Prime Minister to comment on the request when he arrives home later this month.

[From the New Zealand Herald, Nov. 4, 1971]

CAMBODIA AID DETAILS OUTLINED

The Minister of Defence, Mr. Thomson, yesterday broke his silence on aid to Cambodia to announce that the Cabinet was considering the training of Cambodian pilots in New Zealand and Cambodian troops in Vietnam.

Mr. Thomson until yesterday had refused to comment on earlier reports from Washington that New Zealand was expected to help with the training of Cambodians.

His comments yesterday were in response to a parliamentary question by Mr. E. E. Isbey (Oppn—Grey Lynn). The minister made it clear that New Zealand had no intention of stationing troops in Cambodia.

He said that in response to Cambodia's request, New Zealand had to date sent medical and refugee accommodation aid and aid in military equipment.

"We are sending soon logistic support aid in the form of New Zealand-made jet barges," he said.

"We have indicated our readiness to look at the training in New Zealand of Khmer (Cambodian) pilots, though the number we can handle is small, and have been examining the question of other training assistance sought by the republic.

"When I was in Vietnam earlier this year I explored with our own and Allied representatives there the nature of this requirement," Mr. Thomson said.

NEW ZEALAND TEAMS

"Since then there have been discussions at official levels between the Allies on the subject.

"It is clear from my study that any such assistance New Zealand might give should be of the instructional course type already being provided by our training teams in Vietnam.

"It is also clear to me that any offer the Cabinet might authorise should be limited to training courses in New Zealand or Vietnam, with the approval of the Government of the Republic of Vietnam.

"This means there is no intention to station New Zealand servicemen in Cambodia."

To a supplementary question from Mr. Isbey, Mr. Thomson said the initiative came from Cambodia and not the United States, and the response was a New Zealand response.

The Leader of the Opposition, Mr. Kirk, then asked if any consideration had been given by Mr. Thomson or the Government to the possibility of "an entirely dangerous interpretation being placed on the Government's apparent willingness to train Cambodian servicemen now, when at the time there was a democratically elected Assembly in Cambodia such assistance was refused."

CONQUEST

"That Assembly has been discharged by the Government and no plans have been made for its re-election, but aid is offered," Mr. Kirk said.

Mr. Thomson said he had "no doubt that those around the world who seek the Communist conquest of Cambodia will do all they can to advance such a suggestion."

"I may say also that this Government would not recognise any derogation from the right of self-defence of any people, because of the nature of their government, whether democratic or dictatorial."

To a further question from Mr. Kirk, Mr. Thomson said he knew of no different attitude the New Zealand Government had taken to Cambodia.

From Singapore last night an NZPA staff correspondent reported that, if New Zealand agrees to help train Cambodian troops, they will probably be included in courses run for South Vietnamese forces at Chi Lang, in the Mekong delta of South Vietnam.

[From the New Zealand Herald, Nov. 5, 1971]

CAMBODIA ISSUE UNDER FIRE

A notice of motion criticising the way the Government had handled negotiations on training Cambodian troops was tabled in Parliament yesterday by the Opposition spokesman on defence, Mr. A. J. Faulkner (Oppn—Roskill).

The Herald parliamentary reporter says the motion reads, "That this House notes once again the double-talk of the National Government, and particularly the Minister of Defence (Mr. Thomson), relating to the proposed further military involvement in Cambodia and notes also, with extreme concern, the growing practice of this Parliament being informed of new foreign policy by way of statements made by the Prime Minister of Australia and the American Secretary of Defence and further desires to inform the Government that the Labour Party is totally opposed to any military involvement in Indo-China."

Earlier yesterday, the Press Association reports, Mr. Faulkner said:

"One would have thought that the Government had learnt its lesson by now, yet we find that it is actively and apparently favourably considering extending its military operations in Indo-China.

"We are told that the Australian Prime Minister and the American Secretary of Defence both expect New Zealand to participate in training schemes for Cambodian Army and Air Force personnel.

WOULD BE CRIMINAL

"Such assistance would in the present circumstances be criminal," Mr. Faulkner said. "It would provide aid to prop up a corrupt military dictatorship in Cambodia."

Mr. Faulkner said that if the Government wanted to help the people of Cambodia it should provide adequate educational, agricultural and medical aid.

CAMBODIA ASKED

Questioned in Wellington yesterday by a Herald staff reporter, Mr. Thomson said that the first approach to New Zealand for assistance with the training of Cambodian troops had come from Cambodia.

"It was by Koun Wick (the Foreign Minister) when he was here in February," the minister said.

Mr. Thomson had been asked to comment on a statement by the Australian Deputy Prime Minister, Mr. Anthony, that the request to Australia for training assistance had been made verbally by a United States Embassy official.

Meanwhile, in Seoul, it was reported that the South Korean expeditionary force in Vietnam is studying plans to send a 1500-man advisory group to Cambodia at the request of the Cambodian Government.

QUESTIONS ABOUT THE PRESIDENT'S PHASE II TAX BILL

Mr. BIBLE. Mr. President, on October 21, as chairman of the Small Business Committee, I introduced a small business amendment to President Nixon's tax bill, H.R. 10947, also known as the Revenue Act of 1971.[1] It is gratifying that the Committee on Finance approved the substance of this proposal on October 27 on the basis of initiatives by Senators RIBICOFF and CURTIS.[2] The small business community of 5¼ million firms will benefit from the Finance Committee's action and will undoubtedly appreciate this prompt and favorable consideration. I hope the full Senate and the House conferees will concur so that our amendment will be enacted into law.

However, if this bill and the remainder of the President's tax program are to be at all equitable to small business, a great deal more work must be done.

Of course, limited relief on used machinery and accelerating the phase out of the auto excise tax will help small firms and that is something to be thankful for. But, the total benefits to small business under this and other provisions probably mean no more than $500 million annually to small business. A closer look at the statistics on the revenue losses in the President's 1971 program leads me to the conclusion that the "big business" share of the benefits will be somewhere between $4.7 and $5.2 billion. To illustrate what I consider to be this disproportion, the following table itemizes the benefits of this year's Presidential tax proposals according to the best information available to me. I hasten to say that I would warmly welcome additional research to refine, or update, or correct any of these figures.

BIG BUSINESS BENEFITS OF PRESIDENT NIXON'S 1971 TAX PROPOSALS

	Permanent annual revenue loss [1] (in billions)	Approximate benefits to big business (in billions)	
		Amount	Percentage
H.R. 10947—Revenue Act of 1971:			
Increase minimum standard deduction	$1.090		
Investment tax credit	3.900	$2.106	[2] 54.0
Repeal of excise tax on automobiles and trucks	2.260	.125	([3])
DISC export profits	.500–1.0	.450–.900	[4] 90.0
Jan. 11, 1971, ADR depreciation proposal: Accelerated depreciation range system—less ¾ convention	3.6	1.980	[5] 55.0
Total	$11.350–$11.850	$4.661–$5.161	41.1–43.6

[1] From mid-1970's onward (excise tax benefit will be phased out completely in 1982).

[2] 1965 IRS statistics indicate that 53.6 percent of the investment tax credit of that year was claimed by 371 corporations, all with income of over $10,000,000.

[3] Based on Ways and Means Committee's data, an estimated $250,000,000 of excise taxes is paid by corporate businesses, and an additional $440,000,000 by noncorporate firms. For purposes of the table, an approximation was made on the basis of ½ the corporate total only. Since commercial vehicles such as trucks, busses, and trailers bear an excise tax of 10 percent (which is not scheduled to be reduced to 5 percent until 1977), and since large leasing firms acquire substantial numbers of these vehicles, this figure may be on the conservative side.

[4] Senator Albert Gore, a former member of the Senate Finance Committee, estimated that perhaps 90 percent of the DISC benefits would go to fewer than 125 corporations.

[5] The Nation's 103 largest corporations show more than 55 percent of the business property according to the "Fortune 500's annual survey.

I have tried to be careful and conservative in these estimates and, as I have said, would welcome improvements. But it does appear from this tabulation that a select few corporations, a circle perhaps of less than the proverbial "400," will retain upward two-fifths of the $11 billion in annual tax revenues lost when the 1971 act and depreciation guidelines are in full operation.

For about 4 years now, we have been viewing the internal revenue system from the small company viewpoint, and as a result have introduced a tax simplification and reform bill [3] designed to make the Code and its administration more equitable for small business, which accounts for 95 percent of the number of U.S. firms, more than 40 percent of all jobs, and an estimated 37 percent of the gross national product.

Against this background these figures, indicating that a tiny fraction—about 0.027 percent of American corporations

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Footnotes at end of article.

or 0.0072 percent of the total business population—will receive 40 percent of the benefits, raise certain questions in my mind which I would like to see thoroughly discussed.

It is clear that the centerpiece of the Nixon administration's phase II economic program consists of the general provisions of this tax bill.[4] Together with the January 11 accelerated depreciation guidelines, they constitute the Nixon administration's tax program for 1971; and it is a very far-reaching set of proposals. The tax bill was also accompanied by emergency economic controls, which we all hope will be temporary.

However, the pending tax bill and administrative depreciation rules are intended to be permanent parts of the tax law. They constitute the major instrument of this administration for resolving our economic difficulties: inflation at 5 to 6 percent; unemployment hovering at about 6 percent; sluggish growth—a real growth rate of 2.9 percent annually in the third quarter of 1971; capacity utilization below 75 percent for a prolonged period; and the prospects of our first deficit in international trade since 1893.[5]

Thus, in my opinion the following questions may fairly be asked:

First. Is it inevitable that so large a part of the proposed tax benefits go to so small a fraction of our business population?

Are any of the existing tax alternatives (such as the small business tax simplification and reform bill, which would provide a more equitable distribution) worth consideration as better suited to combat inflation, stimulate employment, and promote economic growth and exports?

Second. What taxpayers are going to be required to make up the $11 billion a year in revenue losses?

Can we be informed as to the extent to which middle-income individuals and small businessmen will have to increase their proportion of the tax burden in order to make up this total? Will these figures show this revenue package amounts to a transfer of funds or a subsidy from middle-income taxpayers to rich ones?

Third. Is the allocation of benefits between large and small business an equitable one?

Is there a sound economic argument for concentrating 40 percent of the benefits of a tax bill of this size on less than 400 corporations at this time? Will this provide competitive advantages to the giant corporations; and if so, what effect will this have on mergers and concentration, price inflation and cost-cutting competition?

Fourth. Is this bill the most effective way to build up employment and counteract inflation?

What is the evidence that a tax program with this degree of concentration will stimulate employment and price reductions more than a bill with a greater percentage of the benefits for smaller and newer businesses which are in the innovation and growth bands of the economy? Is not phase II based on the premise that big business and big labor have become a cause of inflation by not allowing the free market to come into play, and does not this point to greater encouragement for medium-sized, small, and new business firms?

Fifth. Is giving a substantial tax break to existing exporters the best way to improve our trade balance?

Would it not make more sense to build up the exports of the 95 percent of U.S. firms which do not now export and to provide benefits—either through promotion and/or tax help to companies that increase their foreign sales? Would not $1 million a year spent on export promotion—which stresses customer contact, marketing, and good service—provide a more solid foundation for increasing our international trade?

From the small business viewpoint, this final title of the bill, the DISC export proposal, causes me extraordinary difficulties. I find that its text is 46 pages long, and the explanation in the Ways and Means Committee report runs to 37 pages.[6] Undoubtedly, there will be many additional pages of Treasury regulations before such an act can come into operation. It therefore seems to me that having a tax attorney read all this material and set up a DISC corporation will cost several thousand dollars, without taking account of the additional advice and bookkeeping which will be needed to remain in compliance.

One member of the House Ways and Means Committee characterized DISC as:

> . . . an extremely complicated tax proposal which had every likelihood of rewarding the large corporations presently engaged in exporting without increasing our exports or helping small business to increase exports.[7]

It also seems relevant that the Administration is engaged in attempting to bring about a major realinement in currencies and is negotiating for a reduction of non-tariff barriers by means of the 10 percent surcharge. These are measures that will, if successful, benefit our existing exporters. In the view of some observers, therefore, the DISC would give an additional exemption to these "windfall" profits.[8]

In view of these factors, I seriously question whether the DISC proposal, even as slightly modified by the Ways and Means Committee, is the best way of spending $1 billion a year to increase exports or whether there might be some better way to do this job.

Finally, I would ask in view of the heavy weighting of these total benefits in favor of large business—and the Senator from Wisconsin (Mr. NELSON) has done a very fine job in also relating these reductions to the personal income and social security taxes[9]—and whether major questions regarding national priorities have not been raised.

I certainly hope that these questions will be thoroughly discussed by the experts in the Finance Committee, and on the floor of the Senate, so that the Members of this body can become more fully informed as to the economic justification for these measures.

Because the significant changes in the tax structure, which I feel are involved, I believe the Senate is entitled to the presentation of a very strong case in favor of the policy alternatives proposed by the Nixon administration and to the analysis of this case by all who are concerned with the well-being of small businessmen and the national economy.

FOOTNOTES

[1] Amend. No. 481 to H.R. 10947. This proposes to eliminate the offset of new machinery purchases against the $65,000 of eligibility provided by the bill for the purchase of used machinery.

[2] "Senate Panel Approves Investment Tax Credit," by Frank C. Porter, *The Washington Post*, A1:3 at p. A8:1. Additionally, the Finance Committee amendment would reduce the $65,000 figure to $50,000, as it was in the prior law.

[3] Small Business Tax Simplification and Reform Acts of 1970 and 1971; S. 4039, 91st Cong.; and S. 1615 and H.R. 7692, 92nd Cong.

[4] See "Effects of Program on FY 1972 Budget," table presented in testimony by Secretary of Treasury, John B. Connally, hearings before the House Ways and Means Committee, Sept. 8, 1971, p. 7 at p. 17.

[5] For instance, see "Goals Eluding Nixon—'3d Quarter Economy Just Plain Dismal'" by Hobart Rowen, *The Washington Post*, Oct 28, 1971, p. A18:6.

[6] H. Rept. 92–533, Sept. 29, 1971, pp. 58–95.

[7] Dissenting views of Rep. Sam M. Gibbons to the report of the House Committee on Ways and Means to the Revenue Act of 1971, H. Rept. 92–533 at p. 108.

[8] See *The Washington* Post article entitled "DISC: Tax Windfall on Top of Trade Windfall," by Prof. Stanley S. Surry, Oct. 24, 1971, p. L1.

[9] "Revenue Act of 1971—Amendments," statement by Sen. Nelson in CONGRESSIONAL RECORD, vol. 117, pt. 29, p. 37907.

SKI AMERICA FIRST: WYOMING

Mr. HANSEN. Mr. President, the travel section of the Washington Post on Sunday, November 7, emphasized skiing in the United States and pointed out the many advantages of U.S. skiing over skiing in other lands.

The lead article, written by Ron Fett, was entitled "Ski America First: A Lift for Stateside Slopes." Mr. Fett noted that the most dramatic ski area in the United States is at Jackson, Wyo. I quote from his article:

> The U.S. ski area with the greatest vertical, 4,135 feet, is Jackson Hole in Wyoming. Located about 270 miles north of Salt Lake City, the "gentle giant" has a 2½-mile-long 63-passenger tramway and four chairlifts. The 100 miles of trails are topped by a vast ballroom of waist-deep powder.
>
> Teton Village at the base has six lodges and six condiminium buildings. Restaurants range from the continental Sojourner to the plebian Mangy Moose Saloon and Spaghetti Emporium. Additional eateries and beds are available in Jackson, 12 miles away. Austrian Olympic champion Pepi Steigler heads the ski school, which has a chairlift for its own use.
>
> To encourage January business, the Jackson Hole management offers visitors a reimbursement of 2 cents a mile for the one-way direct-line distance traveled from departure point to the area. A carload from Washington can have the gas paid for out and back. This season, a new express bus will connect with major flights into Salt Lake City.

Mr. President, I commend the author for his efforts to encourage Americans and visitors to America to ski in the

United States. In addition to Wyoming's several ski areas in the vicinity of Jackson Hole, our State has outstanding ski areas in all sections, and I take this opportunity to urge Senators and their friends who have not skied Wyoming to consider a winter visit to Wyoming soon.

Some of the better-known ski areas in Wyoming are, in additon to Jackson Hole, which is 12 miles northwest of Jackson:

Teton Pass, 13 miles west of Jackson;

Snow King, at Jackson;

Pinedale, 10 miles northeast of Pinedale;

Grand Targhee, in Wyoming 12 miles east of Driggs, Idaho;

Sleeping Giant, 48 miles west of Cody;

Sinks Canyon, 14 miles southwest of Lander;

Eagle Rock, 11 miles east of Evanston;

Antelope Butte, 38 miles east of Greybull;

Meadowlark, midway between Greybull and Worland;

Hogadon, 11 miles south of Casper;

Medicine Bow, 36 miles west of Laramie;

Snowy Range, 23 miles southeast of Saratoga;

Happy Jack, 10 miles east of Laramie;

THE SPARTAN WARHEAD TEST AT AMCHITKA

Mr. BAKER. Mr. President, I want to express my great gratification at the apparent success of the Cannikin test at Amchitka Island on Saturday.

I fully supported the President's decision to proceed with the test in the face of some considerable and vocal opposition. The decision to "go" was a very important one, in my judgment, for reasons substantive and symbolic.

To begin with, the Spartan warhead is the heart of the safeguard ABM system. Although the United States had previously tested a smaller prototype. Cannikin was the first test of the actual warhead. Safeguard is of great importance for at least two reasons. First, it represents a major shift in U.S. strategic weaponry, away from total reliance on second-strike offensive capability toward a partial reliance on a defensive system that poses no active threat to any foreign populations. Second, Safeguard is a significant element in the promising strategic arms limitation talks that have been going on between the United States and the Soviet Union at Helsinki and Vienna. A successful test of the Spartan warhead reinforces the utility of the Safeguard system with respect to each of these functions.

The President's decision to proceed with Cannikin was also an important symbolic act. To many people, both at home and abroad, it may well have appeared in recent weeks and months that the Government of the United States had been paralyzed by antiwar and pro-environment sentiment. The successful testing of the Spartan warhead at Amchitka on November 6 should do much to dispel that misapprehension.

I do not mean to imply that the Government should go about taking actions that threaten the environment just to prove that it can. This is nonsense. But Cannikin underscores the fact that the cost-benefit equation contemplated by the National Environmental Policy Act of 1969 does, in fact, have two sides. NEPA does not say that the Government can take no action with negative environmental consequences. NEPA does say that potential damage to the environment must be taken into account in making an overall "balancing judgment" as to whether the action in question should be undertaken.

I wholeheartedly commend Dr. Schlesinger and other members of the Commission and its staff, particularly the technical personnel at the site, who did such a fine job in taking every possible precaution against untoward damage.

DENIAL OF INFORMATION TO CONGRESS

Mr. FULBRIGHT. Mr. President, Richard F. Kaufman, of the staff of the Joint Economic Committee, has written a most interesting article which was published in the Nation for November 1.

Mr. Kaufman discusses the ways in which Congress has been denied information about our increasing military involvement overseas—not by the usual device of failing to give Congress information, but by the device of hiding foreign assistance funds in the military budget.

For a Senate which is increasingly demanding knowledge before action, and is increasingly questioning the role of the military in the conduct of our foreign policy, this article is must reading.

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:

DOUBLE-TALK BOOKKEEPING

(By Richard F. Kaufman)

Trying to see the costs of wars past, present and future through the federal budget is like looking through shattered glass. Although it is the government's official financial record, the budget is an unreliable guide to the costs of national security. It conceals large sums and puts forth misleading figures and deceptive narrative. Estimates of future spending are often understated, sometimes grossly. As used in the budget, the term "National Defense" is a misnomer and leads directly to a distorted view of the true level of expenditures devoted to military affairs.

One kind of budgetary distortion is the omission of programs that are intended, at least in part, for military purposes, but that are paid for outside the Department of Defense. Another kind is the mislabeling of funds within the official defense budget. For example, military assistance to other countries has for years been poor-mouthed as a once richly funded program that now, because of Congressional parsimony, barely keeps body and soul together. The budget and other official sources of information have created the impression that outlays for military aid steadily declined from a peak in the 1950s to practically starvation levels in the late 1960s and early 1970s. According to the Pentagon's annual report, "Military Assistance and Foreign Military Sales Facts," appropriations for military aid went down from $5.7 billion in 1952 to $350 million in 1970. The Commerce Department's monthly "Survey of Current Business" reflects a similar decline in military assistance in the balance of trade tables, where transfers under military grant programs are seen to have dropped to $613 million in 1970 (appropriations and actual transfers generally vary). Year after year, the budget's breakdown for National Defense contains a line item for "Military Assistance," and anyone examining it over the past decade or so would be bound to conclude that the program was growing smaller at the rate indicated by the reports of the Pentagon and Commerce Department.

But total outlays for military assistance, when added up correctly, have been rising, not falling, for the past six years. The money, arms and equipment now given away to foreign military establishments amount to several *billion* dollars annually, not a few hundred million. The budgetary sleight of hand which suggests the reverse has been accomplished primarily by fracturing the military aid program into a number of pieces, several of which have been conveniently allowed to disappear from public view. Before 1965, practically all military assistance was administered under the Military Assistance Program Act, known as MAP. To know the full scope and costs of military aid it was sufficient to examine MAP.

After 1965, however, MAP and "military assistance" came to have different meanings. In that first year of the buildup in Southeast Asia, it was decided to take South Vietnam out of MAP. Henceforth, military aid to Saigon would be handled as a part of the Pentagon's budget rather than as a part of the State Department's budget, where MAP was located. The explanation given for the change was that the funds required to help South Vietnam were, because of the war, so great that MAP's resources would be drained if it were required to supply them. The following year, the same reasoning was used to carve Laos and Thailand out of MAP. In retrospect, the justification given for moving around the military assistance accounts looks shaky. If greatly increased aid to Saigon was necessary, why didn't President Johnson say so, and request additional funds for MAP? Given the readiness of Congress to support the war in 1965 and 1966, MAP was no more in danger of being swamped by Indochina than was the defense budget. It would have been possible, in other words, to aid our allies in Southeast Asia without chopping up MAP.

The fact is that dismembering MAP had budgetary effects which would not have accompanied an overt enlargement of its program. When assistance to South Vietnam, Laos and Thailand was moved into the Pentagon, it disappeared from public view and Congressional scrutiny. The costs of this part of the program could no longer be seen in the figures for MAP, and under the defense budget label of "Support of other nations" their connection to the military assistance program was soon forgotten. The budget itself nowhere explains the origin of this item or relates it to military assistance.

Moreover, the change shifted jurisdiction over aid to the three nations from the Foreign Affairs to the Armed Services Committees of the House and Senate. From the administration's point of view, this was fortunate—legislative control went from the likes of William Fulbright and Wayne Morse to Richard Russell and Mendel Rivers. Thus transplanted, "Support of other nations" quickly sprouted from $100 million in 1964 to $2.3 billion in 1970. Leaving this item out when describing the size of the military assistance program was like weighing an elephant by placing only his trunk on the scale.

Several other parts of the military aid program lie hidden in the defense budget. Substantial amounts of excess materials and equipment are transferred annually from U.S. military stocks to foreign governments. Since these goods may have been in the inventory for several years before being declared excess, they are usually already paid for when transferred and do not show up as

current outlays for military assistance. Nevertheless, the annual transfers represent hundreds of millions of dollars worth of property purchased with taxpayers' money. More than $10 billion in excess military materials and equipment is being made available under this portion of the aid program, none of which appears in the budget as military assistance, and the amount will probably grow larger as troops are withdrawn from Vietnam and other areas. It is intended to turn over to South Korea all the equipment of the 20,000 troops to be pulled out of that country. No budget, as now designed and presented, will ever itemize the costs of such giveaways.

Aside from budgetary legerdemain, other funny games have been played with such transfers. How many of the equipment is really "excess" to our military needs; how much is funneled through this conduit to avoid Congressional scrutiny and to circumvent the legal restrictions on outright grants? In 1970 a House appropriations subcommittee learned that the United States had given more than $150 million in "excess" weapons to Nationalist China. The weapons included fighter aircraft, cargo planes, howitzers, tanks and rifles. Among the aircraft were more than twenty F–104 Starfighters (the exact number is classified), a modern supersonic plane still being used by the Air Force. The revelation caused a mild uproar in Congress because the year before an effort had been made to tack $54 million onto the MAP appropriation for the express purpose of enabling Taiwan to buy a squadron of F–4 fighters. An amendment to this effect passed the House but was defeated in the Senate and not enacted. Thus when it became known a few months later that the Pentagon had made a gift of the Starfighters and other weapons out of "excess" stocks, a lot of Congressmen were understandably upset. The Administration said that the planes had been declared excess because of reductions in the defense program and that they would have been given to Taiwan even if the funds to purchase the F–4s had been appropriated. To the Representatives and Senators who had successfully opposed the F–4 maneuver it looked as though the Pentagon had mislabeled perfectly good weapons as "excess" to accomplish what the defeated F–4 amendment was intended to do—namely, to give a squadron of modern fighter aircraft to Nationalist China.

The classic example of concealment through mislabeling is the Food for Peace program. It was disclosed in January of this year that approximately $700 million of Food for Peace counterpart funds have been used over the past six years for military aid purposes. The Pentagon correctly argues that there is nothing illegal in this practice. The 1954 legislation that created Food for Peace authorized the use of counterpart funds for "common defense" in the recipient countries, and in 1966 MAP grants were made conditional on foreign governments entering into agreements with the United States allowing Food for Peace funds to be used in this way. The real issue, however, is one of accountability, not legality.

To expect the average taxpayer or member of Congress to be familiar with all the details of the constantly expanding body of law and administrative regulations governing federal agencies, or to penetrate beneath the surface of what the bureaucracy appears to be doing, would be like expecting the stockholders of a firm to be experts on corporate law, as well as certified public accountants. The corporation is supposed to disclose the salient facts about its financial status in the annual report, and the federal government has a much greater responsibility to disclose what it is doing with the taxpayers' money in the annual budget. The statement in that document that the Food for Peace program "combats hunger and malnutrition, promotes economic growth in developing nations, and develops and expands export markets for U.S. commodities," creates the false impression that the program is employed exclusively for what its name suggests. Even high government officials with direct responsibility for military aid have been unaware that the United States has *required* recipients of Food for Peace to use counterpart funds for "common defense." Senator Fulbright and Townsend Hoopes, former Defense Assistant Secretary for International Security Affairs, have candidly admitted their ignorance on this point. It is no wonder that Sen. William Proxmire, whose committee investigation first brought the facts to light, has labeled the project Food for Peace for War and called it a case of Orwellian double-think and a corruption of the English language.

Other much larger programs, ostensibly intended for economic development abroad, are also in reality forms of military assistance. Economic assistance for Vietnam, Laos and Thailand, listed in the budget as "Supporting assistance" (not to be confused with "Support of other nations"), finances police, pacification and resettlement activities. Subsumed in this category are outlays for "public safety" in various foreign countries. "Public safety" is a well-known euphemism for internal security and paramilitary programs which, by themselves, cost $529 million in 1970, almost as much as MAP.

Two further examples indicate the ingenuity with which the facts about military spending are obfuscated: Until 1970 the budget included a table and a brief discussion of "Estimated Special Support for Southeast Asia Operations," meaning the cost of the war. According to the last budget presented by the Johnson administration, outlays for the war rose from $103 million in 1965 to $28.8 billion in 1969. In June 1969, after the changing of the White House guard, the Pentagon supplied Congress with the same figures. Up to this point the Nixon Administration appeared to follow the policy of disclosing the war costs, if not the decisions about the war, and spokesmen for the new regime were in agreement with their predecessors on what those costs were.

But in 1970 the first budget prepared under Nixon included no figures for the costs of Vietnam and from that day to this the war costs have been censored out of the budget. The purging of the numbers has been explained as necessary to prevent tipping the government's hand on future troop withdrawals, an explanation that is hardly consistent with the calculated leaks of war-cost figures by government officials in various speeches and closed-door Congressional hearings. What is more peculiar is that the figures leaked since 1970 are much lower than the official ones given out earlier. Spokesmen for the Pentagon now assert only $21.5 billion was spent in Vietnam in 1969, compared to the $28.8 billion which both the last Johnson budget and the Nixon Administration had once affirmed as the amount spent that year. The last Johnson budget had estimated war spending at $24.9 billion for 1970. It is now maintained in extrabudgetary declarations that the actual costs were $17.4 billion.

What accounts for the discrepancies and the present refusal to disclose the costs formally in the budget? In an attempt to reconcile the two sets of figures, the Pentagon distinguishes between what it calls "full" and "incremental" Southeast Asia costs. Defense Comptroller Robert C. Moot stated in his testimony to the Senate Appropriations Committee last year that the full costs include amounts that would have been incurred in that part of the world even though there were no war, while the incremental costs are those that result directly from the war. The Johnson figures, according to this distinction, represented the full costs. The Nixon figures are the incremental costs and therefore somewhat lower.

The difficulty with this explanation is that war costs have always been described in the budget in incremental terms, although the word "incremental" was not used. Before the lid came down, they were listed year by year in tables separate from the rest of military outlays and referred to as "expenditures directly attributable to our effort in Vietnam" (The Budget for Fiscal Year 1969), "costs which are directly attributable to special efforts in that area and in excess of what might have been the defense budgets for the years shown in the absence of the Vietnam conflict" (The Budget for Fiscal Year 1968), and "special Vietnam costs" (The Budget for Fiscal Year 1967). In addition to the separate tables showing estimated war outlays, the National Defense tables for each of those years contained subtotals excluding the special costs for Vietnam. It is hard not to believe that the purpose of all this classification and differentiation of special costs was to distinguish the nonwar costs of defense from what is now known as the incremental costs of the war.

Taking the analysis one step further, it is interesting to note that the segregation of war from nonwar expenditures facilitated the rapid expansion of the defense budget from 1965 through 1969, while the scaling down of war costs now facilitates resistance of pressures to cut defense spending. By separating the two kinds of military spending, the Johnson administration was able to show that the "baseline" defense budget—the level of spending prior to the Vietnam buildup in 1965—had been kept more or less constant, and that the principal reason for increasing total military outlays was to support our efforts in Vietnam. It became particularly important to be able to show that baseline expenditures were not rising after passage of the Revenue and Expenditure Control Act of 1968. This Act, which placed a ceiling on federal spending, exempted the war in Vietnam. It thereby froze nonwar defense outlays—the baseline—and created an incentive to define as much of the defense budget as possible as war-related.

So long as war efforts intensified during the period of escalation, increases in total defense spending could be justified on the basis of the war. Once the policy shifted to de-escalation, however, severe pressures developed to cut the defense budget and employ the savings, termed "the peace dividend," for nonmilitary purposes. After 1969, in other words, it became advantageous to the military for war spending to be minimized. The incentive was now to define as much of the defense budget as possible as being not related to the war. The Pentagon's use of the incremental costs concept serves this purpose by shrinking the costs of the war and expanding the baseline. The effect is to reduce the potential savings from the phase down. Meanwhile, the possibility that a peace dividend will materialize grows more remote each year as the defense budget continues to hover at approximately the level attained during the height of the war.

The final example of how the true level of military spending is muddled involves the definition of defense. Many persons have observed that the category "National Defense" in the budget does not fully identify all expenditures that are in essence military or military-related. The Joint Economic Committee concludes in its current annual report that "the definition of national defense found in the budget is so restrictive that the outlay figures do not adequately reflect the true costs of national security." In part, no doubt, the inadequacy is due to bureaucratic inertia and obeisance to historical precedent. Budget formats tend to remain the same from one administration to another, although in-

teresting changes do sometimes occur as when special tables were first inserted in the budget to show the costs of Vietnam and then taken out. In any event, whether through bad design or bad habit the tendency is toward gross understatement of what is actually spent.

The Joint Economic Committee's solution is to use the broader term National Security instead of National Defense and to list under it all military outlays, all programs that are clearly related to national security, and all those that appear to be intended for other purposes but which are either partly undertaken for national security or would not be undertaken but for the requirements of national security. Of course, the first improvement would be to insert in the National Security budget all the programs, such as military assistance in its entirety, that should be counted under the present narrow definition of dedense but are not. Beyond that are a variety of other activities and expenses that add more than $25 billion to total costs.

National Defense is at present composed of Pentagon outlays plus certain defense-related programs such as MAP, atomic energy, strategic stockpiles, the Selective Service System and emergency preparedness activities. These items added up to $80.3 billion in 1970. National Security, as conceived by the Joint Economic Committee, would include everything under National Defense and, in addition, the greater portion of interest on the national debt (created mostly to pay for past wars), the Veterans' program, the space program, the costs of the State Department, the Coast Guard, the U.S. Information Agency, the Arms Control and Disarmament Agency, the Renegotiation Board, the National Security Council, the maritime subsidy, most impacted areas school assistance, and part of the costs of highway and airport aid. These outlays would bring the "full" costs of defense 30 per cent above the official figures. National Security expenditures were $106 billion in 1969, and $107.7 billion in 1970.

Most ominous as a harbinger of future spending are the figures in the budget for Recommended Budget Authority. These figures tell what the Administration is requesting from Congress for the following year. The current request for National Defense in the official budget is for $80.2 for 1972, nearly $3 billion more than the outlays estimated for 1971. But recommended authority when tallied in the National Security Budget amounts to $111 billion.

The Administration insists, with some justification, that defense spending has been reduced in the past two years. The rollback, to use the phrase loosely, was accomplished more by inflation than by actual dollar reductions. When price increases are taken into account the size of the defense budget does shrink somewhat. Nevertheless a look at the national security budget shows that, even allowing for inflation, the full costs have gone down by a very small margin, if at all. The Administration's boast that it has achieved a dramatic shift in priorities and that it has successfully managed the transition from a wartime to a peacetime economy is not supported by the statistics or by recent developments in economic policy making. By any reckoning we are now spending for national security at wartime levels and it is not possible to have a peacetime economy and a wartime defense budget at the same time. The New Economic Policy, with its strong resemblance to wartime economic controls, should dispel any remaining doubts about the kind of system we live under.

BLACK HILLS SIOUX CLAIMS

Mr. McGOVERN. Mr. President, deep in the hearts of members of the Sioux Nation is the longstanding Black Hills claim identified as docket No. 74 in the Indian Claims Commission. The claim seeks compensation for the wrongful taking of the Black Hills of South Dakota and has been in litigation in one form or another since 1923.

At a recent press conference in Washington, David Long—Crazy Horse—the vice president of the Oglala Sioux Tribe of the Pine Ridge Reservation in my State, issued an eloquent statement regarding the claim and the feeble efforts of the Government to assume rightful responsibilities toward Indian people. I ask unanimous consent that Mr. Long's statement of September 27, 1971, be printed in the RECORD.

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

STATEMENT OF DAVID LONG—CRAZY HORSE—VICE PRESIDENT OF THE OGLALA SIOUX TRIBE OF THE PINE RIDGE RESERVATION

My people, the Oglala Sioux, have waited a very long time to see justice done in this case. We first went to court in 1923 to get compensation for the lands taken from us by the United States in 1868. Together with the other Sioux tribes we lost 48 million acres of land at that time. We estimate the value of these lands at $62,000,000. A judgment in our favor in this case would not only help to correct this century-old injustice, it would provide us with funds which we could use to deal with the needs which we have today for better housing, jobs, and community development.

When the European peoples first came to the Western hemisphere, my ancestors greeted them in a friendly manner and helped them to survive when their food ran short and when the winters were cold. Your history is full of examples of friendly greetings which were given to the first white people who arrived on this continent. The troubles which later developed between the American Indians and the European peoples came about because, over and over again, the Europeans broke their word and violated the rights of the Indian inhabitants of this land.

After squeezing the Indian people of the United States into a tiny fraction of their original homeland and promising that these small reservation areas would be preserved as Indian country forever, the United States in the General Allotment Act set up a system under which thousands of acres of Indian land have passed into the hands of white men. This process is still going on on my Reservation, the Pine Ridge Reservation in South Dakota. Not only do the whites buy up reservation lands so that our reservation is getting smaller and smaller, but the Bureau of Indian Affairs leases our lands to prosperous whites. Instead, we believe that the Federal Government should assist the Oglala Sioux Tribe to develop the lands of the reservation for use by Indians. We have much valuable grazing land, which could be of even greater value to us if the Federal Government would help us in developing our water resources and improving the quality of our land.

During the past twenty five years the Federal Government has made grants all over the world to help various foreign peoples to develop their countries. We Oglala Sioux, however, have not been able to secure the funds we need to develop our own lands right here in the United States. The United States should recognize that Indian tribes are under-developed, too, and we should have a high priority for Federal assistance.

We also understand that proposals are now being considered to change the special tax status of our property. The tax exempt status of Indian lands was part of the bargain when Indian peoples sold vast areas of this country to the United States. The tax exemption is one of the ways in which the United States is paying us for what we were compelled to give up. I simply cannot believe that in this day, when the wrongs suffered by American Indians are becoming much more fully understood, the American people would go along with another breach of faith by the Federal Government to my people.

What we ask for now from the United States is a just decision in this case so that we will be compensated for the vast area which was once our homeland, and in addition, that there will be sensible and practical programs to assist us in making better lives for our people. These programs should include a vigorous Bureau of Indian Affairs, which will be a source of financial help and technical assistance to Indian tribes, but will not dampen our desire for improvement and discourage us by heavy handed colonialism. I am afraid that at the local level the Bureau has not yet adopted the forward looking policies which have been stated by the Bureau of Indian Affairs in Washington. Indian people want, and still need, the Bureau's assistance and protection, but it should be offered in a helpful spirit of cooperation.

In addition, we also need help for those of our people who cannot find jobs on our reservation. Our unemployment rate at Pine Ridge exceeds 34% of the work force. There simply are not enough job opportunities for our people at Pine Ridge. While we would like to see industry locate at Pine Ridge so that more jobs would be available there and we have had some success with industrialization through the expanding Pine Ridge Products plant, we also ask that the Bureau provide more assistance to hundreds of Oglala Sioux who annually go off the reservation to seek employment in cities across the country. There should be a comprehensive Federally-funded effort to meet the counseling, housing, training, and other needs of Indians forced into the mainstream of American life by the lack of jobs on the reservations. The present Bureau of Indian Affairs relocation program is simply not enough.

I am accompanied here to Washington by an official delegation from the Oglala Sioux Tribe, including Mr. Moses Two Bulls, Mr. Charles Under Baggage, Mr. Charles Red Cloud, Mr. Frank Short Horn and Mr. Frank Kills Enemy. They join with me in the wish that the United States at long last do justice to the Oglala Sioux and to all Indian Americans.

AMENDMENTS TO TAX RELIEF PROGRAM

Mr. MOSS. Mr. President, I should like to declare my cosponsorship of two amendments to the administration's tax relief program for 1971. I believe that, taken together, these amendments will go a long way toward creating a truly balanced tax relief package, one which recognizes the importance of stimulating consumer spending in our efforts to create more jobs.

The first of these would increase the 1971 personal income tax exemption from $650 to $750, thus giving an immediate boost to the overall economy.

I believe it is noteworthy that this new incentive to consumption will not be at the expense of any permanent loss to our Federal revenue base. The Tax Reform Act of 1969 already provides for the increased exemption at this level to take effect in January 1973. This amendment would simply take advantage of

this new fiscal stimulus at a time when our economy could certainly use it.

I am also supporting legislation to increase the 1971 low-income allowance from $1,050 to $1,300. This would be of special benefit to those families whose incomes are less than $10,000 a year. It would guarantee, moreover, that families living below the poverty level would not have to pay Federal income taxes.

It is generally believed that consumer spending is in great need of stimulation at the present time. With much of our Nation's productive potential lying idle—at least 6 percent of our labor force and more than 25 percent of our industrial capacity—there is an obvious necessity to encourage greater market demand for the products of American business. This legislation will address this problem. By putting more money in the hands of consumers, especially those hard-pressed families of low and moderate income, Congress can invigorate the entire economy. As people spend this extra money they will give new life to small businesses and depressed regions.

In addition to the other tax relief measures already contained in the administration's program, these new incentives to the consumer will constitute a major stimulus to a fuller use of our Nation's human and technical resources.

A TRIBUTE TO THE HUNGARIAN FREEDOM FIGHTERS

Mr. WILLIAMS. Mr. President, in 18 days at the end of October and the beginning of November 1956, the people of Hungary took up arms against domination by the Soviet Union and against their Communist form of government. The Hungarian revolution was, in one sense, a triumph of the human spirit in man's age-old struggle for individual freedom and dignity.

On October 23, 1956, masses of workers and students demonstrated and marched on the Parliament buildings in Budapest to present their demands for the withdrawal of Soviet troops from their homeland, the dismissal of Stalinists from positions of power, and for the introduction of more democratic methods of government. Imre Nagy, the man that the people demanded as premier in place of the Stalinist puppet, asked that Soviet troops be withdrawn from Hungary. The revolt spread and by the 30th of October, the Hungarian Air Force and Army had joined the insurgents. The goals of the freedom fighters were so infectious that Soviet troops in Budapest were seen fraternizing with their supposed "enemies." On October 31, Premier Nagy announced that the Kremlin had agreed to withdraw all troops from Hungary. He also declared that his country was going to withdraw from the Warsaw Pact and appealed to the United Nations and the great powers to guarantee Hungary's permanent neutrality. The Soviet Government went through the motions of negotiating the details of the removal of Russian troops from Hungary. But as was to be the case in Czechoslovakia 12 years later, the Russians struck while negotiations were still in progress. At dawn on the morning of November 4, 1956, large formations of Soviet tanks and infantry were sent into Hungary to crush the revolt against Soviet domination. Budapest and other provincial centers were attacked and the government of Imre Nagy was overthrown.

For 6 days the valiant freedom fighters tried to hold off the Red Army, but because of the overwhelming might of the Russians and because of the acts of the newly installed puppet government headed by Janos Kadar, the battle was lost. Yet, even after the streets of Budapest were lined with tanks and troops, the Hungarian people did not give up their resistance. On November 11, a general strike began in the capital, with all workers refusing to cooperate with their imposed government. On December 5, new mass demonstrations erupted and on December 11, one of the most complete general strikes in history paralyzed the entire country. But, in the end the sheer weight of Soviet military strength suppressed the revolution. Over 20,000 Hungarians had lost their lives. It was, indeed, a dark day in the history of freedom in the world.

But, while the revolt was underway, the border of Hungary with Austria was thrown open by members of the Hungarian Army. Thousands of refugees made their way to liberty. They arrived with little more than the clothes on their backs and soon Austrian facilities were swamped by their influx. It is estimated that over 100,000 Hungarians fled their homeland during the revolution. The Austrian Government appealed for help and the entire Western World responded with money, food, and medical supplies. But, the largest problem facing Austria was the resettlement of the new refugees. In response to this challenge, the United States offered to accept 42,000 refugees, and permanent permission to remain in this country was soon granted by Congress. An airlift was organized by the United States, Canada, and Great Britain to transport the refugees from Austria to new homes abroad.

For those refugees who came to the United States, the first point of contact with American soil was at Camp Kilmer, in my own State of New Jersey. This installation, through which so many American soldiers had passed during World War II on their way to fight for freedom and democracy in Europe, now became the chief reception and processing center for the Hungarian freedom fighters. From Camp Kilmer these newcomers spread out into other parts of the country, merging with the mainstream of American life.

Many of them chose to remain in New Jersey and today are active participants in the political, economic, and cultural life of my State. The gain to New Jersey because of the presence of these active, vital people has been beyond estimation. Thus, we observe this 15th anniversary of the Hungarian Revolution, let us hope that the people of Hungary will someday be able to enjoy the freedom and liberties now enjoyed by their countrymen who came to America in 1956, and at the same time, be thankful that they came to America to enrich our country.

NOMINATION OF WILLIAM REHNQUIST, OF ARIZONA, TO THE SUPREME COURT OF THE UNITED STATES

Mr. McCLELLAN. Mr. President, the Committee on the Judiciary is now holding hearings on the nominations of Mr. William Rehnquist, of Arizona, and Mr. Lewis Powell, Jr., of Virginia, to the Supreme Court. On the first day of the hearings I made some remarks and asked Mr. Rehnquist some questions. I should like to draw the attention of Senators and other readers of the RECORD to those remarks, questions, and Mr. Rehnquist's answers.

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

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

REMARKS

Senator McCLELLAN. Mr. Chairman, I have a few questions, but I should like to ask the indulgence of the chair and my colleagues with me while I make a brief statement regarding these nominations, a statement that I want to go into the record in full. Following this statement, I will have some questions premised upon the views that I express here.

OPENING REMARKS ON SUPREME COURT NOMINATION HEARINGS OF SENATOR JOHN L. MCCLELLAN, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Thank you, Mr. Chairman.

A special genius of the American people has been a commitment to the rule of law, not of men, and a special focus of that commitment has always been on the Supreme Court of the United States. This Committee, and ultimately the Senate, fulfills, therefore, a sacred duty in advising and consenting to the nominations submitted by the President for the Nation's highest court.

In considering these pending nominations, three issues face the Committee, and will later face the Senate:

Do these nominees have personal integrity?

Do they possess professional competency?

Do they have an abiding fidelity to the Constitution?

No Senator has a duty to vote to confirm any nomination forwarded by the President that cannot pass muster under this threefold test. In my judgment, this is what this hearing is all about—not about the so-called "Warren Court," or the "Burger Court" or even the "Nixon Court." Those labels are the stuff of journalism, not constitutional law.

Since these nominations were announced. I have examined the public record of each of these men, and I shall undertake to listen through these hearings, without prejudgment. However, I would observe that I have found nothing in the public record of either man that raises any question whatsoever of lack of integrity or competency. I am convinced that any challenge on either of those grounds will utterly fail. Therefore, I shall be concerned about and shall direct my attention and inquiry principally to the question of their fidelity to the Constitution.

I think it can be said that there is room on the United States Supreme Court for liberals and conservatives, for Democrats and Republicans, for Northerners and Southerners, for Westerners and Easterners, for Blacks and Whites, and men and women—these and other similar factors neither qualify nor disqualify a nominee. After personal integrity and professional competence, what is most crucial, in my judgment, is the nominees fidelity to the Constitution—its text, its intention and understanding by its

framers, and its development through precedent over the history of our Nation.

There have been a few unfortunate periods in our history when justices on the Supreme Court have taken too literally Chief Justice Hughes' aphorism that the Constitution is what the judges say it is and have attempted to rewrite our Nation's basic Charter according to their own personal philosophies, either conservative or liberal. In my opinion, our Nation has just passed and is still passing through such a period.

In recent years a majority of the Supreme Court—no doubt in good faith, but nonetheless in my opinion with mistaken judgment—began to impose new standards on the administration of criminal justice in the United States, on both the Federal and State levels. These decisions have not enforced, as some have suggested, the simple rule that law enforcement agents must "live up to the Constitution" in the administration of justice, a Constitution that establishes known and fundamental standards. If this was all that was involved, no one could legitimately complain. My voice, for one, would not have been raised. Instead, these cases have, to a significant degree, created and imposed on a helpless society new rights for the criminal defendant, and some of these new rights have been carved out of society's due measure of personal safety and protection from crime. Indeed, since 1960, in the criminal justice area alone, the Supreme Court has specifically overruled or explicitly rejected the reasoning of no less than 29 of its own precedents, often by the narrowest of 5–4 margins. The high water mark of this tendency to set aside precedent was in 1967, when the Court overturned no less than eleven prior decisions. 21 of the 29 decisions the Court overruled involved a change in constitutional doctrine—accomplished without invoking the prescribed processes for the adoption of a constitutional amendment. It is significant that 26 of these 29 decisions were handed down in favor of a criminal defendant, usually one conceded to be guilty on the facts. The pursuit by some jurists of abstract individual rights defined by ideology, not law, has thus threatened to alter the nature of the criminal trial from a test of the defendant's guilt or innocence into an inquiry into the propriety of the policeman's conduct.

In my judgment, these decisions, however well intentioned, have come at a most critical juncture of our Nation's history and have had an adverse impact on the administration of justice. Our system of criminal justice, State and Federal, is increasingly being rendered more impotent by such decisions in the face of an ever-rising tide of crime and disorder.

President Johnson's prestigious Crime Commission in 1967 began its monumental study of crime in the United States with these tragic words:

"There is much crime in America, more than ever is reported, far more than ever is solved, far too much for the health of the Nation. Every American knows that. Every American is, in a sense, a victim of crime. Violence and theft have not only injured, often irreparably, hundreds of thousands of citizens, but have directly affected everyone. Some people have been impelled to uproot themselves and find new homes. Some have been made afraid to use public streets and parks. Some have come to doubt the worth of a society in which so many people behave so badly. Some have become distrustful of the Government's ability, or even desire, to protect them. Some have lapsed into the attitude that criminal behavior is normal human behavior and consequently have become indifferent to it, or have adopted it as a good way to get ahead in life. Some have become suspicious of those they conceive to be responsible for crime: adolescents or Negroes or drug addicts or college students or demonstrators; policemen who fail to solve crimes; judges who pass lenient sentences or write decisions restricting the activities of the police; parole boards that release prisoners who resume their criminal activities."

Mr. Chairman, I am glad to know that one of the nominees, Mr. Powell, was a member of the President's Commission that voiced these sentiments.

It is for these reasons that I, for one, welcome these two distinguished nominations. Until it has been demonstrated otherwise, I shall assume that their appointment is not an attempt to put a "liberal" or a "conservative" on the Court, but to appoint men of the highest integrity and outstanding competency—men characterized by a deeply held fidelity, not to an abstract ideology of the left or the right, but to the Constitution itself. If we can return to fidelity to the Constitution, I believe our society will be both free and safe.

Mr. Chairman, with that preface, I would like to ask the nominee before us this morning some questions.

The CHAIRMAN. Proceed.

Senator MCCLELLAN. Mr. Rehnquist, it is not my intention here to ask you to comment on specific litigation that might be before or might come before the court. But, I do wish to explore for the record, your understanding in a general way, of the role of the Court and the men who sit on it as the guardians of our Nation's basic charter.

Would you feel free, as a justice, to take the text of the Constitution—particularly in its broad phrases—"due process"—"unreasonable search and seizure"—and to read into it your personal philosophy, be it liberal or conservative?

Mr. REHNQUIST. I would not, Senator McClellan.

Senator MCCLELLAN. If you felt honestly and deeply, in light of your own personal philosophy, that the intention of the framers of the Constitution was no longer being achieved through the specific legal devices they deliberately chose in drafting specific clauses, would you feel free, as a justice, to ignore these specific legal devices and give old clauses new readings to achieve a new, and in your judgment beneficial, result?

Mr. REHNQUIST. I do not believe I would Senator, I think that——

Senator MCCLELLAN. Well, this goes to the heart of the matter. Would you be willing, as a judge, with the power you would have on the court, to disregard the intent of the framers of the Constitution to change it to achieve a result that you thought might be desirable for society?

Mr. REHNQUIST. No. I would not.

Senator MCCLELLAN. If you felt honestly and deeply that a settled course of constitutional doctrine developed by precedent over the years was wrongly decided in terms of your own philosophy of what is good or bad for our society, would you feel free to override that precedent and chart a new course of constitutional doctrine? In other words, assume that for years and years the words of the Constitution in a given clause or section had been given a certain interpretation or construction. Now, if you felt that that interpretation or construction, though in keeping with the plain intent of the framers of the Constitution, was not getting the results that you felt were necessary for a modern day society, would you overrule that decision to bring about a change? Or instead would you feel that the Constitution should be amended by the processes prescribed by it?

Mr. REHNQUIST. I would not overrule a prior decision on the grounds that you suggest.

Senator MCCLELLAN. In your judgment, what sort of respect is due precedent on constitutional questions by the Court? How much should you feel bound by the precedents the Courts has established?

Mr. REHNQUIST. I feel that great weight should be given to precedent. I think the Supreme Court has said many times that it is perhaps entitled to perhaps somewhat less weight in the field of constitutional law than it is in other areas of the law. But, nonetheless, I believe great weight should be given to it. I think that the fact that the Court was unanimous in handing down a precedent makes a precedent stronger than if a court was 5–4 in handing down the precedent. And I think the fact that a precedent has stood for a very long time, or has been re-examined by a succeeding number of judges gives it added weight.

Senator MCCLELLAN. Should you be confirmed, to what degree would you feel free to implement on the Court your personal view of the role that the Court should play in adjusting the rights of society and the individual in the administration of justice?

Mr. REHNQUIST. None.

Senator MCCLELLAN. Would you feel bound by the restraints of personal or logical consistency to follow the same legal or constitutional judgments on issues you considered either as a student, private practitioner, or in the Office of Legal Counsel?

Mr. REHNQUIST. No, I do not believe I would.

Senator MCCLELLAN. Well, it occurs to me—and I have practiced a little law and observed a good many lawyers—that as a practitioner you are an advocate for a client as well as an officer of the Court. And I can well see that the views that one might express in a given case or on a given issue, when one becomes a judge with the power to make the determination, instead of arguing the case, after weighing the other side of the argument, might not conform to his judgment as a jurist. Could you conceive that to be true?

Mr. REHNQUIST. I not only can conceive it to be true, Senator McClellan, but I can recall at least one instance in which Justice Jackson, to whom I clerked, found as a Supreme Court Justice that he was obliged to disagree with something he had done as Attorney General. And I believe the same thing happened to Justice Clark.

Senator MCCLELLAN. You mean after they became justices of the Court, they changed their views and decided differently on the questions they had previously considered or argued as advocates of a cause?

Mr. REHNQUIST. Yes.

Senator MCCLELLAN. Would you hesitate to do that if you had been wrong?

Mr. REHNQUIST. I certainly would not.

Senator MCCLELLAN. You would not let your prior position become the overriding influence in your decisionmaking, would you?

It has been remarked, "At the present time in this country there is more danger that criminals will escape justice than that they will be subjected to tyranny." Do you share this judgment that was expressed by Mr. Justice Holmes? (*Kepner* v. *United States* 195 U.S. 100, 134 [1904]).

Mr. REHNQUIST. I think I would want to know more of the factual situation, Senator, and an examination of the data that I simply have not been exposed to before, I could not categorically agree that there is more danger that criminals would be allowed to escape than that they would be subject to tyranny.

Senator MCCLELLAN. Very well.

Let me read another quotation: "In interpreting the Bill of Rights, I willingly go as far as a liberal construction of the language takes me, but I simply cannot in good conscience give a meaning to words which they have never before been thought to have, and which they certainly do not have in common with ordinary usage. I will not distort the words of the (Fourth) amendment in order to 'keep the Constitution up to date,' or to bring it into harmony with the times: it was

never meant that this Court have such power, which in effect would make us a continuously functioning constitutional convention."

That quote was from an Associate Justice of the Supreme Court. He then followed with this statement:

"With this decision the Court has completed, I hope, its rewriting of the Fourth Amendment."

This is what I am trying to ascertain from you. Do you share this philosophy? Would you be willing to give a new interpretation, never thought of or used heretofore, to change the impact of the Constitution and to decrease or to increase powers that existed or did not in the past under the Constitution, simply to try to do what they say—"to bring the Constitution up to date"?

Mr. REHNQUIST. No.

Senator MCCLELLAN. All right, I assume, then, that you agree generally with that philosophy that is expressed here?

Mr. REHNQUIST. Yes, I do. I do not know what particular case was quoted from, but I certainly—

Senator MCCLELLAN. The words are those of Mr. Justice Black in *Katz* v. *the United States* (389 U.S. 347, 373 [1967]).

Mr. REHNQUIST. I subscribe to the statement read unequivocally.

Senator MCCLELLAN. All right. The Justice further said "I think it would be more appropriate for the Court to leave this job of rewriting (the statute) to the Congress. Waiting for Congress to rewrite its laws, however, is too slow for the Court in this day of rapid creation of new judicial rules, many of which inevitably tend to make conviction of criminals more difficult."

Would you agree with what he said in *Katz* v. *United States* (389 U.S. 347, 373 [1967]).

Mr. REHNQUIST. I certainly agree that the Court should leave to the Congress the rewriting of statutes.

Senator MCCLELLAN. Well, this was the judicial philosophy of Mr. Justice Black, whom I believe Mr. Powell is to succeed.

One other now. Another Justice said, and I quote:

"I am bound to say that what has been done is not likely to promote respect either for the Court's adjudicatory process or for the stability of its decisions.

"I regret that I find so unwise in principle and so inexpedient in policy a decision motivated by the high purpose of increasing respect for constitutional rights. But, in the last analysis I think this Court can increase respect for the Constitution only if it rigidly respects the limitation which the Constitution places upon it, and respects as well the principles inherent in its own processes. In the present case I think we exceed both, and that our voice becomes only a voice of power, not of reason."

This is a quote of Mr. Justice Harlan, whom you are to succeed on the Court from *Mapp* v. *Ohio* (367 U.S. 643, 677, 686 [1961]).

What I am trying to ascertain, simply is this: there is one school of thought today that believes that the Supreme Court, whenever it feels that the Constitution as written or as it has been interpreted is not adequate to deal with the conditions that prevail in society today, ought to give it a different interpretation to get it into the mainstream, as some call it, of modern society. Do you believe that the Court or a justice, under the Constitution, has the power to do that or the duty to do it, under his oath?

Mr. REHNQUIST. Under my oath I believe it would have neither the power nor the duty.

Senator MCCLELLAN. Mr. Chairman, I do not want to take up all of the time this morning. I just wanted to lay this fundamental foundation. I am not one of those who believes the Court has legislative powers. I do not believe it should legislate. I do not believe that it should attempt to rewrite the Constitution. I thought Mr. Rehnquist shared those views, and I just wanted to bring that out.

I appreciate your answers, and I reserve the right to ask further questions.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Ervin.

THE LATE PRESIDENT NASSER OF EGYPT

Mr. FULBRIGHT. Mr. President, the Observer of October 4 contains a thoughtful and well prepared article about the late President Nasser, of Egypt, written by Mr. Robert Stephens.

I believe this analysis of President Nasser, a remarkable man, will be of interest to Senators. 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:

[From the Observer, Oct. 4, 1970]

NASSER

His verdict on King Farouk was: "History will sentence him to death." What will be history's verdict on Gamal Abdul Nasser? Robert Stephens sums up his achievements, failures, and contradictions

Nasser, who had a sense of humour, might have been wryly amused at some of the fulsome tributes paid to him after his death, especially in the West. For in his lifetime he was a man who evoked strong and conflicting feelings. To some he was a nationalist hero, but to others an inflated, war-mongering dictator.

While Nasser was first of all himself a complex and perhaps tragic human being with a subtle political mind, he was deeply influenced by the historical and cultural framework within which he operated. An Egyptian, a Muslim, and a self-proclaimed Arab, he was also essentially a revolutionary of the Third World. He was a product and animator of the same anti-colonial, anti-imperialist and modernising revolution that produced Nehru and Mao Tse-tung, Sukarno and Nkrumah, Castro and Ho Chi Minh.

To be born an Egyptian is to be the heir to 60 centuries of glory and of pain. To be a Muslim in the twentieth century is to be a member of a still-living faith and of a society which is passing through a deep spiritual crisis. To consider oneself an Arab is to feel part of a world civilisation, like that of China or India, which is struggling to reassert its identity and restore a legendary unity and vigour. To grow up a man of spirit and ambition in an Afro-Asian country in the first half of this century was to suffer from the humiliation of poverty, backwardness and political dependence, and to experience an irresistible urge to try to overcome it.

The convulsions caused by the Afro-Asian revolution have been severe and prolonged in the Middle East because they have coincided there with two other powerful conflicts: the confrontation of the United States and Russia in strategically important areas where European empires once dominated, and a unique and tragic clash between two emerging cultures, the Arab and the Jewish national revivals.

As an Egyptian, Nasser was a citizen of the oldest continuously organised and unified State in the world. But he was also the first native ruler of an independent Egypt since the Persian invaders destroyed the twenty-sixth and last Pharaonic dynasty in 525 BC.

He died when his greatest test of statesmanship in making peace or war was yet to come. The Six-Day War with Israel was a colossal blunder with disastrous consequences for the Arabs. Yet if Egypt's defeat by Israel had led to Nasser's fall he would have been remembered by most Arabs, even his enemies, not, as Hitler has been by most Germans, with shame, but as Frenchmen remembered Napoleon in Stendhal's day, with tragic pride.

CHANGES OF FORTUNE

The whole career of Gamal Abdul Nasser was marked by dramatic changes of fortune and his character was full of contradictions. On one side he was a man of determination and broad vision, a patient builder and organiser. He was very Egyptian in his down-to-earth practicality, his humour, his pride and easy magnanimity, his touch of Muslim fatalism. But he strangely combined passion and calculation. There was an emotional, impulsive side to him that under the sting of pride or the spur of ambition, made him capable of risking much of his patient work on a sudden gambler's throw.

He was both frank and secretive, a proclaimer of bold truths and capable of unblushing lies. He tried to involve the public in political action to a degree unprecedented in Egyptian and Arab history, but was haunted by conspiratorial obsessions and relied in the end on his personal authority. He had great private charm and a flair for judging popular sentiment, but lacked the common touch. He was not a great demagogue, except in moments of angry crisis when his passion and sardonic humour flashed to the surface: but his earnestness conveyed a certain massive power.

It was perhaps these very contradictions that created his appeal to the Egyptians and the Arab public. Even his greatest political mistakes did not basically affect his reputation as a man unselfishly dedicated in his public activity and modest and uncorrupted in his private life. But neither such respect nor patient, constructive work would alone have served Nasser's need to galvanise the Egyptians and the Arabs out of apathy and into revolutionary energy and greater self-reliance.

For this a certain display of daring and audacity was required, to stir the popular imagination and encourage the self-confidence needed to face the modern world. In doing so he risked disaster when the human and material resources at his disposal failed to match his ambitions or the tasks he was attempting. In his zig-zags between plodding reform and bursts of apparently reckless adventure, and the lurid language in which his propaganda machine expressed them, he also helped unwittingly to build up around himself and the Arabs an international image of untrustworthiness and violence.

But it was primarily on acts, not words, that Nasser built his Arab reputation: the economic and social reforms in Egypt, the Soviet arms deal in 1955, the nationalising of the Suez Canal Company, the building of the High Dam and the union with Syria in the United Arab Republic.

Although the union was destined to last for only three and a half years (1958–1961), it was an experiment that continues, despite its failure, to haunt the Arab consciousness. Apart from the liberation and development of Egypt herself, it was Nasser's most ambitious political venture. It illustrated perhaps his most valuable contribution to Egypt and the Arabs: his seriousness of purpose, his resistance to inertia and despair, the determination with which he was prepared to try to translate words into acts and dreams into decisions.

The failure of the merger underlined one of Nasser's weaknesses: his inability to share power. The Syrian Baathists, though often dangerously wrong-headed, also represented probably the most vital creative spark in the political life of Syria. Nasser failed to find a method of harnessing their energies. Similarly in Egypt he was for long unable to find a common language with part of the

intelligentsia who sympathised with his aims but criticised his methods.

Nasser's clash with the West was the result partly of his anti-imperialist drive and partly of Western policies. It was also, like his difficulties with Egyptian and Syrian intellectuals, a product of his world view, which was influenced by his erratic education and lack of first-hand knowledge of Western countries.

He was born on 15 January 1918 in Alexandria, where his father, a quiet man, was a post office clerk. For most of his life Nasser lived there and in Cairo, but his father's family came from the village of Beni Murr, in Upper Egypt.

Nasser was politically conscious from his schooldays in Alexandria and then in Cairo, and this was heightened when he went to the Military Academy. Here, and in the following years on garrison duty in Upper Egypt and in the Sudan, he met most of the young officers who were later to be his close associates in the military revolution of 1952. These were the roots of his Free Officers movement, a group of discontented, idealistic and intelligent young men, mostly drawn from the lower middle class, but who were in touch both with the growing educated middle class in the towns and with the peasants in the villages.

Their first concern was to end the British occupation and establish Egyptian independence. Their second was to do something about the appalling poverty, disease and ignorance in which most Egyptians lived.

After World War II the Free Officers movement was given impetus by the failure of King Farouk and the politicians to secure the withdrawal of British troops or to deal with corruption and poverty. The defeat of Egypt in the Palestine war of 1948—in which Nasser fought in a sector which held out until the end against Israel encirclement—further discredited the king.

Then came the 1952 coup, followed in 1956, by Nasser's election as the first President of the Egyptian Republic.

He had already begun to make his mark as an Arab and neutralist leader. He grasped, as no other Arab statesman had done before, the diplomatic bargaining power the Arabs could exert through their geographical position and their control of two-thirds of the world's oil reserves, provided they were united at least in their policies, if not in their political institutions. He had noted in his booklet, "The Philosophy of the Revolution,' the special position of Egypt as the largest Arab State, as a centre of Islam and as a part of Africa.

COOL NERVES OVER SUEZ

This analysis was to be denounced by Anthony Eden and Guy Mollet as a blueprint for empire-building and conquest, like Hitler's 'Mein Kampf.' (Nasser was later to comment ironically 'Why Hitler alone? Eisenhower has suggested that I am not only Hitler but Stalin as well! What they are frightened of really is the impact of the Afro-Asian revolution on their economic interests.')

With the nationalisation of the Canal and the Suez-Sinai War, he took on world importance. By cool nerves, great diplomatic skill and also a reasonable amount of luck, Nasser extracted from his military defeat a resounding political victory—he was now the dominant leader of the Arab world.

Syria's secession from the UAR was a severe blow to his prestige—he described it as 'one of the bitterest moments of my life'—but he characteristically bounced back by deepening his commitment to what he called 'Arab socialism,' linking it with the 'Arab Revolution.' His new doctrine was that effective Arab unity could only come about between 'liberated' countries—that is, countries that had not only rid themselves of foreign domination but also overthrown their 'feudalists and reactionaries' in a social revolution.

Within a year it had led him into a military intervention in the Yemen civil war which was to have disastrous consequences for Egypt.

Nasser later admitted that the intervention was a 'miscalculation. We never thought it would lead to what it did.' Not only did it lead to the pinning down of 70,000 Egyptian troops for five years and a steady drain on Egyptian finances. It also contributed to a worsening of Egypt's relations with the United States, because of Nasser's clash in the Yemen with Saudi Arabia, an American protégé. It also played its part in the events leading up to the 1967 war with Israel, for it encouraged America to step up the Middle East arms race by supplying, directly or indirectly, substantial quantities of tanks and planes to Israel as well as Saudi Arabia.

In the end he could claim that Egypt's sacrifices in the Yemen had not been entirely in vain. The Yemen Republic and revolution were undoubtedly saved by the Egyptian Army and consolidated with Egyptian civil aid.

To set against the heavy and tragic cost to the Yemen itself in lives and damage from Egyptian arms, including the poison gas bombing of royalist villages, there was the beginning of the emancipation of the greater part of the country from a political and social system of cruel backwardness. However crudely, Nasser in Arabia was on the right side of history.

In March 1965 his term as President was renewed for six years by a plebiscite, with one of those meaningless majorities of 99.999 per cent. He was then 48 and more than 12 years of power had left their mark.

When I met him a few months earlier, in July 1964, the physically powerful, ebullient young man of a first interview nine years before had been transformed into a calmer, slower figure, with a hint of almost physical frailty. All political passion was not yet spent and could suddenly animate his heavy face. His large brown eyes, strangely pale and dark at the same time, stared widely open, cool and curious, observant rather than penetrating, and with a hint of melancholy and irony. He was courteous but reserved, listened intently to questions and answered succinctly. He was relaxed, almost subdued, yet formidable. But he seemed a man seeking tranquility and a way out of endless problems rather than of a revolutionary eager to blaze new trails.

He continued then and later to live in the same unpretentious style, with a sharp division between his public and private life. His house at Manshiet el Bakr on the outskirts of Cairo was an expanded version of the suburban villa he had occupied as an army lieutenant-colonel.

He was happily married. His wife, Tahia, the daughter of a successful tea merchant of Persian origins, was rarely in the public eye, though she was not secluded in the old-fashioned Muslim way. She preferred to give most of her time to their three sons and two daughters, and recently, to two grandchildren. Nasser himself had no taste for social life or high living. He preferred plain Egyptian food and his friends with more sophisticated palates regarded it as a culinary penance to have to dine at the President's house: the menu seemed never to vary, nearly always the same dish of chicken, rice and vegetables, the Cairo middle-class equivalent of meat and two veg.

Nor had he any special interest in the arts or in intellectual society, though he read widely in politics and history. He enjoyed playing tennis and watching films. Apart from Hakim Amer, the ill-fated C-in-C who committed suicide after the 1967 war, and his other political associates, his closest friend was Mohammed Hassanein Heykal, the editor of the newspaper *Al Ahram* and later Minister of National Guidance. With Heykal he discussed broad political and social ideas. Heykal was also his Boswell, keeping a full diary of his daily activities and thoughts.

In 1967 many in the West and in Israel once again saw Nasser as Eden had seen him before the Suez war—a kind of Hitler, this time as the leader or instigator of a genocidal war of annihilation against the Jews of Israel. Whatever Nasser's motives for conflict with Israel, anti-semitism of the European kind was not among them. Nor did he speak, like other Arab leaders, of "driving the Jews into the sea."

Nasser's hostility to Israel rose primarily from three sources. First, there was the unshakeable conviction he shared with all Arabs that the Palestinian Arabs had suffered a grave injustice in their expulsion from the great part of their homeland. Second, there was the fact that Israel's control of the Negev introduced a land barrier between Egypt and the Arab States of Asia. Third, there was his fear that Israel was a serious danger to the Arab States, because she was expansionist and was, in his view, the product and instrument of external and hostile Powers greater than herself, the international Zionist movement and the Western imperialist Powers, principally the United States.

Nasser, then, was neither eager to rush into a war of reconquest that he knew the Arabs were still too weak to win, nor in a hurry to make a permanent settlement, except at the price of radical concessions from the Israelis.

Why did he appear to change his mind in May 1967 when he asked the United Nations Emergency Force to leave Sinai and opened the crisis which led to the Six-Day War?

His actions leading up to the war become more comprehensible, if not necessarily more excusable, if one realises the extent to which they were influenced by the general world picture that had been building up in his mind. This picture was of an American campaign to subdue the more radical leaders of the Third World and to break their links with Russia, a campaign in which he felt himself to be marked down, after Nkrumah and Sukarno, as a prime victim.

It was against this background that he reacted to what appeared to be a serious Israeli threat to invade Syria and bring down the left-wing Baathist Government in Damascus. The Syrian regime had become the patrons of Al Fatah, the new and militant Palestinian nationalist irredentist movement whose guerilla units had begun sabotage raids on Israel. Israeli reprisals against Syria had been heavy. Now threats by Israeli leaders of more drastic action coincided with reports received by Nasser from the Russians, the Syrians and his own intelligence of Israeli troop concentrations near the Syrian border.

There is no reason to doubt that he asked for the removal of UNEF from the Sinai border with Israel and instead massed Egyptian forces there in order to deter an expected Israeli attack on Syria.

But did he intend then to go further and close the Straits of Titran to Israeli ships or to attack Israel himself? Nasser told me that he had not intended to close the Titran Straits and wanted UNEF to move only from the Israel border. But the evidence as a whole suggests he was in two minds. When U thant decided that all UNEF must go or all stay, he felt he had no choice but to close the Straits.

In doing so he knew he was taking a great risk of war. Was he then preparing to goad the Israelis into attack or was he so dazzled by the armed strength he moved into Sinai that he thought he could now attack and win? Or was his purpose a display of brinkmanship leading to negotiation?

The most plausible explanation, in the light of the evidence so far available, is that

Nasser improvises this policy as the crisis developed, but that at no time did he intend to start the war himself. He believed that if he did so he could not win outright because, quite apart from Israeli strength, the United States would intervene on Israel's side. He could not count on the Russians to prevent an American intervention. The Russians told him that if he attacked first they would not help him. Nor would they help him even if Israel alone attacked Egypt. They would help only if the Americans supported Israel in such an attack or tried themselves to force the Straits of Titran. The Russians warned Nasser off making war but were ready to back him in bargaining over the Tiran Straits.

Nasser was trying the same tactics that he believed Israel had used successfully against the Arabs, the *fait accompli*, to seize a position and then defend it. His calculation was mistaken on three counts. He believed that the Egyptian Army was strong enough to hold its ground against an Israeli offensive, at least long enough for international intervention to stop the fighting. He thought the U.S. would and could restrain the Israelis from attacking, though in the final days before the war this belief began to wane. Third, he failed to indicate clearly to the Israelis that he had no intention of attacking, but on the contrary allowed pressure for an offensive to build up in propaganda throughout the Arab countries. Like Premier Eshkol of Israel he was under pressure to strike the first blow as war seemed to be inevitable.

But the final decision of the Israel Government to attack Egypt may not have been simply to forestall an impending Arab offensive, but also because the next few days might have seen the beginning of a negotiation between Nasser and the US. Given the way American and British policy seemed to be drifting the neutral attitude of France and the hostility of Russia, a negotiation with Nasser while he was still in control of the Tiran Straits would doubtless have seemed to the Israeli leaders bound to end in political defeat for them.

For the Israeli leaders the choice must have seemed clear. They could seize an unexpected opportunity to strike a blow which would cripple Nasser's growing military forces—the only Arab forces they were seriously concerned about—for years to come, and reopen the Straits. Or they could accept the beginning of a change in the balance of power in which, at each stage, Israel would be in a weaker position to resist further concessions. If they were to be forced to fight some time it was better to fight now.

Both Nasser and the Israelis saw themselves as taking a desperate stand, like a long-tormented schoolboy finally turning and facing a bully. The fullness of the tragedy of the war that began on 5 June 1967 lies in the fact that two great peoples, who were both trying to escape from the humiliations inflicted by European society, were unable to help each other, but instead were thrown by historical fate at each other's throats.

For Nasser the defeat was far worse than that of 1956. As the bad news poured in, he came close to nervous and physical collapse, but he had enough strength and pride left to choose a painful course. He decided to accept full public responsibility for the defeat and to announce his resignation—the decision was not a mere stratagem.

On the evening of 9 June, Nasser spoke to the nation over radio and television. On the screen he appeared a broken man. His features were drawn and haggard, his voice half-choking and hesitant as he read the text of his resignation speech. Even before he had finished speaking, there has begun another of those dramatic reversals of fortune that have marked his career.

In the semi-blacked-out streets of Cairo, hundreds of thousands, some of the men still in pajamas and the women in nightgowns, came out of their houses weeping and shouting, 'Nasser, Nasser, don't leave us, we need you.' This was also the reaction all over the Arab world.

Nasser's decision to withdraw his resignation was received with an outburst of public joy. For Nasser it marked the beginning of a long and painful road back.

When he died, Egypt's main problem was still unsolved, the Israeli Army was still in Sinai and the Suez Canal closed. But otherwise, Nasser appeared to have achieved a remarkable recovery. Egypt was financially solvent (with aid from the Arab oil States) and able to defend herself, though defence costs were a crushing burden. The Egyptian armed forces had regained their pre-war strength, the industrialization of the country was expanding again and the High Dam was completed.

Among the Arab masses, Nasser's ascendancy, shaken by the June war, had been largely restored before his death.

His performance was measured more critically by the miliant young, whose heroes were the Palestinian commandos, and by the educated class, who saw the causes of Arab defeat in technological and social backwardness and in their own exclusion from a share of power.

Nasser himself was prepared to make a peace settlement which would recognise Israel within her 1967 borders. Even after the growth of the Palestinian guerrila movement made this position more difficult to hold. Nasser believed that, provided such a peace included a fair settlement of the Palestinian refugee problem, the guerrillas would not prove a serious obstacle. But he doubted that the Israelis would ever withdraw except under military pressure.

Nasser held all the main sources of power in Egypt in his hands. After the 1967 war he was not only President, but also Prime Minister and head of the Supreme Executive Committee of the Arab Socialist Union, the only permitted political organisation. There was no one left around him of significant political stature. If there were ambitious young officers who were secretly plotting to oust him, as he himself had plotted to overthrow Farouk, no one yet knew about them. When asked by a French journalist whether such new would-be Nassers might not exist, Nasser is reported to have grinned and replied, "I hope so."

If Nasser's personal position still seemed strong, his political machine as a whole was tired and infected with moral decay. He was perhaps nearing the end of his creative period and Egypt needed new men to take over.

His death may now be followed by a period of confusion and possibly of conflict, between liberals wanting to return to a freer parliamentary system and left-wing radicals demanding a Yugoslav-type political regime. But there is also a reasonable prospect that one of his main legacies to Egypt will prove to be an enlarged middle class of educated, able and responsible men, capable of ensuring efficient government on a more democratic basis.

He was guilty of some brutalities. In Egypt there were dark blots like the political concentration camps in the desert where Communists, Muslin Brothers and others were sent. There were torture and spying by the political police; the censorship of the Press and radio, and the endless propaganda. Yet this repression under Nasser was less severe than under many other dictatorships, including some Egyptian and other Arab governments to which Western democracies had given their blessing. Outside Egypt there were the bombing, including gas bombing, of villages in the Yemen and the operation of secret intelligence agents. But among revolutions the Egyptian must be counted as one of the least bloody.

How far must Nasser's reputation be revised in the light of the 1967 defeat and its consequences?

Having at last freed Egyptian territory of foreign military occupation with the departure of the British in 1956, Nasser little more than 10 years later saw Israeli forces occupying the Sinai Peninsula and claiming to remain indefinitely in at least one corner of it, at Sharm-el-Sheikh. Having gained full control of the Suez Canal, he now saw it closed and useless and with one bank occupied by the Israelis. Having rejected a Western alliance and protection in the pursuit of complete independence and nonalignment, he now found himself relying on Russian diplomatic and military support. Having sought financial independence and economic aid without political strings, he was faced with a foreign indebtedness of £1,000 million and dependence on subsidies from Arab Governments, including his chief Arab opponent, Feisal of Saudi Arabia.

There are, however, grounds for arguing that these developments are of a transitory character and have not fundamentally reversed the changes that established Egyptian independence. The Israelis are unlikely to stay in Sinai for more than a few years longer, whether the issue is settled by peace or war. Even if they keep troops longer at Sharm-el-Sheikh, the political significance of their presence there would be far less than the presence of scores of thousands of British troops in the Canal Zone. The Russians have not yet been able to turn Egypt into a satellite; they have no combat troops in Egypt comparable with the former British forces and capable of enforcing their will as in Czechoslovakia.

What has Nasser's Arab Socialism meant to the average Egyptian? In a country with problems of poverty and overpopulation on the scale of Egypt, it is not to be expected that any Government, however virtuous or however efficient, could cure them or even substantially reduce them in less than 20 years. But it might be hoped that some of the worst abuses could be ended, and a start made along a constructive path. This at least Nasser can fairly claim to have done in many respects.

The High Dam and its power station were completed last July, the complementary electrification and land reclamation schemes are moving slowly ahead. So far the increase in agricultural production has been keeping just ahead of the increase in population; industry, on which the reduction of unemployment and an increased standard of living must primarily depend, has been expanding more rapidly. Since 1952 there has been a small increase in per capita national income and a more equal distribution of national wealth.

The benefits have been felt less in increased money incomes than in improved social services of more free schools, hospitals and clinics, some cheap housing and limited social insurance. Sixty per cent of Egyptians still live and work on the land. Those who gained most in earnings were the medium farmers and the one and a half million people who have benefited from the land reform.

But for the millions of landless and often unemployed agricultural labourers and their families there was little increase in earnings unless they were able to find work in the towns. Laws fixing minimum wages for agricultural labourers were almost unenforceable, but the labourers shared access to the expanded rural welfare schemes and education and health services.

A similar division occurred in the towns. The main beneficiaries were the factory workers and the middle class. More jobs were created, though there were still huge numbers of urban unemployed. A man with a job has greater security, usually better working conditions, more active protection of his interests through his trade union and representation on management councils. But the unemployed or only partly employed still live

in the deepest poverty and often in the most appalling slum conditions.

Centuries of Ottoman and Mameluke rule ground deep into the Egyptian consciousness the idea that government and its local representatives were a positive evil, an exploiting bullying force.

Now, cautiously and still skeptically, the idea has grown to a certain extent that government may genuinely be on the side of the peasant and the worker and desirous of helping him, however limited that help may still be. Corruption, bullying and abuse of power, especially by petty officials, still exist but they are no longer taken to be the *purpose* of government.

Nasser's social and economic policies, especially land reform, the development of cooperatives, industrialisation and State planning have stimulated similar developments in other Arab countries.

Although many Western observers saw Nasser as an element of mischievous disturbance, he was in some ways a factor of continuity and stability. At a time when Arab Society was in danger of collapsing and leaving the field to the Communists, the reactionary fanaticism of the Muslim Brother, a narrowly nationalistic military fascism or chaos, Nasser, by providing continuous stable and progressive government in the biggest and most developed Arab State, helped to ensure that in most cases Arab society underwent change in a comparatively bloodless way. (The Yemen was the outstanding exception).

His career throws light not only on the development of Egyptian and Muslim society and on the evolution of the Arab political mind. It also reflects the experience and outlook of the Third World of under-privileged colonial man. In this experience the central driving force is the struggle for the recovery of human dignity and identity, an attempt to escape the humiliation bred of backwardness and weakness, to catch up against overwhelming odds.

This most vital force, which has fired men like Nasser, Ben-Gurion, Mao Tse-tung, Nehru and Nkrumah, was described by James Baldwin in explaining the desperation of American Negroes. They were, he wrote in his book, 'The Fire Next Time,' 'a people from whom everything has been taken away, including most crucially, the sense of their own worth. People cannot live without this sense: they will do anything to regain it.' Time and again, Nasser's speeches and actions were concerned with 'dignity,' with the struggle against national despair and the restoration of the Egyptian people's sense of their own worth after long centuries of humiliation, oppression and self-doubt.

'History will sentence him to death' was Nasser's valedictory comment on King Farouk. What will be history's verdict on Gamal Abdul Nasser?

So far he remains the most progressive Egyptian ruler of modern times and the most important statesman so far thrown up by the Arab renaissance. His role as a leader of the anti-colonial revolution, one of the great world political movements of the twentieth century, is likely to be of enduring interest to historians.

Nasser left his mark on nearly two decades of Egyptian, Arab and world history. In the tradition of the Pharaohs, the High Dam will be for centuries his physical memorial. But his influence will continue to be felt in Egypt and the Arab countries for years to come in the movement of ideas and the course of political, social and economic development which he stimulated and helped to create.

PARITY PURGE

Mr. McGOVERN. Mr. President, 1971 may well be remembered by American farmers as the year of the parity purge. Not only have real prices fallen to the lowest levels since the great depression, but early this year the Nixon administration began tampering with the parity ratio itself, the legal barometer of the well being of agriculture.

In its monthly publication, Agricultural Prices, for October 15, 1971, the U.S. Department of Agriculture eliminated from its monthly report the parity figure for all farm commodities based on the 1910–14 base. The Nixon administration started the process when it substituted a 1967 base period in place of the 1910–14 base, thereby attempting to create the impression parity was 23 points above the figure required by law. This new figure was featured on large type on the front page of the monthly report. Concealed in small type on inside pages was the legally required figure.

The report for October 15, 1971, dropped the 1910–14 base figure entirely. It reported instead 1910–14 parity figures for individual commodities on an inside page.

According to the publication, the overall parity figure appears to be 69 percent, one point higher than the 68 percent of a month earlier. Parity has been this low only 3 years in the last 60 years. It is understandable that the administration would find it too embarrassing to report.

This nonreporting of the economy is not the special province of the U.S. Department of Agriculture. The Bureau of the Census has said it will redefine "farms" as those which sell more than $5,000 worth of products each year. The effect of this would be to eliminate about half of the farms in the United States from census reports. Such figures as "average farm sales" would rise dramatically. The distribution of Federal funds to States on the basis of rural population would be affected. Small farms would disappear from the census report.

The Bureau of Labor Statistics has suspended its monthly news briefings on the cost of living. The administration has also announced that it will no longer report unemployment in poverty neighborhoods. The word "poverty" has been dropped from Government economic reports.

Apparently the Nixon administration believes that economic hardship in rural areas and poverty everywhere will go away simply, because it refuses to acknowledge it.

LAW ENFORCEMENT SUPPORT FOR LEGISLATION TO CURB THE SALE OF "SATURDAY NIGHT SPECIAL" HANDGUNS

Mr. BAYH. Mr. President, the Subcommittee To Investigate Juvenile Delinquency has recently conducted extensive hearings on the role of the "Saturday Night Special" handgun in the crimes of violence which afflict every part of this Nation. We have learned that gun murders have doubled in the United States in the past 10 years. The .22-caliber handgun, such as the "Saturday Night Special," is now used in almost half of the handgun murders committed annually. These small, cheap guns have absolutely no sporting use. The "Saturday Night Special" is a crime gun, and its availability must be eliminated.

I have introduced a bill to prohibit the sale to the public of cheap handguns which do not meet minimum standards of barrel length, frame construction, and suitability for sporting purposes. My bill, S. 2507, extends the import standards embodied in the 1968 Gun Control Act to the domestic sale of handguns, thereby implementing the intent of Congress that these guns not be made available to the public.

There is widespread support for my bill among law enforcement officials who are faced every day with the destruction these guns cause when they are used by hardened criminals. The executive director of the International Association of Chiefs of Police has endorsed this legislation. The Fraternal Order of Police, representing over 140,000 policemen in the United States, supports my bill. The National District Attorneys Association, prosecuting attorneys, and individual chiefs of police throughout the country have appeared before us in support of S. 2507. These men, who are on the firing line in the battle to curb violent crime in our Nation, recognize the urgent need to prohibit the sale of cheap handguns to the public.

I ask unanimous consent that the statements of these law enforcement officials in suport of S. 2507 be printed in the RECORD.

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

STATEMENT OF JERRY V. WILSON, CHIEF OF POLICE

I wish to thank the members of this Subcommittee for inviting me to testify today in connection with proposed legislation which would amend section 922(b) of the Gun Control Act of 1968. As I understand it, the proposed Bill would, in essence, ban the domestic manufacture, assembly and transfer of inexpensive small calibre handguns, which do not meet certain predetermined standards. Under the 1968 Act, the importation of such weapons was prohibited if the weapon did not meet various manufacturing criteria, which the Secretary of the Treasury was authorized to promulgate by regulation. The regulations eventually published dealt with weight, frame construction, barrel length and other characteristics. The effect of the legislative scheme was to curtail the importation of the foreign "Saturday night special," or "suicide special," an easily obtainable, inexpensive lethal weapon which, because it could not meet the regulatory standards, had little redeeming sporting or defensive value to anyone.

The 1968 Act regulated importation of the completed, pre-assembled weapon. The legislation did not, however, deal with either the domestic manufacture or domestic assembly of the weapon from imported foreign components, apparently because at the time of the passage of the Act foreign manufacture and importation into this country of the completed weapon was the chief problem facing the Congress. Notwithstanding the 1968 statute, however, both domestic manufacture and, to a greater extent, assembly in this country of this type of weapon from parts manufactured elsewhere and imported into the United States, have remained a law enforcement problem.

At the present time, many of the "Saturday night specials" we encounter in our Department have been constructed almost entirely from components manufactured

abroad. If these weapons were assembled outside the United States, their importation would be precluded by the 1968 Act. In order to skirt the provisions of the Act, however, the parts are now being imported and the weapon assembled here. The final result in many cases is a weapon which, except for a stamped indication of domestic "manufacture," is almost identical to its prohibited foreign brother.

My understanding of the proposed legislation is that it would prohibit the transfer of all such weapons, whether actually manufactured here or merely assembled here from foreign components, so long as the weapon did not meet the prescribed technical criteria. In this manner the loophole left by the 1968 law would effectively be closed. Because our information suggests that this type of low-quality, inaccurate and dangerous weapon has absolutely no redeeming value, we support enactment of the proposed Bill.

Specifically, "Saturday night specials," because of their poor construction and low quality, are extremely dangerous weapons, not only to intended targets and bystanders, but also to the user himself. They misfire, fire accidentally and backfire with some degree of regularity. They are notoriously inaccurate at even short distances.

Furthermore, the low-grade components used in these weapons, in addition to the fact that many of the parts are foreign-made at reduced labor costs, result in their mass production and extremely low retail prices. A reasonably safe American-made .22 caliber revolver retails in this country for over $50. Many of the "Saturday night specials" can be purchased here for between $10 and $20. Thus, the weapon is accessible to almost anyone who wants one at no more than a few dollars.

It is our impression, therefore, that the market is full of these inferior handguns, notwithstanding the intent of the Congress in 1968 to restrict their importation. Unfortunately, our impression is not based on Department-wide statistics. Firearms which come into our possession historically have not been classified in such a manner as to allow us to determine statistically whether or not the weapon is a Saturday-night special. We do know that of approximately 2500 firearms which we recovered in the first seven and one-half months of 1971, over 1,000 were either .22 caliber revolvers or .25 caliber automatic pistols. But we do not know the percentage of this figure which could be properly classifiable as falling within the category of the "Saturday night special," although we suspect that the percentage is quite high. Our suspicion is based on a survey of weapons recovered in the District's 157 homicides by firearms committed in fiscal year 1971. In connection with those cases, we recovered 83 firearms, of which some 37 (45%) we determined to be an inexpensive, low-grade, poorly made pistol. In some other cases, in which we did not recover the weapon, it appeared, from identification where possible of the recovered bullet, that the "Saturday night special" was the type of weapon used to perpetrate the crime.

The combination of ease of accessibility of this type of weapon and its dangerousness has filled our files with examples of stark tragedies. One particular case may be of interest. At approximately 3:30 A.M. on September 19, 1970, a Washington Post newsboy, age 14, left his home in Southwest Washington to pick up the newspapers he was to deliver that morning. Near his home he came upon a 1965 Ford convertible, with the top retracted. He opened the glove compartment and stole a cheap .22 caliber automatic, Italian-made pistol, which he placed in his belt. At about 5:00 he was joined by two friends, also Post delivery boys. One of the friends asked to see the weapon, and as it was being shown, it went off—quite accidentally—killing almost instantly the friend, age 12.

Naturally, the same tragedy might have occurred if the gun had been an expensive American-made .38 caliber revolver. But we believe that the chances of such an accident happening were enhanced by the fact that this type of a weapon is prone to accidental discharge and is readily available on the retail market for slightly more than pennies.

It should also be noted that the "Saturday night special" presents law enforcement problems in tracing and identifying such weapons when they are used to commit criminal offenses. Generally, the weapon is manufactured from soft, inexpensive metal. As a result, serial numbers are easily and sometimes completely erased by either filing or melting. And ballistics examination of such weapons, in order to determine if a fired bullet was discharged from a recovered weapon, is many times made impossible because the metal in the weapon is of such low quality that the characteristics of the barrel are altered every time the weapon is fired.

For these reasons, there seems to be no valid reason for the possession of this type of weapon by anyone. Under the existing and proposed legislation, the weapon by definition has no sporting value. Additionally, it provides, in our opinion, generally inadequate defensive protection to the user because of its inaccuracy and general unreliability. As the President's Commission on Law Enforcement and Administration of Justice pointed out in 1967, "It is appropriate to ban absolutely the sale of those weapons no citizen has a justifiable reason for owning."

Finally, I would like to suggest that the problem of the use of weapons in crime, and the resulting injury and loss of life, cannot entirely be controlled by legislation. In the District of Columbia, for example, we have had for many years statutes which, if properly utilized, should have provided a brake on the use of handguns in crime. I refer primarily to the carrying and possession of dangerous weapons sections of Title 22 of the District of Columbia Code (D.C. Code §§ 3204 and 3214). It should be obvious that a person will be less prone to use a handgun in street crime if he has a sufficient reason not to take the gun with him onto the street in the first place. Our carrying a dangerous weapon statute (D.C. Code § 22–3204) was designed at its inception to preclude the carrying of handguns on the street, outside the owner's home or place of business. If the statute were properly used, I have no doubt but that the incidence of use of such weapons on the street would be curtailed. And yet the preliminary results of a study which I have directed to be undertaken indicate that a person caught possessing a handgun outside his home or business in the District of Columbia has about a two out of three chance of not receiving a single day in jail. And even when imprisonment does result in such cases, that imprisonment is normally far less than that which is authorized by the existing statute.

I do not mean to suggest by this thought that we are seeking additional legislation with stiffer penalties for users of handguns. Quite the contrary. I am convinced that, in the area of dealing with individual offenders, we now have, for the most part, sufficient legislation. What we do not have, however, is the realization by other integral agencies in the criminal justice system, including prosecutive, judicial and corrections officials, that the unlawful possession of a firearm, in itself, is a crime of the first magnitude.

We must create a climate in this city and all urban areas in the country in which it is known by everyone, beyond any doubt, that carrying a handgun on the street is unlawful and will be dealt with surely and effectively by the criminal justice system.

The Need for Stronger Federal Gun Control

(Statement of Patrick V. Murphy, police commissioner of the City of New York)

Mr. Chairman: I am pleased to be able to appear this morning to support Mayor Lindsay's call for stringent federal controls over the manufacture, shipment, sale and possession of handguns. In my opinion there are few more urgent domestic problems for Congress to address than the reduction in the senseless slaughter that our current national firearms policy permits, and indeed even encourages.

The Gun Control Act of 1968 was an encouraging first step in the direction of a national and humane policy toward firearms. But in the area of handgun regulation, that Act is seriously deficient and the bloody chaos surrounding the market in these lethal implements has only been slightly reduced.

I would like to use our experience in New York City as a grim example of the carnage wrought by the current lack of a realistic national program for domestic disarmament. I should emphasize, as the Mayor's remarks have indicated, New York's experience is by no means unique, but is perhaps a bit more frustrating since the effectiveness of our State's efforts to control handguns has been drastically sabotaged by inaction or half-hearted measures elsewhere in the country. At the conclusion of my testimony I will ask my Chief of Detectives to offer some valid illustrations of this sabotage.

I begin with the premise that very few people who now have access to handguns have a legitimate interest in possessing these weapons. Beyond the obvious need for law enforcement officers and the military to possess handguns, I can think of only a few other categories of citizens who should have this inherently dangerous privilege. Private security guards supplement the police service and, with proper character investigation and training, can generally be trusted to own and use handguns safely and prudently. Some businessmen and merchants who are especially vulnerable to attacks by criminals may have a legitimate self-defense interest in possessing a pistol. But beyond these groups, there is little reason why any other citizen should be allowed to possess or carry a pistol. Even the relatively small number of sportsmen who prefer the use of pistols to long guns may have to foresake this hobby in order to permit their neighbors to achieve a measure of safety that our current handgun policy denies them.

At the very least, sportsmen interested in pistol shooting should be expected to store their guns when not in use, with the local police agency. This safeguard function is one which the New York City Police Department would eagerly assume.

The plain fact is that there are too many handguns in circulation today, and instead of taking steps to dry up this flood, Congress has been content to let the torrent continue virtually unabated. And it is incontrovertible that these guns are a major factor in the reign of violent crime that causes so much fear for our citizens.

One of the most troublesome aspects of this problem is that the use of weapons, especially handguns, in the commission of crimes is increasing at a much faster rate than the overall crime rate. If the present incidence continues, illegal pistols and revolvers will be used in almost three times as many crimes this year as five years ago.

WEAPONS USED IN CRIMES (NEW YORK CITY)

	Handguns	Long guns
1971 (January–June)	16,152	510
1970	26,752	905
1969	20,980	756
1968	18,603	701
1967	12,445	611

Last year, for example, guns were used in about 11,500 assaults in New York City. In the first six months alone of this year, however, there were almost 8,000 assaults involving guns.

For murder, the ultimate crime of violence, the story is sadly the same. Studies by the Federal Bureau of Investigation and others have demonstrated that the percentage of gun murders varies directly according to the ease of access to firearms. In states and cities with strict controls, the percentage of gun-related murders is much lower than in other states where a readily available gun makes it more likely a holdup man will be armed or that a spouse will permanently settle a domestic quarrel before tempers cool. But the relatively easy access to guns outside of the states and cities with strong controls is now tending to equalize these percentages. Thus, in New York City between 1965 and 1970, while the number of homicides doubled, the number committed with firearms nearly quadrupled. Last year over half of the murders in New York involved the use of firearms, compared with barely one quarter of those in 1965. It is clear to me from figures like these that the increased availability of guns, notwithstanding our local controls, has had a tremendous impact on the number of murders in our City. Without the proliferation of guns, many of these murders would not have gone beyond the assault or robbery stage.

All of these crimes are committed by people who obtained these weapons illegally. In recent memory, none of the twenty thousand people licensed to carry weapons in New York City has used his gun to commit a crime.

The frightening ease with which criminals secure guns is especially critical for policemen. Ten times already this year I have had to witness the burial of one of my men, struck down in the line of duty by a killer. Nine of the ten were shot to death, and eight of the nine were murdered with illegal handguns. (The ninth was shot with his own revolver during a struggle.) One hundred and fourteen other New York City Policemen have been subjected to handgun assaults this year, some of them have been seriously injured, clinging tenuously to life at this very moment.

What kinds of guns are used? Some standard, high quality guns, others are the only slightly less lethal low-cost, low quality "Saturday Night Specials." These Saturday Night Specials, which the 1968 Gun Control Act sought to ban from importation, continue to be a major factor in crimes. Of the 8,792 illegal weapons seized by the New York City Police Department in 1970, 24% of them were classified by our Ballistics Section as of this type. In one recent sixteen month sampling, we were able to establish that such weapons, retailing for as little as five or ten dollars, were used in at least 36 murders, 68 robberies, and 117 felonious assaults. With me today I have brought an exhibit of some of these cheap but deadly weapons.

There is absolutely no legitimate reason to permit the importation, manufacture, or sale of these weapons, or their parts. They are sought only by people who have illicit motives, but who may have some difficulty securing a better gun. No policemen, no Army Officer, no security guard, no businessman or merchant, and no sportsman would purchase one of these weapons for any lawful purpose.

Yet the manufacture and availability of hundred of thousands of these weapons guarantees that they will fall into the hands of petty thugs who are just one bullet away from becoming murderers.

But Saturday Night Specials are only one part of the handgun problem, and by no means the most significant part. I strongly urge against limiting the focus of new federal legislation only to Saturday Night Specials. Most of the guns we seized are quality weapons manufactured by reputable foreign and domestic companies. They enter into illegal channels in one of two principal ways: either they are offered for sale in a state where there are inadequate controls over the persons who may legally purchase guns, or they are stolen, singly or in lots, from manufacturers, shippers, dealers, or owners who under current standards have a "legitimate" reason to possess them.

Sixty-five percent of the handguns we seized in New York City are traceable to sources outside the City. Most of the others are not traceable at all. Thus, even the combination of New York's relatively strict controls and the relatively ineffectual impact of the 1968 Federal legislation leaves our citizens at the mercy of the reckless policies of sister states, at the mercy of the carelessness of gun manufacturers, shippers and dealers, and at the mercy of Congress' refusal to act decisively on this national problem.

The issue as I see it is this: Is Congress willing to tolerate more of the slaughter that the present loose patchwork of federal and local laws facilitates? Or will Congress boldly exercise its responsibility to promote domestic peace, tranquillity, and security by enacting realistic federal gun control?

Realistic federal legislation must embrace at least these six features:

First, a complete prohibition against the importation, manufacture, sale, and ownership of Saturday Night Specials or parts for them. These weapons and their parts should be judged not by their size or caliber, but by their safety performance, and reliability. These "junk guns", which can be just as deadly as a high quality .38, have no place in American life.

Second. The Secretary of the Treasury, in consultation with the Secretary of Defense, should establish reasonable quotas for the importation and manufacture of all handguns. When so much of the market for handguns is illegal, it is foolhardy to leave production unregulated. We know that the supply of guns already far exceeds the legitimate demand. To continue to pour limitless numbers of additional pistols into the market only facilitates their appearance in the hands of robbers and killers.

Third. Tighter control over security must be established at every stage of the distribution of legal handguns, including the manufacturer, carrier, and dealer. A crate of guns is at least as deadly as a crate of dynamite. A whole series of federal regulatory schemes defines the conditions under which explosives can be made, transported, and stored. Theft of stocks of guns are a major source of the guns we find in the hands of criminals, and it is high time the federal government established strict and uniform controls over this deadly commerce.

Fourth. No private citizen should be allowed to purchase a handgun in this country until he has received a permit to do so. It is not enough to require that the applicant be of sufficient age and be demonstrably free of criminal record. These personal qualifications must be determined through fingerprinting and police investigation. But beyond this, any sensible permit system must insist on a persuasive demonstration of good cause to own a pistol. The good cause test should be defined to limit the privilege to the narrowest class of people who require pistols for self protection or legitimate employment.

Fifth. The place where a licensed firearm can be kept should be limited. Every year, thousands of murders, suicides, and accidental killings take place because handguns are within reach at home. In those instances where a person has legitimate cause to own a handgun, the gun should be kept securely locked at his place of business or at a police station, except when the firearm must actually be carried elsewhere.

Sixth. There must be national registration of every handgun. At present, under the 1968 Gun Control Act, the National Firearms Registration and Transfer Record lists essentially only machine guns and sawed-off shotguns and rifles. Effective implementation of any real federal control over handguns depends upon extension of this system to record every change in the ownership of a pistol or revolver. This control record should also receive prompt notification of any theft of handguns, since this information is vital to any follow up investigation.

Enactment of legislation along the lines Mayor Lindsay and I have proposed would, I am confident, save thousands of American lives every year, a saving of incalcuable human misery that more than outweighs the possible disappointment to gun enthusiasts whose opposition has too long blocked this critical reform.

At this point in my testimony, I want to illustrate the ease with which New York's controls can be flouted and with which even the modest provisions of the Gun Control Act of 1968 can be circumvented. My Chief of Detectives, Albert A. Seedman, assigned two of his men to follow the approach a gangster would take to secure deadly weapons for use in New York City. These men, who are also here with me today, were terribly efficient in performing their mission.

With the Chairman's permission, I will ask Chief Seedman to introduce these men and to explain to the Subcommittee how easy it is in this country to buy a gun, that will be used to commit murder.

STATEMENT OF COMMISSIONER JOHN F. NICHOLS, DETROIT POLICE DEPARTMENT

Senator Bayh and Distinquished members of the Subcommittee:

It is a pleasure to have this opportunity to testify before this Subcommittee regarding my views of "Saturday Night Specials."

For the purposes of this presentation, I have defined "Specials" to be any small caliber pistol of extremely low quality. The guns are usually .22 or .25 caliber. In some cases, they are .32 or .38 caliber. In developing our data, we first considered all firearms of .22 and .25 caliber, and then eliminated all brands known to be of reasonable quality in metal content, safety features, and general operating construction. The remaining guns were considered "Saturday Night Specials."

We first determined what percentage of all our confiscated handguns have been "Saturday Night Specials." Beginning with 1968, those figures are as follows:

Year	Total	Saturday night specials	Percent of total
1968	4,569	1,642	35.9
1969	5,261	1,897	36.1
1970	6,971	2,304	33.1
1971 (August)	5,153	1,528	29.7
1971 (projected total)	7,728	2,292	29.7

In 1968, we confiscated over 4,500 handguns, and 35.9% were "Specials." In 1969, the number of confiscated handguns rose to almost 5,300 and the percentage of "Specials" rose only two tenths of one percent to 36.1. The number of confiscated handguns continued to rise in 1970, but the proportion of "Specials" declined to 33.1% of the total. Thus far in 1971, the percentage has dropped to 29.7. Since 1968, the total number of handguns confiscated by Detroit Police officers has increased by more than 65%, but the percentage of "Specials" confiscated has decreased by about 6%. I believe this decrease is the direct result of the Federal Firearms Act of 1968, which halted the importation of this class of handguns. However,

if, as Senator Bayh has indicated, American manufacturers have picked up where the foreign gun makers were stopped, then it is certainly just a matter of time before our statistics will reveal a new trend.

Perhaps I should also point out that a significant period of time is required for the effect of events to reveal themselves in statistics of this type. Just as the 1968 halt on importation of "Saturday Night Specials" is being significantly revealed in 1970 and 1971 statistics, likewise the manufacture of such handguns by American gun makers will be increasingly revealed in later statistics. For the present, however, no one can deny the use of these handguns in the commission of crimes, but the exact extent, by type of crime, cannot be accurately determined. The statistics which I just cited for confiscated handguns include all handguns which were either possessed illegally or were used in the commission of an unlawful act. Since 30 to 35% of those guns were "Saturday Night Specials," it would probably be reasonable to assume that a significant portion of all homicides, robberies, and assaults committed with firearms, involved the "Specials." This premise is impossible to support statistically simply because many of these crimes are not solved by arrest, and even in those cases which are, the gun often remains unidentified.

For the past several years, the number of homicides in Detroit has increased significantly. Since 1968, however, the percentage of homicides committed with handguns has remained relatively constant at about 60%. The remaining 40% were committed with long guns, knives, and other means. Looking deeper into the homicide picture, the following data presents a telling story regarding homicides since 1963:

	Homicide total	Hand gun	Percent total	Long gun	Percent total	Knife	Percent total	Other	Percent total
Year:									
July 1971	305	184	60.3	51	16.7	33	10.8	37	12.1
1970	495	297	60.0	74	14.9	73	14.7	51	10.3
1969	439	268	61.0	61	13.9	65	14.8	45	10.3
1968	389	237	60.9	42	10.8	59	15.2	51	13.1
1967	281	127	45.2	42	14.9	60	21.4	52	18.5
1966	214	101	47.2	20	9.3	50	23.4	43	20.1
1965	188	68	36.2	18	9.6	61	32.4	41	21.8
1964	125	40	32.0	17	13.6	43	34.4	25	20.0
1963	125	51	40.8	8	6.4	44	35.2	22	17.6

You will note that the percentage of homicides with handguns increased steadily until 1968, at which time that figure leveled off, as I mentioned moments ago, at the 60% mark. The percentage of homicides with knives also showed a marked change over the same span of years, but in the opposite direction. The proportion of homicides with knives has decreased as the handgun figure has increased. What I'm saying, then, is simply this: In Detroit, we have more homicides than ever before, and almost all of the additional homicides are being committed with handguns.

The next question is what percentage of the homicides are committed with "Saturday Night Specials." Because of the number of cases in which the gun is never identified, an accurate determination is most difficult, Through July of this year, we have recorded 184 homicides with handguns. We have established that 20 of those deaths were by "Specials" and another 20 were committed with small caliber guns which were never identified but could have been the type in question. As I suggested earlier, it is possible that enough time has not passed to record the full effect of these handguns.

Ballistically, we have noted that the "Specials" are extremely inferior. Due to the low quality steel or machining in the barrels, the rifling leaves very poor land and groove marks which makes ballistic identification most difficult. If the firearm in question has been used to any extent (50 or 60 shots), the land and groove marks are so poor that identification by scientific means is virtually impossible.

In response to your specific question regarding the "Saturday Night Specials," they constitute a significant portion of illegally possessed and illegally used handguns. They may be the most widely used single class of guns in robberies, serious assaults, and other crimes, but there is no way to be sure unless every crime is solved and every gun is confiscated. I do believe, however, that were it not for the "Saturday Night Specials," many people killed, wounded, or robbed with those guns might have been spared.

Senators, your questions about "Saturday Night Specials" must also be viewed in the human dimension. "Specials" and handguns in general are designed to kill or cripple people. No one ever questions a criminal's intent when confronted with a handgun—the weapon has no other mission than to kill or cripple people.

Where are we, as Americans? Where are our values and priorities? We have controlled polio and walked safely on the moon. Gentlemen, we must now stop the wanton destruction of life which is made possible by a handgun—not only "Specials."

I apologize for appearing emotional—but Cop or not—I am a man with deep feelings about the value of human life. My emotions were clearly taxed last Tuesday when I buried my third policeman in just three weeks—not months or years—but weeks!

At the graveside, as my Superintendent of Police handed the folded flag to the dead officer's 3-year-old son, I thought again about the Pastor's words at the memorial services for the officer—"Patrolman Marshall did not lose his life—he gave it for a safer Detroit." The Pastor then, as he should have, looked at Mayor Gribbs, and at me, and said—"Now, what will the rest of us do to assure a safer city?"

Senators,—Patrolman Marshall's life was stopped, dead, by a bullet from a handgun. He had been off duty, observed a holdup in progress—then he put his life on the line in an attempt to stop the fleeing thieves. That handgun was a "Saturday Night Special"—a cheap .32 caliber Marshal-Brazilian pistol. Two weeks ago, Patrolman Ulysses Brown—another young, fine officer, was stopped, dead, by the bullet from another handgun.

There are endless stories of tragedy. I suggest that those of us who view ourselves as leaders, must begin to respond to our assigned responsibility to take corrective action to stop needless deaths, to control handguns.—My case examples are limited to homicides—handguns are also a key factor in tens of thousands of robberies, rapes, and assaults.

Dead—A husband: April, 1971—A man and his wife were in the bedroom of the wife's mother's home. The wife pulled a .22 caliber CDM pistol and shot her husband. The wife claimed that she had fired by accident.

Dead—A boy, 16 years old: March, 1971—A 16-year-old boy was visiting in an apartment in a building located a few blocks from his home. A man appeared in the hallway door as the boy left the apartment. The man fired two shots from a .22 caliber pistol—RG-23—and one of the shots struck the boy in the head and killed him.

Dead—A young man: January, 1971—Two young men were playing with a .22 caliber German Liberty revolver. One of the men was holding the gun and the other was waving a broomstick. The broomstick hit the gun causing it to discharge, fatally wounding the man holding the broom.

Dead—A friend: April, 1971—Two men were walking through an alley enroute to a beer store. One man produced a .22 caliber German RG-23 and began playing with it. The gun discharged and the second man was fatally wounded.

Dead—A boy, 17 years old: June, 1971—A 17-year-old boy handed a .22 caliber German Burgo to a 16-year-old girl, telling her that it had one bullet in it. The girl removed one bullet, then pointed the gun at the boy and fired. The youth died a few hours later in the hospital.

Dead—A 13-year-old: May, 1971—A 14-year-old was playing with a .22 caliber Gerstenberger. He pointed the gun at a playmate and pulled the trigger. The gun failed to discharge. He pointed it at another youngster and pulled the trigger again. This time, a 13-year-old was fatally wounded.

Dead—a 14-year-old boy: June, 1971—A mother was arguing with her 19-year-old son about his car. The son began to throw bricks and stones at his mother. The mother obtained a .22 caliber German Gecado side-load revolver from the house and fired several shots at her son. Her 14-year-old son ran in front of his brother and one of the shots struck him in the neck and proved fatal.

During the past three years, excluding fatalities, over 50 of my police officers have been shot—approximately 20% of these policemen were assaulted with firearms which may be classified as "Saturday Night Specials."

Senators,—most people will not drive a knife into a human—most people will not beat a human being to death—but discharging a pistol, any pistol, at someone else is so easy—so impersonal. Unfortunately, most people who fire a handgun at another human, have no idea of the horror that results in destroying a life. They seldom think beforehand about the irreversibility of the act of firing a handgun.

Senators,—the police need your help,—I appreciate the opportunity to meet with you today, to tell my story, and to answer your questions.

Thank you.

CITY OF CLEVELAND,
September 8, 1971.

Hon. BIRCH BAYH,
United States Senate,
Washington, D.C.

DEAR SENATOR BAYH: Lieutenant Ralph M. Joyce—in command of the Homicide Unit of the Cleveland Police Department, Cleveland, Ohio, will be available to appear before the Subcommittee To Investigate Juvenile Delinquency on September 14, 1971—Room 2228—New Senate Office Building—Washington, D.C. per your request.

The following information is respectfully submitted with reference to Testimony which Lieutenant Ralph M. Joyce will be prepared to deliver at this Hearing:

Statistics of Homicides which have been perpetrated in the City of Cleveland, Ohio, beginning January 1, 1971 to the present date,

in which the use of Firearms have been attributed to these Violent Deaths.

The Cleveland Police Department—Homicide Unit—has been charged with the Investigation of (192) Homicides which have occurred under their jurisdiction. This total number of Homicides include those which have been Solved or have been Cleared by Arrests. Homicides which have been ruled Justifiable. Those that are presently under Investigation and listed as Unsolved.

Of the total number of Homicides (192). 152 of the Victims had met their demise in a violent manner, due to the use of some type of Firearm. 136 Homicides have been attributed to Hand Guns (Revolvers or Pistols). 11 Deaths resulted in the use of Shotguns. 5 Deaths were caused by the use of Rifles.

The availability in the purchasing of Inexpensive Small Caliber Hand Guns by Individuals which are being used to commit Crimes Against Persons, such as Homicides—Suicides—Shootings—Robberies—Aggravated Assaults is evident in the increase of these Crimes.

The lack of needed restrictions in the Law prior to 1968—made the mass importation of Cheap Foreign Made Guns into the United States a contributing factor.

With the Amending of Title 18.—United States Code—Public Law 90-618—90th Congress—1968 dealing with the importation of Foreign Made Weapons into the United States was a step in the right direction however, material replacement parts for weapons can be shipped into the States with little or no restrictions. These so called replacement parts are later completely assembled by various Firearms Companies and are available for sale.

These Foreign Made Guns are relatively inexpensive. For example, .22 Caliber Revolvers and Pistols range in Price from $26.00 to $44.00. The difference in price being the type of finish (Parkerized—Nickle Plated—Blue Steel) or a various type of grip on the weapon (Plastic—Wooden—Pearl).

Typical Foreign Hand Guns, such as the Rohm RG 14 may be purchased for $36.95—The Rohm RG 23 may be purchased for $39.95.

Other Foreign Make Hand guns of a larger Caliber, such as 32 and 38 Revolvers or Pistols are priced for sale from $59.00 to $89.00.

That any individual supposedly over the Age of twenty one (21) may go to a Federally Licensed Gun Dealer and purchase over the counter any type of Hand Gun. "No questions Asked".

The Individual who is desirous to purchase a Hand gun—need only to go to the Gun Dealer—pick out the weapon of His or Her choice. Then fill out a Federal Form 4473—Firearm Transaction Record—Sign the application sworn under Oath that He or She has never been convicted of a Felony Crime or sentenced other than a Traffic Misdemeanor—That He is not a Suspicious Person—Vagabond—Vagrant or Transient and that He is over the age of (21).

There is no Affidavit needed by the Individual, to Attest his Statement that He is not a Felon nor has been convicted of a State or Federal Law. No Police check is required of this Applicant—either Local-State or Federal. The only requirement is that the Individual produce a Valid State Drivers License or a Draft Card. Moreover to expedite this weapon purchase Gun Dealers have on hand a Notary Public on the premise who immediately attest the application of the Individual purchaser that He is telling the Truth as put forward in the application.

It is an opinion—due to facts as presented above—That an Individual who desires to purchase a Hand Gun for his personal use, To go to The Local Police Department—Fill out an application—explaining why He has use for a certain type of Hand Gun—That then a Police Record Check be made by the Police, Locally—State—Federal. Further that a Waiting or Cooling off period be also incorporated before an Affidavit to purchase a Weapon is issued.

It is too late, after an undesirable—purchases a Firearm without a Security—Record—Age—Check, to walk from the Store with a weapon and ammunition and then commit Personal Violence upon some unsuspecting Citizen or harm to Himself.

Statistical Records will be made available to the Members of this Subcommittee.

Respectfully,

RALPH N. JOYCE,
Lieutenant.

STATEMENT OF CLARENCE M. KELLEY, CHIEF OF POLICE, KANSAS CITY, MO., POLICE DEPARTMENT

As one who has been in law enforcement for over 30 years, it should come as no surprise to anyone that I am a proponent for some type of gun registration and/or control.

I fully realize that registration or control of sporting weapons such as rifles and shotguns is at best of questionable necessity and difficult of enforcement.

During these 30 years however and especially these last ten years, the number of persons who were killed or killed others with revolvers has at least made me aware of some need in this field for control.

Of the 254 homicides in Kansas City during the past two years, 201 were perpetrated with guns and of those 11 were with handguns that cost less than $20 to purchase. Over the years police officers have classified these handguns as Saturday night specials. The implication is probably clear but in order that there be no misunderstanding they are guns which are primarily used by persons during family fights, bar-room brawls and street arguments in order to settle their differences.

These weapons are cheaply made, have few if any safety factors and are usually made of relatively soft metal. Some cannot even withstand being dropped to the pavement without either cracking or breaking apart. It is therefore most unlikely that they will withstand the stress generated by the explosion of gunpowder contained in a cartridge case.

Then, too, they are a most likely weapon for the youngster who is bent on a career of crime but whose initial purse is too lean to afford the expenditure of the amount needed to buy a good weapon.

Most are secured with the thought in mind that if used it probably would be only for at most a cylinder-load of ammunition. Under no evaluation can they be considered as weapons of any accuracy nor conceivable use other than an illegal one.

The ease with which they can be purchased is another factor which makes them attractive to the purchaser. In a transaction involving one of the better weapons there is a greater chance that the purchase will be recorded than if it is a transaction involving only a few dollars.

Trafficking these guns among the law violator is one of comparative freedom of exchange inasmuch if the weapon is seized or lost, little investment loss is sustained. There is absolutely no pride in ownership such as that generated when a fine piece is purchased and therefore little reluctance to throw it away such as in a river after its illegal use. We find in police circles that if the crime is committed with a valuable and fine handgun there is a good chance that the owner will retain it and thereby enable investigative bodies a better chance to link the gun with the spent bullet.

There is also of course the fact that most of these guns are easily concealable, adding to their attractiveness for illegal activities.

I have no way to determine how many people were injured with this type of gun. However, of the 2,225 handguns received in our Property Room so far this year, 731 are of the variety mentioned before and have no possible other use than to kill or injure another human being. These guns cannot be used for sport, hunting, target practice and for self protection are often more dangerous to the user than the opposing party.

However, I do feel that some standards should be set out in this act rather than left to the Secretary. Such standards should be based on safety, accuracy, construction, and mechanical action rather than size only.

In 1968 and again in 1969 officers on the Kansas City, Missouri Police Department were killed by assailants with weapons that can only be described as a substandard. These officers were John Dacy and Ronald Yoakum. Neither had an opportunity to properly defend himself.

Thirteen of our officers were wounded by gunfire in the last ten years. Of these nine were shot with cheap, substandard weapons.

In December of 1967 a sporting goods company in Kansas City was burglarized over a weekend and approximately 2,200 weapons were taken. 1,858 of these were handguns and of these approximately 1,200 were of the variety most commonly called Saturday night specials.

I have brought three representative handguns with me to show this committee the type of weapon we are talking about. As you can see they are of the cheapest construction and certainly have no sport or target use. This is the type of gun that is almost always used in the perpetration of a robbery or in family conflict situations.

Our laws for many years have prohibited the carrying of concealed weapons but this has not reduced the improper use of carrying of these weapons. We make hundreds if not thousands of arrests each year for these violations but in my opinion we cannot effectively control this type of violation short of restricting the manufacture and import of at least the substandard type of gun. Due to its relative cheapness, this type of gun is also easily available to juveniles and minors who although they cannot purchase them legally seem to have easy access and very little compunction against using them in illegal activity.

There is no ideal solution of this problem, but I do want to go on record supporting your effort in attempting to lessen the tremendous damage and loss of life which these weapons and their owners cause each year.

FRATERNAL ORDER OF POLICE,
Cleveland, Ohio, September 14, 1971.

My name is Jack Stonebraker, Jr. I am National Legislative Committee Chairman for the Fraternal Order of Police, the oldest and largest of National police organizations. I am a full-time Police Officer, serving as such for the last 15 years, in the city of Muncie, Indiana. I come to Washington, D.C. bi-weekly to promote legislation beneficial to police officers nationally, and to the professionalization of law enforcement so we may enjoy the preservation of life, liberty, property, and the pursuit of happiness as these were granted by the Constitution and the Bill of Rights.

Mr. Chairman, thank you for affording me the privilege of presenting facts in behalf of the Amendments to the Gun Control Act of 1968, introduced by Senator Birch Bayh and his colleagues. I am most happy that the Committee is considering this legislation which would provide more stringent regulations governing the sale of fire arms not suitable for sporting purposes. I wish to state that we in professional law enforcement are not opposed to the true sportsman nor his weapons, provided their use remains within the confines of the code and the statutes. As professional law enforcement personnel, we feel primary concern and interest in providing the citizens

with the protection of their lives, property and rights.

As this Committee knows, in 1968, Congress enacted Public Law No. 90-618—"Gun Control Act of 1968." This law, as passed by Congress, was for the purpose of providing support to federal, state and local law enforcement officials in their fight against crime and violence. This Act was passed with the intent of limiting the accessibility of the small calibre, inexpensive handguns, which prior to that time were largely imported from foreign manufacturers. The amendment as introduced would strengthen, we feel, the current statute, in that "domestically" manufactured weapons would be required to conform with safety standards and sales criteria.

Under ordinary circumstances the Policeman's life is not an enviable one. Within the past 2 or 3 years, the burdens laid upon law enforcement officials have been greatly increased. The danger which is present in even relatively common times has been compounded by a series of developments of which this Committee is well aware. The tremendous increase in violent demonstrations on and off the campuses has added to the perils with which the police officer is faced.

The crime rate increases steadily. In many cities the streets are not safe at night and there are areas where the passerby is not safe even in the daytime. Many businesses and industries in the larger cities are folding simply because they are burglarized and robbed so often. During the first 6 months of 1971 robberies were up 17%, aggravated assault—8%, and murders—11%. It is in these three categories of crime that guns are most commonly used.

Obviously, an orderly society is impossible without adequate and efficient policemen and statutes which are to be enforced.

The Fraternal Order of Police feels that a series of measures should be enacted by the Federal Government to make police work more attractive and safe. One of these measures is the Amendment to the Gun Control Act of 1968. I don't think I need to emphasize that all crime is, in reality, interstate in character.

In the commission of violent crimes we find that weapons—to wit: guns—are used between 65% and 70% of the times. The *Uniform Crime Report—Crime in the United States*, published annually by the Justice Department, indicates the tremendous percentage of increase in violent crimes and the use of weapons in the same. From 1960, to 1969, 561 law enforcement officers were killed in the line of duty and firearms were used in 96 percent of these incidents.

I need not point out to you that the death of a police officer is a financial burden upon the community as the funds invested in his training, etc. are lost completely and a replacement must be trained and schooled. Nor need I tell you that the overwhelming majority of policemen are family men. Nor do I need to emphasize that the death of a policeman or law-abiding citizen results in nearly every instance with the most serious consequences to his widow and children; to say nothing of the grief and sorrow they undergo. To quote F.B.I. Director, J. Edgar Hoover, "When a law enforcement officer dies at the hands of a killer, part of our system of law dies with him."

Permit me to quote the words of Detective Harry Koch, of the Maricopa County, Arizona, Sheriff's Office, who wrote: "A Part of America Died . . .

Somebody killed a policeman today
And a part of America died . . .
A piece of our country he swore to protect
Will be buried with him at his side.

The beat that he walked was a battlefield, too,
Just as if he had gone off to war;
Though the flag of our nation won't fly at half-mast
To his name they will add a gold star.

The suspect who shot him will stand up in court
With counsel demanding his rights,
While a young, widowed mother must work for her kids
And spend many long, lonely nights.

Yes, somebody killed a policeman today . . .
Maybe in your town or mine,
While we slept in comfort behind our locked doors
A cop put his life on the line.

Now his ghost walks the beat on a dark city street,
And he stands at each new rookie's side;
He answered the call . . . of himself gave his all,
And a part of America died . . ."

We, in law enforcement, feel the restriction on the availability of inexpensive, small calibre handguns would be beneficial to law enforcement and society in general. I could cite example after example in which the small calibre, domestic handgun—the so-called "Saturday Night Special"—has been used in crimes of violence and the victims were honorable individuals living within the legal framework of society.

Reasons for the use of this type of weapons are obvious—the gun is inexpensive, easily obtained, easily concealed and it is lethal. The weapons are sold, with no questions asked, to non-residents, criminals, and immature juveniles.

Previous testimony before Committee hearings has called for the Gun Control Act to "prohibit the domestic production of these junk guns."

I believe that Congress must act—must act upon this Amendment without delay—before the incidents of criminal misuse of these guns reaches astronomical proportions.

I need not tell the members of this Committee that we are engaged in a war with crime, a war which we are losing. Adequate and efficient police forces are not the only necessity in the fight against crime. The Fraternal Order of Police feels that the whole field of criminal law must be intelligently and thoughtfully worked over so that the criminal may not spend months or years awaiting trial after committing lawless acts; meanwhile committing other crimes. Liberal judicial trends have a "demoralizing effect" on law enforcement. It is disconcerting to know that you have arrested a violent criminal and meet him coming down the street. We feel that the courts must face reality and realize what a cancer crime has come to be to the country as a whole.

First steps first—that is why we, on behalf of the Fraternal Order of Police and its National President John J. Harrington, urge the passage as quickly as possible of this amendment which would assist toward the objectives we all seek—a stable, orderly and prosperous society.

Gentlemen of the Congress, I sincerely appreciate the opportunity to appear before you and ask your most serious and sincere deliberations.

Thank you.

TESTIMONY BY WILLIAM L. CAHALAN, PROSECUTING ATTORNEY, COUNTY OF WAYNE, AND SECRETARY, NATIONAL DISTRICT ATTORNEYS' ASSOCIATION

Today I am here in two capacities: as Prosecuting Attorney of Wayne County, Detroit, Michigan and representing the National District Attorneys Association. In both capacities I urge the speedy adoption of this proposed legislation to prohibit the manufacture and sale of the cheap, poorly constructed handgun commonly referred to as the "Saturday night special".

Never in the history of this great country have we failed to meet a crisis head on. Whether it was a war, flood, famine, disease or any other crisis we have dealt with it with every resource we could possibly use.

The wanton misuse of handguns throughout the United States today is a crisis. It has been a crisis for many years and is becoming more critical every day. For these and many other solid reasons this gun bill should be enacted into law as soon as possible.

The majority of the handguns confiscated by the Detroit Police Department are the so-called "Saturday night specials".

Experience and statistics show that many of the gunmen have used the "Saturday night specials" because they can get them through many illegal sources when it is impossible for them to buy a gun from a regularly licensed gun dealer.

These guns are poorly constructed and inexpensive which generally are more deadly than the well manufactured gun because they do not expel the bullet through the barrel in a true line. Rather, they are so poorly made the bullet tumbles out of the barrel of the gun and inflicts multiple wounds in the victim.

I do not want to in any way convey the impression that the cheap "Saturday night specials" are not all right because they do such a dirty job, and the well manufactured, expensive handguns are all right. I strongly oppose any handgun in the possession of anyone unlicensed to have and carry one.

All of us, citizens, legislators, prosecutors, judges and all members of the law enforcement agencies must recognize the gravity of the gun situation of this country, a real not imagined danger with every single handgun in our nation.

Every law enforcement agency in every corner of this country must pursue all avenues which will meet this crisis caused by the handguns head on.

Citizens particularly must recognize this critical situation. Without community support our laws are of little avail.

We must make clear to all our citizens that there is really no good reason to own a handgun but on the other hand there are many good reasons why no one outside of law enforcement should own one. The public must be made aware of the fact that the possession of a handgun affords him little if any protection against the robber, the burglar or any other wrongdoer. On the other hand the possession of a handgun will increase substantially the danger of being killed or killing, or being injured or injuring. The possession of a handgun is a major factor in the homicide rate between friends, relatives and acquaintances and the vast majority of homicides are committed by friends, relatives and acquaintances.

For those few who are not convinced of the danger of owning and possessing a handgun and have a legitimate reason to own and possess one, they must know the law and comply with it. Those of us in law enforcement must put forth the effort to make sure that they know the law. Those of us in law enforcement must make sure that if they do not comply with the law they shall be punished. In the past many people in law enforcement and members of the judiciary knowing that many usual law abiding citizens occasionally carry handguns in violation of the law for their own protection, have sometimes been tolerant of the infractions of the gun control laws. The crisis is too grave to continue to be tolerant.

Within the next two weeks in the Detroit-Wayne County area a Criminal Justice Coordinating Council will present a three-pronged program on gun control.

First, a public education program is being developed to alert the public to the dangers of owning and possessing a handgun in his home or on his person, and to the fact that handguns provide little protection, if any.

The communication media is being asked to lend their support and knowhow in the hope of gaining total community support.

Second, during the public education program a moratorium will be provided during which citizens can turn in unwanted handguns or register and apply for a license for a handgun in those relatively few situations in which the possession of a handgun is wise and lawful.

Third, the Committee will recommend that jail sentences be imposed on any person convicted of a crime in which a firearm is used. It will also recommend a sentence more commensurate with the gravity of the problem when a person is convicted of violating the state gun control laws.

It will not be the intent of the Council to disarm law abiding citizens who qualify and show a real need to have a handgun. Rather it will be an effort to urge community support of effective gun control which will reduce the number of homicides and the number of violent crimes where handguns are involved.

All of us are willing to check our guns at the door if we are sure everyone else will do the same. The time has come to bring the full force of the law to bear to make sure that everyone checks his gun at the door.

I should like to take a minute to show you the reaction of Detroit's Police Commissioner John F. Nichols when one of his officers was shot and killed a few days ago by a $3.50 "Saturday night special" gun. (A film clip is to be shown at this particular stage of the testimony.)

Thank you.

STATEMENT BY JOSEPH P. BUSCH, DISTRICT ATTORNEY OF LOS ANGELES COUNTY

Mr. Chairman, members of the committee, it is an honor to appear here today.

You are addressing yourselves to one of the most difficult areas of law enforcement. As a professional prosecutor who has spent twenty years in law enforcement, I recognize clearly the problem with which you are grappling.

I have always maintained a conservative attitude toward gun control, recognizing all the problems attendant to firearms legislation.

It is also my belief that the only truly effective firearms legislation must come at the federal level. The experience of New York with its Sullivan Law, the experience of California with some of the strictest state laws in the nation indicate that a state by itself cannot control the abuse of firearms.

This is particularly true in the area that you are looking at today: the cheap .22 caliber weapons, the Saturday Night Specials.

Control of these guns must come at the federal level.

When I was invited to appear before this committee, I asked the State Bureau of Criminal Identification and Investigation to crank up its computer and give me information on the number of .22 caliber handguns now in California and the criminal acts in which they have been used.

I should explain that a record of every handgun sold over the counter in California goes to CII in Sacramento and is placed in a computer. Further information which comes to the attention of law enforcement concerning that weapon is also then placed in the computer.

When they began the computer run, CII estimated that perhaps 80,000 to 100,000 .22 caliber weapons were in the computer. After running ten percent of the file, they stopped and called me. From this ten percent run, they were able to project that there are now 1,400,000 .22 caliber handguns in California. The print-out on these guns would take six days and fill up twenty boxes, like the box I have here with me. This box represents five percent of the file.

This figure may place this situation in perspective, as far as California is concerned. When we discuss halting the sale of Saturday Night Specials, we are really discussing cutting off the sources of weapons which already number 1,400,000 in my state. That's one Saturday Night Special for about one out of every fourteen citizens in our state.

I can't see this as a real hardship on anyone except those companies which specialize in making these weapons.

To indicate to you the role that these guns play in the crime problem in California, let me give you these figures.

California law enforcement agencies annually destroy the guns seized by the police from criminals during the course of a year.

In July 1971, the Los Angeles Police Department, the Los Angeles Sheriff's Office and other police agencies in my county destroyed 3,742 handguns seized from criminals. Of these guns, 1,401 or 37 percent were Saturday Night Specials.

These weapons comprise about one-fourth of the total 5,000,000 handguns in California. (We're a well-armed state) Yet, in the City of Los Angeles, they comprise more than forty percent of the handguns used in crimes.

They are crime guns. Last year in the City of Los Angeles, 719 such guns were used in robberies. Up to August of this year, 483 robberies were committed with such weapons.

I am sure you know why they are used. They are cheap and they are easily concealable.

The samples which I have brought to you today come mainly from narcotics dealers. In the past few years, we have experienced a tremendous rise in violence in the illicit narcotics traffic in our state. It is rare that we arrest a narcotics trafficker who is not armed. And, they are frequently armed with the weapons we are discussing today.

A survey of three outlets for such weapons in Los Angeles show current sales running at twenty, forty, and sixty guns a month—guns which have no sporting purpose and are only good for shooting people.

A company in my county manufactures these short barrel .22 caliber weapons. We were not able to obtain production figures for you, however, since no local, state or federal agency maintains any records on the production of handguns in California. This is another area which the committee may want to inspect.

You may have seen similar weapons before, but I brought with me some .22 caliber weapons which have been seized by the police from criminals. Those on my left are foreign imports which are now barred by federal law from our country. Those on my right are American made and may be sold here. They are virtually identical.

It was this type of weapon—an Iver Johnson Cadet .22 caliber—which was used by Sirhan Sirhan to kill Senator Robert Kennedy in Los Angeles. Other .22 caliber weapons were used by the Manson family in two of their murders.

I mention these to you as two well known cases involving such guns. For each of these there are a hundred more that never receive notice. I have some pictures here of two of these other murders and I present them to you to illustate the havoc that these small weapons can wreak.

These two murders were committed in a three day period by an eighteen year old who is on Death Row in San Quentin. The first involved a hitch-hiker. The second involved an elderly part-time liquor store clerk.

These pictures really represent the basic reason that I am here and that I am supporting a ban on these weapons. Too many of these weapons are used in this type of crime.

I am aware that there is another proposal now being drafted to take other steps to control these weapons.

Since S. 2507 is currently the only bill before the Congress to halt the sale of short-barreled .22 caliber weapons, I heartily endorse S. 2507 as a most necessary measure to protect the citizens of our nation.

I do not see how legitimate concern over citizens' access to sporting firearms can be extended to cover the types of weapons which I have here.

Action to remove such weapons from the market seems to be completely consistent with federal actions in other areas to ban dangerous objects or substances from public sale.

Thank you for the opportunity to appear here today to express my opinion on this critical topic.

STATEMENT BY MR. QUINN TAMM

Mr. Chairman and Members of the Subcommittee:

My name is Quinn Tamm and I am the Executive Director of the International Association of Chiefs of Police.

I appreciate this opportunity to testify regarding Senate Bill 2507 and related matters on behalf of the police executives who constitute a major part of our 8500 members.

The International Association of Chiefs of Police has since its founding in 1893 been vitally concerned with the easy accessibility of firearms to the criminal. Shortly after the turn of the century—in 1908—IACP membership enacted a resolution calling for uniform laws governing the sale and use of dangerous and deadly weapons.

In 1922, a major resolution was adopted calling for more stringent regulations concerning the distribution of firearms and the licensing of sellers. It was recommended that individual owners be required to obtain permits.

In 1925, it was again observed that the carrying of small firearms by unauthorized persons constituted a menace to law abiding citizens in their persons and property and the request was made for more restrictive licensing procedures.

In 1937, IACP membership commented on the need for further Federal legislation with respect to pistols and revolvers and observed at that time that most of the murders and other crimes of violence and voluntary homicide were committed with handguns. It called for appropriate legislation to arrest traffic in and transportation of pistols and revolvers.

In 1966, a resolution was adopted urging additional Federal legislation designed to promote more effective gun control. Although most of the provisions of that resolution were included in the Omnibus Crime Control and Safe Streets Act of 1968, it has relevance to the deliberation of this Committee. For that reason I would like to read major portions of the resolution into the record.

"Whereas, there is in the United States a widespread traffic in firearms moving in or otherwise effecting interstate or foreign commerce, and the existing Federal controls over such traffic do not adequately enable the states to control the firearms traffic within their own borders through the exercise of their police power;"

"And recognizing, that the ease with which any person can acquire firearms (including criminals, juveniles without the knowledge or consent of their parents or guardians, narcotics addicts, mental defectives, armed groups who would supply the functions of duly constituted public authorities, and others whose possession of firearms is similarly contrary to the public interest) is a significant factor in the prevalence of lawlessness and violent crime in the United States;"

"That the possession and use of firearms by those engaged in crime and lawless activities aids in the carrying out of such activities and greatly magnifies the tragic and serious consequences thereof;"

"That the acquisition on a mail order basis of firearms by nonlicensed individuals, from

a place other than their state of residence, has materially tended to thwart the effectiveness of state laws and regulations, and local ordinances;"

"That the sale or other disposition of concealable weapons by importers, manufacturers, and dealers holding Federal licenses, to nonresidents of the state in which the licensee's place of business is located, has tended to make ineffective the laws, regulations, and ordinances in the several states and local jurisdictions regarding such firearms;"

"That the United States has become the dumping ground of the castoff surplus military weapons of other nations, and that such weapons, and the large volume of relatively inexpensive pistols and revolvers (largely worthless for sporting purposes), imported into the United States in recent years, have contributed greatly to lawlessness and to the Nation's law enforcement problems;"

"That there is a causal relationship between the easy availability of firearms and juvenile and youthful criminal behavior, and that firearms have been widely sold by Federally licensed importers and dealers to emotionally immature, or thrill-bent juveniles and minors prone to criminal behavior...."

The provisions of the Omnibus Crime Control and Safe Streets Act of 1968 provided adequate controls over import and distribution and thus reduced possession of low quality handguns of foreign manufacture. It, however, does not provide adequate controls over the distribution of such handguns of domestic origin.

It is obvious from the resolutions I have cited that the nation's police officers have always had a great concern for the availability to the criminal of firearms.

Originally, this concern was born of police responsibility for preventing or investigating incidents in which firearms were illegally used.

More recently a new dimension has been added, for the police officer has himself been the frequent object of violence committed by the use of handguns.

On July 1, 1970, it had become obvious that assaults on police officers were becoming more frequent and that adequate data were not being collected on a structured basis regarding such assaults. Under a grant from the Law Enforcement Assistance Administration a Police Weapons Center was established within the IACP (I might parenthetically add that on April 30th of this year the grant from LEAA expired, application for its renewal was rejected and the IACP is now adequately financing its continuation).

As a part of the activities of the Police Weapons Center, we began to collect and disseminate specific and detailed information concerning assaults on police officers and resultant injuries and fatalities.

It should be of interest to this Committee that from July 1, 1970, through August 31, 1971, 119 American police officers were killed and 2,126 were injured by criminal assaults. It is also relevant to your deliberation that 78 of the 119 police officers killed were murdered with a handgun and that the injuries sustained by 301 of the 2,126 officers were inflicted with a handgun.

The conclusion is avoidable, I am convinced, that the ready accessibility of handguns constitutes a threat, both the citizen and more specifically to the police officer. While it would be of minor interest to a policeman assaulted with a handgun whether the weapon was of high or low quality, legislation designed to control the "trash weapon" or "Saturday night special" would reduce greatly the number of weapons available for illegal use.

I urge the Sub-Committee's favorable consideration of this Bill.

Again, I am honored and grateful to have had the opportunity to appear before this Committee.

If there are any questions, I should be happy to answer them.

THE ILLEGAL POSSESSION OF HANDGUNS IN THE DISTRICT OF COLUMBIA

Mr. BAYH. Mr. President, an excellent article written by Paul Valentine and published in the Washington Post of November 5, 1971, reports the final results of a Metropolitan Police Department study regarding the disposition of arrests for carrying a pistol without a license in violation of the misdemeanor portion of the District of Columbia Code. In testimony before the Subcommittee on Juvenile Delinquency on September 13, 1971, Geoffrey Alperin, general counsel to the Metropolitan Police Department, speaking on behalf of Chief Jerry V. Wilson, indicated that upon completion of the department's gun survey, it would be made available to the subcommittee. The completed survey has now been incorporated in the hearing record on "Saturday Night Special" handguns.

The survey found that 45 percent of the cases reviewed never reached a judge. Of the cases in which convictions were obtained, 66 percent resulted in simple fines, suspended sentences, or probation. In fact, a person arrested for carrying a pistol without a license has better than a five out of six chance of escaping any incarceration at all. But even more frightening is the fact that 379 people were arrested in just 3 months in Washington for carrying unlicensed pistols.

These findings distress me deeply. They show that there must be thousands of people walking the streets of Washington with concealed murder weapons. What is so alarming about the widespread illegal possession of these weapons is not just the crime of possession, but all the other crimes that such possession make possible—crimes like murder, manslaughter, armed robbery, rape, and assault with a deadly weapon.

The seriousness of the problem of illegal possession cannot be taken lightly, because of the close relation between possession and the commission of violent crime. The ready availability of handguns is one of the contributing factors to the high crime rate which plagues our Nation's Capital and every other city, town, and village in this country. As long as any thug or hoodlum can buy a "Saturday Night Special" for less than $10 and walk the streets with his cheap gun, every American must fear for his life, for his safety, and for his property.

I am deeply concerned that those responsible for administering the criminal justice system are not sufficiently aware of the seriousness of the threat posed to the safety of our citizens by the inadequate enforcement of existing gun control laws. I urge law enforcement officials and judges across the country to prosecute these offenders more diligently and to punish those who are convicted more severely. Until these criminals realize that they cannot escape with a mere fine or suspended sentence, they will continue to violate even those meager gun laws that now eixst.

Even with improved enforcement, we will still be faced with thousands of gun-related crimes of violence each year. I am convinced that we must make greater efforts to reduce crime in this country by eliminating the availability of cheap handguns to the public. I have introduced legislation to prohibit the sale of "Saturday night specials," those cheap handguns which have no sporting purpose and which are used in the great majority of violent crimes throughout the United States. There is widespread support for my bill among law enforcement officials who are daily faced with the destruction these guns cause when they are used by ruthless, hardened criminals. I have heard testimony from scores of witnesses in hearings before the Subcommittee on Juvenile Delinquency that such legislation is urgently needed. I hope that my colleagues in the Congress will act quickly to adopt this vital measure so that we can get crime guns off our streets and out of the hands of criminals.

Mr. President, I ask unanimous consent that the firearms survey submitted to me by the District of Columbia Metropolitan Police Department and the article written by Mr. Valentine be printed in the RECORD.

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

GOVERNMENT OF THE
DISTRICT OF COLUMBIA,
METROPOLITAN POLICE DEPARTMENT,
Washington, D.C., October 29, 1971.

LAWRENCE SPEISER, Esq.,
Staff Director and Chief Counsel, Senate Judiciary Subcommittee To Investigate Juvenile Delinquency, Washington, D.C.

DEAR MR. SPEISER: Pursuant to the Subcommittee's request, we have enclosed the final statistical results of our study of persons arrested for carrying a pistol without a license, in violation of the misdemeanor portion of District of Columbia Code, sec. 22-3204, during the months of July, August and September 1970.

The study originally contained 379 cases. However, included in that figure were 10 cases which were still pending as of October 22, 1971, and 8 cases for which the court or prosecutor's files could not be located. Thus, the figures and percentages which follow are based on a total of 361 cases, all of which have been rechecked and verified. As a result of the statistics disclosed by the study, indicated in the enclosure, we have reached the following conclusions:

1. Of the 361 verified cases reviewed in the study, only 54 persons (or 15%) were incarcerated for any length of time at all. It is therefore apparent that our preliminary estimate—that a person arrested for violation of the misdemeanor portion of the statute during those months had a two out of three chance of not receiving a single day in jail—was significantly understated. In fact, such a person had better than a five out of six chance of escaping any incarceration at all.

2. One hundred and sixty-two of the 361 cases (or 45%) never reached a judge, but were either not initiated ("no papered") or nolle prossed by the prosecutor. Many factors may be reflected in this statistic; for example, close questions of search and seizure, failure of civilian witnesses to appear when called, bargained pleas in other pending cases, problems of determining possession in multiple defendant cases, questionable prosecutorial discretionary decisions, and others. Nevertheless, the fact that 45% of

such cases did not reach a judge is distressing.

3. Of the 199 cases which did reach the court, there were 157 convictions (79% of the cases actually disposed of by the court), either by plea of guilty or verdict of guilty after trial. The 42 cases not resulting in conviction included 17 dismissals by a judge and 25 acquittals. Thus, the conviction rate of those cases actually being decided in court seems satisfactory.

4. Of the 157 convictions, 103 (66% of the convictions) resulted in a sentence of a simple monetary fine, suspended sentence or probation. This extraordinary statistic may be the chief reason why carrying a pistol without a license is not viewed throughout the criminal justice system as a serious crime. The fact of the matter is that a person *actually convicted* (not merely arrested) under the misdemeanor portion of the statute during the months of the study had a two out of three chance of not receiving a single day in jail. As indicated above, when all arrests under the misdemeanor section of the statute are considered, the chances of not being imprisoned at all are better than five out of six.

We hope that this study will be of assistance to the Subcommittee in its work, and if we may be of further aid, please do not hesitate to advise.

Sincerely,

GEOFFREY M. ALPERIN,
General Counsel.

DISPOSITIONS OF CASES IN WHICH VIOLATION OF DISTRICT OF COLUMBIA CODE § 22-3204—MISDEMEANOR—WAS CHARGED DURING JULY, AUGUST, AND SEPTEMBER 1970

A. Total cases studied	379
Exclusions:	
1. Still pending as of 10/22/71	10
2. Court or prosecutor's files not located	8
Total	18
Total cases studied and verified	361
B. Dispositions—Cases disposed of without court action:	
1. No papered or nolled prossed by prosecutor	162
Cases disposed of by court action:	
1. Dismissed by court	17
2. Defendant acquitted	25
3. Defendant convicted	157
Total dispositions	361
C. Sentences of convicted defendants—imprisonment:	
1. Straight imprisonment	38
2. Fine or imprisonment (counted here as imprisonment)	16
Total imprisoned	54
No imprisonment:	
1. Fine only	11
2. Probation	92
Total not imprisoned	103

MANY CHARGED, FEW JAILED IN GUN CASES

(By Paul W. Valentine)

Nearly two-thirds of all persons convicted of carrying illegal handguns—many of them cheap "Saturday night specials" used in homicides and assaults here—do not go to jail for the offense, a metropolitan police survey suggests.

In a nutshell, the survey says: If a suspect is arrested, he stands a good chance of not going to court in the first place because the prosecutor will drop the case before trial time. But if he should be tried and convicted, he's more likely to be fined or receive probation than go behind bars.

"I think this shows that some judges and prosecutors just don't view CDW (carrying a dangerous weapon) as a serious offense," Geoffrey M. Alprin, police department general counsel, said yesterday.

He acknowledged that the U.S. attorney's office may drop some cases because of weak evidence supplied by police or "close questions" about the legality of police search and seizure practices.

The survey results, submitted this week on request to the Senate Judiciary Subcommittee to Investigate Juvenile Delinquency, come amid a rash of slayings in the city, most of them committed with handguns. There have been 236 homicides so far this year, surpassing last year's total of 230 and approaching the record high of 292 in 1969.

The police survey covers all suspects arrested on the charge of carrying an illegal or unlicensed pistol in Washington during the 92-day period from July 1 through Sept. 30, 1970.

A total of 379 persons were arrested during that period, an average of more than four arrests a day. Ten of 379 cases are still awaiting disposition and the files on eight more could not be located, leaving 361 verified cases, the survey reported.

Of that total, 162 (45 per cent) were dropped by prosecutors before any court action was taken. The remaining 199 went to trial. The vast majority of those, 157 (79 per cent) ended in convictions; 17 others were dismissed by the court and 25 resulted in acquittals.

Among the 157 suspects convicted, according to the survey, 54 were given prison sentences, while 92 were placed on probation and 11 were fined.

"This extraordinary statistic," wrote Alperin in an Oct. 29 letter to the subcommittee, "may be the chief reason why carrying a pistol without a license is not viewed throughout the criminal justice system as a serious crime.

At another point, he acknowledged the high number of cases dropped by the prosecutor's office at the pretrial stage.

"Many factors may be reflected in this statistic," he said, such as "close questions of search and seizure, failure of civilian witnesses to appear when called, bargained pleas in other pending cases, problems of determining possession in multiple defendant cases, questionable prosecutorial discretionary decisions and others."

Nevertheless, he added, "the fact that 45 per cent of such cases did not reach a judge is distressing."

The survey covered persons arrested only on the misdemeanor charge of carrying a dangerous weapon. The CDW charge becomes a felony if the arrested person is found to have a prior felony or narcotics conviction in his record. Alprin said this comprises a relatively small category of suspects and was not included in the survey.

Sen. Birch Bayh (D-Ind.), chairman of the Subcommittee, introduced a bill in September to ban the manufacture or sale of small, inexpensive handguns, called "Saturday night specials" by police. The guns are among the most common found in homicide, assault and CDW arrests here, police say.

The pistols are often of foreign origin and made of low grade materials, retailing for $5 to $20 in Washington compared to $50 or more for "safer" standard American makes, police say.

The Saturday night special is a "low quality, inaccurate and dangerous weapon (which) has absolutely no redeeming values," Police Chief Jerry V. Wilson testified Sept. 13 in support of Bayh's bill.

The measure would amend the 1968 Gun Control Act by prohibiting the sale or manufacture of handguns that do not meet certain quality standards in material, design and engineering precisions. The standards would permit the continued sale of most established American brand name sports pistols.

THE SENATE SHOULD TAKE A FIRST STEP TO MEET THE CRISIS OF DRUG ADDICTION

Mr. BAYH. Mr. President, in any listing of national priorities the insidious problems of drug addiction and drug abuse must rank near the top. In recent months much has been said regarding these critical matters, but to date little has been accomplished.

Today, I wish to commend Congressman EDWARDS and his colleagues in the House of Representatives who by vote of 354 to 0 passed H.R. 9293, amendments to the Narcotic Rehabilitation Act.

On June 24, 1971, I introduced with the Senator from Nebraska (Mr. HRUSKA) an identical measure, S. 2140. This bill would expand treatment under the Narcotic Addict Rehabilitation Act of 1966 to include methadone maintenance for narcotic addicts committed for hospitalization and aftercare.

The Narcotic Addict Rehabilitation Act was enacted by the 89th Congress in response to the narcotic problem in this Nation during the mid-1960's. The act embraces the view that narcotic addiction is a disease that should be treated rather than viewed as a matter for punitive penal action. Its declaration of purpose in favor of civil commitment for treatment, in lieu or prosecution or sentencing, was a legislative landmark—a turning point in the Federal approach to drug addiction.

The amendment to the act which the distinguished Senator from Nebraska and I introduced would expand the treatment modalities under this landmark program to include methadone maintenance. This would be accomplished by amending the definition of the word "treatment" wherever it appears in the act to include treatment which not only aims at terminating addiction, but also seeks to control addiction. Enactment of my bill would make available an additional component thereby enhancing the quality of the NARA program which currently includes detoxification, withdrawal and abstinence, therapeutic community programs, individual psychotherapy, counseling, vocational guidance, job training, and other essential supportive services.

There are no simple solutions to the epidemic of narcotic addiction that this Nation is experiencing. There are no panaceas—no magic wands. But when it comes to treatment for addicts, the least we should require is that a Federal program be truly comprehensive; namely, that it meets the needs of all addicts, including those who would benefit from methadone maintenance.

Although there has been no single satisfactory method developed for treating all narcotic addicts, methadone maintenance has been established as a relatively effective means of treatment for selected groups. It should be clear, however, that it is not a solution to every or even most forms of narcotic addiction.

Methadone is a narcotic similar to heroin and morphine. Methadone maintenance does substitute one form of addiction for another. Methadone may be abused. Therefore, under any circum-

stance, it should be rigidly controlled and its distribution limited to chronic addicts: those who have had primary addiction to heroin for a number of years; who have had previous failures with other modes of treatment; and who are willing to consent to long-term participation in a program. This is not a program for young people only marginally involved with narcotics or those addicts who succeed under the more traditional rehabilitation programs.

It is methadone blockage of the craving for heroin and the subsequent stabilization of the chronic addict which permits him to concentrate on rehabiiltative efforts which other addicts may be able to pursue without maintenance. Perhaps for this group methadone may be the only feasible alternative. It is this proposition that I feel deserves considerable attention.

But methadone maintenance should not block or "smoke-screen" the effects of drug addiction on our society and the social conditions, such as racism, despair, and poverty, that spawn drug addiction. Methadone maintenance should not provide a "fix" for a complex social, political, medical, and psychological problem.

This amendment would establish methadone maintenance as a complement to other facets of treatment under NARA. Although its role should be a limited one, it could provide a useful tool in the arsenal of weapons in our fight against this pestilence—narcotic addiction.

Our colleagues in the House have acted expeditiously to assure that the full spectrum of addiction treatment is made available to those addicts who are subject to Federal control and jurisdiction. I urge Senators to follow the leadership of the House of Representatives in this matter and vote for passage of my bill, S. 2140.

CONFIRMATION OF SUPREME COURT NOMINATIONS

Mr. BAYH. Mr. President, on Friday I invited the attention of the Senate to a memorandum on the role of the Senate in the confirmation of nominations to the Supreme Court, which the Senator from California (Mr. TUNNEY) and I had received from three distinguished scholars at Stanford University. Unfortunately, that document was inadvertently omitted from Friday's RECORD. I ask unanimous consent that it be printed in today's RECORD, instead.

I take this opportunity to read once again the memorandum's conclusion.

First, it is the Senate's affirmative responsibility to examine a nominee's political and constitutional philosophy, and to confirm his nomination only if he has demonstrated a clear commitment to the fundamental values of our Constitution—the rule of law, the liberty of the individual, and the equality of all persons.

Second, the Senate should consider a nominee, not in isolation but in the context of the President's other nominations, past and promised; and that the Senate performs a proper constitutional role in preventing the Chief Executive from distorting the Court in his own image.

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

MEMORANDUM ON THE ROLE OF THE SENATE IN CONSIDERING THE PRESIDENT'S NOMINEES FOR APPOINTMENT TO THE SUPREME COURT OF THE UNITED STATES

To: Senator Birch Bayh, and Senator John V. Tunney.

From: Paul Brest, Assistant Professor of Law, Stanford University; Thomas C. Grey, Assistant Professor of Law, Stanford University; Arnold M. Paul, formerly Professor of History, Michigan State University.

This Memorandum considers the proper scope of the Senate's inquiry into the political and constitutional philosophy of a nominee for appointment to the Supreme Court of the United States. Our conclusion, briefly, is that although a nominee's experience, legal ability, and personal integrity are necessary conditions for his confirmation to the Supreme Court, they are not—and they have never been considered—sufficient conditions. We believe:

First, it is the Senate's affirmative responsibility to examine a nominee's political and constitutional philosophy, and to confirm his nomination only if he has demonstrated a clear commitment to the fundamental values of our Constitution—the rule of the law, the liberty of the individual, and the equality of all persons.

Second, the Senate should consider a nominate, not in isolation, but in the context of the President's other nominations, past and promised and that the Senate performs a proper constitutional role in preventing the Chief Executive from distorting the Court in his own image.

We return to these conclusions and the analyses supporting them in Part III of this Memorandum. In Part I we examine the relevant history surrounding the adoption of Article II, section 2, clause 2 of the Constitution: "The President . . . shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the Supreme Court. . . . " In Part II we survey the Senate's own precedents in exercising its constitutional responsibility of confirmation.

We have prepared this Memorandum during the week following October 21, 1971, for the purpose of addressing a principal issue raised by the President's Supreme Court nominations of that date. The Memorandum states as accurately and fairly as we can, within quite stringent limitations of time, our conclusions concerning the historical and constitutional role of the Senate in the appointment of Supreme Court Justices. In that sense, it *is* a memorandum, rather than a partisan brief. However, we are frank to say that, based upon the information we presently have regarding the views of one of the President's nominees, we personally would oppose his confirmation under the criteria developed herein.

Much of the research for this Memorandum was done by the following students at the Stanford Law School, to whom we are greatly indebted: Jeff Coleman, Susan Cooper, Ron Fujikawa, Mick Goldstein, Joan Gottschall, Mary O'Hara, Ron Oster, Ken Philpot, Mary Lou Randol, Robert Spanner, Dave Stegall, and Victor Vilaplana.

I. THE ORIGINAL HISTORY

The proceedings of the Constitutional Convention make clear that the Senate was intended to serve an active role in reviewing presidential nominations to the Supreme Court.

Debate over the method of appointment of Supreme Court Justices focused on two alternative schemes: appointment exclusively by the Senate and appointment exclusively by the Executive. The chief argument in support of Senate appointment was the unacceptability of the alternative. Allowing the Executive to appoint the Justices would vest it with excessive power; it would seem to be "leaning too much toward Monarchy." [1] Additionally, it was contended that the Senate, "being taken from all the States, would be best informed of the characters and most capable of making a fit choice." [2] [T]he judges ought to be diffused, which would be more likely to be attended to by the 2d branch, than by the Executive." [3] The Senate "would be composed of men nearly equal to the Executive and would of course have on the whole more wisdom. They would bring into their deliberations a more diffusive knowledge of characters. It would be less easy for candidates to intrigue with them, than with the Executive. . . ." [4]

Against the concern of an excessive concentration of power in the Executive, it was argued that "if the Executive can be safely trusted with the command of the army, there cannot surely be any reasonable ground of Jealousy in the present case," [5] and that there was advantage in appointment "by a single, responsible person." [6] The argument that the Senate would have better knowledge of the candidates was countered by the assertion that "The Executive in the necessary intercourse with every part of the U.S. required by the nature of his administration, will or may have the best possible information." [7] And where those favoring appointment by the Senate argued that the Executive "will be more open to caresses & intrigues than the Senate," [8] the opposition argued that the Senate was more subject to "intrigue, partiality, and concealment." [9]

These arguments were renewed each time the issue came before the Convention. The earliest proposal for selection of the Justices was incorporated in the Virginia Plan, introduced on May 29. The plan provided that members of the "National Judiciary . . . be chosen by the National Legislature." [10] As amended to vest the power of appointment in the Senate rather than the full legislature, this proposal was to remain in the working draft of the Constitution throughout much of the Convention and carry into the draft reported by the Committee on Detail.

The compromise embodied in Art. II, § 2, cl. 2 of the Constitution was first proposed by Alexander Hamilton on June 5. [11] However, one week later, acting as a committee of the whole, the Convention approved a motion that the Justices "be appointed by the second branch of the national legislature." [12]

On June 18, motions calling for Executive appointment of the Justices, and for Executive nomination subject to Senate approval, were both defeated, the latter by a tie vote. [13] The matter was put over. When it was taken up again three days later, the Convention again rejected (6 to 3) a proposal for Executive nomination subject to Senate approval, and voted by the same margin to retain "the clause as it now stands by which the Judges are to be appointed by the 2d branch." [14] This procedure was retained in the draft reported by the Committee on Detail on August 6. [15]

The matter came up again briefly on August 23 and 25 only to be postponed and referred to the Special Committee on Postponed Matters (or the Committee of Eleven). [16] It was between August 25 and September 4 that the final compromise was worked out: on September 4, the Committee reported the procedure presently embodied in the Constitution; and three days later the Convention adopted it, no one voting against. [17]

This last vote, as Professor Charles Black has written, "must have meant that those who wanted appointment by the Senate alone—and in some cases by the whole Congress—were satisfied that a compromise had been reached, and did not think the legislative part in the process had been reduced to

Footnotes at end of article.

the minimum. The whole process . . . suggests the very reverse of the idea that the Senate is to have a confined role." [18]

The ratification debates add little to what was said at the Philadelphia Convention on this question. However, the *Federalist* papers Nos. 76 and 77—even though written by Hamilton, who consistently favored a powerful Executive—indicate an active and independent role for the Senate. The Senate, he wrote in No. 76, would reject nominations where there are "special and strong reasons for the refusal." The Senate's power of review

". . . would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view of popularity. In addition to this, it would be an efficacious source of stability in the administration.

It will readily be comprehended, that a man who had himself the sole disposition of offices, would be governed much more by his private inclinations and interests, than when he was bound to submit the propriety of his choice to the discussion and determination of a different and independent body, and that body an entire branch of the legislature. The possibility of rejection would be a strong motive to care in proposing. The danger to his own reputation, and, in the case of an elective magistrate, to his political existence, from betraying a spirit of favoritism, or an unbecoming pursuit of popularity, to the observation of a body whose opinion would have great weight in forming that of the public, could not fail to operate as a barrier to the one and to the other. He would be both ashamed and afraid to bring forward, for the most distinguished or lucrative stations, candidates who had no other merit than that of coming from the same State to which he particularly belonged, or of being in some way or other personally allied to him, or of possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure." [19]

In Number 77, Hamilton responded to the argument that the Senate's power to refuse confirmation would give it an improper influence over the President:

"If by influencing the President be meant *restraining* him, this is precisely what must have been intended. And it has been shown that the restraint would be salutary. . . ." [20]

The Federalist thus supports the Convention debates in speaking strongly for the Senate's independent consideration of nominees for the Court. And, as Professor Black writes, there is no indication in these writings "that the Senators may not or ought not, in voting on a nominee, take into account anything that they, as serious and public-spirited men, think to bear on the wisdom of the appointment. . . . Is a Senator's belief that a nominee holds skewed and purblind views on social justice not a special and strong reason [to deny confirmation]? Is it not as special and strong as a Senator's belief that an appointment has been made from a view to popularity—a reason which by clear implication is to suffice as support for a negative vote?" [21]

II. SENATE PRECEDENT

In the following pages we outline and summarize the Senate's own precedents with respect to the confirmation of nominees to the Supreme Court. We divide this history into three periods: the nineteenth century; the first half of the twentieth century; and the past two decades.

Two general conclusions, which we amplify below, emerge from an examination of 170 years of Senate practice:

1. There has never been a time when a nominee's social and political viewpoints were not generally considered relevant to his suitability for appointment to the Supreme Court; and

2. Those Senators who have urged considering and have considered a nominee's substantive views come from no one political camp: they span the range from Whig to Democrat, Republican to Progressive, liberal to conservative.

A. The 19th century

During the nineteenth century, the Senate refused to confirm twenty-one nominees to the Supreme Court. With only several possible exceptions, Senate rejection of the nominees was grounded in the nominees' political views. What is most striking about the precedents of this period, compared to the twentieth century, is that the confirmation battles focused as much on the nominees' partisan political affiliations as on their constitutional philosophies—although these generally were more closely intertwined then than they are today. Many of those rejected on these grounds were men of unquestioned personal integrity and high legal qualifications.[1]

While John Rutledge's nomination for Chief Justice was pending before the Senate in 1795—

"Facts became known as to his political views which . . . aroused the most bitter and determined opposition to his appointment. The Jay Treaty had been ratified by the Senate on June 24, and owing to the violent revolt against its terms by the anti-British faction in this country, support of the treaty was regarded by Washingon's adherents as the touchstone of true Federalism. When, therefore, towards the end of July on the arrival of Charleston newspapers at the North, the Federalists were informed that the new Chief Justice, on July 16, before receipt of his appointment, had delivered an address violently attacking the Jay Treaty, they were surprised and indignant. . . . The excited political situation was such that . . . rejection by the Senate was certain, and it was accomplished by a vote of ten to fourteen, as soon as that body convened.[2]

With the action on Rutledge, "The Senate thus established a precedent of inquiring into the political views and ideas of persons nominated for public office and of rejecting a nominee whose views do not correspond to those of the majority of the Senate."[3]

In 1811, the Senate rejected James Madison's nomination of *Alexander Wolcott* to the Supreme Court because of Senate opposition to Wolcott's vigorous enforcement of the Embargo and Non-intercourse Acts when he was Connecticut's collector of customs.[4] And in 1829, a Democratic Senate rejected John Quincy Adams' nomination of John J. Crittenden because he was too closely identified with Adams' Whig politics.[5]

In 1835, Andrew Jackson nominated his former Attorney-General and Secretary of the Treasury, *Roger Taney*, an Associate Justice. "For the past two years, a storm of partisan passion had raged over the removal of government deposits from the United States Bank, ordered by Jackson and carried out by Taney," and for this reason the Senate rejected the nomination.[6]

A year later, Taney was re-nominated for Chief Justice and, after a fierce political battle, was confirmed 29 to 15. The Whig opposition did not need to consider Taney's personal views; his party affiliation was a sufficient reason for their rejection of him. But those favoring confirmation urged the Senate to consider Taney's own constitutional philosophy on its merits:

". . . It was undoubtedly true that Jackson would consider only the appointment of a Democrat to fill the vacancy in the position of Chief Justice; and it was natural that he should desire a Democrat in sympathy with his constitutional views, just as President Adams had originally appointed Marshall as a strong Federalist. It by no means followed, as the Whigs seemed to assume, that no consideration should be given to the views of the appointee on the subject of politics, taking politics in its highest and philosophic sense as involving the theories of human rights and the principles of government. Political partisanship should of course be no qualification; but, as a leading paper in the South said: 'It would be indeed strange if, in selecting the members of so august a tribunal, no weight should be attached to the views entertained by its members of the Constitution, or their acquirements in the science of politics in its relations to the form of Government under which we live. We can imagine the horror with which the annunciation would be received throughout the country of the elevation of a thorough Nullifier, however able and accomplished and learned, to the chief place in the interpretation of the Constitution. Yet the exclusion of a Nullifier would be the admission of a political, or it may in this sense be called, a party test, and it is one which the country will approve.' The Democratic papers, in fact, demanded that a man should be selected 'whose principles, profession and practice afford a sure guarantee that on all questions involving the power of the government, he will strictly adhere to the letter of the Constitution and faithfully abide by the stern dictates of popular opinion',—a man who would keep pace with the steady progress of publick liberty and popular reform.' " [7]

During the next two decades, nominees for the Supreme Court almost regularly encountered substantial political opposition from one or another quarter. Whigs and Democrats were evenly divided in the Senate, and the issue of states' rights vs. a nationalist philosophy infused much of the debates.

A vacancy on the Court in 1843 "gave rise to a prolonged contest between the Executive and the Senate. The bitter political feud between President Tyler and the Whigs was now at its height." [8] President Tyler nominated *John Spencer*, whom the Senate rejected in 1844. "While the rejection was placed upon high moral grounds, the fact was that it was due solely to Whig politics." [9] Tyler then nominated *Reuben Walworth*, and then, to fill another vacancy, *Edward King*. "The heated contest which had long prevailed between the President and the Whig Senate made it unlikely that his appointments would be confirmed," [10] and the Senate refused to act on them during the session. Tyler withdrew the nominations and nominated *Samuel Nelson* and *John Read*. The former was confirmed; the Senate adjourned without acting on the latter's nomination.

President Polk nominated *George Woodward* in 1846. "He had become obnoxious, however, to certain elements of the party owing to alleged 'native American sentiments' [and was thought "somewhat radical in his views"]; and for this reason and owing to the opposition of Senator Cameron of Pennsylvania, the Senate rejected the nomination. . . ." [11]

Because of partisan opposition, President Filmore was unsuccessful in filling the seat left vacant by Justice McKinley's death in 1852. The Senate postponed consideration, then adjourned, without considering either of his successive nominees.[12]

In 1858, President Buchanan nominated *Nathan Clifford* to the Court. "The moment . . . the nomination reached the Senate, it was subjected to the most venomous criticism by the radical anti-slavery men. . . . Nevertheless the Senate confirmed the appointment by the close vote of twenty-six to twenty-three." [13] However, a second Buchanan nominee, *Jeremiah Black* was also opposed by the anti-slavery forces and was rejected in 1861.

In 1869, the number of Justices on the Court was increased giving President Grant

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a vacancy to fill. He nominated *Ebenezer Hoar*. The Senate refused confirmation:

"Some Senators believed that a lawyer from the South . . . should have been appointed; others were disgruntled over the nominees recommended by Hoar for Circuit Judges; to many Senators, Hoar's brusque manners had given great offense; other resented his opposition to the Johnson impeachment; others disliked his support of Civil Service Reform. He was supported by Senator Trumbull but opposed by Conkling, Edmunds, Carpenter, by the carpet-bag Senators from the South and by the Democrats. 'In the whole proceedings,' said the *Nation*, 'the Democrats alone can be justified or excused. To them, Judge Hoar is the principal representative of a system they believed to be unconstitutional and outrageous.' " [14]

President Hayes' judicial nominations met with strong Senate opposition. *John Marshall Harlan* was opposed, ironically, because of his one-time opposition to the Reconstruction Amendments.[15] Hayes' nomination of *Stanley Matthews* was pigeonholed by the Senate largely because of Matthews' identification with railroad interests.[16] Matthews, however, was renominated by Garfield, and after fierce political battle, he was confirmed by a margin of one vote.[17]

B. 1900–1950

The Senate debates during the twentieth century generally have a different tenor from those of the nineteenth century. For, as Joseph Norris points out, "the most significant contests over nominations to the Supreme Court since 1900 have occurred over broad political issues, in contradistinction to partisan considerations." [18]

Although opposition to Louis Brandeis, nominated in 1916 by President Wilson, was started in terms of alleged unethical conduct, its true source lay in his social and political views. "It is significant that the opponents of Brandeis elected to base their opposition on charges of this kind rather than state the real reason for their opposition; they regarded him as a dangerous radical. . . . Those who were in charge of the campaign in favor of Brandeis made no mention of his extraordinary record in opposing monopolistic practices; nor did they mention his progressive views, which they recognized would not enlist the support of the conservative Democrats on the Judiciary Committee. Both sides, for different reasons, thus sidestepped the real issues." [19]

Harlan Stone's confirmation was opposed in 1925, largely because of his supposed conservatism. However, the opposion was small, his defenders (which included Progressives) denied that he held those views, and he was confirmed by a large margin.[20] Opposition to *Charles Evans Hughes* in 1930 was stronger. Senator Norris conceded Hughes' extraordinary legal qualifications, but said he would place a man with his economic views and background on the Court.[21] LaFollette similarly "maintained that it was highly important to consider the economic and social philosophy of persons nominated to the Court." [22] And although Senator Borah "conceded that Hughes was a distinguished American of wide reputation, high standing, and acknowledged ability, . . . he said: 'I am only concerned with the proposition of placing upon the court as Chief Justice one whose views are known upon these vital and important questions . . . views which ought [not] to be incorporated in and made a permanent part of our legal and economic system.' " [23]

As Harris concludes:

"The opponents did not hope to defeat the appointment of Hughes, but rather to serve notice that they would scrutinize all appointments to major policy positions and would stand ready to fight the nomination of conservatives. The case is significant because emphasis was placed, not on the ability and qualifications of the nominee, which were conceded, but rather on his economic and political philosophy. Senators Norris, Borah, and LaFollette were right in insisting that this is an appropriate subject for the Senate to consider in passing upon a nominee for the Supreme Court, but they erred in the assumption that because Hughes had been an attorney for large corporations, he was necessarily committed to his clients' philosophy." [24]

In 1930, the Senate refused to confirm *John J. Parker* as a Supreme Court Justice. "The opposition to Parker was based on three contentions: (1) that he favored 'yellow-dog' contracts and was unfriendly to labor; (2) that he was opposed to Negro suffrage and participation in politics; and (3) that the appointment was dictated by political considerations." [25] There was no question as to Parker's legal ability. But "when we are passing on a judge, therefore, we not only ought to know whether he is a good lawyer, not only whether he is honest—and I admit that this nominee possesses both of those qualifications—but we ought to know how he approaches these great questions of human liberty." [26]

Of President Roosevelt's nominees to the Supreme Court, only *Hugo Black* met with any serious opposition. Senator Black was opposed because of his strong support for the New Deal, the issue of his membership in the Ku Klux Klan surfacing significantly only after his confirmation. He was approved by a vote of 66–15.[27] *Felix Frankfurter* was confirmed without dissent, the Republican Senate leader taking the position that Frankfurter's qualifications were so extraordinary as not to call for political opposition.[28] Frankfurther himself, though refusing to testify as to his "personal views on controversial issues before the Court," urged the Judiciary Committee to scrutinize his record: "My attitude and outlook on relevant matters have been fully expressed over a period of years and are readily accessible." [29]

C. The recent experience

The Senate's action during the past two decades confirms and reinforces its historical tradition of scrutinizing the substantive views and constitutional philosophies of nominees to the Supreme Court. As both the public and the Senate have become more accustomed to the fact that a Justice's personal philosophy and views on issues of public policy do affect the way he decides cases, the depth and intensity of Senate concern with the views of candidates has increased. Three of the most recent nominations—those of Abe Fortas to be Chief Justice, and of Clement Haynsworth and G. Harrold Carswell to be Associate Justices—have been rejected by the Senate. In each of these cases, as well as in those where confirmation was given, the views and philosophies of the nominees have played a major and explicit role. Through the course of these controversies, only a handful of Senators have adhered consistently to the view that these factors should play little or no role in the Senate's exercise of its constitutional power of advice and consent.

1. The Eisenhower years

President Eisenhower's second nominee to the Court, John M. Harlan, underwent a searching examination before the Senate Judiciary Committee with respect to his views on such questions as world government versus American sovereignty, foreign treaties, federal-state relations, and other issues likely to be relevant to the decision of cases which would come before the Court.[30] Though no question was raised as to his competence or integrity, four members of the Judiciary Committee voted against recommending Harlan's confirmation, and eleven Senators ultimately voted against confirmation.[31]

William J. Brennan, the next Eisenhower nominee, was searchingly questioned on his views concerning Communism and the propriety and legality of legislative investigations of Communism.[32] And President Eisenhower's last nomination, that of Potter Stewart, was subjected to extended and searching examination and debate, virtually all of which focused on his constitutional views—in particular, his view that *Brown* v. *Board of Education* had been properly decided. Seventeen votes were cast against Stewart's confirmation.[33]

2. The Marshall nomination

The next Supreme Court nomination to meet opposition in the Senate was that of Thurgood Marshall in 1967. The nominee was questioned at length before the Judiciary Committee, both as to his general philosophy of constitutional interpretation and as to his views on particular issues of constitutional criminal procedure.[34] Members of the Committee asserted not only a right but a duty to discern his positions even on highly particularized issues which might later come before him as a Justice. The viewpoint of several Senators was perhaps best summarized by Senator Ervin:

"The Constitution provides in substance that the President has the power to appoint Supreme Court Justices by and with the advice and consent of the Senate. I believe that the duty which that provision of the Constitution imposes upon a Senator requires him to ascertain as far as he humanly can the constitutional philosophy of any nominee to the Supreme Court." [35]

When the Marshall nomination reached the floor, the substantial number of Senators who spoke against confirmation rested their case almost exclusively on his supposed activist bent. Thus, Senator Holland:

"My first reason for my position and my vote is that I regard Thurgood Marshall as a constitutional ultra-liberal and an activist . . ." [36]

Senator Stennis:

"(T)he nominee must be measured not only by the ordinary standards of merit, training, and experience, but his basic philosophy must be carefully examined." [37]

Senator Byrd of West Virginia:

"I simply cannot bring myself to vote for an individual to be a United States Supreme Court Justice who, by his past record so clearly stamps himself as one who will be an ally to the already top-heavy, ultraliberal and activist bloc on the Court." [38]

Senator Byrd's speech emphasized not only the nominee's own views, but stressed as an additional factor the effect they would have in shifting the balance of the Court as a whole. Senator Thurmond emphasized the latter point:

"This means that it will require the appointment of two additional conservative justices in order to change the tenor of future Supreme Court decisions." [39]

Of the numerous Senators who spoke in favor of Marshall's confirmation, most confined themselves to a defense of the nominee's record and achievements.[40] Others argued that his record of litigation aimed toward expanding the rights of black Americans was a positive factor.[41]

In the end, eleven Senators voted against confirmation, and several others were paired or announced against—all apparently because of opposition to the nominee's substantive views.[42]

3. The Fortas nomination

President Johnson'snomination of Abe Fortas to be Chief Justice of the United States in 1968 provoked the first of the major confirmation fights of recent times. There were, of course, issues involved other than the substantive views of the nominee: the partisan political issue of a "lame-duck" nomination, the propriety of Chief Justice Warren's "con-

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ditional resignation", the issue of "cronyism", and the related question of the nominee's role as confidential advisor to the President while sitting as an Associate Justice.

But at least as large as any of these loomed the issue of the nominee's substantive positions on constitutional issues ranging from obscenity to the scope of the privilege against self-incrimination. Our examination of the proceedings indicates that an overwhelming majority of those who addressed themselves to the question believed that the nominee's views and judicial philosophy were relevant to the question of his confirmation. Some 32 Senators, as best we could determine from the Index to the Congressional Record, spoke to the question of the nominee's political and constitutional views. Of those, 14 explicitly stated that those views were relevant and should be discussed. Another 12 discussed and analyzed the nominee's views in explaining their own votes, thus implying that they regarded this as a relevant and proper consideration. Three others stated that the nominee's "qualifications" were relevant to the question of confirmation, but made this point in opposing the consideration of partisan politics or the "lame-duck" issue; they did not imply that a nominee's substantive views on constitutional questions were not part of his "qualifications." Only three Senators, insofar as we could determine, argued that a nominee's constitutional philosophy was not a proper consideration for the Senate. (We have attached as Appendix A a specification of these findings, with references to the Congressional Record and the confirmation hearings before the Judiciary Committee.)

Space permits only a representative sample of statements by Senators to the effect that the nominee's views, philosophy and the substance of his past decisions are relevant to the question of confirmation. Senator Byrd of Virginia:

"The Senator's responsibility, as I see it, is to meet the issue head on, to deal squarely with the qualifications and the philosophy of the appointee. . . ." [43]

Senator Eastland:

"An examination and analysis of (the nominee's opinions and statements as an Associate Justice, and his public writings and statements, clearly demonstrate that his judicial philosophy disqualifies him for this high office." [44]

Senator Fannin: (Quoting Senator Borah from an earlier confirmation fight)

"They pass upon what we do. Therefore it is exceedingly important that we pass upon them before they decide upon these matters." [45]

(Senator Fannin made extensive use of a letter from Mr. William H. Rehnquist, arguing from history and policy that nominees' views were proper factors for the Senate to consider.) [46]

Senator Fong:

"(T)he Senate, in considering Presidential nominations to the Supreme Court, has never hesitated to take into account a wide variety of factors, including the nominee's ability and qualifications. His political views, his economic and social philosophy, his attitude on particular issues, or other matters." [47]

Senator Miller:

"What I am bringing into question is (the nominee's) judgment . . . Two people, equally sincere and equally convinced, can render opposite judgments on a question. One judgment may be good for the country, the other judgment may be bad for the country. . . . For too long, the Senate has rubberstamped nominations. . . . But a time comes when every Senator should search his conscience to see whether the exercise of the confirming power by the Senate is for the good of the country. . . ." [48]

Senator Thurmond:

"(I)t is my contention that the Supreme Court has assumed such a powerful role as a policymaker in the government that the Senate must necessarily be concerned with the views of the prospective Justices or Chief Justices as they relate to broad issues confronting the American people, and the role of the Court in dealing with these issues." [49]

4. The Haynsworth nomination

Like the Fortas controversy, the struggle leading to the rejection of President Nixon's nomination of Judge Clement Haynsworth to be an Associate Justice involved issues other than the substantive views of the nominee. In this case, the nominee's alleged ethical improprieties predominated in debate. But his substantive views on questions of labor law and race relations played a large subsidiary role.

Again, a substantial majority of those who addressed themselves to the question clearly felt that the nominee's views and philosophy were proper and relevant considerations. Here, however, a more significant minority did argue that these were not appropriate factors for the Senate to consider, although the members of this group generally felt that the President could properly take such considerations into account in making his nomination.

A rough count, which is doubtless incomplete, indicates that at least 23 Senators argued for the relevance of the nominee's views, either in the Judiciary Committee hearings or in the floor debates, while at least 12 Senators took the opposite position. (A list of the relevant statements, with citations, is attached as Appendix B.)

Among those who thought that the nominee's views were relevant, there was considerable variation in the approach taken to the evaluation of those views. Most Senators were content to conclude that the nominee's philosophy was a factor to be considered by the Senate. Some were more specific. Thus, Senator Case made clear that to him the nominee's views were the central consideration:

"How he approaches these great questions of human liberty—this for me is the essence of the issue in the pending nomination of Judge Haynsworth." [50]

Senator Muskie argued that the power of the Senate to consider the views of nominees must be as great as the power of the President to consider those same views in making the nomination:

"It is the prerogative of the President, of course, to try to shift the direction and the thrust of Court's opinions in this field by appointments to the Supreme Court. It is my prerogative and my responsibility to disagree with him when I believe, as I do, that such a change would not be in the best interests of the country." [51]

5. The Carswell nomination

The most recent major confirmation debate, which resulted in the rejection of the nomination of Judge G. Harrold Carswell to be an Associate Justice, focused heavily on the nominee's views concerning racial equality. A second issue emerged during the debate—the nominee's technical competence as a judge—but by far the greatest emphasis was placed on his expression of white supremacist views, his involvement in the transfer of a public golf course to a private segregated club, his alleged hostile treatment of black litigants and civil rights lawyers, and his consistently limited—and often reversed—view of the scope of the equal protection clause in civil rights cases.

In our relatively limited research into the floor debates concerning this nomination, we have found only one Senator—Senator Stevens—who argued unequivocally that Judge Carswell's view were irrelevant to the question of Senate confirmation.[52] Judge Carswell's supporters tended rather to dispute the facts brought forward by his opponents, and to dispute the inferences drawn from them, than to argue that proven personal racial prejudice was not a relevant consideration.

Again, the considerations which render a nominee's views relevant to the Senate's role in the appointment process were expressed in varying terms. Senator Kennedy of Massachusetts urged that:

"Surely, understanding of the times and sensitivity to the Nation's problems are factors we may and should take into account. And without doubt, we can consider what the impact of an appointment would be on our national fabric and our legal institutions." [53]

Senator Inouye took care to state as a separate and independent ground for his negative vote the nominee's "philosophy on one of the most critical issues facing our Nation today—civil rights." [54] and Senator Brooke—as had Senator Muskie in the Haynsworth controversy—urged that the Senate's authority and scope of consideration were coextensive with those of the President:

"The Senate bears no less responsibility than the President in the process of selecting members of the Supreme Court. . . . [Competent service on the bench] could not be sufficient [qualification] for a man who began his public career with a profound and far-reaching commitment to an anti-constitutional doctrine, a denial of the very pillar of our legal system, that all citizens are equal before the law." [55]

D. Summary

Writing in 1953, Joseph P. Harris summarized his detailed study of Senate precedent with the following paragraphs, which could describe as well the history of the ensuing two decades: [56]

"In making nominations to the Supreme Court, the President, as leader of his party, has necessarily taken political considerations into account, but they have been of a rather different type from those that are controlling in the appointment of judges to lower courts. Conservative Presidents have usually nominated conservatives to the Supreme Court, and liberal or progressive Presidents have similarly chosen persons favorable to their programs. There can be no valid criticism of this practice. The Senate, as well as the President, has given primary attention to the philosophy, outlook, attitude, and record of nominees to the Supreme Court with regard to social and economic problems of society. The contests that have taken place in the last fifty years over nominations to the Supreme Court have been concerned almost wholly with such issues, though not always openly so. Thus there was always strong opposition to Brandeis and Black because of their liberal views, although it was placed ostensibly on other grounds; the opposition to Stone, Parker, and Hughes was based on their reputation as conservatives. On the other hand, the nominations of Taft, a pronounced conservative, and Cardozo and Frankfurter, who were widely known for their liberal views, met with little opposition, because of the high public esteem in which these men were held.

"The opposition to Hughes and Parker in 1930 because of their supposed conservatism was denounced as an attack on the sanctity of the Court itself. Senators Norris and LaFollette replied that the Supreme Court has come to pass upon economic and social legislation and hence to decide upon governmental policies; the philosophy of persons nominated to the Court was therefore a pertinent consideration. In their study of *The Business of the Supreme Court*, Professors Frankfurter and Landis found that common law cases, which in 1875 amounted to 43 per cent, had dropped to 5 per cent by 1925. There were no cases under the 'due process' clause in 1875, but in 1925 there were 20; in 1875 there were no cases under the commerce clause, but in 1925 there were 29.

"Writing in 1930, Frankfurter strongly defended the action of the Senate in consider-

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ing the philosophy and outlook of a nominee to the Supreme Court. 'The meaning of "due process,"' he stated, 'and the content of terms like "liberty" are not revealed by the Constitution. It is Justices who make the meaning. They read into the neutral language of the Constitution their own economic and social views. . . . . Let us face the fact that five Justices of the Supreme Court *are* molders of policy, rather than the impersonal vehicles of revealed truth.' In an often quoted statement, Chief Justice Hughes, when he was governor of New York, once said: 'We are under a Constitution, but the Constitution is what the judges say it is.'

"It is entirely appropriate for the Senate, as well as the President, to consider the social and economic philosophy of persons nominated to the Supreme Court. With the changed functions of the Court, considerations of this kind are more pertinent than the legal attainments and experience of nominees. In recent years few of the persons appointed to the Supreme Court have had experience as judges; for the most part they have been drawn from public life and have not been practicing attorneys at the time of their appointment."

III. ANALYSIS AND CONCLUSION

If the judicial process were a mechanical or even a scientific one, unaffected by matters of judgment and value, a nominee's law school honors, and perhaps his success as a practicing attorney, might be dispositive of the question of his competence to serve as a Justice of the Supreme Court. But few of those familiar with the process believe that it can or should be purely mechanical or scientific: and even those few will agree that it is unlikely to be so in practice. As Professor Charles Black has put it "a judge's judicial work is . . . influenced and formed by his whole lifeview, by his economic and political comprehensions, and by his sense sharp or vague, of where justice lies in respect of the great questions of his time." [1]

The notion that judges' values, philosophies and backgrounds play a part in determining how they decide cases, today widely accepted with respect to the judicial process as a whole, is most obviously true as applied to constitutional adjudication. Precisely because, in Chief Justice Marshall's words, our Constitution is a document "intended to endure for ages to come," many of its most important provisions speak in general terms only. As Mr. Justice Frankfurter said:

"The meaning of 'due process' and the content of terms like 'liberty' are not revealed by the Constitution. It is the Justices who make the meaning. They read into the neutral language of the Constitution their own economic and social views. . . . Let us face the fact that five justices of the Supreme Court are the moulders of policy rather than the impersonal vehicle of revealed truth." [2]

The sweeping and unreviewable power exercised by Supreme Court justices, along with their life tenure and virtual immunity from popular or legislative check, presents, as one of the present nominees, Mr. Rehnquist, has himself argued, "something of a paradox in a government supposed to be ultimately responsible to the electorate." [3] As Mr. Rehnquist has noted, our Constitution accepts this paradox for the sake of judicial independence, but also provides some popular check through the process of selecting Supreme Court Justices: "that is, the power of appointment by a President who is elected by the Nation as a whole, and confirmation by a Senate which is composed of two popularly elected members from each state." [4]

If the policy views and judicial philosophies of Justices play a large part in determining how they will decide cases, it seems difficult to argue that the President and the Senate should ignore these factors is the appointment process. Indeed it has long been accepted that the President may and indeed should take account of the individual views of those he nominates to the Court. President Nixon has made clear that he will appoint "strict constructionists" and "judicial conservatives" who will through their decisions "strengthen the hand of the peace forces" as against "the criminal forces in our society." [5] In taking the views of his nominees into account, President Nixon is following long Presidential tradition, dating at least from the administration of John Adams. Indeed Presidents have—as did President Nixon—made a campaign issue of the political and constitutional views of men they would appoint to the Supreme Court.

Given this presidential role, opponents of senatorial consideration of the views of nominees are, as Mr. Rehnquist again has argued, "reduced to contending . . . that even though the President . . . can and does consider the judicial philosophy of the appointee, the Senate when it debates confirmation may not consider it." [6] Neither the language of the Constitution, nor the history of its framing or its subsequent application, suggests such a restricted role for the Senate.

As Professor Black has said: "(H)e who lies under the obligation of making up his mind whether to advise and consent to a step considers the same things that go into the decision whether to take that step." [7] Of course, when a President appoints cabinet officers or ambassadors he is appointing his own men, his subordinates within the executive branch, and for that reason the Senate should and usually does give great deference to his decision. But a Justice of the Supreme Court is not "the President's man," but is meant to be independent, and powerfully independent for life. That is all the more reason to require maximum and maximally diverse scrutiny of all his qualifications, including views and philosophy, by a popularly elected Senate as well as a popularly elected President.

The question remains: what criteria should the Senate employ in judging these crucial aspects of a nominee's qualifications? The history of the confirmation process indicates that the Senate, and individual Senators, have answered this question in widely differing ways at different times. Nominees have been opposed and denied confirmation for reasons as partisan as their party affiliation and as trivial as their viewpoint on one or another narrow issue of the times.

One who accepts the relevance of a nominee's views to the question whether or not he should be confirmed need not go this far into partisanship and particularism. A confirmation issue is not one of party politics, but of the quality of our highest constitutional court, and we believe that the Senate's role must be determined in those terms. To that end, we propose two standards both of which should be invoked in any instance. One focuses on the individual nominee under consideration, the other on the nominee viewed in the context of the Executive's other nominations and appointments.

First, we believe that the Senate should consider whether a nominee for the Supreme Court has a clear and demonstrated commitment to basic constitutional values. The Supreme Court has the ultimate responsibility of protecting our constitutional system of government. Underlying this system are certain fundamental values, which however changing in scope and meaning for different historical periods, have remained paramount. Among the most basic of these are the rule of law, the protection of individual liberties against arbitrary governmental action, and the equality of man.

Reasonable men, committed to these values, will of course differ as to their scope and as to the proper means of implementing them. This suggests that a Senator should not vote against a nominee because of bare disagreement with him on one or two narrow issues. But where a Senator believes that a nominee's views, as revealed by his past and present statements and actions, depart fundamentally from what the Senator sees as basic constitutional values, it is his constitutional responsibility to vote against confirmation on that ground alone.

Such a standard is not susceptible of easy definition in the abstract. Formulations in particular situations may be more revealing. One clear and eloquent statement of the approach we urge, among many which could be quoted, was given by Senator Javits in explaining his vote against the confirmation of Judge Clement Haynsworth because of the Judge's record and views on the subject of racial equality:

"(H)is views on the application of the Constitution to this most critical constitutional question of our time are so consistently out of date, so consistently insensitive to the centuries-old injustice which we as a Nation have caused our black citizens to bear, that I could not support the introduction of Judge Haynsworth's judicial philosophy into the Nation's highest court." [8]

Second, we believe that the Senate should consider a nominee for the Supreme Court, not in isolation, but in the context of the President's other appointments, nominees, and stated intentions with respect to future nominations.

Senator Norris made this distinction in opposing the confirmation of Justice Stone to the Court during the 1920's, arguing that "if the nomination of Stone had stood alone, he would have entered no objection, but when he considered it in the light of several similar appointments he felt impelled to protest.[9] Several Senators who opposed the nomination of Thurgood Marshall made the same point, arguing that although the nominee was otherwise qualified, he would shift the balance of the Court too far in the "activist" direction.[10]

It is one thing to vote to confirm a particular candidate about whom one has doubts, giving the President the benefit of the doubt. It is quite another to confirm one candidate after another when each one presents the same doubts and when the Executive's past performance indicates that future nominees will be cast from the identical mold. The debates at the Constitutional Conventionist and *The Federalist* make clear that a basic function of the Senate's responsibility in this sphere is to prevent partisan, ideological packing of the Court by a President intent on remaking the Court in his own image.

In conclusion, we emphasize the position we urge is a relatively confined and restricted one. If history were taken as the sole guide, virtually no substantive ground, however particularistic or petty, could be ruled out as a basis for refusing confirmation. The Constitution, of course, places no restrictions on the factors which Senators can properly take into account. Thus, our formulation should be viewed as the *minimum* scope of Senate concern with the constitutional views of Court nominees that can be drawn from tradition and from what seem to us the relevant institutional considerations.

FOOTNOTES

Part I

[1] *Hunt & Scott*, the Debates in the Federal Convention of 1787 (1920), 57, 54.
[2] *Id.*, at 275.
[3] *Ibid.*
[4] *Id.*, at 276.
[5] *Id.*, at 302.
[6] *Id.*, at 56–57.
[7] *Id.*, at 302.
[8] *Ibid.*
[9] *Id.*, at 56, 301.
[10] *Id.*, at 25.
[11] 1 Farrand, the Records of the Federal Convention of 1787 (1911), 128.
[12] *Id.*, at 224.
[13] Hunt & Scott, *supra* n. 1, at 277.
[14] *Id.*, at 303.

[15] 2 Farrand, *supra* n. 11, at 132, 155, 169, 183.
[16] Hunt & Scott, *supra* n. 1, at 455, 464–65.
[17] 2 Farrand, *supra* n. 11, at 498, 539.
[18] Black, *A Note on Senatorial Consideration of Supreme Court Nominees*, 79 Yale L.J. 657, 661 (1970).
[19] The Federalist, No. 76 (Modern Library ed. 1937), at 494–95.
[20] *Id.*, No. 77, at 498.
[21] Black, *supra* n. 18, at 662.

Part II

[1] Joseph Harris, the Advice and Consent of the Senate, (1953), 303–05.
[2] 1 Charles Warren, the Supreme Court in United States History (1922), 129, 137.
[3] Harris, *supra* n. 1, at 42–43.
[4] 1 Warren, *supra* n. 2, at 412.
[5] *Id.*, at 702, et seq.
[6] *Id.*, at 789–800.
[7] 2 Warren, *supra* n. 2, at 5–6.
[8] *Id.*, at 107.
[9] *Id.*, at 112–13.
[10] *Id.*, at 116.
[11] *Id.*, at 147.
[12] *Id.*, at 242–45.
[13] *Id.*, at 322–23.
[14] *Id.*, at 503–04.
[15] 2 Friendman & Israel, the Justices of the Supreme Court (1969), p. 1284.
[16] 2 Warren, *supra* n. 2, at 622.
[17] *Ibid.*
[18] Harris, *supra* n. 1, at 305.
[19] *Id.*, at 105–06.
[20] *Id.*, at 117–19.
[21] *Id.*, at 125.
[22] *Id.*, at 126.
[23] *Id.*, at 126.
[24] *Id.*, at 127.
[25] *Id.*, at 128.
[26] *Id.*, at 130, quoting Senator Norris.
[27] *Id.*, at 305–08.
[28] *Id.*, at 309.
[29] *Id.*, at 310.
[30] Thorpe, *The Appearance of Supreme Court Nominees Before the Senate Judiciary Committee*, 18 Journal of Public Law 371, 384–85 (1969).
[31] *Ibid.*
[32] *Id.*, at 385–86.
[33] *Id.*, at 386.
[34] *Id.*, at 387–88, see generally *Hearings Before the Senate Judiciary Committee on the Nomination of Thurgood Marshall*, 90th Cong., 1st Sess., July 13, 14, 18, 19, and 24, 1967 [hereinafter cited as *Marshall Hearings*].
[35] *Marshall Hearings*, at 25.
[36] 113 Cong., Rec. 24635.
[37] *Id.*, at 24583.
[38] *Id.*, at 24655.
[39] *Id.*, at 16057.
[40] See *id.* at 24541 (Sen. Hart); *id.*, at 24645 (Sen. Tydings); *id.*, at 24646 (Sen. Yarborough); *id.*, at 24647 (Sen. Percy); *ibid.* (Sen. Kuchel).
[41] See *id*, at 24644 (Sen. Fong); *id.*, at 24646 (Sen. Kennedy of N.Y.).
[42] *Id.*, at 24656.
[43] 114 Cong. Rec. 26142.
[44] *Id.*, at 28764.
[45] *Id.*, at 26704.
[46] *Id.*, at 28755–56.
[47] *Id.*, at 28167.
[48] *Id.*, at 23489.
[49] *Hearings Before the Senate Judiciary Committee on Nominations of Abe Fortas and Homer Thornberry*, 90th Cong., 2d Sess., July 1968, at 180.
[50] 115 Cong. Rec. 35130.
[51] *Id.*, at 35368.
[52] 116 Cong. Rec. (daily ed.) S3410.
[53] *Id.*, at S4143.
[54] *Id.*, at S2077.
[55] *Id.*, at S2384.
[56] Joseph Harris, *supra* n. 1, at 312–313.

Part III

[1] Black, *A Note on Senatorial Considerations of Supreme Court Nominees*, 79 YALE L.J. 657, 58 (1970).
[2] Frankfurter, *The Supreme Court and the Public*, 83 FORUM 334 (1930).
[3] 114 Cong. Rec. 28756 (Speech of Sen. Fannin, based on a letter from Mr. William H. Rehnquist).
[4] *Ibid.*
[5] *New York Times*, October 22, 1971, p. 24, cols. 4–5.
[6] 114 Cong. Rec. 28756.
[7] Black, *supra* n. 1, at 658.
[8] 115 Cong. Rec. 34275.
[9] Joseph Harris, the Advice and Consent of the Senate (1953), 118.
[10] See pp. 19–20, *supra*.

APPENDIX A

(Statements of Senators Concerning Relevance of Nominee's Substantive Views—Fortas Hearings and Debates)

1. *Senators who argued directly that the views of the nominee are relevant:*
Senator Baker, 114 Cong. Rec. 28258 (1968).
Senator Byrd (Va.), 114 Cong. Rec. 26142–26143 (1968).
Senator Curtis, 114 Cong. Rec. 26148 (1968).
Senator Ervin, *Hearings on the Nomination of Abe Fortas and Homer Thornberry Before the Senate Comm. on the Judiciary*, 90th Cong., 2d Sess., at 107 (1968) [hereinafter cited as *1968 Hearings*].
Senator Fannin, 114 Cong. Rec. 26704–26705 (1968).
Senator Fong, 114 Cong. Rec. 28167 (1968).
Senator Gore, 114 Cong. Rec. 28780 (1968).
Senator Griffin, *1968 Hearings* at 44.
Senator Holland, 114 Cong. Rec. 26146 (1968).
Senator Hollings, 114 Cong. Rec. 28153 (1968).
Senator McClellan, 114 Cong. Rec. 26145 (1968).
Senator Miller, 114 Cong. Rec. 23489 (1968).
Senator Thurmond, *1968 Hearings* at 180.
Senator Williams (Del.), 114 Cong. Rec. 20910 (1968).

2. *Senators who debated the nominee's views:*
Senator Byrd (W. Va.), 114 Cong. Rec. 28785 (1968).
Senator Eastland, 114 Cong. Rec. 28785 (1968).
Senator Hart, *1968 Hearings* at 276.
Senator Javits, 114 Cong. Rec. 2868 (1968).
Senator Lausche, 114 Cong. Rec. 28928 (1968).
Senator McIntyre, 114 Cong. Rec. 20445–20446 (1968).
Senator Montoya, 114 Cong. Rec. 20143–20144 (1968).
Senator Murphy, 114 Cong. Rec. 28254 (1968).
Senator Proxmire, 114 Cong. Rec. 20142–20143 (1968).
Senator Smathers, 114 Cong. Rec. 19536–19538 (1968).
Senator Stennis, 114 Cong. Rec. 28748 (1968).
Senator Symington, 114 Cong. Rec. 19242–19243 (1968).

3. *Senators who argued that only the nominee's qualifications are relevant, as opposed to partisan political considerations:*
Senator Bayh, 114 Cong. Rec. 19902 (1968).
Senator Mansfield, 114 Cong. Rec. 28113 (1968).
Senator McIntyre, 114 Cong. Rec. 20445 (1968).

4. *Senators who argued that the nominee's views are not relevant:*
Senator McGee, 114 Cong. Rec. 19638 (1968).
Senator Randolph, 114 Cong. Rec. 19639 (1968).
Senator Tydings, 114 Cong. Rec. 28164 (1968).

APPENDIX B

(Statements of Senators Concerning Relevance of Nominee's Substantive Views—Haynsworth Hearings and Debates)

1. *Senators who argued directly that views of the nominee are relevant, or who debated the nominee's views:*
Senator Baker, 115 Cong. Rec. 34432 (1969).
Senator Bayh, 115 Cong. Rec. 35132 (1969).
Senator Byrd (Va.), 115 Cong. Rec. 30155–30156 (1969).
Senator Case, 115 Cong. Rec. 35130 (1969).
Senator Dole, 115 Cong. Rec. 35142 (1969).
Senator Eagleton, 115 Cong. Rec. 28212 (1969).
Senator Ervin, *Hearings on the Nomination of Clement Haynsworth Before the Senate Comm. on the Judiciay*, 91st Cong., 1st Sess., at 75 (1969) [hereinafter cited as *1969 Hearings*].
Senator Fannin, 115 Cong. Rec. 34606 (1969).
Senator Goodell, 115 Cong. Rec. 32676 (1969).
Senator Gurney, 115 Cong. Rec. 34439 (1969).
Senator Harris, 115 Cong. Rec. 35376 (1969).
Senator Hart, *1969 Hearings* at 463.
Senator Hollings, 115 Cong. Rec. 28877 (1969).
Senator Javits, 115 Cong. Rec. 34275 (1969).
Senator Kennedy, *1969 Hearings* at 327–328.
Senator McClellan, *1969 Hearings* at 167.
Senator Mathias, *1969 Hearings* at 307–308.
Senator Metcalf, 115 Cong. Rec. 34425 (1969).
Senator Mondale, 115 Cong. Rec. 28211 (1969).
Senator Muskie, 115 Cong. Rec. 35114 (1969).
Senator Percy, 115 Cong. Rec. 35375–35376 (1969).
Senator Stennis, 115 Cong. Rec. 34849 (1969).
Senator Young, 115 Cong. Rec. 28895 (1969).

2. *Senators who argued that the nominee's views are not relevant:*
Senator Allott, 115 Cong. Rec. 35126 (1969).
Senator Bellmon, 115 Cong. Rec. 31787 (1969).
Senator Boggs, 115 Cong. Rec. 34847 (1969).
Senator Cook, 115 Cong. Rec. 29557 (1969).
Senator Fong, 115 Cong. Rec. 34862 (1969).
Senator Hruska, 115 Cong. Rec. 28649 (1969).
Senator Mundt, 115 Cong. Rec. 35371 (1969).
Senator Murphy, 115 Cong. Rec. 35138 (1969).
Senator Prouty, 115 Cong. Rec. 354439 (1969).
Senator Spong, 115 Cong. Rec. 34444 (1969).
Senator Stevens, 115 Cong. Rec. 35129 (1969).
Senator Tower, 115 Cong. Rec. 34843 (1969).
Senator Tydings, *1969 Hearings* 57–58.

FREEDOM FROM HUNGER

Mr. McGOVERN. Mr. President, I wish to draw the attention of the Senate to an appropriate occasion for recognition of a unique American organization. Ten years ago, on November 15, the certificate of incorporation for the American Freedom From Hunger Foundation was signed.

Its growth and development over the past decade are a measure both of changing world conditions and of the continuing concern of Americans for the underprivileged and underfed, whether at home or abroad.

In its initial establishment, the foundation represented American response to the appeal of Binay R. Sen of India, then director general of the Food and Agriculture Organization, for a worldwide people-to-people campaign against hun-

ger, poverty, and underdevelopment. Mr. Sen's appeal won support of FAO member nations in 1959. The campaign became operative the following year, and in that same year the first meeting of a U.S. Freedom From Hunger Committee was held, leading eventually to the establishment of the American Freedom From Hunger Foundation, with headquarters here in Washington.

The foundation is one of more than 90 similar organizations around the world whose common efforts are coordinated through a small secretariat of FAO headquarters in Rome as components of the world freedom from hunger campaign. During the 10 years of its existence, the campaign raised funds for more than 400 self-help projects around the world. A recent independent study of these projects found that most were dynamic in nature and tended to become self-sufficient.

The activities of the American freedom from hunger campaign have expanded enormously in the past couple of years, primarily due to the interest shown by young people in a program called young world development which is operated under auspices of the foundation.

During the last 3 years, under the sponsorship of YWD, hundreds of "Walks for Development" were staged in communities across this Nation. I know that many Senators and Representatives have lent their names to sponsorship and that others have walked. These walks are not only practical means of fundraising to support self-help projects for the underprivileged, but they also have involved hundreds of thousands of young people in an appealing action-oriented program. Each walker solicits as many sponsors as possible at varying amounts per mile over a prescribed course which the walkers or "hunger hikers" follow on the day of the walk. The funds are collected on the basis of the number of miles each walker completes.

On the weekend of May 8–9, 1971, more than $5 million was raised through walks in the United States. These funds account for approximately 60 percent of the total raised in the 46 countries who participated in the International Walk for Development.

Of the funds raised, 42½ percent is earmarked for support of self-help development projects within the United States. Most of these development projects are located within the city or immediate region where the walk takes place. Another 42½ percent goes to the support of overseas projects in developing countries. These projects are identified and administered under the FAO freedom from hunger campaign or by other recognized voluntary agencies with overseas programs. The remaining 15 percent is retained by the American Freedom From Hunger Foundation to cover its educational programs and administrative costs.

The primary focus of the foundation's program is continuing public education on development issues. Of money raised, the most important aspect is not the amount but rather that these walks involved, in one way or another, as walkers or sponsors, hundreds of thousands of people from the private sector in the kind of assistance often regarded as solely a prerogative of public agencies. When this involvement is supplemented, as Young World Development is now striving to do, with educational materials and seminars relating to development issues, public understanding of those complex issues will surely be enhanced.

Ten years ago, when this program was starting, the emphasis was on the threat of famine in the developing world. At that time there was little public consciousness of any hunger which might exist within our own borders. Today, the foundation stresses the interrelated challenge of poverty within our national borders and throughout the developing world.

In 1963 the first World Food Congress was held here in Washington under auspices of the Food and Agricultural Organization, with the American Freedom From Hunger Foundation playing the host role. Concern about the long-range outcome of the world food population equation was deep, but reliable information was still scanty. One result of the conference was a request that the Food and Agriculture Organization undertake an indepth study of what the prospects were for meeting world food requirements over the next 20 years. The results of that study, published 2 years ago as the Indicative World Plan for Agricultural Development, have shown clearly what enormous effort is still required, by both public and private sectors, in industrial as well as developing countries, if there are to be even marginal improvements in existing dietary and nutritional levels. The immediate threat of widespread famine has been abated by the growing adoption of a number of developing nations of high-yielding varieties of rice and wheat, a movement which has been labeled, perhaps unfortunately, "the Green Revolution." What has become apparent in this past decade is that problems of food production cannot be solved within a technological vacuum. To diagnose them, to prescribe for them, is to touch inevitably on numerous interrelated issues, many of them sensitive; issues of cultural heritage, trade, education, unemployment, population, and social reform.

That is why the education component of the American Freedom From Hunger Foundation's program is so vitally important. Greater public awareness of the complexity of economic and social development is essential. It is significant, perhaps, that at the same time the Indicative World Plan for Agriculture Development was released, member nations of the Food and Agriculture Organization, at its biennial conference in 1969, unanimously voted to extend the freedom-from-hunger campaign through the next 10 years, the second development decade, as it is being called.

Thus the American Freedom From Hunger Foundation marks its 10th birthday at a critical juncture in development assistance history. Its work already merits recognition for its positive involvement of hundreds of thousands of young people in an era too often marked by negativism. It has achieved an unusual balance in focusing on needs of the disadvantaged at home, as well as abroad. Greater involvement of the private sector in the reshaping of our foreign assistance program will depend heavily on such initiatives as the foundation has undertaken so effectively. The foundation deserves the widest possible recognition for its achievements and support for its further endeavors.

LABOR SUBCOMMITTEE PENSION STUDY

Mr. WILLIAMS. Mr. President, in furtherance of its study of private pension plans the Subcommittee on Labor on November 7, 1971, released a second preliminary staff analysis based upon a survey of 764 private plans. This analysis disclosed that the median normal, early, and disability retirement benefits paid by private pension plans during 1969–70 were less than $100 a month and that even when coupled with the median social security retirement income were less than the $241 monthly minimum amount required to sustain a retired urban couple, as published by the Bureau of Labor Statistics. I believe that this preliminary study clearly points up the inadequacy of the retirement income received by the vast majority of pensioners.

Senators will recall that the Subcommittee on Labor, on March 31, 1971, released a preliminary staff analysis on benefits and forfeitures relating to 87 private pension plans. This analysis was made in conjunction with the subcommittee's continuing study of private pension plans which was authorized under Senate Resolution 35, 92d Congress, first session, agreed to March 1, 1971. The preliminary analysis was published in the CONGRESSIONAL RECORD of April 5, 1971, together with a description of the purpose and nature of the pension study. The analysis demonstrated that the number of employees in the 87 plans who did not receive benefits or vested rights since 1950 greatly exceeded those who did receive benefits or vested rights.

Additional staff analyses of various aspects of the private pension system, including a computerized analysis of all plans studied, are being prepared and will be published by the subcommittee.

I ask unanimous consent that the joint statement of Senator JAVITS and myself and the accompanying staff analysis be printed in the RECORD.

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

JOINT STATEMENT BY SENATORS WILLIAMS AND JAVITS

"This current staff analysis is based upon a study of 764 private pension plans submitted to the Subcommittee among the 1,500 pension and profit-sharing plans originally chosen from the plans on file with the United States Department of Labor with more than 25 participants and selected as a base for the Subcommittee pension study. The total participants in the 764 plans is about 11.6 million, and the assets held by these plans exceed $30.7 billion. The 34,000 retirement plans registered with the Department of Labor have more than 30 million participants and assets of $130 billion.

The current staff analysis indicates that more than 50% of the normal, early, and disability benefits being paid by private pension plans during 1969–1970 to retirees, regardless of date of retirement, were less than $100 a month.

The median monthly payment for normal retirement was $99 a month; for early retirement it was $72 a month; and for disability retirement it was less than $50 a month.

Eighty-seven percent of the plans analyzed covered less than 1,000 participants in each plan, and the median benefits paid by these plans were considerably less than the median benefits paid by plans with 1,000 or more participants each. For plans with less than 1,000 participants, the median monthly payment for normal retirement was $96, and the median payments for early and disability retirement were less than $50. In contrast, the monthly medians paid by plans with 1,000 or more participants for normal, early, and disability retirement, were $121, $99, and $79 respectively.

By way of comparative interest, information furnished by the Social Security Administration in Report No. 3, September, 1970, according to the latest available data, indicated that the median Social Security retirement benefit for a retired couple during 1967 was $129 a month.

When the median for normal retirement of $99 a month is added to the median Social Security retirement benefit of $129 a month, the total, $228 a month, is less than the $241 minimum monthly income required to sustain a retired urban couple, as reported by the Bureau of Labor Statistics in January, 1970.

The median annuity paid to retirees from private pension plans during 1969–1970 is very low. Even when coupled with median Social Security benefits, the total amount being paid to a retired couple is hardly sufficient for them to maintain a decent standard of living, particularly when considered in light of the inflationary costs today. Because increasing numbers of the Nation's work force are dependent on private pension plans, together with Social Security, to provide adequate retirement security, the low median annuities disclosed by this analysis demonstate a substantial need for strengthening the private pension system.

In this connection, we direct attention to the testimony of workers and employers at the hearings of the Subcommittee in July and October. There was testimony that, despite long years of service, employees had missed out on eligibility for pensions with prior employers even though they would qualify for a pension under the plan of their current employer. However, the amount of pension they would receive would be based solely on their period of service with their current employer, no credit being given for long years of prior service with other employers and under other plans during their working career.

We believe that this kind of experience may have some bearing on the low annuities received by those who have changed jobs during their working lifetimes, and we further believe that this factor deserves greater attention than has been the case up to now.

The Staff analysis also shows that 97% of the 764 plans reported providing some form of death benefits. The types of death benefits provided included joint and survivor and period certain options, guaranteed post-retirement death benefits and pre-retirement spouse's benefits and lump sum benefits.

The predominant form of death benefit provided was joint and survivor and period certain options. In this form of death benefit, the employee must elect to take the option and if he does so, he must accept a reduced pension. The less prevalent form of death benefits are provided automatically.

U.S. Senate Subcommittee on Labor, Preliminary Staff Analysis—Monthly Normal, Early, and Disability Retirement Benefits and Prevalence of Death Benefit Provisions of Private Pension Plans

INTRODUCTION

On March 1, 1971, Senate Resolution 35 directed the Senate Labor Subcommittee to continue its study of private pension plans in the United States, with special emphasis upon the need for protection of employees covered. This analysis is a part of the study being conducted by the Subcommittee under this mandate. It represents a preliminary analysis of normal, early retirement, disability, and death benefits provided for in 764 selected private pension plans during their latest reporting year, 1969–1970.

An earlier analysis of 87 pension plans was previously released by the Subcommittee on March 31, 1971. At that time, the purpose and scope of the questionnaire survey undertaken by the Subcommittee was explained in detail and to avoid repetition, there is attached a copy of said release. (Appendix I)

The current analysis represents data furnished by 764 private pension plans, each containing more than 25 participants, filed with the U.S. Department of Labor and reflecting a representative group of plans throughout the United States. It does not include profit-sharing plans and other types of plans which do not pay a monthly benefit.

FINDINGS

A. Average monthly benefits

1. The percentages of private pension plans, by size of plan, which paid less than $100 a month in average monthly normal, early, and disability retirement benefits are shown below.

SIZE OF PLAN (BY NUMBER OF PARTICIPANTS)

[In percent]

Benefits	All plans	Under 1,000	1,000 to 4,999	5,000 to 9,999	10,000 and over
Normal	51	53	43	33	32
Early	65	74	53	38	39
Disability	73	80	63	44	46

2. A summary of the median payments by all plans and by size of plan for normal, early, and disability benefits is presented below. The questionnaire circulated by the Subcommittee requested data concerning the average benefit paid to retirees. (The term "median benefit" as used in this study refers to the average monthly benefit paid by all plans represented by the analysis, "median" denoting the average amount separating the upper half from the lower half of the averages.) The summary shows that the median payments for all plans and all benefits, taken together, were less than $100 a month. It also shows that plans with less than 1,000 participants (about 87% of the plans) made the smallest payments.

SIZE OF PLAN (BY NUMBER OF PARTICIPANTS)

Benefits	All plans	Under 1,000	1,000 to 4,999	5,000 to 9,999	10,000 and over
Normal	$99	$96	$117	$140	$140
Early	72	(1)	96	123	129
Disability	(1)	(1)	74	110	110

[1] Less than $50.

Since the above rates are based on average amounts actually paid to retirees during the latest year preceding submission of the questionnaire (1969–1970) the lengths of time in retirement and increases in rates during the retirement periods would have affected the average amounts paid.

A further breakdown of the foregoing data is provided in Tables I, II, and III.

3. Since more than half of the private pension plans paid normal, early, and disability retirement benefits of less than $100 a month, the following data is presented for comparison purposes.

	Per month	Per year
Budget for a retired urban couple, 1969 (published by Bureau of Labor Statistics, release dated January 1970) (see app. II):		
Lower budget	$241	$2,902
Intermediate budget	349	4,192
Higher budget	551	6,616
Median OASDI benefits, 1967, for married couples (Rept. No. 3, private and public retirement pensions, September 1970, Social Security Administration) (see app. III)	129	1,557

B. Extent of death benefits

1. Of the 764 plans, 97 percent provided some form of death benefits. (See table IV).

2. A summary breakdown of the types of death benefits provided by all plans is shown below:

Benefit:	*Percent*
Optional forms	68
Post-retirement death benefit	22
Pre-retirement death benefit	10
Total	100

TABLE I.—NORMAL RETIREMENT BENEFITS[1] PERCENTAGE DISTRIBUTION OF PRIVATE PENSION PLANS BY AVERAGE MONTHLY BENEFITS PAID DURING LATEST PLAN REPORTING YEAR (1960–70), BY PARTICIPANT SIZE OF PLAN

[In percent]

Average monthly normal retirement benefits	Total	Size of plan: Under 1,000	1,000–4,999	5,000–9,999	10,000 and over
Less than $50	23	25	15	12	12
$ 50 to $99	28	28	28	21	20
$100 to $149	22	22	22	22	23
$150 to $199	11	10	13	20	15
$200 to $249	5	4	7	8	15
$250 to $299	3	3	7	8	8
$300 and over	8	8	8	9	7
Total	100	100	100	100	100
Percentage of plans in each group	100	87	11	1	1
Median payment[2] (dollars)	$99	$96	$117	$140	$140

[1] Includes only plans reporting information relative to average monthly normal benefits paid and size of plan. Approximately 11 percent of the 764 pension plans reviewed either had not paid any normal retirement benefits during the latest reporting year (1969–70) or did not report data as to amounts paid or size of plan.

[2] The median normal retirement payment for all plans with 1,000 or more participants is $121.

TABLE II.—EARLY RETIREMENT BENEFITS[1] PERCENTAGE DISTRIBUTION OF PRIVATE PENSION PLANS BY AVERAGE MONTHLY BENEFITS PAID DURING LATEST PLAN REPORTING YEAR (1969–70), BY PARTICIPANT SIZE OF PLAN

[In percent]

Average monthly early retirement benefits	Total	Size of plan: Under 1,000	1,000–4,999	5,000–9,999	10,000 and over
Less than $50	39	51	20	14	16
$50 to $99	26	23	33	24	23
100 to 149	18	12	28	27	20
150 to 199	8	6	7	14	19
200 to 249	3	2	5	8	10
250 to 299	2	2	3	6	5
300 and over	4	4	4	7	7
Total	100	100	100	100	100
Percentage of plans in each group	100	85	12	1	1
Median payment[3] (dollars)	$72	(2)	$97	$123	$129

Footnotes on following page.

[1] Includes only plans reporting information relative to average monthly early retirement benefits paid and size of plan. Approximately 27 percent of the 764 pension plans reviewed either did not provide for early retirement benefits, did not pay and early retirement benefits during the latest reporting year (1969–70), or did not report data as to amounts paid or size of plan.
[2] The median early retirement payment for all plans with 1,000 or more participants is $99.
[3] Less than $50.

TABLE III.—DISABILITY RETIREMENT BENEFITS,[1] PERCENTAGE DISTRIBUTION OF PRIVATE PENSION PLANS BY AVERAGE MONTHLY BENEFITS PAID DURING LATEST PLAN REPORTING YEAR (1969-70), BY PARTICIPANT SIZE OF PLAN

[In percent]

Average monthly disability retirement benefits	Total	Size of plan: Under 1,000	1,000–4,999	5,000–9,999	10,000 and over
Less than $50	54	64	39	24	26
$50 to $99	19	16	24	20	20
$100 to $149	15	12	21	32	24
$150 to $199	4	3	4	11	18
$200 to $249	5	3	8	9	7
$250 to $299	2	1	3	4	3
$300 and over	1	1	1	0	2
Total	100	100	100	100	100
Percentage of plans in each group	100	85	13	1	1
Median payment (dollars)[2]	(3)	(3)	$74	$110	$110

[1] Includes only plans reporting information relative to average monthly disability retirement benefits paid and size of plan. Approximately 37 percent of the 764 pension plans reviewed either did not provide for disability retirement benefits, did not pay any disability retirement benefits during the latest reporting year (1969–70) or did not report data as to amounts paid or size of plan.
[2] The median disability retirement payment for all plans with 1,000 or more participants is $79.
[3] Less than $50.

TABLE IV—PERCENTAGE DISTRIBUTION OF DEATH BENEFITS PROVIDED BY PRIVATE PENSION PLANS [a]

Types of death benefits:	Percent
Optional forms [1]	68
Post-retirement death benefit [2]	22
Pre-retirement death benefit [3]	10
	100

[a] Of the 764 pensions plans reviewed, 3 percent either did not provide for death benefits or did not report the various types of death benefits offered.

[1] Includes *joint and survivor option and period certain options.* The former provides that, upon its election by the participant, a reduced pension will be paid to the participant after his normal retirement date with all, or a specified portion of this reduces pension, continued to a surviving beneficiary (usually a spouse) for the remainder of his or her lifetime following the participant's death. The latter provides a lifetime pension at a reduced amount. If, however, the pensioner dies before the end of a specified time period, payments are continued in the same amount to his named beneficiary until the total number of "certain" payments have been made.

[2] Includes *guaranteed period benefits and lump sum death benefits.* In both cases, the benefit is paid automatically. In the former, it is paid for a specific period; in the latter, it is paid out in a lump sum.

[3] Includes *spouse's benefits and pre-retirement lump sum benefits.* The former consists of monthly income to the surviving spouse of a deceased worker and, in some cases, to dependent children if the surviving spouse has died, or remarried. The latter is usually a modest lump sum benefit paid in similar circumstances.

COMMITTEE ON LABOR AND PUBLIC WELFARE, SUBCOMMITTEE ON LABOR: STAFF ANALYSIS—PRELIMINARY DATA ON THE EXTENT OF BENEFITS AND FORFEITURES IN PRIVATE PENSION PLANS IN THE UNITED STATES

INTRODUCTION

One of the objectives of the U.S. Senate study into private pension plans is to determine the impact of private pension plans on participating employees. The study data of this analysis focuses upon the impact of those plans with no vesting or restrictive vesting provisions on employees with substantial periods of service who terminate their employment prior to qualifying for retirement benefits.

For the purpose of this analysis, "vesting" refers to the provision in the plan which gives to the employee a non-forfeitable right to share in the pension fund which covers him in the event of termination of his employment prior to retirement age. Although, in its literal sense, "vesting" has been sometimes construed to mean all types of non-forfeitable benefits, including normal, early or disability retirement benefits, for purposes of this report the term "vesting" is intended to mean that on termination of employment prior to retirement, the employee has a non-forfeitable right to obtain a deferred retirement benefit based upon both the employer's and employee's contribution to the pension fund.

The purpose of this limited study is to examine and compare the historical activity of certain pension plans in terms of benefits and forfeiture rates. These analyses reflect a statistical comparison of the covered participants as between those who ultimately received benefits and those who did not and is based solely on information supplied by plan administrators in response to the survey form. No projection of any kind is made based on this data.

SAMPLING APPROACH

The entire sample of private pension plans randomly selected for study by the Subcommittee in July of 1970 consisted of 1500 plans, representing a broad and diverse segment of the pension industry. Questionnaires (Pension Study: Form P–1) were mailed to the respondents (plan administrators) selected in July and August of 1970.

Out of the 1500 plans, over 1,000 have responded. Of those who have responded, many have so far either refused to respond in whole or in part, have asserted that they are unable to respond in whole or in part, or have provided data which appears questionable on its face in connection with Part III of the survey form—covering data on benefits and forfeitures. As a consequence, many returns will require additional clarification and completion.

Accordingly, for purposes of analysis, a sample was constructed of data from a preliminary group of plans that furnished complete answers to Part III. In addition, in order to create as homogeneous a sample as possible, plans established after 1950 and profit-sharing plans were excluded.

The sample consists of two sets of plans, distinguished by the nature of their vesting provisions. The first set consists of 51 plans with total assets of $10 billion, ranging in size from plans with over 100,000 active participants, to plans with under 100 participants.[1] In this set of plans, no vesting or vesting with 11 years of service or more is provided (with some plans having additional age requirement [2] as well).

Footnotes at end of article.

Industries in the sample are as follows:

Manufacturing	20
Communications	12
Finance	7
Oil	3
Gas	3
Wholesale & Retail	2
Insurance	1
Maritime	1
Construction	1
Services	1
Total	51

No attempt was made to break down these plans by other characteristics, however, the sample covers both single employer and multi-employer plans,[3] insured and non-insured plans, and plans covering hourly-rated, salaried and all employees. The first set of 51 plans also includes eight (8) "contributory" plans, *i.e.*, plans in which contributions are made by both the employer and the employees.[4]

The second set consists of 36 plans with assets of $6 billion, again representing a wide range in terms of participant coverage. The distinguishing characteristics of these plans are that they provide for vesting after ten years of service or less, regardless of age. Industries represented in this group are as follows:

Manufacturing	21
Oil	3
Gas	2
Utilities	1
Transportation	3
Publishing	2
Insurance	3
Construction	1
Total	36

Neither set of samples can as yet be assumed to be statistically representative of all industries in the survey.

This set also includes 14 contributory plans.[5]

It should be noted that many sets of forfeiture figures furnished by the plans in the sample were based on estimates, in which case a footnote explanation is contained within the appropriate table. These responses are tabulated exactly as reported.

ANALYSIS OF 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE

Table 1 depicts the overall comparison of the number of participants who have obtained retirement benefits from the 51 plans [6] since 1950 with the number who have forfeited.[7]

Out of a sample covering a total of 6.9 million participants since 1950, 253,118 or 4 percent have received any kind of normal, early or deferred vested retirement benefit. 4.8 million or 70 percent, without regard to length of service, have left these plans since 1950 without benefits. In terms of the 5.2 million active participants who left the scope of these plans since 1950, the total percentage who forfeited, regardless of length of service, is 92 percent, while the percentage who received benefits is 5 percent.[8]

Of the 4.8 million who forfeited without benefits, close to 4.1 million or 85 percent had five years service or less (Subtable 1–A). The impact of these plans on longer service employees is reflected in Subtable 1–B. For every two employees who received a benefit, one employee with more than 15 years of service forfeited. For every one employee who received a benefit, one employee with more than ten years of service forfeited, nearly three employees with more than five years of service forfeited, while 16 employees with five years service or less forfeited.

Table 2 compares the number of par-

ticipants who have received vested rights on termination of employment prior to retirement since 1950 with those who have forfeited. Less than one percent of the 6.9 million employees since 1950 who have participated in these plans and the 5.2 million active employees who have left the plans since 1950 have received such vested rights—the precise number is 21,498.

As Subtable 2–A shows, for every one participant who received such a vested right, 223 participants forfeited without regard to length of service. Of these participants, five forfeited with more than 15 years service, 13 forfeited with more than ten years service, 33 forfeited with more than five years and 186 forfeited with five years service or less.[9]

Table 3 provides the same comparisons as Table 2 except that it is limited to the experience of the last five years.

12,536 participants of 2.9 million participating in the last five years—or considerably less than one percent—have received vested rights on termination of employment prior to retirement. In terms of the 1.2 million active participants who have left the scope of these plans in the last five years, the percentage who received such vested rights is one percent.

By contrast, 991,111 participants, regardless of length of service, forfeited in the last five years. This constituted 34 percent of the 2.9 million participating in the last five years but 82 percent of all the active participants who left the scope of the plans.

As Subtable 3–A shows, the largest number of all of the participants who forfeited —835,589 or 84 percent—were in the category of participants with five years service or less. The forfeiture percentages by length of service for the remaining categories of participants are virtually similar to the corresponding forfeiture percentages for the last 20 years (See Subtable 1–A).

Subtable 3–B indicates that for every one participant in the last five years who received a vested right upon termination of employment prior to retirement, 70 participants forfeited without regard to length of service. Of these participants, two forfeited with more than 15 years service, five forfeited with more than ten years service, 12 forfeited with more than five years service, and 67 forfeited with five years service or less.[10]

ANALYSIS OF 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS

Table 4 depicts the overall comparison of the number of participants who have obtained retirement benefits from the 36 plans since 1950 with the number who have forfeited.

Out of a sample covering a total of 2.9 million participants since 1950, 242,510 or 8 percent have received a normal, early or deferred vested retirement benefit. 1.1 million or 38 percent, without regard to length of service, have left the 36 plans since 1950 without benefits. In terms of the 1.5 million who left the scope of these plans since 1950, the total percentage who forfeited, regardless of length of service is 73 percent, while those with benefits is 16 percent.[11]

Of the 1.1 million who forfeited without benefits, 897,797 or 80 percent had five years service or less (Subtable 4–A).

As indicated by Subtable 4–B, 24 employees received a benefit for every one employee with more than 15 years service who forfeited and seven received a benefit for every one employee with more than ten years of service who forfeited.[12] On the other hand, for every one employee that received a benefit, one employee with more than five years service forfeited and four employees with five years service or less forfeited.

Table 5 compares the number of participants since 1950 who have received vested rights on termination of employment prior to retirement with those who have forfeited in the 36 plans. Of the 2.9 million who have participated in these plans since 1950, only 3 percent (91,517 participants) received vested rights. Of the 1.5 million active participants who left the scope of these plans since 1950, only 6 percent (91,517 participants) received such vested rights.

As Subtable 5–A shows, for every one participant who received such a vested right, 12 participants forfeited without regard to length of service. Of these participants, ten had five years service or less. On the other hand, nine participants received vested rights for every one that forfeited with more than 15 years service, and two received vested rights for every one that forfeited with more than ten years service. For every one participant that received a vested right, 2.5 forfeited with more than five years service.[13]

Of 1.8 million participating in the last five years, 38,037 participants, or 2 percent, have received vested rights on termination of employment prior to retirement. This number represents 9 percent of the active participants who have left the scope of the plan in the last five years—the highest percentage in this connection.

332,760 participants, regardless of length of service forfeited in the last five years. This constituted 18 percent of the 1.8 million participating in the last five years but 83 percent of the 400,000 active participants who left the scope of the plan in the last five years.

As Subtable 6–A shows, 267,583 or 80 percent of the total forfeitures had five years service or less while 65,177 or 20 percent had more than five years service. Subtable 6–B indicates that 80 employees received vested rights on termination of employment prior to retirement for every one employee who forfeited with more than 15 years of service. Of these participants, 26 employees received such vested rights for every one employee who forfeited with more than ten years service. Again, employees who forfeited with more than five years service outnumbered those who received such vested rights by two to one.[14]

A COMPARISON OF 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE AND 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVCE OR LESS

As Table 7 demonstrates, while only five percent of the active participants who left the scope of the plan since 1950 obtained benefits in the 51 plans with no vesting or later vesting. 16 percent of such participants obtained benefits in the 36 plans in the earlier vesting sample.

To some extent, this is attributable to the larger numbers of participants in the 36 plans who received deferred retirement benefits based on vested rights obtained when they terminated employment prior to retirement. Only .03 percent of participants who left the scope of the 51 plans obtained such benefits, while .7 percent in the 36 plans obtained such benefits.

The percentages of those who forfeited with more than five years of service is fairly equal in both sets of plans (see Subtable 7–A).

Subtable 7–B shows that in the 51 plans for every two employees with more than 15 years service who received benefits, one employee forfeited, compared with the 36 plans where 24 employees with more than 15 years service received benefits for every one who did not.

A consistent factor is that roughly the same high percentages—in the 80th percentile—forfeit with five years service or less. (see Subtable 7–A).

A comparison of those who have received vested rights on termination of employment prior to retirement is show by Table 8. Almost three times as many active participants left the 51 plans since 1950 as left the 36 plans, yet in the latter group, 91517 obtained such vested rights, while in the former group only 21,489 obtained such vested rights—a ratio of over four to one.

The experience of the five years is similar. Three times as many participants have received vested rights on termination of employment prior to retirement in the 36 plans as in the 51 plans, despite the fact that three times as many active participants left the 51 plans as left the 36 plans.

SUMMARY

The benefits, vested rights and forfeiture status of two discrete samples of private pension plans that completely answered Part III Pension Study: Form P–1 was examined. The first sample consisted of 51 plans that had no vesting provisions or vesting with 11 years of service or more. The second sample consisted of 36 plans with vesting after 10 years of service or less.

The principal preliminary results are:

(1) Four percent of the all participants since 1950 in the 51 no vesting or later vesting plans have received normal, early or deferred retirement benefits; eight percent of all participants in the 36 earlier vesting plans have received such benefits.

(2) Five percent of all active participants since 1950 who left the plans have received normal early or deferred retirement benefits; 16 percent of all active participants since 1950 who left the 36 plans have received such benefits.

(3) 70 percent of all participants since 1950 in the 51 plans have forfeited without qualifying for benefits; 38 percent in the 36 plans have forfeited without qualifying for benefits.

(4) 92 percent of all active participants since 1950 who left the 51 plans forfeited without qualifying for benefits; 73 percent of all active participants since 1950 who left the 36 plans forfeited without qualifying for benefits.

(5) Of the total forfeitures in the 51 plans since 1950, 85 percent were participants with five years service or less; of total forfeitures in the 36 plans since 1950, 80 percent were participants with five years service or less.

(6) In the 51 plans, for every two participants who has received a normal, early or deferred retirement benefit since 1950, one participant forfeited with more than 15 years service, for every one participant who received a benefit, one participant with more than ten years service forfeited, three participants with more than five years service forfeited, and 16 participants with five years service or less forfeited.

(7) In the 36 plans, for every one participant with more than 15 years service who forfeited since 1950, 24 participants received a normal, early or deferred retirement benefits; for every participant with more than 10 years service who forfeited, seven participants received such benefits; for every participant with more than five years service who forfeited, one participant received such a benefit; for every participant who received such a benefit, four employees with five years service or less forfeited.

FOOTNOTES

[1] "Participant" was defined by Form P–1 as "any employee or former employee of an employee or any member of an employee organization who is or may become eligible to receive a benefit or any type from any employee pension benefit plan or whose beneficiaries may be eligible to receive any such benefit and included preparticipants where contributions were being made on their behalf as well as persons still eligible to receive benefits whose service is temporarily interrupted."

[2] In addition to length of service requirements for vesting of benefits, many plans also require that a minimum age be attained, *e.g.*, 15 years service *and* age 45. For purposes of this analysis, only the service requirements were considered; the age factor has not yet been separately analyzed.

[2] "Multi-employer" referring in this context to a collectively bargained plan to which predominantly unaffiliated employers contribute.

[4] In tabulating forfeiture rates, "contributory" plans present somewhat of a problem because it is almost invariably the case that terminating employees who withdraw their contributions will forfeit vested rights in the employer's contributions despite having otherwise satisfied the age and service requirements for vesting. Where the plan specifically indicated that forfeitures were created by these circumstances rather than by failure to meet age or service requirements, the figures furnished were eliminated from tabulation. Otherwise, they were specifically included.

[5] See Footnote #4.

[6] For purposes of constructing this table, as well as the comparable tables for the sample of 36 plans, workers receiving disability retirement, death, and other forms of survivors benefits were excluded since receipt of benefits in these circumstances is not primarily conditioned on meeting age or service requirements. However, the total number of participants having received such benefits is provided in footnotes to the respective tables involved.

[7] The tables contained separate percentage calculations which indicate that there are participants still within the scope of the plan who may yet receive benefits.

[8] For explanation of variations in totals, see technical note on page 16.

[9] For explanation of variations in totals, see technical note on page 16.

[10] For explanation of variations in totals, see technical note on page 16.

[11] See technical note on page 16.

[12] Many plans in this particular sample reported no forfeitures for participants with more than 15 or 10 years of service. For those who did report such forfeitures, it is to be deduced that 10 year vesting or less was not applicable during the entire 20 year period reported.

[13] For explanation of variations in totals, see technical note on page 16.

[14] For explanation of variations in totals, see technical note on page 16.

THREE BUDGETS FOR AN URBAN RETIRED COUPLE—PRELIMINARY SPRING 1969 COST ESTIMATES

The Bureau of Labor Statistics has developed a set of budgets which describe a specified manner of living at three levels for an urban retired couple—husband age 65 or over and his wife. These budgets, described as Lower, Intermediate and Higher, were published in the November 1969 issue of the *Monthly Labor Review*. A report *Three Budgets for a Retired Couple in Urban Areas of the United States, 1967–68* (Bulletin 1570–6) will be released in 1970. *Preliminary* estimates of the budget costs in 39 metropolitan areas, 4 regional classes on nonmetropolitan areas, and urban U.S. are now available for spring 1969.

Consumption costs were derived by applying price changes between spring 1967 and spring 1969, reported in the Consumer Price Index, to the appropriate spring 1967 cost of each budget class of goods and services. Final estimates will utilize specific price data considered more appropriate to each budget level than is the Consumer Price Index. Since this index reflects prices paid for commodities and services purchased by urban wage earners and clerical workers generally, without regard to their family type and level of living, its use to update budgets for price change over time must be viewed as yielding preliminary estimates.

Other costs were also updated to 1969, but personal taxes (in the higher budget) were computed from tax rates in effect for 1968. Final detailed estimates based on the complete repricing of the budgets in spring 1969 will be published in mid-1970. Total budget costs for spring 1969 are available for the first time, but consumption costs were released by the Bureau in September 1969.

Copies of Bulletin 1570–6 will be for sale early in 1970 at the Bureau of Labor Statistics and the Superintendent of Documents, Washington, D.C. 20402. A press release which includes costs of the three budgets in all urban areas is available upon request.

TABLE 1.—ANNUAL COSTS OF A LOWER BUDGET FOR A RETIRED COUPLE,[1] SPRING 1969

Area	Total budget[2]	Cost of family consumption						
		Total	Food	Housing[3]	Transportation[4]	Clothing and personal care	Medical care	Other family consumption
Urban United States	$2,902	$2,777	$851	$1,010	$205	$240	$334	$137
Metropolitan areas[5]	2,975	2,847	860	1,069	185	244	341	148
Nonmetropolitan areas[6]	2,687	2,571	824	835	266	228	314	104
Northeast:								
Boston, Mass	3,011	2,881	902	1,186	62	239	341	151
Buffalo, N.Y	3,208	3,070	882	1,182	265	270	321	150
Hartford, Conn	3,304	3,162	919	1,214	268	257	349	155
Lancaster, Pa	2,948	2,821	894	986	229	240	330	142
New York-northeastern New Jersey	3,080	2,947	919	1,239	34	249	353	153
Philadelphia, Pa	2,872	2,748	919	1,048	58	234	340	149
Pittsburgh, Pa	2,921	2,795	873	954	249	244	319	156
Portland, Maine	2,983	2,855	842	1,036	231	251	330	165
Nonmetropolitan areas[6]	2,981	2,853	889	1,017	282	237	323	105
North Central:								
Cedar Rapids, Iowa	2,954	2,827	807	1,061	242	253	323	141
Champaign-Urbana, Ill	3,047	2,916	838	1,123	239	240	340	136
Chicao, Ill.-northwestern Indiana	2,906	2,781	884	1,109	60	250	335	143
Cincinnati, Ohio-Kentucky-Indiana	2,834	2,712	844	916	249	231	323	149
Cleveland, Ohio	3,155	3,019	851	1,158	261	255	340	154
Dayton, Ohio	2,949	2,822	840	1,035	237	242	321	147
Detroit, Mich	2,886	2,762	871	905	257	251	329	149
Green Bay Wis	2,864	2,741	817	1,014	231	242	301	136
Indianapolis, Ind	3,071	2,939	849	1,152	246	239	304	149
Kansas City, Mo.-Kans	2,929	2,803	871	958	258	248	329	139
Milwaukee, Wis	3,040	2,909	836	1,113	244	246	329	141
Minneapolis-St. Paul, Minn	2,982	2,854	827	1,075	251	250	305	146
St. Louis, Mo.-Illinois	2,970	2,842	880	1,015	257	237	318	135
Wichita, Kans	2,923	2,797	843	1,014	242	242	320	136
Nonmetropolitan areas[6]	2,766	2,647	843	876	259	249	317	103
South:								
Atlanta, Ga	2,690	2,574	791	815	238	235	341	154
Austin, Tex	2,701	2,585	795	843	238	217	359	133
Baltimore, Md	2,837	2,715	801	941	260	237	328	148
Baton Rouge, La	2,646	2,532	807	759	259	230	335	142
Dallas, Tex	2,745	2,627	777	888	245	227	347	143
Durham, N.C	2,793	2,673	774	963	233	229	336	138
Houston, Tex	2,761	2,642	800	864	266	223	346	143
Nashville, Tenn	2,778	2,658	775	935	242	229	324	153
Orlando, Fla	2,806	2,685	757	995	234	221	331	147
Washington, D.C.-Maryland-Virginia	3,092	2,959	855	1,097	262	254	343	148
Nonmetropolitan areas[6]	2,524	2,415	788	742	264	208	309	104
West:								
Bakersfield, Calif	2,849	2,726	841	907	259	240	342	131
Denver, Colo	2,870	2,746	806	996	236	250	326	132
Los Angeles-Long Beach, Calif	3,069	2,937	841	1,063	258	246	381	148
San Diego, Calif	2,971	2,843	819	1,041	252	230	351	150
San Francisco-Oakland, Calif	3,224	3,085	880	1,148	280	269	354	154
Seattle-Everett, Wash	3,221	3,082	922	1,141	261	260	352	146
Honolulu, Hawaii	3,365	3,220	1,061	1,147	298	228	332	154
Nonmetropolitan areas[6]	2,877	2,753	864	935	277	251	317	109
Anchorage, Alaska	4,234	4,052	1,112	1,737	360	314	397	137

[1] A husband age 65 or over and his wife.

[2] The total cost of the budget includes an allowance for gifts and contributions, in addition to family consumption shown separately in the table.

[3] Housing includes shelter, household operation and house furnishings. The average costs of shelter are weighted by the following proportions: 40 percent for rental costs, 60 percent for homeowner costs.

[4] The average costs of automobile owners and nonowners were weighted by the following proportions of families: Boston, Chicago, New York, Philadelphia, 100 percent for nonowners; all other metropolitan areas, 45 percent for car owners, 55 percent for nonowners; nonmetropolitan areas, 55 percent for car owners, 45 percent for nonowners.

[5] For a detailed description see the 1967 edition of "Standard Metropolitan Statistical Areas," prepared by the Bureau of the Budget.

[6] Places with populations of 2,500 to 50,000.

Note: Because of rounding, sums of individual items may not equal totals.

TABLE 2.—ANNUAL COSTS OF AN INTERMEDIATE BUDGET FOR A RETIRED COUPLE,[1] SPRING 1969

Area	Total budget[2]	Cost of family consumption						
		Total	Food	Housing[3]	Transportation[4]	Clothing and personal care	Medical care	Other family consumption
Urban United States	$4,192	$3,940	$1,131	$1,433	$412	$396	$337	$231
Metropolitan areas[5]	4,355	4,093	1,150	1,539	409	403	344	248
Nonmetropolitan areas[6]	3,710	3,487	1,073	1,117	422	378	317	180
Northeast:								
Boston, Mass	4,643	4,364	1,235	1,742	403	389	343	252
Buffalo, N.Y	4,604	4,327	1,178	1,659	471	440	324	255
Hartford, Conn	4,740	4,455	1,270	1,685	479	413	351	257
Lancaster, Pa	4,293	4,035	1,233	1,407	427	387	333	248
New York-northeastern New Jersey	4,689	4,407	1,277	1,835	269	412	355	259
Philadelphia, Pa.-New Jersey	4,380	4,117	1,235	1,536	370	383	342	251
Pittsburgh, Pa	4,241	3,986	1,177	1,384	451	392	322	260
Portland, Maine	4,329	4,069	1,162	1,466	434	410	322	265
Nonmetropolitan areas[6]	4,128	3,880	1,199	1,343	439	394	326	179
North Central:								
Cedar Rapids, Iowa	4,286	4,028	1,041	1,562	439	412	327	247
Champaign-Urbana, Ill	4,390	4,126	1,103	1,611	434	393	343	242
Chicago, Ill.-northwestern Indiana	4,309	4,050	1,135	1,546	384	404	338	243
Cincinnati, Ohio-Kentucky-Indiana	4,111	3,864	1,101	1,360	447	379	327	250
Cleveland, Ohio	4,520	4,248	1,106	1,663	465	417	344	253
Dayton, Ohio	4,154	3,904	1,086	1,414	435	401	324	244
Detroit, Mich	4,194	3,942	1,149	1,349	461	404	331	248
Green Bay, Wis	4,126	3,878	1,054	1,468	429	393	304	238
Indianapolis, Ind	4,387	4,123	1,104	1,619	451	393	307	249
Kansas City, Mo.-Kansas	4,224	3,970	1,124	1,399	468	407	333	230
Milwaukee, Wis	4,386	4,122	1,103	1,613	439	398	331	239
Minneapolis-St. Paul, Minn	4,277	4,020	1,085	1,519	451	403	309	253
St. Louis, Mo.-Illinois	4,289	4,031	1,154	1,476	462	387	320	232
Wichita, Kans	4,166	3,915	1,074	1,435	455	396	322	233
Nonmetropolitan areas[6]	3,842	3,611	1,073	1,212	411	413	320	182
South:								
Atlanta, Ga	3,923	3,687	1,069	1,202	434	386	343	253
Austin, Tex	3,916	3,680	1,056	1,247	438	357	361	221
Baltimore, Md	4,106	3,859	1,079	1,348	461	395	330	246
Baton Rouge, La	3,823	3,593	1,083	1,102	470	367	338	233
Dallas, Tex	4,000	3,759	1,052	1,302	442	378	349	236
Durham, N.C	4,004	3,763	1,035	1,349	429	381	338	231
Houston, Tex	4,017	3,775	1,077	1,274	475	368	349	232
Nashville, Tenn	4,052	3,808	1,037	1,366	445	380	326	254
Orlando, Fla	4,011	3,770	1,010	1,378	434	367	334	247
Washington, D.C.-Maryland-Virginia	4,422	4,156	1,154	1,523	466	425	346	242
Nonmetropolitan areas[6]	3,484	3,274	1,037	979	424	344	312	178
West:								
Bakersfield, Calif	4,114	3,867	1,079	1,354	458	398	345	233
Denver, Colo	4,116	3,868	1,050	1,420	440	405	327	226
Los Angeles-Long Beach, Calif	4,374	4,111	1,095	1,519	458	406	385	248
San Diego, Calif	4,179	3,928	1,072	1,431	444	378	354	249
San Francisco-Oakland, Calif	4,607	4,330	1,152	1,633	490	439	358	258
Seattle-Everett, Wash	4,623	4,345	1,201	1,656	466	418	354	250
Honolulu, Hawaii	4,755	4,469	1,367	1,612	520	378	334	258
Nonmetropolitan areas[6]	3,912	3,677	1,099	1,231	427	417	319	184
Anchorage, Alaska	5,626	5,288	1,397	2,207	548	521	400	215

[1] A husband age 65 or over and his wife.

[2] The total cost of the budget includes an allowance for gifts and contributions, in addition to family consumption shown separately in the table.

[3] Housing includes shelter, household operation, and house furnishings. The average costs of shelter are weighted by the following proportions: 35 percent for rental costs, 65 percent for homeowner costs.

[4] The average costs of automobile owners and nonowners were weighted by the following proportions: New York, 25 percent for car owners, 75 percent for nonowners; Boston, Chicago, Philadelphia, 40 percent for car owners, 60 percent for nonowners; all other metropolitan areas, 60 percent for car owners, 40 percent for nonowners; nonmetropolitan areas, 68 percent for car owners, 32 percent for nonowners.

[5] For a detailed description see the 1967 edition of "Standard Metropolitan Statistical Areas," prepared by the Bureau of the Budget.

[6] Places with populations of 2,500 to 50,000.

Note: Because of rounding, sums of individual items may not equal totals.

TABLE 3.—ANNUAL COSTS OF A HIGHER BUDGET FOR A RETIRED COUPLE,[1] SPRING 1969

Area	Total budget[2]	Cost of family consumption							Personal taxes
		Total	Food	Housing[3]	Transportation[4]	Clothing and personal care	Medical care	Other family consumption	
Urban United States	$6,616	$5,811	$1,387	$2,247	$735	$608	$339	$495	$297
Metropolitan areas[5]	6,966	6,083	1,412	2,434	753	604	346	534	356
Nonmetropolitan areas[6]	5,569	5,004	1,314	1,689	683	622	319	377	119
Northeast:									
Boston, Mass	7,912	6,761	1,487	3,069	735	577	347	546	573
Buffalo, N.Y	7,299	6,331	1,420	2,583	798	649	327	554	422
Hartford, Conn	7,540	6,552	1,553	2,640	823	615	355	566	426
Lancaster, Pa	6,624	5,806	1,491	2,130	719	588	336	542	312
New York-Northeastern New Jersey	7,690	6,623	1,543	2,858	685	617	357	563	499
Philadelphia, Pa.-N.J	7,057	6,087	1,500	2,468	652	570	346	551	442
Pittsburgh, Pa	6,691	5,835	1,432	2,180	757	581	325	560	347
Portland, Maine	6,538	5,782	1,391	2,153	740	607	335	556	251
Nonmetropolitan areas[6]	6,230	5,532	1,467	2,022	705	622	329	387	212
North-central:									
Cedar Rapids, Iowa	6,882	5,989	1,294	2,428	783	631	329	524	373
Champaign-Urbana, Il	6,859	6,035	1,371	2,402	786	609	346	521	300
Chicago, Ill.-northwestern Indiana	6,820	6,003	1,400	2,418	704	626	340	515	296
Cincinnati, Ohio-Ky. Ind	6,281	5,549	1,365	1,999	748	588	330	519	245
Cleveland, Ohio	6,981	6,095	1,354	2,460	772	645	346	518	358
Dayton, Ohio	6,626	5,807	1,326	2,296	720	623	328	514	312
Detroit, Mich	6,935	6,076	1,412	2,401	775	621	335	532	332
Green Bay, Wis	6,681	5,784	1,296	2,355	726	612	308	487	392
Indianapolis, Ind	6,866	6,007	1,369	2,420	765	608	311	534	337
Kansas City, Mo.-Kans	6,654	5,838	1,378	2,189	794	630	335	512	307
Milwaukee, Wis	6,863	5,919	1,374	2,353	737	615	334	506	429
Minneapolis-St. Paul, Minn	6,741	5,863	1,336	2,298	772	616	311	530	367
St. Louis, Mo.-Ill	6,548	5,755	1,436	2,107	804	600	323	485	290
Wichita, Kans	6,509	5,726	1,314	2,197	787	611	326	491	283
Nonmetropolitan areas[6]	5,729	5,126	1,314	1,779	664	665	324	380	148

Footnotes at end of table.

TABLE 3.—ANNUAL COSTS OF A HIGHER BUDGET FOR A RETIRED COUPLE,[1] SPRING 1969—Continued

Area	Total budget[2]	Cost of family consumption							Personal taxes
		Total	Food	Housing[3]	Transportation[4]	Clothing and personal care	Medical care	Other family consumption	
South:									
Atlanta, Ga	$6,148	$5,474	$1,316	$1,968	$738	$593	$347	$512	$192
Austin, Tex	6,048	5,395	1,292	1,913	775	554	364	497	177
Baltimore, Md	6,569	5,777	1,353	2,191	772	595	333	533	288
Baton Rouge, La	6,177	5,428	1,388	1,799	820	564	340	517	271
Dallas, Tex	6,542	5,786	1,322	2,212	783	584	352	533	251
Durham, N.C	6,070	5,389	1,272	1,927	756	581	340	513	206
Houston, Tex	6,562	5,802	1,337	2,206	832	567	351	509	254
Nashville, Tenn	6,294	5,590	1,269	2,103	785	582	328	523	214
Orlando, Fla	6,168	5,490	1,257	2,043	762	563	336	529	195
Washington, D.C.-Md.-Va	6,967	6,088	1,417	2,361	779	654	349	528	351
Nonmetropolitan areas[5]	5,239	4,750	1,267	1,521	688	584	314	376	62
West:									
Bakersfield, Calif	6,488	5,743	1,328	2,137	827	588	348	515	243
Denver, Colo	6,538	5,772	1,347	2,266	738	595	331	495	262
Los Angeles-Long Beach, Calif	7,077	6,201	1,367	2,522	803	602	387	520	340
San Diego, Calif	6,676	5,892	1,328	2,349	779	560	359	517	271
San Francisco-Oakland, Calif	7,268	6,345	1,448	2,490	863	649	361	534	376
Seattle-Everett, Wash	7,049	6,179	1,485	2,396	805	616	357	520	336
Honolulu, Hawaii	7,858	6,700	1,721	2,615	897	558	337	572	584
Nonmetropolitan areas[5]	5,891	5,233	1,360	1,826	692	664	321	370	195
Anchorage, Alaska	8,599	7,246	1,722	3,056	852	798	405	413	739

[1] A husband age 65 or over and his wife.
[2] The total cost of the budget includes an allowance for gifts and contributions and life insurance, plus family consumption and personal taxes shown separately above.
[3] Housing includes shelter, household operation, house furnishings, and lodging out-of-home city. The average costs of shelter are weighted by the following proportions: 30 percent for rental costs, 70 percent for homeowner costs.
[4] The average costs of automobile owners and nonowners were weighted by the following proportions of families: Boston, Chicago, New York, Philadelphia, 75 percent for car owners, 25 percent for nonowners; all other metropolitan and nonmetropolitan areas, 100 percent for car owners
[5] For detailed description see the 1967 edition of "Standard Metropolitan Statistical Areas," prepared by the Bureau of the Budget.
[6] Places with population of 2,500 to 50,000.

Note: Because of rounding, sums of individual items may not equal total.

APPENDIX III

[Extract from Report No. 3, Preliminary Findings from Social Security Survey of the Aged 1968, September 1970]

TABLE 3.—SIZE OF OASDHI BENEFITS FOR OASDHI BENEFICIARIES[1]: PERCENTAGE DISTRIBUTION OF AGED UNITS BY SIZE OF OASDHI INCOME, 1967

OASDHI income	All Units	Married couples	Nonmarried persons		
			Total	Men	Women
Number (in thousands):					
Total with OASDHI income	12,447	4,913	7,534	1,928	5,606
Reporting on OASDHI income	12,360	4,866	7,494	1,915	5,579
Percent of units	100	100	100	100	100
$1 to $499	5	3	6	3	7
$500 to $749	21	8	29	22	32
$750 to $999	18	10	22	17	24
$1,000 to $1,249	20	11	25	22	26
$1,250 to $1,499	13	14	13	26	9
$1,500 to $1,749	8	13	4	10	2
$1,750 to $1,999	5	12			
$2,000 to $2,249	7	17	(2)	(2)	
$2,250 to $2,449	3	9			
$2,500 or more	1	3			
Median OASDHI income	$1,091	$1,557	$906	$1,080	$859

[1] Excludes beneficiaries who received their first benefit in February 1967 or later, the transitionally insured, and special "age-72" beneficiaries.
[2] 0.5 percent or less.

THE SURCHARGE AND UNITED STATES-CANADIAN RELATIONS

Mr. CHURCH. Mr. President, so long as President Nixon's 10-percent surcharge is in effect, United States-Canadian relations will suffer. The economies of both countries are closely linked; and the surcharge is causing extraordinary stress to our northern neighbor. Canada's Ambassador to Washington, Hon. Marcel Cadieux, illustrated this in pointing out the results of a recent survey of 1,300 Canadian firms. The statistics "suggest that if the surcharge continues for a year, 150 different companies will be in danger of going under." According to the Ambassador, data indicate that 40,000 Canadians will lose their jobs in 3 months, 70,000 in 6 months, 90,000 in a year, a development that Canada can hardly afford with an unemployment rate already of 7.1 percent.

"Canadians feel," Ottawa's representative here said, that there is "no justification for the application of the surcharge to Canada."

Last month, Ambassador Cadieux outlined these stresses and strains in United States-Canadian relations in a speech to the Dallas Chamber of Commerce. I ask unanimous consent that his address be printed in the RECORD.

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

REMARKS BY MR. MARCEL CADIEUX, CANADIAN AMBASSADOR, DALLAS CHAMBER OF COMMERCE DINNER, DALLAS, TEX., OCT. 20, 1971

I was delighted to receive your gracious invitation to address you today.

When I was named Ambassador of Canada to the United States, I was charged with maintaining an alert interest in the welfare of official Washington.

Perhaps I can satisfy my curiosity now on a particular point.

Whatever happened to the Senators?

Are they really buried in Arlington?

This visit also allows me to fulfill a dream of my childhood—to meet the Texan on his native ground and, as one of your great sons who has now returned home often put it, to "press the flesh".

To the foreigner, Texas and the Texan represent a most romantic and distinctive America. You are a state and a people shaped by the challenge of a vast, rich land. A land of great difficulties and of great triumphs—of great industry and great energy. There are many points of similarity between your state and my country.

They are both—here in the latter half of the 20th Century—frontiers, frontiers of the spirit. I would suggest that your past accomplishments will look small only in contrast to those of your future. We in Canada have a future too—and a great one—but our immediate future is today of much concern to us all.

When I accepted your invitation it occurred to me that for the sake of novelty I might avoid that old cliche about the perpetual harmony existing between Canada and the United States. As it turned out the cliche is not particularly appropriate right now. This is a time of stress for Canada—it has been one since the new economic policy of the United States was announced by President Nixon on August 15.

The announcement of the import surcharge had a profound impact on Canada. The reason is obvious. We live in a world where the economies of nations, particularly the industrialized nations, depend on each other. Of all nations the economies of Canada and the United States are most closely linked—they pull on each other as does the gravity on the earth and the moon.

We are—in all the world—each other's best customers. You take 68 per cent of our ex-

ports. You provide 75 per cent of our imports. A fourth of all the goods that the United States sells abroad—it sells to Canada.

Many of our industries—farm machinery, automobiles, defence materials—are almost totally intermeshed. Firms based in the United States control half of Canada's industry and 90 per cent of its petro-chemical production and distribution.

These are extraordinary figures—of which I am afraid most Americans and a great many Canadians are unaware. There are other figures just as extraordinary. Thirty per cent of America's foreign investments are in Canada. The Canadian investment in the United States is—proportionately—even more. We are linked—like the Earth and the Moon—the economic gravity pulls in both directions—but the bigger body exerts the bigger pull and you are ten times as big as we are.

When we make an economic move it affects the United States; but when you make one it affects us ten times over. Let us consider the effect of the surcharge. Canada is a reliable source of essential materials—oil, gas, forest products, minerals. We export to many countries around the world—but more than two thirds of our exports go south, across the border.

The surcharge will not apply to all our exports but it will apply to fully a quarter of them. The quarter is—in the economic sense—a most important part of the whole. It includes the products of our labour intensive industries. The factories in which many of our men and women are employed. These industries account for two-and-a-quarter billion dollars in American sales. Eighty-five per cent of our exported finished Canadian goods goes to the United States. These sales have already been severely affected by the upward flotation of the Canadian dollar since the spring of 1970.

What can these manufacturers do to lessen the impact of the surcharge? The choice is limited. They can attempt to absorb the cost but their profits are already dangerously low. A recent—careful—survey of 1300 Canadian firms suggests that if the surcharge continues for a year, 150 different companies will be in danger of going under. Seventy-three firms said that they might be forced to relocate in the United States—an eventuality which I profoundly believe would be to the disadvantage of both countries.

The affected firms could attempt to pass the cost of the surcharge on to their customers—but this would hardly have a buoyant effect on sales. The indications are that these critical export sales would slump—by $400 million after three months—by $700 million in six months—by $900 million after a year.

And this would be the beginning of our difficulties—not the end. When sales go, jobs go.

The survey suggests that 40,000 jobs would be lost in three months, 70,000 in six, 90,000 in a year. 90,000—or 40,000—is a lot of jobs, particularly so in a country the size of Canada which already has an unemployment rate that is higher than that in the United States.

Unemployment is a reality—and a very grim one—particularly in some Canadian provinces. I have mentioned some similarities between Texas and Canada. I will mention another—we are each the heir of a rich, double cultural past. You are a blend of Spanish and English speaking nations. We are principally a blend of the French and the settlers from the British Isles. We are fortunate—your State and mine—for our lives are richer, our food is more varied, and our heritage is stronger because of the blend. But such blending is not always easy and as I'm sure you are aware we in Canada have felt the strains—particularly so a year ago this month in Quebec. In Quebec the unemployment rate is between nine and ten per cent. This severe economic fact makes the resolution of delicate issues involving the unity and identity of Canada much more difficult.

It is a distressing fact that one of the Provinces most severely affected by the surcharge is Quebec.

But this is a situation that we in Canada must handle ourselves. We cannot ask the United States to shape its economic policy to answer Canadian needs. The United States decided on a surcharge to answer its own economic needs. President Nixon has set forth—clearly—the reasons why.

Let us examine the reasons—not as they apply to other nations around the world but in terms of Canada and the United States.

The surcharge is designed to encourage United States trading partners to revalue their currencies in terms of the United States dollar—to allow their currencies to move up freely to more realistic levels.

Canada floated its dollar in May, 1970. It has long since moved up—by some seven per cent.

The surcharge is designed to encourage the lowering of tariffs and other barriers which discriminate against the United States. Canada has no tariff—or other trade barriers—which discriminate against the United States. Other nations—in Europe and Asia—do. Canada does not.

The surcharge is designed to encourage other nations to share more fully the burdens of international security and development.

Canada assumed its share of these responsibilities long, long ago—perhaps more than its share. It works with the United States and NATO, it keeps NATO forces in Europe. It aids developing nations and the aid is increasing substantially. In per capita and gross national product terms it compares favourably with that of the United States; and it is growing.

There have been, and no doubt are, sharp practice traders abroad in the world. They are not Canadians.

There are nations which have regarded the United States as an indulgent uncle from which much is demanded and nothing returned. Canada has never been one.

Since World War II Canadians have had the policy of reducing trade barriers and building our export production. We are traders. We have built up secondary industries, ones in which we have natural competitive advantages. We have built them to export. We have committed ourselves to free trade.

This policy has served Canada, and the United States, well. It was developed in conjunction with the United States.

We make a variety of goods and we make them well and we sell them at small profit margins. We buy in markets where the same attitudes prevail. We buy, overwhelmingly, from the United States. Three of every four dollars we spend abroad are spent in the United States.

To be frank, Canadians feel there seems no justification for the application of the surcharge to Canada.

We could not avoid it by conforming to the President's standards for we already conformed.

We tried, I assure you, friendly persuasion. We pointed out the obvious:

That we were the United States' best customer and that we are better when we are prosperous. When we experienced economic difficulties last year our imports from the United States dropped by three per cent. This year, as things have improved a bit they have climbed back by 2.6 per cent.

Last year we had a current account deficit with the United States and we expect this year it will grow.

The United States is concerned with the outward flow of long-term capital. The Canadian government has urged the provinces, its municipalities and its corporations to restrict their borrowing and in recent months the capital flow from the United States has gone down.

I would like to make it clear that Canada supports fully the United States' broad efforts to bring about an equilibrium in its balance of payments and to rebuild confidence in the United States dollar as a world reserve currency.

We support fully President Nixon's efforts to end arbitrary restrictions on trade. We have been hurt by them too.

It is in the same spirit that we are against the surcharge.

We can live with it for a short time without having to make major readjustments to our trading structure. The Canadian government has introduced legislation to support employment in threatened industries, including those affected by the surcharge.

But this is a temporary measure. The long term threat is the basic one. Since the mid-Thirties we and many other nations have turned away from protectionism under the leadership of the United States. The basic question now raised is whether Canada can continue to depend on trading access to the United States on mutually acceptable terms—on terms negotiated and agreed to by the two governments. If we cannot, then we must reconsider our whole industrial and commercial policies.

Experience suggests that this is the time not to step backward to the restricted and protected ways of the past but forward—in the direction of freer markets of greater trade.

In this regard we are encouraged by President Nixon's statement, in his address to the joint session of Congress, on August 15 that: "To our friends abroad . . . I give this assurance; the United States always has been, and will continue to be, a forward-looking and trustworthy trading partner." And also by the President's statement on September 9 that: "We cannot remain a great nation if we build a permanent wall of tariffs and quotas around the United States. We cannot live behind a wall that shuts the rest of the world out."

World trade can be liberalized if the leading economic powers wish it to be liberalized. Canada will use every opportunity to promote free consultation and joint agreement among them.

I have earlier compared my country with both the Moon and with Texas. The comparisons have obvious limitations. The Moon is dead. Canada is enormously alive and growing. The comparison with Texas is, I believe a better one though not precise. We are in terms of the developing of our resources and our industrial potential where Texas was some generations ago. We have the achievements of Texas as models. We expect our own to be as great. We need, as you once needed, a fair shake, a fair chance to grow.

COST DATA FOR MAJOR WEAPONS SYSTEMS

Mr. PROXMIRE. Mr. President, I am today releasing a report made by the General Accounting Office at my request summarizing estimated cost data for 45 selected major weapons systems. The data were taken from the June 30, 1971, Selected Acquisition Reports—SAR's—prepared by the Department of Defense. At the close of my remarks, I will place in the RECORD the letter of the Comptroller General, Elmer Staats, forwarding the GAO letter and report.

The latest figures show absolutely no letup in the spiraling costs of weapons systems.

The problem of cost overruns appears to be growing worse.

I asked the General Accounting Office to provide me with summary data on 45 selected major weapons systems.

An analysis of that data shows a whopping $35.2 billion cost overrun on the programs reported on.

A year ago, the same 45 programs showed an overrun of $28.2 billion. Thus, in 1 year, the overruns themselves have increased by $7 billion or by 25 percent.

A further analysis of the data shows that the cost overruns on only nine of those programs amount to $15.5 billion.

In the past 12 months alone, these nine programs went up in costs by $3.1 billion.

The nine programs are the B–1 bomber, the F–111, Minuteman II, Minuteman III, Safeguard ABM, the SAM–D missile program, the main battle tank, the M–60 tank, and the TOW missile program.

The quantity of weapons being purchased in seven of the nine programs had been reduced. Reductions in quantity are almost always caused by increased costs.

In the cases of most of the weapons I have named, we know that the cost increases have been accompanied by poor technical performance, delayed deliveries, and general mismanagement and waste.

A table comparing the original planning estimates for each of the nine programs, adjusted for reductions in quantity, with current estimates to complete those programs follows in millions of dollars:

	Planning estimate (adjusted for quantity change)	Current estimate
1. Main battle tank (MBT–70)	$1,524.1	$2,219.7
2. TOW missile	128.0	714.6
3. M–60A1E2 tank	146.3	391.9
4. Safeguard ABM	5,015.0	6,184.0
5. SAM–D missile	3,125.4	3,921.8
6. B–1 bomber	8,920.7	11,122.6
7. F–111 aircraft	2,000.0	6,667.9
8. Minuteman II	3,018.1	4,744.6
9. Minuteman III	2,540.2	5,981.7
Total	26,417.8	41,948.8

In addition to the overruns that are now evident, there are a number of serious problems in other weapons whose dimensions are still hidden by statistical gimmicks and the fact that it is too early to evaluate the results of actual production.

This is especially true for Navy weapons systems.

For example, the Navy has recently had to reduce the number of ships to be purchased in four major shipbuilding programs. In each case, cost overruns and other problems led to the decision to reduce the quantity.

The ship programs are the DLG–938 nuclear guided missile frigate, the DD–963 destroyer, and the LHA landing assault vessel.

Drastic reductions in the number of units also had to be ordered in the cases of the Mark 48 torpedo and the F–14 aircraft programs, both of which have experienced astronomical cost overruns.

Evidence that the Pentagon is unable to efficiently and economically manage the billions of dollars entrusted to it for purchase of military hardware has become mountainous.

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

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

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C., November 3, 1971.

Hon. WILLIAM PROXMIRE,
Chairman, Subcommittee on Priorities and Economy in Government, Joint Economic Committee, Congress of the United States.

DEAR MR. CHAIRMAN: Enclosed is the updated summary of estimated cost data, concerning the status of 45 selected major weapon systems included in both our report thereon dated March 18, 1971 (See Attachment I), and in the June 30, 1971, SARs. This information was obtained from the June 30, 1971, Selected Acquisition Reports (SARS) as released by the Department of Defense. We have made no audit or verification of the reported data.

In addition to the summary data, we have included a schedule of program cost data for each of the individual systems, included on the Selected Acquisition Reporting System as of June 30, 1971. (See attachment II)

As you know, we plan to review the June 30 SAR's in connection with the preparation of our Major Acquisition Reporting System report on the status of these and other weapon systems early in the next calendar year.

Sincerely yours,

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

SUMMARY OF ESTIMATED COST DATA AS OF JUNE 30, 1971

[Dollars in millions]

Number of systems	Planning estimate	Development estimate	Cost change		Current estimate
			Quantity	Other	
Army (10)	$13,088.3	$12,757.2	($2,080.6)	$4,466.7	$15,143.3
Navy (24)	31,012.4	38,858.5	(780.2)	5,986.9	44,065.2
Air Force (11)	35,055.1	42,863.6	(4,871.8)	9,390.5	47,382.3
Total (45) as of June 30, 1971	79,155.8	94,479.3	(7,732.6)	19,844.1	106,590.8
Total (45) as of June 30, 1970	78,615.5	87,884.6	3,476.6	18,940.5	110,301.7
Difference June 30, 1970 to June 30, 1971	540.3	6,594.7	(11,209.2)	903.6	(3,710.9)

Note: The amounts indicated above for current estimate show a net decrease of $3,710,900,000 as compared to the similar total as of June 30, 1970, reflected in the GAO Report (B–163058, dated Mar. 18, 1971). This net decrease consists of an increase of $1,348,500,000 for the Army, a decrease of $7,484,600,000 for the Navy, and an increase of $2,425,200,000 for the Air Force.

The systems accounting for the major changes are as follows:

ARMY

Safeguard: Increase—$245.0 million.

Significant increases were primarily due to revision of previous estimates, historic inflation, added requirements, and stretchout costs. These increases were partially offset by quantity reductions.

SAM–D: Increase—$508.3 million.

This increase is primarily due to revised cost estimates to update the constant dollar base from FY 1970 to FY 1971 and to reflect the "best estimates" of the amounts ultimately to be paid, specifically incorporating anticipated changes in future prices.

MBT–70: Increase $394.0 million.

This increase is primarily due to revised cost estimates to update the constant dollar base from FY 1970 to FY 1971 and to reflect the "best estimates" of the amounts ultimately to be paid, specifically incorporating anticipated changes in future prices.

Tow: Increase—$39.3 million.

This increase is primarily due to revised cost estimates to update the constant dollar base from FY 1970 to FY 1971 and to reflect the "best estimates" of the amounts ultimately to be paid, specifically incorporating anticipated changes in future prices.

M–60A1E2: Increase—$32.6 million.

This increase is primarily due to price escalation and incorporation of Shillelagh equipment previously reported in Shillelagh Sar.

NAVY

SSN–688: Increase—$2,545.2 million.

This increase is primarily due to an increase in the number of units to be procured and repricing a number of ships from FY 1972 to FY 1973 dollars.

DLGN–38: Decrease—$4,600.5 million.

This decrease is primarily due to a reduction in the number of units to be procured.

DD–963: Decrease—$1,461.4 million.

This decrease is primarily due to a reduction in the number of units to be procured.

Mark–48: Decrease—$1,518.2 million.

This decrease is primarily due to a reduction in the number of torpedoes to be procured and refinement of production costs, and decision to proceed with Mod 1 production and elimination of Mod O & 2 programs.

F–14: Decrease—$3,067.2 million.

This decrease is primarily due to a reduction in the number of units to be procured.

LHA: Decrease—$467.8 million.

This decrease is primarily due to a reduction in the number of units to be procured.

AIR FORCE

B–1: Increase—$1,014.8 million.

This increase is primarily due to escalation of procurement estimate from FY 1970 to Then Year Dollars.

F–111: Increase—$287.6 million.

This increase is primarily due to a program cost estimate reassessment reflecting results of an independent cost estimate completed in January 1971 and other developments such as the Norden Settlement.

Minuteman II: Increase—$278.2 million.

This increase is primarily due to an upgrading of the silo program.

Minuteman III. Increase—$346.5 million.

Program costs have increased primarily due to an upgrading of the silo program. This cost increase was offset by significant cost decreases related to reductions in missiles and related equipment.

SCHEDULE OF PROGRAM COST DATA APPEARING ON JUNE 30, 1971 SARS

[In millions]

System	Planning estimate	Development estimate	Cost change		Current Estimate
			Quantity	Other	
Army:					
Cheyenne [1]	$125.9	$125.9		$167.1	$293.0
Safeguard [2]	4,185.0	4,185.0	$830.0	1,169.0	6,184.0
Dragon	382.2	404.2	(232.7)	98.8	270.3
SAM-D	4,916.8	4,031.0	(1,791.4)	1,682.2	3,921.8
Lance	586.7	652.9	7.7	104.8	765.4
TOW	410.4	727.3	(282.4)	269.7	714.6
M-60 AIE2	162.1	205.6	(15.8)	202.1	391.9
MBT-70	2,126.5	2,100.9	(602.4)	721.2	2,219.7
Gama Goat	69.1	163.9	(5.5)	22.7	181.1
TacFIRE	123.6	160.5	11.9	29.1	201.5
Navy:					
SSN-688	1,658.0	5,747.5	902.5	174.9	6,824.9
DLGN-38 [2]	769.2	769.2	(70.2)	190.8	889.8
S-3A	1,763.8	2,891.1		247.7	3,138.8
F-14	6,166.0	6,166.0	(1,111.5)	157.4	5,211.9
EA-6B	689.7	817.7	(50.7)	295.3	1,062.3
P-3C	1,294.2	1,294.2	971.1	83.5	2,348.8
A-7E	1,465.6	1,465.6	(70.5)	711.5	2,106.6
SQS-23	157.1	170.5	(82.7)	94.6	182.4
VAST 247	241.1	312.0	(180.7)	299.4	430.7
Phoenix	370.8	536.4	185.5	529.8	1,251.7
Condor	356.3	441.0	(137.7)	77.0	380.3
Poseidon [2]	4,568.7	4,568.7	(243.6)	729.5	5,054.6
Sparrow E	$1,215.8	$1,269.3	($710.4)	$4.0	$562.9
Sparrow F	151.5	707.7	135.4	403.7	1,246.8
Mark 48	720.5	1,294.8	290.8	653.4	2,239.0
LHA	1,380.3	1,380.3	(480.6)	60.3	960.0
CYAN 68/69	946.5	1,063.2		170.6	1,233.8
DE-1052	1,285.1	1,259.7		156.1	1,415.8
SSN-637 [2]	2,515.8	2,515.8		433.0	2,948.8
SSN-685	100.8	151.7		26.2	177.9
DLG Conv	698.8	698.8		307.8	1,006.6
AMTRAC	324.4	328.5	(126.9)	.4	202.0
DD-963	1,784.4	2,581.2		134.0	2,715.2
Aegis	388.0	427.6		46.0	473.6
Air Force:					
B-1	8,954.5	11,218.8	(33.8)	(62.4)	11,122.6
F-15	6,039.1	7,355.2		(46.5)	7,308.7
C-5A	3,423.0	3,413.2	(736.3)	1,878.3	4,555.2
F-111	4,686.6	5,505.5	(2,686.6)	3,849.0	6,667.9
FB-111	1,781.5	1,781.5	(1,043.3)	546.6	1,284.8
A-7D	1,379.1	1,379.1	(282.6)	280.7	1,377.2
AWACS	2,656.7	2,661.6		(.3)	2,661.3
Maverick	257.9	383.4	(63.5)	54.3	374.2
SRAM	167.1	236.6	125.6	941.9	1,304.1
Minuteman II	3,014.1	4,254.9	4.0	485.7	4,744.6
Minuteman III	2,695.5	4,673.8	(155.3)	1,463.2	5,981.7

[1] The Cheyenne costs represents research and development costs only. These estimates do not include termination costs related to the canceled production contract.

[2] For those programs where the SAR's have shown only a development or a planning estimate, we have made both estimates the same to prevent distortion between the totals of these columns.

Note: For comparison purposes, the above 45 programs on the SAR at June 30, 1971, were also on the SAR at June 30, 1970. Subsequent to June 30, 1970, one program was completed and dropped from the SAR. Also, 6 programs were added to the SAR as of Dec. 31, 1970, Mar. 31, 1971, or June 30, 1971. These 7 programs are excluded from the schedule because comparable data is not available for June 30, 1970, of June 30, 1971.

UTAH SKIING: POWDER NEXT DOOR

Mr. MOSS. Mr. President, as we approach the winter ski season again our magazines, our air waves, and the general conversation of many of our citizens will be filled with opinions and facts as to where the best ski slopes are, how to get there, and what you will find when you do.

In the November 1971 issue of the American Way, eight ski areas in the vicinity of Salt Lake City are discussed and labeled as some of the finest and most easily reached skiing not only in the country but in the world.

The writer, Abby Rand, who lives in New York City and must travel 4 hours before reaching "minimally respectable ski territory," reports in prose filled with longing, and even some envy, how a Salt Laker can be skiing in "fabled powdered snow" some 20 to 40 minutes after he leaves his front door, and calls the eight areas "the most accessible top-rung ski areas" in the world.

I ask unanimous consent that the article, entitled "Utah's Skiing: Powder Next Door," be printed in the RECORD.

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

UTAH SKIING: POWDER NEXT DOOR

(By Abby Rand)

Name eight ski areas that have a full-scale symphony orchestra, trans-continental jet airport, professional ballet company and basketball team. Easy! Alta, Brighton, Gorgoza, Park City, Park City West, Solitude and Sundance and the eighth area, Snowbird, starts operating in November. At this point, reader, you are either (a) a skeptic and smell a rat or (b) a ski buff and smell Utah. The ski areas mentioned above are all high in the wilderness of the Wasatch Range. They are also on the outskirts of Salt Lake City and are America's—nay, the world's—most accessible top-rung ski areas.

I live in Manhattan. From my house, I must drive four hours before I can reach minimally respectable ski territory, southern Vermont. To get to Aspen, I would have to spend four hours flying to Denver then five hours praying a rental car through its paces, over two mountain passes to terrifying that I prefer shutting my eyes. Or, after a wait in Denver airport, I can overfly those passes in an hour, using scheduled small plane service.

If I am really itching to feel snow beneath my skis, I can go 1,972 miles from my house and be at Salt Lake City airport in about five hours. Then I simply walk outside and hail a cab. Twenty to forty minutes later, I am skiing Utah's fabled powder snow, Midwesterners and Californians, of course, get there even faster.

I learned this chunk of American geography not from Miss Fowler in fourth grade but from a Madison Avenue accountant executive. Howard goes to California to supervise TV commercials and inspect prospective programs. Mainly Howard goes between November and May, though the season officially begins in mid-December. Mainly he goes on Thursdays. He travels with his boots and parka tucked discretly in a carry-on bag. He never takes a nonstop flight. He gets off at Salt Lake City and hails a cab. Thursdays to Sundays, Howard skis. He is not cheating his agency. So many ad men are on to the trick that Howard picked up a $500,000 account while riding the Germania chairlift at Alta.

Once, I asked a Salt Lake housewife if she skied Alta often. "Not more than three times a week," she said. "I get too busy with Cub Scouts." How far in advance did she plan her trips? "Well, if I don't have Cub Scouts that day, I look out the window at breakfast. If it is sunny, I take off as soon as the beds are made."

Her statement reminded me of the corporate president who said that there was no use sponsoring a broadcast on Sunday afternoons because that is when everyone plays polo. What American skiers do on Sunday afternoons is start the long homeward trek from the place where they have been skiing—everyone, that is, except the Salt Lakers. They are home and they are spoiled rotten.

Detroit, Chicago, Buffalo skiers—can you imagine driving back home if you got to the ski area and found you brought the wrong ski poles? You wouldn't go back three hundred miles even if you have found you brought the wrong spouse. Can you imagine turning away from a 15,000 foot mountain covered with natural snow! Chances are, you can't imagine a 15,000 foot high mountain, much less one covered with genuine flakes that have fallen from the sky instead of being spewed from snowmaking guns.

The fact is that American skiing is based on a woeful series of inequities. This is a wide country. People are stacked on the edges. Mountains are scrunched in to the center, slightly to the left of the Mississippi River. There are miniature mountains up and around some of the population centers, but then there are also miniature golf courses. The one exception to this picture is the splotch of 800,000 people on the shore of the Great Salt Lake.

How the Census Bureau arrives at that figure is by counting the number of skis and dividing by two. You don't waste time asking Salt Lake citizens if they ski. You ask them if they skied last Sunday. The answer will be yes, providing last Sunday was at least partially sunny.

One of the few things ski experts agree on is that Alta has the finest skiing in North America and, possibly, the world. Like most mountains in Utah, it gets not feet of new snow, but yards of it. The snow is unusually light and fluffy, like powder. Powder snow is the type skiers like best, because they can float through it with dream-sequence grace. What exalts Alta above others is its magnificent treeless terrain, some of which is appealingly gentle but most of which is awesomely steep. To have skied Alta is to have played the Palace, or kibbitzed the Supreme Court. Yes, Alta has only five lodges, and a total of 490 beds.

How come? How come the ski areas of Utah are as depopulated as its deserts, except for those outpourings of locals on the sunnier weekends?

Let's turn time back to the thirties when Americans first decided it was pleasurable to ski down a precipice during blizzards. Salt Lake residents, who have plenty of precipices and blizzards, caught on early. To spend more time skiing and less time climbing to a point worth descending from, they chipped

in to finance mechanical lifts. The cagey looked for old mine facilities to incorporate into their tows.

The cagiest looked up Little Cottonwood canyon to Alta, where an ore-bucket hoist remained. From the 1860s through the first quarter of this century, Alta was a silver mining town producing millions. At one point, it had 5,000 inhabitants. Then an avalanche and the price of silver descended, at approximately the same time. George Watson and his family stayed on. The skiers came. The Alta Ski Lifts Company was started by the local elite. Watson donated most of his surface rights to the U.S. Forest Service so that the land could be developed for skiing. From the start, Alta was a "shincracker." The first marked trails snaked through Collins Basin on down the sheer face of Rustler peak. The High Rustler track was the hangout of heroes who scraped close to the trees in order to get the freshest powder. They still do. High Rustler is only 3,300 feet long. Thank goodness! It is so steep—an average 23.3 degrees—that nobody's legs could take the strain for one yard more. True heroes save their leg power for the Baldy Chutes, which are narrower, steeper and can be reached only by climbing. No one can ski them without personal clearance by the Ski Patrol. The public was welcomed, to help pay the cost of preparing and grooming the miles of trails and lifts. In Salt Lake, being poor was having to ski Alta on weekends, with the hordes. Week-long hordes were not wanted. The backers did not want to be in the tourist business. They wanted to ski. Other operators had similar philosophies. Many Utah residents were actually pleased that Colorado, not they, landed the 1976 Winter Olympics.

How Robert Redford came to build Sundance is that he and his Utah-reared wife chose the site for a mountain home, one that offered complete quiet—this despite the fact that the site was directly above a ski area known as Timp Haven. The proprietor, a devout Mormon, would not operate on Sunday. Saturdays were not very productive, either, because he kept misplacing the admission money and the tickets. Redford, who had recently learned to ski, could not bear to see such beautiful recreation space wasted. He went into the resort business while working on a film that had an inspirational title, "Butch Cassidy and the Sundance Kid." Building lots near the Sundance slopes now belong to luminaries like New York's Mayor John V. Lindsay and film director Arthur Penn. So far, Utah has not been tainted by this influx of show biz types. In fact, ecology-minded Redford has been appointed to Utah's Water Quality Board and serves as a volunteer spokesman for the state's environmental efforts. At Sundance, he pioneered the concept of the ski area tree bank. Anyone who cuts a tree to build a house or trail must plant a replacement. There is even a stately spruce growing in the middle of the base lodge restaurant. A folk songstress strolls around it serenading the Salt Lake club ladies who favor the Tree Room for birthday suppers and showers. Ironically, since the new money came, the snow has been scarce. Some day soon, scarcities will be circumvented by the building of lifts up in the vast high basin atop Mount Timpanogos.

In that respect, Sundance represents the new wave, regarding money as a means of active problem-solving which in turn brings more money. Utahans are beginning to adopt this point of view themselves. Old-timers might prefer taking their families to the simple slopes of Brighton and Solitude, each a canyon away from Alta, or, if they have very young children, to little Gorgoza. These are fine slopes, with few resort-like facilities—they are unnecessary for people whose homes are thirty minutes away.

Even die-hard sentimentalists realize that the state needs tourist money and the jobs that tourism creates. They know that their fellow skiers in other states are aching for a little more schussing space. Utah has magnificent recreation facilities and room for more. The residents are learning to accept the new style areas like Sundance or Park City and Park City West. The state is due for half a dozen more new ski areas before the end of 1970s. By mid-December, an area called Snowbird will erupt—"open" is too small a word for what is planned. It is one mile down-Canyon from Alta. Seemingly, it is springing fullgrown from the heads of Richard Bass, a Dallas oilman whose family has been identified with the development of Aspen and Vail in Colorado, and of Ted Johnson, who used to manage a lodge at Alta. Since 1965, Johnson has been identified with a passion to get Snowbird the where-withal to take wing. Its skiable terrain is potentially bigger than that of Alta. While Alta is famous for being steep, Johnson is banking on the fact that Snowbird is moderate enough to be loveable.

"I have always been afraid to ski Alta," confided a Chicagoan who for years had ducked invitations to come out and ski with Salt Lake friends. In somewhat hushed tones, he discussed the difficulty of skiing hip-deep in powder snow. Back home he was accustomed to scraping away on glare ice. "What saved face for me was hiring a helicopter to ski down from the top of Hidden Peak at Snowbird. The blooming powder was just as deep as the stuff at Alta; the difference was, the terrain was intermediate, not super-expert. I could cope with it as well as anybody in our party." (Skiing via helicopter is the newest wrinkle in Utah. With Snowbird's completion, however, Hidden Peak will be reachable by a 120-passenger tramway.)

From the summit, most skiers are going to find themselves being lured into Gad Valley. The management offers marked routes through the tree-dotted area, but the customers are invited to compose their own itineraries. Skier A, B and C start downhill together. A ventures into the untracked powder. B goes slaloming off through the trees. C stays on the track that has already been packed down by others, until the courage equals his envy and he tries to whoosh around in powder like A and B.

People-who-can-cope actually comprise the bulk of American skiers. Those who are not super-experts like to talk about challenge, but they heave a sigh of relief when they get on trails that resemble meadows rather than elevator shafts.

Snowbird is not a brandname thought up on Madison Avenue or in Hollywood. The ski area happens to be situated on the site of an old mine claim called Snowbird.

Mining and skiing keep criss-crossing here. Park City is the state's biggest lure for out-of-state skiers. Its slopes are less harrowing than those of Alta, which, as noted, many skiers secretly appreciate. Moreover, Park City boasts a genuine gingerbread mining town.

Oldtime miners are still to be seen sipping sodas in the drugstore or staring at the skiers sipping stronger stuff in the Gay Nineties' saloons. Note to outlanders: In Utah, stronger stuff is available with complete legality, but not by the drink—*that* is what is inside those ubiquitous brown paper bags. For generations, "Salt Lakers" have headed up Parley Canyon's to Park City when they felt in the mood for fun. Skiers agree. It is the only ski town in the world with two stripteasers-in-residence.

Until last year, the ski slopes were owned by United Park Mines. Now, the company is out of the tourist business. It owns the mineral rights to everything inside the mountain. Considerable silver ore remains under the slopes. These are the very deposits that created the inheritance of William Randolph Hearst. The new owner of the white gold on top of the slopes is the Royal Street Development Company, Inc., which has holdings in California and Louisiana. They have promised to sprinkle $100-million onto those slopes by 1981.

Significantly, the first lifts to be added by the new regime will open terrain that is mild without being soporific. Let Alta specialize in cliffs and avalanche slopes; Park City prefers to unreel white carpets, smooth and moderately tilted, like Payday, which happens to be one of the best night skiing slopes in America. Most city dwellers who have the opportunity to ski "under the lights" must settle for half-pint hills. Payday pays handsomely. It is more than a mile long. Now do you see why Salt Lake firms frequently run Help Wanted ads on eastern ski pages?

Park City West, just a few miles down the Canyon, is a smallish area with biggish potential. Its launchers are, as of this moment, still awaiting the signature of their prospective Prince Charming, a California insurance company. Since the start, serious Salt Lake skiers have had great respect for Park City West's steep runs, many of which are laid out on ridges, somewhat precariously. It is not that skiers fall off, but that the sun beats down on the ridges, eventually causing un-Utah-like ice.

Un-Utah-like developments are increasingly common in Utah these days. The Utah Travel Council, a government bureau, has mounted a tourist-napping campaign aimed at skiers, mountain climbers, fishermen, sightseers and other outdoor sportsmen. Snowmobile enthusiasts, for example, have a special network of trails reserved for them. Maintenance costs are paid via a $5 snowmobile registration fee. In effect, the state is keeping the noisy motorized sleds out of other sportsmen's hair, but it is the snowmobilers who are paying for the privilege of being ostracized. That would seem like good commercial thinking in any state! The UTC is also nagging the rest of the state into taking preventative measures against the avalanches that often close Alta off from the main highways.

The UTC has arranged complete itineraries but it is also urging visitors (skiers, particularly) to bunk in Salt Lake City, sample a different mountain each day and come back downtown each night for dinner and dancing—or dinner and a visit to the Mormon Tabernacle, followed by a visit to the country's first full-scale symphony orchestra to provide a little night music, apres-ski.

SALT LAKE CITY AREA SKI DIRECTORY

FREE BROCHURE

"Great Ski Resorts of the Rockies:" describes American Airlines ski tours.

Write: *Director Sales Promotion, American Airlines, 633 Third Avenue, New York, New York 10017.*

ALTA

Location: 26 miles southeast of Salt Lake City in Little Cottonwood Canyon. (State Highway #210.) Area Manager—Charles Morton. For information call (801) 649-9751 or write Charles Morton, Alta, Utah 84070.

Season: Mid-November into May.

Lifts and Tows: *Collins S-Chair:* 2,750 ft. long with 750 ft. vertical rise; *Wildcat D-Chair:* 4,250 ft. long with 1,250 ft. vertical rise; *Germania D-Chair:* 4,000 ft. long with 1,000 ft. vertical rise; *Albion D-Chair:* 5,200 ft. long with 850 ft. vertical rise; *Sugarloaf D-Chair;* 5,100 ft. long with 1,300 ft. vertical rise; *New D-Chair:* 4,000 ft. long with 730 ft. vertical rise.

Area Features: 30 expert runs. 9 intermediate runs and 4 novice runs. Powder skiing as well as machine-prepared intermediate runs and 4 novice runs. Excellent cross-country skiing. Three cross-country skiing shelters. 4- and 6-mile tours.

BRIGHTON

Location: 25 miles east of Salt Lake City in Big Cottonwood Canyon. Area Operators:

Dean and Gilbert Jensen, Zane and Michael Doyle. Write 3535 Herms Drive, Salt Lake City, Utah. Phone (801) 277–5440 or 277–3963.

Season: Mid-November to Mid-May.

Lift and Tows: *Millicent S-Chair:* 4,200 ft. long with 1,300 ft. vertical rise; *Mary D-Chair:* 2,450 ft. long with 425 ft. vertical rise; *Majestic D-Chair:* 3,700 ft. long with 750 ft. vertical rise; *Sky Hook T-Bar:* 550 ft. long with 225 ft. vertical rise; *Evergreen D-Chair:* 2,800 ft. long with 660 ft. vertical rise.

Area Features: Unlimited runs, slopes and trails; machine-packed. Shelter and dining facilities located at the base of the lifts. Cross-country skiing and touring.

GORGOZA

Location: 3 miles east of Parley's Summit on Interstate 80 (13 miles east of Salt Lake City). Write P.O. Box 11277, Salt Lake City, Utah 84111. Phone (801) 359–5452.

Season: December 1 to March 15.

Lifts and Tows: Two *D-Chairs:* 1,200 ft. long with 300 ft. vertical rise. *T-Bar:* 2,100 ft. long with 300 ft. vertical rise. 1 free *Rope Tow.*

Area Features: Gradual and "sorta" steep. Perfect for intermediate and beginning skiers. Family dining. Tubing-sledding lift. World's longest toboggan chutes (1,100 feet with 600 feet to run-out).

PARK CITY RESORT

Location: 27 miles east of Salt Lake City, via Interstate 80. Area Manager: Woody Anderson. Write P.O. Box 919, Park City, Utah 84060. Phone (801) 521–2131 or 649–9681.

Season: Mid-November to May.

Lifts and Tows: *Gondola:* 2½ miles long with 2,300 ft. vertical rise. *Prospector D-Chair:* 6,600 ft. long with 1,000 ft. vertical rise. *Thaynes D-Chair:* 5,280 ft. long with 1,000 ft. vertical rise. Two *J-Bars,* each 1,200 ft. long with 100 ft. vertical rise.

Area Features: Over 35 miles and 37 separate runs. Night skiing. Unique mine train museum tour. Cafeteria at base also serves gourmet dinners. Nursery school. Summit House restaurant. Picturesque Park City offers the old Western mining town atmosphere.

PARK CITY WEST

Location: 24 miles east of Salt Lake City via Interstate 80. Don Redmon, Area Manager, Write P.O. Box 308, Park City, Utah 84060. Phone (801) 363–6413 or 649–9663.

Season: Thanksgiving to May.

Lifts and Tows: *Tomahawk D-Chair:* 5,000 ft. long with 1,400 ft. vertical rise; *Iron Horse D-Chair:* 6,640 ft. long with 1,800 vertical rise; *Short Swing D-Chair:* 3,400 ft. long with 950 ft. vertical rise; *Tumbleweed D-Chair:* 1,550 ft. long with 340 ft. vertical rise; 2 *Mitey-Mite* lifts & *Pathfinder* beginner's area lift.

Area Features: 30 miles of groomed slopes and trails; all are machine packed. Weekly NASTAR race complete with electric timing.

SNOW BASIN

Location: 19 miles east of Ogden on Utah Highway #39 in Ogden Canyon above Pineview Reservoir. Area Manager, Roy C. Newson. Write 4921 Kiwana Drive, Ogden, Utah. Phone (801) 392–9196.

Season: Late November through April 10.

Lifts and Tows: *Becker D-Chair:* 2,500 ft. long with 600 ft. vertical rise; *Wildcat D-Chair:* 5,200 ft. long with 1,355 ft. vertical rise; *Wildcat S-Chair:* 5,200 ft. long with 1,355 ft. vertical rise; *Porcupine D-Chair:* 4,300 ft. long with 1,100 ft. vertical rise; *Powder Puff T-Bar:* 1,800 ft. long with 180 ft. vertical rise.

Area Features: Skiing for the entire family with 32 designated runs. A day lodge, cafeteria at base.

SNOWBIRD

Location: In Alta area 31 miles southeast of Salt Lake International Airport. Write Ted Johnson, General Manager, Snowbird, Ltd., Alta, Utah 84070. Phone (801) 649–9822.

Season: Opens Dec. 11, 1971 into May.

Lifts and Tows: Aerial tramway: 8,395 ft. long with 2,900 ft. vertical rise; 3 double chairlifts; pony tow.

Area Features: Unlimited north facing runs with certain ones left untouched for deep-powder fans and with most regularly machine packed. Lodge and newly developed Village at base. Child care facilities.

SOLITUDE

Location: 23 miles east of Salt Lake City in Big Cottonwood Canyon. Phone (801) 355–6412.

Season: Mid-November to April.

lifts and Tows: *Inspiration D-Chair:* 3,600 ft. long with 1,100 ft. vertical rise; *Powder Horn D-Chair:* 3,800 ft. long with 1,360 ft. vertical rise; *Moonbeam D-Chair:* 2,800 ft. long with 800 ft. vertical rise.

Area Features: One of the world's largest night skiing areas. Manicured slopes with unlimited runs and central lodge facilities.

SUNDANCE

Location: On Timpanogos Loop Highway (Utah Highway #80) in Provo Canyon. 12 miles northeast of Provo, Utah and 12 miles southwest of Heber, Utah. Write Edward Jones, Sundance, Inc., P.O. Box 837, Provo, Utah 84601. Phone (801) 374–8444.

Season: November 20 to April 1.

Lifts and Tows: 2 *Double Chairs:* 5,500 ft. long with 1,400 ft. vertical rise and 5,000 ft. long with 1,300 ft. vertical rise; *Poma Lift:* 2,600 ft. long with 700 ft. vertical rise; new 7,400 ft. long *Double Chair Lift* will be completed for the 1971–72 season.

Area Features: Open slopes—runs vary from novice through expert. Night skiing.

JUVENILE JUSTICE

Mr. PERCY. Mr. President, the issues of crime in the streets and effective law enforcement are tody more important than ever. The breakdown in our criminal justice system has never been more apparent than in recent weeks. Tragic situations like that at Attica State Prison force us to recognize that prisons do not rehabilitate; they simply confine. The entire judicial process from arrest to conviction is complicated by the inadequate numbers of personnel in law enforcement agencies and courts and by the interminable delays in court proceedings that exist in practically every judicial district in the country.

Our best hope of eventually controlling crime is, in my judgment, through increased efforts to help young delinquents and potential delinquents. If we are not successful in these efforts to assist youth to become constructive adults, I fear that we are likely to find them five or ten years from now still in our corrections system, involved in yet more serious crimes.

To help bring about this emphasis in juvenile justice, I have sponsored, with the support of 18 Senators, a bill to establish an Institute for Continuing Studies of Juvenile Justice. My colleague from Illinois, Representative TOM RAILSBACK, first initiated the legislation in the House and has recently been successful in having it reported favorably from the House Judiciary Committee. In an excellent article written for the September/October issue of Trial magazine, Representative RAILSBACK explains what the legislation will do.

I ask unanimous consent that the article, entitled "Less Than the Sum of Its Parts," be printed in the RECORD.

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

LESS THAN THE SUM OF ITS PARTS

(By Congressman THOMAS F. RAILSBACK)

No national problem is of greater concern to the individual American citizen than the incredible increase in crime and lawlessness which threatens our society. Violence to person and property may occur at anytime and anyplace and affect anyone. Crime is undermining the values of the country and fear of crime is destroying our stability as a nation and our personal sense of well-being.

Many have studied the problem and many have proposed programs and legislation to combat it. With few exceptions, objective analysis would conclude that we have made little progress in truly understanding the cause of crime or in devising effective means to control or eliminate it. Despite all efforts, the crime rate continues to rise at an unprecedented pace.

No aspect of the problem is at once more frightening and sad than the nature and extent to which young persons have become involved in crime. No one can deny the urgency of the situation. The statistics speak for themselves:

Juveniles commit about one-half of all offenses.

In the inner city 70% of the young people find themselves in trouble with the law.

The juvenile crime rate is rising more rapidly than the adult rate; in the sixties juvenile arrests increased 90%.

Recidivism of youthful offenders is staggering: almost 75% are re-arrested within five years.

The addition of such statistics to the overall crime rate is alone cause for great concern, but as tragic as this may seem, it is yet more serious when we consider that these figures represent only the beginning of a life at odds with society and, more than likely, a career in crime. What it means in human terms is the immeasurable loss to society of productive, integrated citizens and to the juvenile offender of a normal future.

It is clear that juvenile crime and delinquency are not under control and that the juvenile justice system is not accomplishing its objectives. We must recognize that the traditional means of employing more stringent law enforcement, appropriating additional funds, and enacting new legislation do not, in themselves, constitute an effective offensive against juvenile crime. Nor does the rhetoric which calls for eradication of those conditions that often cause and perpetuate juvenile crime.

Sincere and coordinated efforts at the community level and a reform of the juvenile court and correctional system are what is needed and, in some few instances, are underway.

But these efforts are not enough. We have given little attention to assessing and re-evaluating the failures of the whole system relating to the handling and treatment of juvenile offenders. There is a critical need to equip those individuals responsible for prevention and control of juvenile crime with the knowledge and perspective necessary to assure that the young person in trouble with the law will receive treatment designed to improve his chances for becoming a constructive and creative part of the community.

In an effort to meet this need, I, along with a bipartisan group of over 100 members of Congress—including Congressmen Abner Mikva and Edward Biester and Senators Charles Percy and Birch Bayh as principal sponsors—have introduced a bill to establish an Institute for Continuing Studies of Juvenile Justice.

The primary purposes of this legislation are threefold:

(1) to provide training programs and facilities for personnel involved in the prevention, control and treatment of juvenile crime and delinquency;

(2) to provide a coordinating center for the collection and dissemination of useful data on treatment and control of juvenile offenders and the juvenile justice system and;

(3) to prepare studies on juvenile justice including comparisons and analyses of state and federal laws and such model laws and recommendations which will be designed to promote an effective and efficient juvenile justice system.

The juvenile justice system, much like the correctional system, is characterized by an overlapping of jurisdictions, a diversity of philosophies, and a hodgepodge of organizational structures which have little contact with one another. The existing fragmentation of federal and state agencies and programs and the lack of coordination among them is probably the single greatest obstacle to the development of an effective juvenile justice system.

One can only agree with the observation that in its operation the juvenile justice system functions so that the total is less than the sum of its parts. Most state systems are made up of several interrelated parts, usually separately administrated at different levels of government. Consequently, no one body oversees the entire system and allocations of funds for program and personnel are generally uncoordinated.

There is the same lack of coordination and concerted effort at the federal level. Barbara McGarry, executive director of the American Parents Committee, commenting on the current status of juvenile delinquency programs conducted by the Departments of HEW, HUD, Labor and Justice, has stated:

"No single authority exists within any of these Departments solely to direct juvenile delinquency programs, or to coordinate one Department's programs with others, to avoid overlapping or duplication. Although very substantial sums of money are involved under each department's general heading of 'Juvenile delinquency programs,' . . . there is intense interdepartmental and even intradepartmental competition."

Thus, while recognizing that prevention and control of juvenile crime are primarily local in nature the Institute was conceived as an independent, national agency, nonpolitical in makeup, which would provide coordination and professional leadership and focus national attention on the problems of juvenile crime and justice.

The Institute would be under the supervision of a director appointed by the President for a four-year term and would have a professional teaching and research staff. The overall policy and operation would be set by an Advisory Commission composed of 21 members, including the director, five federal agency officials and 15 experts from the juvenile justice field (appointed by the President for four-year terms). These experts would include law enforcement officers, juvenile or family court judges, probation and correction personnel representatives from private organizations concerned with juvenile justice, and representatives from state juvenile agencies.

The training program which the Institute would operate is a matter of high priority. The juvenile justice system will not work unless it can provide the specialized treatment and rehabilitation needed to avert criminality in its incipiency. We have not done nearly enough to give the system the tools to do its job. It is not simply a matter of increased workload, but rather an increase in the system's responsibilities, which requires new and innovative techniques to be transmitted through training and education.

The advent of *Kent, Gault* and other Supreme Court decisions have enhanced the legal rights of juveniles. There is now need for further study of the *causes* of juvenile criminality and the psychological *effects* of incarcerating a 12- or 13-year-old boy until he reaches 21. These observations require more and better trained personnel.

To demonstrate the scope of the existing problem, I quote Daniel Resnick, American Civil Liberties Union.

"In many communities law enforcement officials have no special training in handling juvenile offenders, specialized juvenile squads do not exist, and juveniles are handled and processed in virtually the same way as adult offenders. Juvenile court judges themselves frequently lack the necessary training to deal effectively with youthful offenders. A recent study of the National Crime Commission reported that less than 10% of all juvenile court judges in the country were fulltime; three-quarters devoted less than one-quarter of their time to juvenile matters; a fifth were not members of the bar; a quarter had no law school training; a half had no undergraduate degree. . . .

"Other trained personnel are lacking throughout the juvenile justice system: About one-third of all fulltime juvenile court judges have no probation and social work staff regularly available to assist them. Between 80% and 90% of the judges have no psychologists or psychiatrists regularly available to their courts. Correctional facilities available to the juvenile judges are similarly deficient; there are not enough trained personnel."

Under the proposed legislation, the Institute would be authorized to develop short-term multidisciplinary training and education programs for persons involved in the juvenile justice system—law enforcement officers, judges, probation and correctional officers, psychiatrists and psychologists, social workers, members of the bar and others. Participants would be instructed in the latest methods of prevention, treatment and control and would receive the information they need to properly carry out their respective responsibilities.

Eventually, the Institute program could be expanded to assist in the development of state and regional seminars and workshops to reach directly the many persons working in the system at the local levels.

The second function of the Institute involves comprehensive and centralized data collection and processing. While there is great need for new research, there is even a *greater* need to find more effective ways of utilizing the studies and information presently available. The academic field, government and private organizations have all been involved to some extent in juvenile delinquency research and programs. A mass of material has been published relating to their work; yet we have no central means of collecting, processing and disbursing the information, data and experience that results from their diverse activities.

The Institute would correct this glaring deficiency by establishing a national "information bank" charged with the responsibility for gathering, coordinating, publishing and disseminating meaningful research and information to individuals, agencies, and organizations throughout the nation. It would not only serve as a clearinghouse but would also publish its own reports and abstracts based on what it determines to be the most useful incoming data.

The advantages of having a central information source are obvious. Too often the individual delinquent has suffered because his state received and processed fragmented information, or lacked—or even completely misunderstood—the resources and knowledge available only to a few. Judge Everett West of Indiana has expressed the opinion that "there are many million-dollar programs which offer solutions to juvenile problems that are not being used simply because we judges are not aware of their availability."

Increased knowledge and awareness of each others' activities would bring a higher level of cooperation and coordination between often isolated and fragmented agencies and programs. In addition, new techniques successfully innovated in many courts and communities would be more readily brought to the attention of those in other areas of the country, where they could be adopted when suitable.

And most important, more complete and systematized information would aid in the search for a more adequate explanation of the causes of juvenile crime as well as in the development of solutions. We certainly need to learn a great deal more than we now know if we are to formulate successful policies and devise effective measures to combat these problems.

The third principal function of the Institute would be the preparation of studies designed to promote development of a more effective and efficient system of juvenile justice. It is not intended that the Institute be a research facility. The scope of the studies is to be limited to problems associated with the fragmentation and lack of coordination and planning in the system.

One aspect of this function which deserves particular note is the authorization to focus upon the difficulties created by variations among state laws which affect juvenile offenders. An example of the kind of problem the Institute might examine would be the right to a jury trial in juvenile cases. A recent survey found that 24 states expressly deny jury trials in juvenile proceedings, 14 states have no reference to jury trials in the statutory provisions affecting juvenile offenders, and a dozen states guarantee the right to a jury trial.

Taking a cue from the successful American Bar Association and American Law Institute projects, the Institute is directed to analyze the various statutory provisions, develop model laws and codes, and make appropriate recommendations. This function holds much promise for steps to clear the existing confusion and create a uniformity sorely needed in our juvenile justice system.

By updating inequitable laws, gathering and disseminating pertinent data and training the persons dealing with young offenders, we cannot help but improve our present system of juvenile justice. While an Institute for Continuing Studies of Juvenile Justice will not resolve the entire chain of complex problems associated with juvenile crime, it most assuredly should be one of the steps designed to change the juvenile justice system so that it may function in the best interest of society and the young people it is supposed to serve.

TRIBUTE TO "BEVO" HOWARD

Mr. THURMOND. Mr. President, the tragic death of Beverly E. "Bevo" Howard of Charleston, S.C., robbed the Palmetto State of one of its most outstanding citizens. In this same calamitous crash, the United States lost its finest precision acrobatic pilot. His fame and expertise was not limited to the geographical boundaries of our Nation, for he was regarded by his peers and competitors as the best acrobatic flyer in the world.

Bevo Howard's long record of aeronautical achievements and honors ended on Sunday, October 17, 1971, in Greenville, N.C., when his small biwinged Buecker Jungmeister crashed during the final stunt in what was to have been just another of many Howard air shows. Observers say the small craft must have struck a tree as it entered the final pass. The plane buried its nose in the ground some 400 yards from the runway.

Bevo Howard was president of Hawthorne Aviation located in Charleston.

He was a pioneer in commercial aviation and flight training.

He was born August 11, 1914, in Bath, S.C., and was reared in Augusta, Ga. At the age of 16, he learned to fly and helped pay for flying lessons by making parachute jumps and selling airplane rides. He started flying in 1930 and soloed in 1931. Soon afterwards, he bought his first airplane—an OX–5 Waco–10—with money saved from a newspaper route. In 1932, he quit junior college in his freshman year to join the newly established Hawthorne Aviation at Charleston, S.C. starting as a line boy at $10 a week.

By 1936, at the age of 21, Howard had become president of Hawthorne. Between 1936 and 1938, he joined Eastern Airlines, becoming the youngest commercial airline pilot in the Nation. Seeing a bright future for commercial aviation and flight training, he laid the groundwork for Hawthorne's expansion. Between 1939 and 1943, Hawthorne conducted flight training for the College of Charleston, the Citadel, and the University of South Carolina.

In 1941, he received a contract to operate a primary flying school for the Army Air Force at Orangeburg, S.C., which was in operation until the end of World War II. During that time, some 6,000 combat pilots were trained, of whom more than 2,000 were French Air Force students. For his leadership, Howard was presented French Air Wings, the coveted French Medaille de L'Aeronautique and later the Ordre National de la Legion D'Honneur for his pilot training and accomplishments as an aerobatic flyer.

Howard was voted the 1943 "most outstanding young man of South Carolina" by the State junior chamber of commerce; and in January of 1959, the Moultrie, Ga., Jaycees honored him as the "boss of the year." He is listed in "Who's Who in the South and Southwest," also in "Outstanding Personalities of the South."

Two classes of Pakistan cadets were trained by Hawthorne at Jacksonville in 1948–52 and 1953. In January of 1951, Hawthorne was awarded a contract by the U.S. Air Force to operate a primary flying school at Spence Air Base, Moultrie, Ga. Approximately 10,000 pilots were trained in 10 years, with students from 32 countries being included.

A rare combination of pilot and businessman, Howard became interested in flying air show exhibitions back in 1933 and has flown here and abroad before millions of air show spectators and television viewers. He held six first place championships for precision aerobatic flying. In 1939–41 he won the National Light-plane Aerobatic Championship. He copped two honors in the International Aerobatic Championship for all classes in 1946–49 and placed second in 1948 and 1950.

Though his exhibition flying was just a hobby, he was once the highest paid air-show pilot in the country. Howard, in 1938, became the first flier to outside loop a light plane, performing the feat in a 37½-horsepower Piper Cub. Then, in 1942, he demonstrated to the U.S. Army the operational utility of light aircraft in modern warfare, artillery spotting, air rescue, and other purposes under combat conditions.

He was the first and only pilot to accomplish an inverted ribbon pickup hands off.

Hawthorne also operates an Army aviation maintenance program for helicopters and fixed wing aircraft at Fort Rucker, Ala. The home base is a civilian aircraft sales and service operation at the Municipal Airport, Charleston, S.C. Howard's company has seven operations in five States including a large shopping center constructed in an Atlanta suburb with 25 stores and shops, two large first-class mobile-home parks, an interstate trucking line in Hickory, N.C., and a Ford dealership in Summerville, S.C.

Howard was married and the father of five children. The family resides in Charleston, S.C.

His civic affairs and club affiliations included boards of C. & S. National Bank of Charleston, Charleston Trident Chamber of Commerce, United Community Services—he served as United Fund Campaign chairman, 1967, and raised $846,000—Charleston Junior Achievement, and Charleston YMCA—serving as president, 1968–70; advisory board of Rampart College in Santa Ana, Calif., and former trustee of the College of Charleston in Charleston, S.C. Other memberships included Charleston Exchange Club, Washington Aero Club, Grasshoppers, Caterpillar Club, Veteran Pilots' Association, OX–5 Club, American Helicopter Society, American Society of the French Legion of Honor, and Industrial Committee of 100. Howard was also a past two-term president of the Aeronautical Training Society, the National Aviation Trades Association, and the Moultrie, Ga., YMCA. In 1945 he was a charter member of the Air Power League and served as a member of the industry consulting committee of the National Advisory Committee for Aeronautics, 1945–46. He was also coauthor of a book entitled, "You Can Learn To Fly," published by Prentice-Hall.

Mr. President, the death of Bevo Howard not only robbed the world of a great man, it robbed me of a personal friend. I knew him for a long time, and I knew him to be a dedicated and conscientious man. He was totally devoted to the growth of aviation in this country, and he was privileged to see his profession grow from an infant to a fully developed participant in our Nation's commerce. His personal contribution played a large part in making this so.

To his wife, Arden, his mother, his five children, Mrs. Thurmond and I take this means to express our deepest sympathies and condolences.

There will never be another man like him.

Mr. President, the death of Bevo Howard was acknowledged by many newspapers and national publications. Some of these include an editorial entitled, "Bevo Howard," which appeared in the North Charleston Banner on October 20, 1971; an article dated October 19, 1971, by John W. Faust of the Times and Democrat of Orangeburg, S.C., entitled, "Orangeburgers Say U.S. Lost Best Aerobatic Flyer When 'Bevo' Died"; an article entitled "Bevo Howard: Extraordinary Man," written by William D. McDonald in the October 24 issue of The State of Columbia, S.C.; an article which appeared in the October 18 issue of the Charleston Evening Post, entitled, " 'Bevo' Dies in Plane Crash"; an editorial from that same paper on October 19, bearing the title, "A Master Flyer," and an obituary; an article entitled, "Bevo Howard Dies in Crash at Air Show," which appeared in the News and Courier of Charleston, S.C., on October 18, 1971; an article from the Aiken Standard of Aiken, S.C., dated October 18, 1971, and entitled, " 'Bevo' Howard Dies in Airplane Crash"; an editorial in the October 19 issue of the Aiken Standard entitled, "Beverly Howard"; an article from the Dothan Eagle, Dothan, Ala., entitled, "Bevo Howard Dies in Aiplane Crash"; an article entitled, "Rites for Stunt Pilot Beverly Howard Are Set Today in Charleston, S.C.," which appeared in the October 18 issue of the Atlanta Constitution, Atlanta, Ga.; an article from the October 22 publication of the Weekly Moultrie Observer, Moultrie, Ga., entitled, "Bevo Howard Dies in Crash"; two articles from the Columbia, S.C. State, of October 18, entitled, "Stunt Man Dies in Plane Crash," and "Bevo—Outstanding in Every Way"; an article enttled "Little Fuel Found in Howard Biplane," which appeared in the State on October 19, 1971, and an editorial which appeared in that same newspaper on October 22, 1971, entitled, "Dean and Ace of Aviation."

Mr. President, I ask unanimous consent that these articles and editorials be printed in the RECORD.

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

[From the North Charleston Banner, Oct. 20, 1971]

BEVO HOWARD

It is always hard to accept the death of a man and an institution such as Bevo Howard, hard because of the man himself and hard because of the style of life he subscribed to.

Beverly Howard, though we did not know him intimately, seemed to us to stand for rugged individualism and aggressive disregard for the mundane things in life. In a time when many men his age were busily counting the minutes, Bevo Howard was always ready to junp into that jaunty Buecker Jungmeister biplane and dash off somewhere for some stunt flying.

The biplane and the way Bevo flew it said more about him than we ever could. He belonged, it seems, to that special breed of man who fell in love with flight when it was still very much a novelty and still very much a day-to-day danger. He began at 15 in 1929, soloed at 17 and bought his first airplane, an old Waco 10, with money he earned on a paper route. He joined Hawthorne Aviation in Charleston in 1932 as a $10-per-week line boy and owned the company four years later. He taught hundreds of French and American youths how to make an airplane sing, and they would need that knowledge over the European and Pacific battlefields during World War II.

Later, Bevo Howard branched out into many fields of endeavor, but he never forgot and he never gave up his first love, winging it in the Jungmeister, thrilling audiences across the nation.

Early on, we think, an aerobatic pilot must stare death in the face and make his peace with it, and we prefer to think that Bevo had done that long before his untimely death Sunday during a benefit performance at Greenville, N.C.

While we mourn his passing, we somehow think it fitting that, when death came for Bevo Howard, it found him in the cockpit of that Buecker biplane, winging it again, thrilling an audience, doing what only he and a few other rare men could do so well.

[From the Times and Democrat, Orangeburg, S.C., Oct. 19, 1971]

ORANGEBURGERS SAY U.S. LOST BEST AEROBATIC FLYER WHEN "BEVO" DIED

(By John W. Faust)

The death of Beverly "Bevo" Howard Sunday during an air show at Greenville has cut suddenly the career of a man rated by his contemporaries as the best aerobatic flyer in the world.

Howard, well known to Orangeburg area residents, died as his Buecker Jungmeister bi-wing stunter evidently clipped the top of a tree as Howard made his approach on the field for the final stunt of his performance at an air show, the plane burying its nose in the ground some 400 yards from the runway.

"Bevo," said Vic Lebednik of Orangeburg, "was a real gentleman." C. B. Goodman, also of Orangeburg, said of Howard late Monday, "Bevo was the finest precision acrobatic pilot in this country and probably in the world.

Both men, along with 14 other Orangeburg area residents, were instructors for Howard at the Hawthorne School of Aeronautics at Orangeburg where over 6,000 men of two nations were trained in primary flight for their combat roles in World War II.

The school was located where the present Methodist Home for the Aged now stands. Howard opened it under contract with the U.S. government in October, 1941, and kept it in continuous operation until October, 1945.

"A lot of people's lives changed from the influence of Bevo," said Lebednik speaking of his former employer and friend through the years. "He wasn't really an extrovert, yet, he would do anything if he thought it helped somebody and if he thought it was for a good cause. A lot of people moved to Orangeburg back during the war to work at Hawthorne and stayed. And," he continued, "a lot of students found their wives from the people they met while they were stationed here."

Howard was internationally known for his skill in acrobatics. For years the sight of the German made stunt plane piloted by the Bath, S.C., native was a familiar sight in this country and abroad as the South Carolinian wove intricate patterns through the sky.

A resident of Charleston and president of Hawthorne Aviation, Howard retired from the active competitive field in 1959 and performed only on special occasions.

Goodman, long a friend of the former Orangeburg resident, said that Howard had told him many times he was going to retire permanently from any acrobatic flying. "But," said Goodman, "he never did. He loved flying and couldn't resist performing when urged by people he knew and respected."

Howard, according to Lebednik, "made his greatest contribution in the field of flying during World War II when he trained thousands of young men from France to fly. He provided pilots for the Free French Air Force and these men moved on to form the nucleus of the present airline, Air France . . . and many Hawthorne trained men are still piloting for that airline."

A tall man, Howard had the clear eyes of the airman. He began flying at the age of 15 and by age 21, was a pilot for Eastern Airlines, working for another famed airman, Capt. Eddie Rickenbacker.

"When I knew Bevo," said Goodman, "he was doing some barnstorming up in Hickory, N.C. You know, flying out of cow pastures and grass fields. He requested my assignment to Orangeburg from Randolph Field in Texas during the war, and after being an instructor here, I remained after the war."

What Bevo Howard contributed to aviation will never be accurately and concisely known. He joins the hundreds of other airmen who have met their demise in the very element in which they only became alive.

A poem written by John G. Magee Jr., an R.A.F. airman during World War II is a tribute to what Bevo Howard lived for and by:

"Oh, I have slipped the surly bonds of earth,
And danced the skies of laughter-silvered wings;
Sunward I've climbed and joined the tumbling mirth
Of sun-split clouds—and done a hundred things
You have not dreamed of—wheeled and soared and swung
High in the sunlit silence. Hov-ring there,
I've chased the shouting wind along and flung
My eager craft through footless halls of air.
Up, up the long delirious burning blue
I've topped the wind-swept heights with easy grace,
Where never lark, or even eagle, flew:
And, while with silent, lifting mind I've trod
The high untrespassed sanctity of space,
Put out my hand, and touched the face of God."

And, fittingly, as a reminder of the man who ended his days in the air machine in which he attained his greatest honors, the lane winding its way to the old quarters of the Hawthorne School of Aeronautics is lined with living, growing hawthorne trees, planted there when Bevo Howard made his home among his friends of Orangeburg.

RUSSELL RECALLS FRIENDSHIP—BEVO HOWARD: EXTRAORDINARY MAN

(By William D. McDonald)

"He swam three-quarters of a mile every morning and three-quarters of a mile every night. The day before he was killed, I swam 80 laps with him in a motel pool."

Columbia realtor Bob Russell was recalling his deep friendship with Beverly E. "Bevo" Howard, self-made multi-millionaire, civic leader and probably the world's best-known stunt pilot.

Howard, 57, was killed last Sunday in the crash of his 35-year-old Buecker Jungmeister biplane while performing in Greenville, N.C.

A reason for the deep friendship between Howard, a native of Bath (near North Augusta), and Russell, was their mutual love of aerobatics.

"I was flying in the show when Bevo crashed and had flown in 17 or so shows with him this year. This was my first full year in aerobatics, and Bevo was a tremendous help to me. He critiqued most of my shows when I was through," Russell said.

In discussing his friendship with Howard, Russell mentioned such attributes as "efficiency, modesty, physical conditioning,"—characteristics he said, which made Howard a successful man.

"He told me the story, for instance, about a visit to the doctor when he was 40. He was feeling tired all the time, and the doctor told him he was completely exhausted. Well, shortly afterwards, he discovered a book called "Eat Right and Stay Alive," by Adele Davis. He later told me, 'I wouldn't give $100,000 for having gotten that book.'

"The book recommended more of a protein diet than the average American gets—hearty breakfasts like steak and eggs. A breakfast, incidentally, that we both ate the day of the crash.

"I got a copy of the book, and it has completely changed my life, too. Instead of drinking four or five cups of coffee a day, I now drink milk every meal. It's the old theory of 'you are what you eat'."

Howard was such a nut on physical conditioning, Russell said, that he wouldn't hesitate to swim even if the temperature was near freezing.

"We were in Bennettsville last year and it was about 45 degrees outside. I dove in the motel pool, and I couldn't stand it. He dove in and didn't even change expressions. Well, I eased in and managed to dog paddle and breast stroke my way through the swim. Just as we were finishing, an old man walked up and asked me, 'How come you let that ole fella do two laps to your one?' He was just a tremendous athlete, that was the reason."

Russell said that Howard, who held three aerobatic world championships and three international championships, was extremely philosophical in discussing the possibility of a fatal air crash.

"He was a deeply religious man, and he was totally prepared to die if his number came. And he was one of the most safety-conscious pilots I've ever known. He studied everything he could about air plane crashes and failures.

"He told me there were only two ways you can get it: contact with the ground or structural failure. He said he would take the responsibility for the ground, and his plant foreman would take care of the structural failure. It's ironical that his death was caused by neither, but by a tree in his blind spot."

The president of Hawthorne Flying Service in Charleston, Howard soloed in 1931 at 17 and bought his first airplane, a Waco-10, from proceeds of a newspaper route.

At age 21, Howard became the youngest airline pilot in the nation when he joined Eastern Airlines as a co-pilot.

Commercial flying, however, did not represent a challenge to the young pilot, and he quit Eastern a few years later to expand Hawthorne into commercial aviation and flight training.

"He told me he left Eastern because commercial flying was a boring, routine job like bus driving or truck driving. The reason aerobatics appealed to him was that it was the epitome of flying. It requires the utmost in concentration and precision.

Howard looked forward to the flying season each year, Russell said, because it was a pleasant diversion, a distraction from his multi-million dollar business empire.

"Generally, the shows paid him anywhere from $500 to $1,000, depending on where it was. Bevo was the highest paid aerobatics pilot in the United States for a couple of years.

"Actually," said Russell, recalling a recent air show, "you had to know Bevo to appreciate him. I have never met a man who had more savoir faire or public relations attitude. One of his specialties was remembering a person's name. He could remember more names, including the wife's name. And I've seen him sign autographs for two hours on end. And each autograph would have a personal note with it."

Howard's dogged spirit and persistency met a stern challenge in 1938, the year a tornado devastated part of Charleston.

Commissioned to fly news pictures of the damage from Charleston to Columbia, Howard was forced by bad weather to bail out of his airplane, a Waco biplane.

A few hours later, however, the undaunted flyer appeared at the newsroom of The State—film in hand. A news account of the ordeal, reported on the front page of The State the next day, read in part:

"Mr. Howard said he had been flying low to

keep in sight of the ground because he had no instruments on his plane . . . for blind flying. The "ceiling" got so low just before he jumped, he explained, that he ran into clouds and lost sight of the ground.

"Afraid to descend further, he said, because he did not know how close to the ground the cloud "ceiling" was, he zoomed the plane sharply upwards, went into thicker clouds and jumped after he felt he had attained enough altitude to make a jump safely. He said the plane had already whipped out of control because he had no instruments to guide him once he lost sight of the ground."

Although flying was his first love, it was, by no means, Howard's sole preoccupation. His interests included, for instance, an auto dealership, mobile home parks and retail establishments in the Charleston area, a shopping center in Atlanta and an aviation maintenance program for helicopters at Ft. Sill, Okla.

Additionally, he was a trustee of two colleges—College of Charleston and Rampart College in Larkspur, Colo.—and served on the boards of the Citizens and Southern National Bank of South Carolina and the Charleston YMCA and Exchange Club.

"Fortunately," Russell said, "his businesses are so well set up that they will maintain themselves. He planned each day, believe me. I might call him, and he would say, 'I'm busy right now, but I can talk at 9:17.' He was that precise.

"He told me one time that his philosophy of life was developing other people, and he's certainly done an outstanding job of that."

Russell was asked if Howard's death, coupled with the death of at least seven or eight other aerobatics pilots this year, had dimmed his enthusiasm for stunt flying.

"Not really. I feel the same way about it that Bevo did. I love it. It's a part of my life. When my number's up, I'll go."

"Bevo" Dies in Plane Crash

Beverly E. (Bevo) Howard died Sunday afternoon while doing what he loved and, as usually, doing for charity.

The self-made successful businessman, world-known aerobatic aviator and civil leader, was killed in the crash of his 35-year-old plane while performing in Greenville, N.C.

Howard was performing his customary, breath-taking aerial routine in his Buecker Jungmeister biplane for the benefit of the Greenville Boys Club. It was a routine he has staged many times over the nation and in Europe.

At the conclusion of the routine Sunday, as in other performances, he was to fly inverted 20 to 30 feet off the ground and clip a ribbon strung between two poles and held aloft by associates.

He missed the ribbon on the first try, climbed to right the plane and was making a left, banked turn when apparently, according to witnesses, the plane's right wing tip brushed a tree.

The plane crashed into a field. Bevo died still strapped in his seat. An estimated 2,000 horrified spectators witnessed the crash.

Howard's aerial routine was familiar to thousands as he performed here numerous times for charity drives, beginning in 1938.

He usually performed over the harbor and spectators lined Murray Boulevard and East Battery to see his precision turns, loops and rolls; his flying inverted with his hands dangling outside the cockpit, and his final ribbon-cutting act.

He performed for fund drives in numerous cities and towns in South Carolina, North Carolina and Georgia.

Yesterday made twice that death has struck the Howard family through air crashes. His younger brother, Charles L. Howard, died Sept. 6, 1939, when an aircraft he was in crashed on the Augusta Country Club.

The Federal Aviation Authority began an immediate investigation to determine if Sunday's crash was caused by the brush with the tree, or from other causes.

Two witnesses said they saw something fall from the plane as it was banking into the turn.

Mr. Howard was born at Bath, S.C., Aug. 11, 1914, and grew up in nearby Augusta, Ga., where he began flying lessons at 15. He paid for his early flight training by parachute jumping.

He soloed in 1931 at 17 and bought his first airplane, a Waco-10, from proceeds of a newspaper route. He attended a junior college and joined Hawthorne Flying Service here as a line boy.

At the end of four years he had become president and owner of Hawthorne. He joined Eastern Air Lines in 1936 as a co-pilot. He was 21 and the youngest airline pilot in the nation.

He left Eastern Airlines and in 1939 began to expand Hawthorne into commercial aviation and flight training.

With World War II underway, his company conducted flight training for the College of Charleston, The Citadel and the University of South Carolina, First in the Civilian Pilot Training and later the War Training Service.

His primary flying school at Orangeburg, by 1945, had trained some 6,000 pilots for war duties. These included 2,000 French air cadets. His was the last civilian contract flying school to close at the end of World War II.

Mr. Howard had a brush with death in September, 1938, when he was flying film of destruction wrought in Charleston by tornadoes to Columbia. He was forced to parachute when his plane became disabled near Columbia.

He began air show flying in the early 1930s and held three world championships and three national championships. He was the star of air shows in this country, Canada and Europe.

He was honored for his training of the cadets by the French Government and also by the South Carolina Junior Chamber of Commerce.

His interests included an auto dealership, mobile home parks and retail establishments in the Charleston area. He owned a shopping center with 25 shops in an Atlanta suburb and an aviation maintenance program for helicopters at Fort Sill, Okla., among other interests.

He served on the board of the Citizens and Southern National Bank of South Carolina and board of the YMCA and the Charleston Exchange Club. He was a member of a number of aviation associations.

Mr. Howard was a holder of the French Legion of Honor. He was a member of the Charleston Trident Chamber of Commerce, the board of United Community Services, and was a director of Junior Achievement of Charleston.

He was a trustee of Rampart College, Larkspur, Colo., and the College of Charleston. He was a past president of the Charleston YMCA.

Among the many aeronautical organizations to which he belonged are the Grasshopper Club, the Caterpillar Club, the OX-FIVE Club, the American Helicopter Society and the Aeronautic Club of America.

He was president of the Aeronautical Training Society for two terms and headed the National Aviation Trades Assn. for two terms.

He was co-author of the book "You Can Learn to Fly" and was team captain of the American Aerobatic Team in Spain in 1964.

He was a member of the Carolina Yacht Club and the Country Club of Charleston.

Mr. Howard, who resided at 73 King St., was a son of Charles L. Howard and Mrs. Marian Scott Howard.

Funeral services will be held at 4:30 p.m. Tuesday at St. Philip's Episcopal Church. Burial directed by Stuhr's, will be in the churchyard.

Surviving are his mother of Charleston; his wife, Mrs. Arden Ball Howard, three daughters, Miss Arden Ball Howard of Atlanta, and Miss Langhorne Moultrie Howard, and Miss Amanda Scott Howard, both of Charleston; two sons, Beverly E. Howard Jr. of Austin, Tex., and John Ball Howard of Charleston, and two sisters, Mrs. Ferdinand Brickwedde of State College, Pa., and Mrs. W. H. Harvey of Washington, D.C.

A Master Flier

During a career in aviation that spanned 42 years, Beverly E. Howard made two names for himself. One was as an able, energetic executive who built a flying service into a multi-million-dollar enterprise and whose interests ultimately extended to other business spheres. The other, which perhaps better exemplified the spirit of the man, was as one of the world's foremost aerobatic pilots.

Bevo Howard was a product of his time—and of a driving determination to achieve goals demanding disciplined mind and body. In the post Lindbergh era when the "Spirit of St. Louis" still held a fascination, the young Howard lived in a hillside house in Augusta overlooking an airfield. The field was a magnet. At 15 he was taking flying lessons. At 17 he had his license and a plane, which cost $100 and was paid for with profits from a newspaper route. At 18 he was a $10-a-week lineboy for the Hawthorne Flying Services in Charleston. At 22 he was president of Hawthorne, and also Eastern Airlines' youngest pilot.

His climb in business was sure and steady. Under his hand Hawthorne grew. During two wars it trained thousands of U.S. and Allied pilots under government contract. It expanded into five states, providing flight service and instruction, aircraft sales and maintenance.

Impressive as his general aviation accomplishments were, the rare skill Bevo Howard displayed in pursuit of his "hobby" was what caught the public imagination. For 38 years he was a professional aerobatic pilot. His mastery of what he himself regarded as an art thrilled millions at air shows at home and abroad. It gained for him national and international acclaim as the winner of six precision flying championships.

When he put his favorite Buecker Jungmeister biplane through a series of intricate maneuvers he conveyed always the impression of oneness between man and machine that derives only from love of flying. His routines reminded somehow of aviation's earlier days, when it was just pilot and plane up there defying nature's old laws. Yet he knew precisely at every split second what had been done, what was being done, what was to be done next. To spectators the rolls, the loops, the inverted flight spelled courage and daring. But Bevo Howard was no foolhardy barnstormer. He was a master flier.

His death Sunday in a crash while executing a familiar maneuver that was one of his trademarks has both shocked and saddened. Aviation—and Charleston—will miss him.

Services Held Today for Beverly Howard

Funeral services for Beverly E. (Bevo) Howard of 73 King St., businessman, civic leader and internationally-known aerobatic flyer, were held today at St. Philip's Episcopal Church.

Burial, directed by Stuhr's, was in the churchyard.

Mr. Howard was killed instantly Sunday afternoon in the crash of his airplane while he was performing in a benefit air show for the Greenville, N.C., Boys Club at Greenville.

Mr. Howard had reached the climax of his breathtaking routine in which he was to cut a ribbon held some 30 feet off the ground between two poles with the rudder of his plane, a Buecker Jungmeister.

He missed the first pass and was circling after righting his plane for a second try when witnesses said a wing tip brushed a tree, throwing the plane out of control.

He crashed in an adjacent field while some 2,000 spectators watched. The 1937-model plane did not burn.

Federal Aviation Authorities Monday completed an investigation of the crash and the wreckage of the plane was sent to the Hawthorne Flying Service, of which Mr. Howard was chairman of the board, at the Municipal Airport here.

Results of the investigation have not yet been announced.

Mr. Howard, whose business interests are located in five states, was born Aug. 11, 1914, in Bath, a small town in Aiken County, a son of Charles L. Howard and Mrs. Marian Scott Howard.

He grew up in nearby Augusta, Ga. and developed his interest in aviation there. He had his first airplane ride when he was 15 and soloed at 17. Shortly thereafter, he bought his first airplane.

He cut short junior college attendance to join Hawthorne Flying Service in Charleston in 1932. By 1936 he was owner and president of the service.

He began aerobatic flying and since 1938 he has been witnessed by millions in this country and in Europe in flights to raise funds for charities and in competition.

He holds three national and three international aerobatic championships.

His business interests included aircraft sales and service, charter flights, an automobile agency, a shopping center near Atlanta and mobile home parks.

He was a member of numerous aviation organizations, was a director of the Citizens and Southern National Bank of South Carolina and was a past chairman of the Charleston United Fund drive.

He was active in YMCA work and the Charleston Exchange Club. He was a member of the Carolina Yacht Club and the Country Club of Charleston and was also active in a number of other civic organizations.

Surviving are his wife, three daughters, two sons and two sisters.

BEVO HOWARD DIES IN CRASH AT AIR SHOW

GREENVILLE, N.C.—Beverly E. (Bevo) Howard died Sunday in the crash of his 1937 Buecker Jungmeister biplane near the end of an air show at the Greenville Airport.

Howard, 57, flying third from the last act in the benefit performance for the Greenville Boys Club, was attempting his ribbon pickup while flying upside down. He had made a pass at the ribbon and missed. Righting the plane, he banked to the left to make a return pass and his wingtip apparently struck a treetop.

The plane crashed into a cornfield as more than 2,000 persons watched. Rescue workers reached the plane but Howard was dead, still strapped in his seat.

A Washington, N.C., newsman said as the plane was ready for the final pass, it suddenly lost altitude. He said he saw no smoke or fire as the plane crashed from an altitude of about 200 feet.

Two witnesses reported seeing something fall from the plane while it was in the banking turn. A National Guard Military Police outfit having drill at the field was called in to help cordon off the area and assist Federal Aviation Administration (FAA) investigators.

An FAA inspector on hand for the show said the plane would probably be reconstructed in an effort to determine whether it had malfunctioned.

Howard had completed a series of loops and rolls and the ribbon pickup was his last scheduled stunt. The crash occurred about 3:10 p.m. The last two events in the show were canceled.

Mr. Howard was born Aug. 11, 1914 in Bath. He grew up in Augusta, Ga., where he began flying at 15. He paid for early flying lessons by making parachute jumps and selling rides.

He soloed in 1931, at 17, and soon bought his first airplane, a Waco-10, with money he made on a newspaper route. In 1932, he ended a brief junior college career to join Hawthorne Flying Service in Charleston as a line boy at $10 a week.

Within four years, Howard had become president and owner of Hawthorne. From 1936 to 1938 he flew as a pilot for Eastern Airlines, the youngest commercial pilot in the transportation industry at 21. His business demanded more of his time and he left Eastern to begin, in 1939, an expansion into commercial aviation and flight training.

Between 1939 and 1943, his company conducted flight training for the College of Charleston, The Citadel and the University of South Carolina, first in the Civilian Pilot Training Program and later as the War Training Service.

In 1941, he contracted with the U.S. Army Air Force to operate a primary flying school at Orangeburg, where by 1945, the school had trained some 6,000 combat pilots, including 2,000 French Air Force cadets. His was the last civilian contract school to close at the end of the war.

He was honored by the French government, by the South Carolina Junior Chamber of Commerce and with a national air service citation for his work.

He began flying air shows exhibitions in 1933 and held six world championships for precision aerobatic flying. He flew in shows in the U.S. and Europe.

Howard's business interests sprawled across five states, with aircraft sales and service, flying service and flying instruction in Charleston, an auto dealership, mobile home parks and retail establishments in Charleston, a shopping center in an Atlanta suburb with 25 shops and stores, an aviation maintenance program for helicopters at Fort Sill, Okla. and others.

He had served on the board of C&S National Bank, the YMCA and Exchange Club. He was a member of numerous flying associations.

He was also a member of the French Legion of Honor, Charleston Chamber of Commerce, board of United Community Services and a director of Junior Achievement of Charleston. He served as a trustee of Rampart College, Larkspur, Col., and of the College of Charleston. He was a past president of the Charleston YMCA.

Surviving are his wife and five children.

"BEVO" HOWARD DIES IN AIRPLANE CRASH

An aviator since 1929 who was a stunt pilot for a traveling air show, Beverly "Bevo" Howard of Charleston, died Sunday when his plane crashed during a performance at Greenville.

A television newsman who photographed the accident said a wing of the single-engine biplane hit a tree. The aircraft hit the ground 400 yards from the airport runway, killing Howard instantly.

A Federal Aviation Administration investigation was begun immediately by officials who were at the air show to direct traffic above the field while it was in progress. The area of the crashed Buecker Jungmeister was roped off.

FAA officials said they were trying to determine if the crash were caused by the brush with the tree or something else.

Howard had just flown upside down over the field and turned over as he circled around to prepare for his final stunt. That was to have been another inverted pass that would have been climaxed when he caught a handkerchief with a hook on the aircraft's tail.

The native of Bath, first flew when he was 15. At age 21 he was an Eastern Airlines pilot.

He taught pilots during both World War II and the Korean War.

Howard owned Hawthorne Aviation of Charleston which sold business airplanes and serviced Army aircraft.

BEVERLY HOWARD

While most South Carolinians knew him as a stunt pilot, Beverly (Bevo) Howard, who died Sunday when his plane crashed in Greenville, N.C., was that and a lot more.

Behind the exciting facade of stunt pilot was a solid business man and a real pillar of his community.

Mr. Howard, a native of Bath, grew up in the Augusta area, having attended Richmond Academy. He came to Charleston at an early age, however, to make his place. He founded Hawthorne Aviation Service, which had its humble beginnings at Charleston Municipal Airport in the 1930s, when aviation was still in its relative infancy. He and his pilots were flying charter flights routinely to provide the only air link for cities that now have several commercial flights between them each day.

When World War II came along, Mr. Howard and his staff trained thousands of Americans for the Air Force, and a sizeable number of foreign pilots. When the Korean conflict came along, he again undertook the training mission. During World War II, he had established training centers at Orangeburg and at Moultrie, Ga. He branched out into real estate and development, and before he had reached his 35th birthday anniversary he was a millionaire.

After he moved his headquarters back to Charleston, Mr. Howard's Hawthorne Aviation Service kept up with the times and altered its role to expand in new directions. His company was a sales agency for small planes, and it serviced planes under a military contract in addition to continuing a charter business.

Mr. Howard was unsurpassed in his dedication to the American way of life. At 57, he was more physically fit than most men at 40. He kept himself on a rigidily disciplined physical fitness regimen which suggested the other standards he required of himself.

South Carolina has lost one of her most valued citizens.

BEVO HOWARD DIES IN AIRPLANE CRASH

Beverly (Bevo) Howard, 57, president of Hawthorne Aviation, and internationally honored as an acrobatic pilot, was killed during an air show at Greenville, N.C., yesterday.

An aviator since 1929, and at one time the youngest commercial airline pilot (Eastern) in the nation, Howard died when the wing of his Buecker Jungmeister biplane hit a 60-foot tree and the plane crashed.

The aircraft hit the ground 400 feet away.

A Federal Aviation Administration investigation is now under way. The probers said they are attempting to determine if the brush with the tree, or something else was responsible for the crash.

A Hawthorne employe here said, "The sun must have gotten in his eyes. He was too good a pilot to goof up."

Howard had just flown upside down over the field and turned over as he circled around to prepare for his final stunt. This would have been another inverted pass that would have climaxed when he caught a handkerchief with a hook on the aircraft's tail.

Hawthorne has a contract with the U.S. Army Aviation Test Board at Ft. Rucker. He has flown here a number of times in exhibitions.

A native of Bath, S.C., he was reared in Augusta, Ga., and was still a 15-year-old high school student when he learned to fly in 1929.

He helped pay for his flying lessons by making parachute jumps and selling airplane rides.

In 1932 he quit junior college to join the newly established Hawthorne Aviation at Charleston, S.C.

By 1936, he was president of the firm and he flew from 1936 to 1938 as an Eastern pilot.

He expanded Hawthorne by giving flight training at the College of Charleston, the Citadel, and the University of South Carolina.

In 1941 he received a contract for a primary flying school at Orangeburg, S.C. The school trained 6,000 combat pilots, 2,000 of them for the French Air Force.

The school was cited in 1945 for its safety record by the Air Force Training Command.

Howard had been the South Carolina Jaycees' Outstanding Young Man of the Year, and Boss of the Year in Moultrie, Ga.

He received several honors from the French, and also a national outstanding airport operation award.

He became interested in air shows in 1933 and had appeared in nearly every major air meet in the U.S. He had also flown in Germany and France.

In 1939–41, he was the international light plane acrobatic champion, and the open plane acrobatic titles in 1946, 1947 and 1949.

Hawthorne, in addition to its Ft. Rucker operations, has operated at Ft. Sill. Howard also had an aircraft sales and service firm in Charleston, an Atlanta shopping center, two large mobile home parks; and he was author of a book, "You Can Learn To Fly."

He belonged to a large number of civic, service and aviation oriented organizations.

Married, he was the father of five children.

Funeral services are tentatively set for St. Phillips Episcopal Church tomorrow. Time for the rites had not been determined.

The family has asked that flowers be omitted and suggest memorials be contributions to the American Cancer Society.

RITES FOR STUNT PILOT BEVERLY HOWARD ARE SET TODAY IN CHARLESTON, S.C.

Internationally known stunt pilot Beverly E. (Bevo) Howard, 57, died Sunday when his 1936 Buecker Jungmeister biplane struck the top of a 60-foot tree and crashed during a performance at Pitt-Greenville Airport in Greenville, N.C.

Services for the former Georgian will be at 4 p.m. Tuesday at St. Philips Episcopal Church in Charleston, S.C. Burial will be in the church cemetery. Mr. Howard, formerly of Moultrie, lived at 73 King St. in Charleston. Survivors include his widow, his mother, two sons, three daughters and two sisters.

Mr. Howard was six times national and international precision flying champion and in 1954 was awarded the Ribbon of Chevalier, National Order of the Legion of Honor by the French government for training French air cadets during World War II.

He was born in Bath, S.C. and learned to fly as a high school student in Augusta, Ga. He helped pay for his early flying lessons by making parachute jumps and selling airplane rides for other fliers. He bought his first airplane with money he saved from a newspaper route.

He was chairman of the board and principal stockholder in Hawthorne Aviation in Charleston. The firm has eight subsidiaries in five states including six non-aviation businesses. Two of those are in Georgia—Hawthorne Plaza Shopping Center in Mableton and Creditors Mercantile Inc., in Atlanta.

DURING ACROBATICS FLYING: BEVO HOWARD DIES IN CRASH

Beverly (Bevo) Howard, 57, who lived in Moultrie more than a decade while serving as president of Hawthorne School of Aeronautics in the operation of Spence Air Base as a pilot-training school, was killed Sunday at Greenville, N.C., when his acrobatic plane crashed during a performance at an air show.

Howard, a native of Bath, S.C., was recognized as one of the world's finest acrobatic fliers and he gave precision flying demonstrations at Spence to each graduating class. He and his Buecker Jungmeister plane, one of the few remaining of its type, were familiar sights at major air shows in the United States and Europe.

He and his family had been residing in Charleston, S.C., since the closing of Spence in 1961.

A television newsman who photographed the accident at the Greenville airport, said a wing of the single-engine biplane apparently hit a tree and the aircraft struck the ground some 400 feet from the runway, killing Howard instantly.

Federal Aviation Administration officials, who were at the show, roped off the area of the crash and started an immediate investigation to determine positively if the crash was caused by he brush with the tree or something else.

READY FOR RIBBON-CUT

Howard had just flown upside down over the field and had turned over as he circled the airport to prepare for his final stunt. That was to have been his celebrated inverted ribbon-cut and handkerchief pick-up with a hook on the tail of the aircraft.

Born on August 11, 1914 at Bath, S.C., Mr. Howard first flew at the age of 15. He went on to capture six national and international precision flying championships. The veteran business executive-airman and his famous red-and-white Buecker, a 1936-built German aircraft, performed at hundreds of air shows and air bases.

As early as 1936 he became owner-president of Hawthorne Aviation of Charleston, S.C., which sold airplanes and serviced Army aircraft. In 1941 he secured a contract to train pilots at Orangeburg, S.C., under the Hawthorne name. He was voted Outstanding Young Man of South Carolina in 1943, and in 1945 was presented the French Air Force Wings and Medaille de L'Aeronautique.

AWARDED SPENCE CONTRACT

Howard in 1951 was awarded to a contract to train Air Force pilots at Spence Air Base and Hawthorne operated the facilities here until 1961 when the Defense Department phased out Spence and a number of other bases.

Thirty-two different countries were represented in the pilot training programs supervised by Howard and Hawthorne. More than 30,000 pilots received training under him.

In addition to his international reputation in aviation and among fliers, Howard gave unstintingly of his time and talent to civic and religious affairs. He was a leader in the Chamber of Commerce, YMCA, Kiwanis Club, St. Johns Episcopal Church and other orgnaizations and groups while living here.

STUNT MAN DIES IN PLANE CRASH

GREENVILLE, N.C.—An aviator since 1929 who was a stunt pilot for a traveling air show, Beverly "Bevo" Howard of Charleston, S.C., died Sunday, when his plane crashed during a performance at Greenville.

A television newsman who photographed the accident said a wing of the single-engine biplane hit a tree. The aircraft hit the ground 400 yards from the airport runway, killing Howard instantly.

A Federal Aviation Administration investigation was begun immediately by officials who were at the air show to direct traffic above the field while it was in progress. The area of the crashed Buecker Jungmeister was roped off.

FAA officials said they were trying to determine if the crash were caused by the brush with the tree or something else.

Howard had just flown upside down over the field and turned over as he circled around to prepare for his final stunt. That was to have been another inverted pass that would have been climaxed when he caught a handkerchief with a hook on the aircraft's tail.

The native of Bath, S.C., first flew when he was 15. At age 21 he was an Eastern Airlines pilot.

He taught pilots during both World War II and the Korean War.

Howard owned Hawthorne Aviation of Charleston, S.C., which sold business airplanes and serviced Army aircraft.

Funeral services will be held at 4:30 p.m. tomorrow in St. Phillip Episcopal Church. Burial will be in the churchyard.

Memorials may be made to Charleston County Cancer Society.

Born in Bath, he was a son of Mrs. Marian Scott Howard and the late Charles L. Howard.

Surviving are his wife, Mrs. Arden Ball Howard; three daughters, Miss Arden Ball Howard of Atlanta, Ga., Miss Langhorne Moultrie Howard and Miss Amanda Scott Howard both of Charleston; two sons, Beverly E. Howard Jr., of Austin, Tex. and John Ball Howard of Charleston; his mother, Mrs. Marian Scott Howard of Charleston; two sisters, Mrs. Ferdinand Brickwedde of State College, Pa., and Mrs. H. W. Harvey of Washington, D.C.

BEVO—OUTSTANDING IN EVERY WAY

Friends of Beverly "Bevo" Howard, world-famous aerobatic pilot who crashed and died yesterday during a benefit show in Greenville, N.C., describe him as a "polished gentleman."

"He was outstanding in every way," D. D. Overton III of the Overton Container Corp. in Smithfield, N.C., said, "That benefit show was typical of everything that he did."

Overton said that the Smithsonian Institute had filed a written request for Howard's plane. "That speaks a lot for him right there, the fact that they would request his plane . . . in the league of people like Amelia Earhart and Charles Lindbergh.

He was probably the most well-known aviator South Carolina has ever turned out, Overton said.

Col. Johnson Hagood Jr. of the Wings and Wheels museum in Santee said of Howard, "in addition to being one of the most famous acrobatic pilots, he was a businessman and rare old-time gentleman from way back.

"He was a great help and inspiration to us here at Wings and Wheels. He encouraged us right from the start and helped in every way he could," he added.

He was completely known all over the world in aviation circles, Overton said, and was "honored by every aviation society there is.

"He was a very quiet, polished businessman. You wouldn't think of him as an acrobatic pilot. He was distinguished, handsome and athletic. He swam a mile every day."

Howard, who once said, "I knew I wanted to fly an airplane when I was 15 years old," joined Hawthorne Flying Service of Charleston as assistant manager in 1932 and owned it by 1938.

He was a pilot for Eastern airlines when he was 21, the youngest transport pilot in the nation at that time.

He was a civilian aviation instructor during World War II.

The 57-year-old Bath native was beginning his final stunt, the inverted ribbon pickup, during the Greenville benefit, when a wing of his biplane caught the top of an 80-foot tree and crashed.

Howard died as he lived, thrilling crowds for the benefit of others.

LITTLE FUEL FOUND IN HOWARD BIPLANE

CHARLESTON, S.C.—Investigators probing through the wreckage said today they found only a small quantity of fuel in the vintage biplane which carried world famous pilot

Bevo Howard to his death Sunday at a Greenville, N.C., air show.

Funeral services for Howard were scheduled this afternoon at St. Phillips Episcopal Church in Charleston.

Inspector Roger McPhetters of the Raleigh, N.C., office of the Federal Aviation Administration, said a small quantity of gas was found in the fuel lines and a ripped-open gas tank aboard the aircraft. Investigators are now looking into a possible engine malfunction.

McPhetters noted that the shutoff valve at the bottom of the tank was broken off, but declined to say if this might have caused fuel to leak out during aerial stunts Howard was performing.

The 1936 plane, used to train German pilots and brought to America aboard the German Zeppelin Hindenburg, was reportedly due to be placed in the Smithsonian Institute in Washington in several weeks. It was one of only a small number left in the country.

DEAN AND ACE OF AVIATION

Beverly (Bevo) Howard, 57, internationally famous acrobatic pilot who was killed in an accident while giving a benefit performance in North Carolina, was the dean and ace of South Carolina aviation.

He was no daredevil, but a flier keyed to utmost efficiency. Before every takeoff he personally inspected his plane to be sure of mechanical perfection. He knew his own capabilities.

Learning to fly at the age of 15, he was the nation's youngest transport pilot at 21, flying for Eastern Airlines. When 24, he became owner of a flying service that trained 6,000 pilots at Orangeburg in World War II, including 2,000 cadets of the French Air Force.

He was acclaimed all over the world as an aerial stunt man, but he never lost his modesty or humility. Quiet and unassuming, he was every inch a gentleman.

While completing a maneuver in an exhibition to raise funds for needy boys, his plane tipped a tree on the blind side and crashed. His death was a great loss to aviation and to his native state.

EVIDENCE DEMONSTRATES EFFECTIVENESS OF FREEZE ON PRICES

Mr. PERCY. Mr. President, as we near the end of the first phase of the wage-price freeze announced on August 15, it is appropriate to consider whether it has been effective. In spite of considerable apprehension that the price decisions of the millions of economic units that comprise the American economy could not be restrained even for a brief 3-month period, the evidence is that the freeze has been remarkably effective.

Prime evidence, of course, is in data on the wholesale price index released on November 4 for the month of October. The index on an unadjusted basis declined 0.1 percent between September and October. On a seasonally adjusted basis, the index increased 0.1 percent in October, largely due to increased prices of farm products and processed foods and feeds, which rose 1.4 percent. As representatives of the Labor Department's Bureau of Labor Statistics testified at a Joint Economic Committee hearing on Friday, November 5, only 8 percent of all prices checked by the Bureau's price monitoring system reflected increases. These were mainly in the area exempted from the freeze. Chief among these are farm prices, prices that normally fluctuate on a seasonal basis, and prices of imports, to which can be added, under the freeze, the cost of the temporary 10 percent import surcharge.

There is other evidence of the effect of the freeze. Last week the Office of Emergency Preparedness issued a report on complaints of violations of the freeze. As of October 31 complaints of alleged violations were 36,220, most of them price violations. Of this total, 18,296 were determined not to be violations, 7,134 resulted in informal compliance and there was compliance in 4,598 cases after investigation. Only 6,192 cases are unresolved. This, I submit, is such a slight fraction of the total of economic transactions of this country as to be virtually insignificant.

Another indication is the report of the Manhattan office of the Internal Revenue Service resulting from what it called "the largest and most comprehensive survey of prices made since the beginning of the price-wage freeze." Covering 50 stores and 550 items, the survey showed only two violations of the price freeze. According to the Wall Street Journal of November 5, there two increases were considered unintentional and were immediately rescinded.

Though some reports have indicated that consumers do not consider the freeze to have effectively held down prices, and though retailers have only in rare cases complied with the President's initial directive to list prefreeze prices so that consumers can know whether current prices have remained stable, there is indeed sufficient evidence to indicate that the freeze has been effective. As Donald Rumsfeld, Executive Director of the Cost of Living Council said yesterday on the Channel 9 television program Newsmakers, the freeze has been an outstanding success. I can only urge Americans to join together to make phase II wage and price guidelines equally as effective.

I ask unanimous consent to have printed in the RECORD the November 4 statement of the Bureau of Labor Statistics on the wholesale price index, and two articles from the Wall Street Journal of November 5.

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

WHOLESALE PRICE INDEXES, OCTOBER 1971

The Wholesale Price Index of All Commodities declined one-tenth of one percent (0.1 percent) between September and October, the U.S. Department of Labor's Bureau of Labor Statistics announced today.

Industrial commodities showed no change.

Prices of farm products and processed foods and feeds also held steady on average, with a rise for farm products offsetting a decline for processed foods and feeds.

Consumer finished goods, an index closely comparable to the commodity component of the Consumer Price Index increased 0.2 percent.

Of the 15 major commodity groups measured by the Wholesale Price Index, 8 declined between September and October, 5 showed no change and 2 increased.

In October, the All Commodities index was 114.4 (1967=100), 3.1 percent above a year earlier.

SEASONALLY ADJUSTED CHANGES

On a seasonally adjusted basis, the Wholesale Price Index increased 0.1 percent in October.

Industrial commodities were down 0.3 percent.

Farm products and processed foods and feeds rose 1.4 percent.

Consumer finished goods were up 0.6 percent on an adjusted basis, principally because of higher prices for food.

The October increase in the seasonally adjusted all-commodities index of 0.1 percent followed a decline of 0.4 percent in September. In this two-month period the WPI declined on average 0.2 percent per month. This compares with an average monthly rise of 0.4 percent during the six months from March through August, the period immediately preceding the stabilization action. The decrease over the 2-month period in the industrial commodities index averaged 0.2 percent per month in contrast to an average monthly rise of 0.5 percent in the March-August period. The index for consumer finished goods declined on average 0.1 percent in the September-October period compared with an average monthly increase of 0.3 percent in the six months preceding the freeze.

PRICE CHANGES FOR MATERIALS AND FINISHED GOODS (SEASONALLY ADJUSTED)

Among consumer finished goods, foods (seasonally adjusted), advanced 2.1 percent, offsetting the preceding month's decrease, chiefly reflecting price increases for fresh vegetables and fruits, dairy products and meats; foods were 3.3 percent higher than a year earlier. Consumer nonfood finished goods were down 0.3 percent over the month. Within this grouping nondurable finished goods declined 0.1 percent, largely as a result of lower gasoline prices. Consumer durables also dropped (by 0.5 percent) for the most part because passenger car prices did not increase by as much as usual for this time of year.

Lower seasonally adjusted prices for passenger cars as well as motor trucks were the predominant influence in the drop of 0.4 percent for producer finished goods. Processed (intermediate) materials, supplies and components (excluding foods and feeds) were down 0.2 percent. On the other hand crude materials for further processing (excluding foods, feeds and fibers) rose 0.3 percent.

PRICE CHANGES FOR COMMODITY GROUPS, NOT SEASONALLY ADJUSTED

The only major increase among industrial commodities in October was for passenger cars and motor trucks which usually rise in October. In September prices included in the index were entirely for old-model year vehicles on which rebates were offered in order to reduce inventories. However, in October prices used in the index were for new-model year vehicles on which as usual there were no rebates.

Prices of most other industrial commodities either moved lower or remained unchanged in October. The most important decline both percentage-wise and in terms of influence on the overall index was for lumber and wood products. The decrease was much steeper than that in September which had followed an 8-month period of almost continually rising prices. Softwood plywood and lumber showed the largest declines. Weakness also affected the fuels as prices dropped for gasoline, residual fuel and electric power. Decreases for nonferrous metals, iron and steel scrap, steel mill products and some fabricated metal products brought the metals index down. Chemicals and allied products were lower in price chiefly because of declines for inedible fats and oils and fertilizer materials. Textiles—most notably manmade fiber products—declined after showing considerable strength through the end of the summer. There were widespread decreases among rubber and plastic products. Nonmetallic mineral products registered the first decline since September 1968 chiefly because of price weakness for gypsum products.

Substantial increases for fresh and dried vegetables and hogs caused most of the rise

in the farm products index; fresh fruit and raw cotton also were up in price, but eggs, live poultry, cattle, grains and oilseeds declined. The processed foods and feeds index dropped chiefly as a result of lower prices for manufactured animal feeds, processed poultry, fats and oils, sugar and confectionery and canned vegetables and juices; dairy products, meats and flavoring syrups were higher.

IMPACT OF WAGE-PRICE-RENT STABILIZATION ACTION

The 0.1 percent decline in the All Commodities Index between September and October is largely attributable to commodities subject to the provisions of the President's stabilization action. There was a net upward movement in October for raw agricultural products which are uncontrolled and imported items to which special regulations apply. Excluding these raw agricultural products and imports, the WPI shows a decline of 0.1 percent. The index for industrial commodities which was unchanged in October, reflects declines in controlled commodities which offset increases for some imported industrial commodities and domestic passenger cars and trucks. Domestic cars increased 1.6 percent over the month, a less than seasonal rise.

[From the Wall Street Journal, Nov. 5, 1971]

WHOLESALE PRICE LEVELS HELD FAIRLY STEADY IN OCTOBER, SECOND FULL MONTH OF FREEZE

WASHINGTON.—Wholesale prices held fairly steady in the second full month of the wage-price freeze.

On a seasonally adjusted basis, the wholesale price index rose 0.1% in October or at a 1.2% annual rate, and showed a 0.1% decline before adjustment, the Labor Department reported. The October results follow September's decline of 0.4% on an adjusted basis and 0.3% without adjustment.

The Nixon administration hailed the figures as showing that the price freeze is working. Charls E. Walker, Treasury Under Secretary, said the figures "provide encouraging evidence that the wage-price freeze is putting the brakes on inflation" and that there is widespread compliance with the freeze.

At 114.4% of the 1967 average, the closely watched price index stood 3.1% above the like month a year earlier on an unadjusted basis. In September the index was 114.5%, or 3.2% above a year earlier.

The seasonally adjusted increase was caused almost entirely by higher prices for foods that aren't covered by the freeze. Farm products, processed foods and feeds rose 1.4%. The index for consumer finished goods rose 0.6%, but this was primarily the result of a 2.1% boost in the cost of fresh vegetables, fruits, dairy products and meats that qualify as consumer finished goods. The higher food prices were a reversal from last month, when food prices fell sharply.

On an unadjusted basis, food and feed prices remained unchanged at 113% of the 1967 index. Consumer finished goods rose 0.2% on an unadjusted basis and consumer foods climbed 0.1%.

Important industrial commodities prices fell 0.3% on an adjusted basis, their sharpest decline in a decade. Mr. Walker noted these prices have declined for two consecutive months for the first time since 1962. He called this an important sign that the government is succeeding in its fight against the current type of inflation which he said is caused by rising costs rather than excessive demand.

On an unadjusted basis, the industrial commodities index was unchanged at 115% of the 1967 average. At a news briefing yesterday, government officials focused primarily on the unadjusted prices. Edgar R. Fiedler, deputy director of the Cost of Living Council, said it was "hard to know" the significance of seasonal adjustments during a freeze. For one thing, some wholesalers who normally lower prices on a seasonal basis may have kept their prices up this year because of the uncertainty caused by the freeze.

Of the 15 major commodity groups measured by the index, eight declined, five held steady and two increased. Both increases were "explainable," Mr. Walker said. One, raw agricultural products, wasn't covered by the freeze, and the other, transportation equipment, rose because the council allowed seasonal price increases on the 1972 car models.

Prices of several specific commodities rose but Mr. Walker said none of the increases appeared to violate the freeze. Mr. Fiedler said an investigation of some of the price increases disclosed by September's wholesale price study didn't show any widespread violations of the freeze, although two meatpackers rolled back price increases and some refunds were made on fishing rods.

However, Mr. Fiedler said, a recent survey of compliance with the council's directive that stores make price lists available showed that 913, or 35%, of the 2,500 stores sampled weren't complying. Most promised to have the information on hand by today.

[From the Wall Street Journal, Nov. 5, 1971]

IRS SLEUTHS ASSERT STORES DIDN'T FATTEN THEIR MEAT PRICES

NEW YORK.—Contrary to what many shoppers here believe, the government says, supermarkets aren't beefing up their meat prices.

In what was called "the largest and most comprehensive survey of prices made since the beginning of the price-wage freeze," the Internal Revenue Service's Manhattan Office reported a general compliance among retail meat dealers. IRS investigators compared store prices of specific cuts and grades of meat in the past week with the base price list in those stores for those meats.

The bureau's survey, which covered 50 stores in the New York metropolitan area and over 550 items, showed only two violations of the price freeze. The two items, found in two different locations, were 10–14 pound turkeys and shoulder lamb chops. IRS investigators found one store charging $1.59 a pound for shoulder lamb compared with the base price of $1.29, and another store charging 65 cents a pound for the turkeys, compared with the base price of 59 cents.

Base period prices were established during July 16 to Aug. 14. Under the freeze guidelines, meat retailers aren't allowed to charge more than the highest price charged during the base period for a particular grade and cut of meat. They may, however, charge less.

Elliott H. Gray, district director of the IRS' Manhattan office, called the two violations unintentional pricing errors. These prices were immediately rolled back at the IRS' request. The IRS found most other grades and cuts of meats below the base period prices.

A report published in the New York Times on Oct. 25 had indicated that leading retailers in New York City illegally increased the prices of seven out of 27 meat cuts, ranging from pork shoulder to porterhouse steak. The Office of Emergency Preparedness, which is responsible for overall supervision of the freeze operations in the field, asked the IRS to investigate the newspaper's charges. Mr. Gray said the investigation had "top priority," and the IRS had as many as 15 agents in the field at one time checking prices.

Mr. Gray cautioned consumers when comparing current prices of meat to base period price listings to note the difference in grades and cuts of meats. He urged consumers to report suspected violations immediately to the IRS. He said widespread publicity could give retailers time to roll back prices before the IRS could investigate charges.

Mr. Gray said The New York Times story was based on a general survey of the New York State Department of Agriculture and Markets retail price reports, and the reported prices were in a general range.

A MEDICAL VIEW OF VIETNAM

Mr. TUNNEY. Mr. President, one of my constituents, Mr. Ben F. Bufford, of Madera, has brought a depressing but important article to my attention. It appeared in the San Francisco Examiner magazine of October 25, 1971.

I ask unanimous consent that the article, which so poignantly describes the suffering in Vietnam, be printed in the RECORD.

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

VIETNAM WAR'S SMALLEST VICTIMS

The following letter, which appeared in the September Bulletin of the San Francisco Medical Society, was written from Saigon by Dr. Mark Gorney, a San Francisco surgeon and member of the American Society of Plastic and Reconstructive Surgery.

At this distance, the sound and fury of argument about our Vietnamese misadventure (the most popular current theme in our hospital staff rooms) seem specious. If the term were not so wholly inappropriate, one could almost regard with wry amusement the spleen vented by hawks and doves in discussing the issues involved. What is seldom mentioned is the unbelievable toll paid, not by those who are fighting and dying, but by the hundreds of thousands of innocent people caught in the vortex, most particularly the children. The dimensions of this barbarous carnage can be measured by many standards, but by none as accurate and pathetic as a headcount of the youngest victims. Thus my answer to those who ask me "How was it?" can only be, "Go and see for yourself, because if I told you, you wouldn't believe me."

This is my second tour with Children's Medical Relief International. This organization has built in Saigon a modern 56-bed hospital dedicated exclusively to the teaching of plastic and reconstructive surgery and the treatment of pediatric casualties of the war and war related causes. We admit any child who needs help, no questions asked. I am sure we have as many beneficiaries of the "People's Struggle for Liberation" as from the Pax Americana. We remain assiduously non-political. We have so far admitted over 3000 children and perform 8 to 12 major operations daily. This is only a small fraction of the 50,000 to 100,000 children who have been "wasted," to use that lovely euphemism. With the war winding down and travel somewhat easier, our waiting list has grown to over 500, and the stream grows to a torrent. We are also seeing neglected or mismanaged cases, many almost beyond redemption.

LEGACY OF HORROR

Of all the possible exercises in reappraisal of the Vietnamese struggle, I truly believe that a quick tour around our wards would be the most effective. In almost every bed the legacy of horror makes striking counterpoint to the fatuous statements from the corridors of power in Saigon or Hanoi or Washington. I feel, in fact, that this brief tour should be mandatory for anyone in a decision-making position in this war. Time and space do not permit even the briefest abstract of the abysmal tragedy that accompanies every mutilated face, every empty eye socket, every gnarled stump of what was once a slender arm, and above all every pair of unblinking black eyes that stare out from behind a fright-mask of inch thick, purple keloid scar.

Scars flow, like corrugated lava which has frozen, welding chins to chests, arms to ribs, and doubling little hands completely back so that the top of the hand and the forearm are one, and what finger stumps remain point to the shoulder. That's what white phosphorus does. A Hollywood make-up wizard would be hard-pressed to match the small

brown bodies twisted into grotesque shapes, or the cavities where there used to be a nose or an eye, or the living skeletons with vast patches of festering rotting bare bone.

We are often asked how we retain our sanity in the midst of such horror. The answer is simple: We happen to be in a unique position. We can do something direct and positive to help. Certainly it beats making Molotov cocktails or lying down in front of traffic. Anyone who allows rage or revulsion to consume him loses his objectivity and thus his effectiveness. Beyond rage or revulsion, what? Wonder, I suppose. Incredulity, if you wish. Wonder how anyone can come out of this with anything other than a profound sense of cynicism. Wonder at the tenacity of human life. Disbelief at the depravity of man in general. Wonder and disbelief that we go on, and on . . . and on compounding the calamity out of some misguided sense of chivalry.

Often our visitors, even though tough military and journalistic type, have to stop and lower their heads between their knees. One of the sights that invariably "grabs" them is that of several grossly mutilated children laughing and playing games in wheelchairs. The answer is, of course, that to these kids the grotesque is their entire horizon, their common denominator. It is only in the cold light of the outside world that reality becomes apparent.

In ward five, bed four, there is an 11-year-old boy who lost his genitalia, suffers paraplegia, and wears a colostomy bag. He never smiles nor is he seen joining in the fun and games. It seems that he and two friends were swimming in a river when a marine threw a grenade at them. The other two were killed outright. The nurses ask him what he plans to do when he is discharged. Without hesitation he answers. "I am going to kill myself." I have little reason to doubt that he will.

There are changes in the streets of beautiful downtown Saigon. One has the distinct feeling that this meaningless tragedy is playing out its last scenes. Our military presence is vastly diminished. Our troopers no longer compete in the daily Monoxide Grand Prix along Dien Tien Hoang. The gagging stench along Pestilence Gulch and around Garbage Circle and the sound of chaos are once more purely Vietnamese. (This is the only city in the world where the prevailing sound overall is that of a 24-hour long continuous jailbreak.) The sun once more sinks slowly into the perma-fog, the helicopters no longer clatter over the rooftops, and the flashes on the night horizon are merely summer lightning.

BITTER SADNESS

All this provides the final touch of bitter sadness. It brings to mind the words of John Kery who asked a Congressional committee, "How do you ask the last man to die in Vietnam to give up his life for a mistake?" I would also ask how do you condone the slaughter of children for a mistake. Whether they die from a hand grenade tossed by a marine, or are mutilated by South Vietnamese troopers bent on revenge, or they were roasted by a Viet Cong phosphorus booby trap seems to make very little difference.

I guess what troubles me is that I can no longer remember what it was we set out to prove here. I guess I am puzzled by the fact that (in the recent elections) there was a Yellow Alert from the Embassy; all Americans stay indoors, and all military on full armed alert. Unfortunately it isn't only the Communists that we must guard against, but also the very people for whom so many Americans have bled and died. I guess I am disturbed over the utter futility of this war.

How appropriate T. S. Eliot's words: "This is the way the world ends; not with a bang but a whimper."

STUDIES OF POLLUTION

Mr. KENNEDY. Mr. President, in recent years, all Members of Congress have become aware of the great problems of pollution. However, there is an aspect to this problem which has not received the attention and visibility that it merits. I make reference to the problem of internal pollution. Internal pollution comes about in either of two ways—from the additives and impurities in what we eat, drink, and breathe, and from the increasing number of drugs which are consumed every day by millions of persons for other than therapeutic reasons. Now at last an effort has been begun which hopefully will broaden our understanding of the growing problem of internal pollution. A small working group of eminent scientists has been formed to devise ways of identifying and cataloging the growing number of internal pollutants. Their job will be one of predicting contingencies and establishing priorities.

Mr. President, in order to bring to the attention of my colleagues a more detailed presentation of this effort, I wish to introduce in the RECORD three articles. The first is entitled "Scientists Urging 'Pollution' Study," written by Walter Sullivan. The second, also, from the New York Times, is entitled "The Other Pollution—Internal," written by Peter Beaconsfield, who is one of the scientists participating in this study. The third article, from the journal Experientia, is entitled "Suggestion for a Study on the Implications of Various Chemicals and Non-disease Specific Drugs."

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

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

SCIENTISTS URGING "POLLUTION" STUDY—SEEK TO BAR BAD EFFECTS OF INGESTED SYNTHETIC MATTER

(By Walter Sullivan)

An international team of eight leading scientists has proposed forming a working party to develop a program that can spare mankind from the long-term effects of "internal pollution"—the ingestion of a great variety of synthetic substances.

Within the next decade, they said, if drug company predictions are fulfilled, virtually everyone in the developed countries will daily be taking at least one drug to avert fatigue, obesity, nervous stress, childbearing or something else.

Furthermore, the populations of such countries are eating more and more synthetic foods or food additives whose subtle effects on the body have not been adequately explored, they said.

Among the scientists who signed the appeal were Sir Julian Huxley, first director general of the United Nations Educational, Scientific and Cultural Organization, and Sir Randolph Peters, former president of the International Council of Scientific Unions.

NOBEL LAUREATES SIGN

Others included Dr. Jacques Monod, Nobel Prize winner in medicine who is the new director of the Pasteur Institute in Paris; Dr. Jacques Tréfouël, outgoing head of the institute, and Dr. Hugo Theorell, another Nobel Laureate in medicine, who is director of biochemistry at the Nobel Institute in Stockholm.

Also, Dr. Raymond Paul, who in 1969 became president of the French Chemical Society; Dr. Rebecca Rainsbury, assistant editor of the British Medical Journal, and Dr. Peter Beaconsfield of the Royal Free Hospital in London.

Dr. Beaconsfield, an American, is a specialist in the long-term effects of drugs upon various body tissues and cells. He earlier coined the term internal pollution and was instigator of this proposal for independent action by the scientific community.

FIND SURVIVAL IMPERILED

The proposal appeared in the June 15 issue of Experientia, a scientific journal published in Switzerland. The vast majority of drugs now being taken, said the article by the scientists, "are for nondisease-related purposes."

"Society has reached a stage of development where the stresses and strains produced by its own speed of technological advance are not only overtaking man's powers of adaptability—both physical and mental—but are endangering his very survival," the article said.

Many of these challenges to man's adaptability are man-made, scientists said. "Chemicals made by man for his economic enrichment and physical well-being are the primary offenders, because they are ubiquitous and being exploited to the limits of their possibilities."

The report said scientists already have sufficient knowledge to devise ways for identification of hazardous substances and for the production of innocuous substances.

The proposed working party would consist of a relatively small group of scientists with broad backgrounds and no loyalties that would subject them to outside pressure. The article invited the scientific community to propose to Dr. Beaconsfield or Dr. Tréfouël suggestions on how to attack the problem.

It argued that present methods for screening substances for safety "sprang originally from the necessity to evaluate drugs in relation to disease," with effectiveness a prime consideration.

Classical pharmacology continues to operate on this basis, the authors said, even though disease treatment is no longer the target for most such compounds. In view of the massive consumption of synthetic substances, they said that new methods of classification, rating and testing must be explored.

THE OTHER POLLUTION—INTERNAL—ADDITIVES AND DRUGS SWALLOWED CARELESSLY HARM HUMAN ANIMAL

(By Peter Beaconsfield)

LONDON.—The public has at last become conscious of the near-catastrophic proportion of the pollution problem. Few, however, are concerned as yet with the emerging reality of a comparable trend in our internal environment—our bodies.

Internal pollution is occurring in two ways: From the additives and impurities in much of what we eat, drink and breathe; even more disturbing, from the multiplicity of drugs consumed daily by many millions of Americans for other than strictly therapeutic reasons.

Our solution to coping with the stresses and frustrations of urban industrial society tends more and more toward dosing ourselves with one drug or another—largely encouraged and abetted by the advertising media. Pills are available for every contingency—to induce sleep or to prevent it; to reduce weight or build up muscle power; to achieve pregnancy or to avoid it; to ease pain; to relieve tension; to counteract depression; to calm the nerves.

How much permanent damage such indiscriminate imbibing may cause the human system in the long run is still a matter of speculation. If a parallel can be drawn from the present condition of the external environment, then the pending consequences

are all too clear. There is already proof that pollutants are affecting the genetic mechanisms of some fish and insects: It would be folly to assume that similar changes might not be equally certain and irrevocable in the human species.

Even by conservative estimates, to redress the ravages to our natural habitat will be an extremely long and costly undertaking. On the other hand, with relatively simple and inexpensive efforts we can determine the extent to which the functions and adaptability of the human organism is being impaired and how these effects can be minimized.

Over prolonged periods, the equilibrium of the internal environment is patently vulnerable to the action and interaction of the state of drugs daily overextending its metabolic machinery. Yet the precise effects on the different body systems of most of the compounds currently being taken over the long term are still little, if, at all, understood.

Up to now, the safety of a drug has been considered relative to its value in assuaging disease, any undesirable side-effects being balanced off against its therapeutic efficacy and the length of time for which it is prescribed.

The safety standards now required for any drug include a supposed proven absence of potential to kill, to poison, to cause cancer, or to maim the unborn. In testing drugs whose use is not intended as medication, however, an additional category of information should be mandatory.

It is essential to establish not only the primary effect of a compound on the cells of the organ where its action is specific, i.e., on the target organ, but similar data is equally important with respect to all the vital organs of the body—liver, brain, kidneys, etc. Furthermore, we must be able to determine if repeated or long-term administration of a drug could so change the body's response to external stimuli and the remarkable adaptability of its protective mechanisms, as to alter entirely the established patterns of health and disease.

It may seem surprising to the point of incredulity that these aspects of drug safety have not been tackled. The truth is that many of the logical questions have not as yet even been asked.

Senate investigating committees, with the best of intentions, find themselves grappling with lengthy sessions of conflicting expert opinions. The F.D.A. responds alternately in undue haste or with agonizing circumspection. And the pharmaceutical manufacturers are obliged to send more and more "dear doctor" letters of caution to the dispensing physician. But none of this contributes in any way to a solution of the basic problem.

The care of the private citizen's ills is the concern of the medical profession. Protection of community health is the responsibility of the lawmakers. When the nation's health and that of the next generation is in jeopardy through lack of knowledge about the safety of products in free supply and increasing demand, the onus for instituting effective protective measures or at least the possibility of finding them, falls squarely on those who frequent the corridors of power.

The extent to which modern man's internal environment is being polluted is still limited and measurable. Correction and prevention would be a relatively simple undertaking. The longer we delay, the more complex and expensive it will be. In essence, it is a matter of of predicting the contingencies and establishing logical priorities. To attack the environmental problems around us with dedication and resolve will be self-defeating if we fail in our calculations to consider first and foremost the human animal.

SUGGESTION FOR A STUDY ON THE IMPLICATIONS OF VARIOUS CHEMICALS AND NONDISEASE SPECIFIC DRUGS [1]

If the present trend continues, within the next decade almost every person in the technologically developed countries will—according to the pharmaceutical industry—be on some type of daily drug regimen for the improvement or maintenance of his positive health. This habit is becoming modern Man's response to his over anxiety, over weight, over indulgence, and over population. In addition, it is inevitable that he will be consuming an ever increasing number of food additives and substitutes the use of which is the result, in large measure, of modern economic dictates concerning demand and supply, storage and distribution.

The problem of this continuous ingestion of synthetic products, their possible effects on Man, on his disease patterns, and on his physiological adaptability to the ever increasing demands of environmental change are beginning to be recognized. Environmental pollution's effect on the human organism, together with iatrogenesis [2 3] and the diseases of civilisation,[4] are among the monumental issues of our day, and they are also among the few that are capable of a solution within the framework of our economic possibilities. In sharp contrast to the difficulties of halting and correcting pollution of the external environment and the astronomical cost this will incur, preventing further internal pollution is not only relatively inexpensive but also feasible if cognisance of the problem is taken now. These are causes for concern not only to the specialist but also to the general biologist and all those having any responsibility for the physical and psychological well being of mankind.

SAFETY OF COMPOUNDS

Tests for most compounds taken by Man—irrelevant of their usage—sprang originally from the necessity to evaluate drugs in relation to disease. Therapeutic efficacy was the foremost consideration, and in the main, undesirable effects have been equated strictly with this factor. This disease-orientated fashion in testing still holds sway in classical pharmacology, despite the fact that we have now reached a stage in our attitude to health and wellbeing for which we demand aids to maintain and improve activity and appearance. The vast majority of compounds being consumed today are for nondisease related purposes and must, therefore, be considered in the context of health.

Society has reached a stage of development where the stresses and strains produced by its own speed of technological advance are not only overtaking Man's powers of adaptability—both physical and mental—but are endangering his very survival. The response of a living organism to the constantly changing environment has to be a continuous process of adaptation otherwise the inevitable consequence is breakdown into a disease state. In addition to the obvious danger from physical destruction there are an ever-increasing number of man-made forces that bend our adaptability to such an extent that selection soon will be no longer simply "natural," and mutations no longer unpredictable occurrences. Chemicals made by Man for his economic enrichment and physical well being are the primary offenders, because they are ubiquitous and being exploited to the limits of their possibilities. And yet these are the very forces which are to a large extent within the realm of the scientists' control in particular as we already have most of the knowledge needed to eliminate their dangers and substitute inoffensive ones in their stead. This is not a research project to be initiated, but conversion into practical terms of erudition already esoterically disseminated around many specialized laboratories.

In evaluating the safety of chemical compounds the purpose for which they were developed, once satisfactorily established, must be temporarily disregarded, and instead their effect on the rest of the body investigated—particularly at the cellular level in the vital organs. It is not only the final state of the compound in the body—its ultimate metabolism—that counts; but also, and in some instances even more importantly, the compound's effect on the body's ultrastructure, both functionally and architecturally.

To investigate the primary effect of any compound at the cell and tissue level in vital organs and determine whether any damage is caused by short or long term exposure to it does not require a whole new global battery of testing techniques, but rather an intelligent application of our existing technical knowledge. In various scientific disciplines not immediately related to pharmacology, such as tissue, cell, and molecular biology, biophysical and biochemical experimentation is routinely performed which, when suitably adapted, could give much of the information needed.

A certain number of the basic tests now done to evaluate compounds for use by Man will probably continue to be employed for a long time to come, but in addition there will have to be a second tier of testing [5 6] and this will depend on the type of compound and its formulation, the length of time it is to be taken for, and the reason for its use. Most of the knowledge to evolve testing on these lines we already have; it has simply to be transferred to a different context.

Introducing this kind of testing into traditional pharmacology will have a number of advantages. It will increase the safety of all compounds, improve their efficacy and make it possible to predict in advance with a high degree of accuracy the majority of side and deleterious effects. This in turn will make satisfactory clinical trials easier to design and the interpretation of the results more accurate.

Safety of compounds is a problem of our technological age, and its solution must come from our advanced technology and from those who can look at a 20th century problem with the methods and equipment of today and tomorrow. Application of the expertise of other scientific disciplines to the field of traditional pharmacology, starting with a new classification and going logically therefrom to a new testing procedure, is the obvious way to proceed. Thus, what is the next step?

THE RESPONSIBILITY

Somehow between the identification of a problem and its solution there lies a no-mans-land which no one is willing to be first

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[1] Comments and suggestions are welcomed and should be sent: In English to Prof. P. Beaconsfield, Royal Free Hospital, Liverpool Road, London N.1 (England), in French to Prof. J. Tréfouël, Institut Pasteur, Paris 15 (France).

[2] L. G. SEIDEL, G. F. THORNTON, J. W. SMITH and L. E. CLUFF, Bull. Johns Hopkins Hosp., 119, 299 (1966).

[3] S. SHAPIRO, D. SLONE, G. P. LEWIS and H. JICK, J. Am. Med. Ass. 216, 467 (1971).

[4] J. Sós, T. GÁTI, L. CSALAY and I. DÉSI, *Pathology of Civilization Diseases* (Akadémiai Kidaó, Budapest 1971).

[5] BEACONSFIELD, Annali Ist. sup. Sanita 5, 536 (1969).

[6] P. BEACONSFIELD, New Scient. 49, 600 (1971).

to step across. In the domain of public health there are always areas of vacua of responsibility, and these seem to occur particularly in the train of any innovation. Questions such as who should take the initial responsibility, who should insur the cost, where the venue should be, and under whose auspices should be the continuing work are disputed endlessly and unproductively; in fact, their very discussion seems to be an end in itself.

SUGGESTIONS FOR A SOLUTION

The purpose in setting out all the foregoing is to state a case, and then to see whether something can be done about formulating a new set of regulations for the safety of the various compounds we have been discussing.

To do this requires the setting up of a working party, which to accomplish its work completely and within a reasonable time framework should be as small as practicable: If the work of this group is to be meaningful and to the point the members should be men with a multidisciplinary orientation, having long laboratory or clinical experience, and of a broad and flexible intellect. Super specialists would serve best in a consultant capacity and the members of the working party would draw on such specialized knowledge as and when required. For a project of this importance the best brains available have to be harnessed, irrespective of their geographic origin, and they must not be in a position to be subjected to any sort of pressures.

OBJECTS OF THE WORKING PARTY

1. To define problem areas relating to long-term effects of various chemical compounds with regard to their different categories and usage.

2. To consider a new classification of such compounds. This would put medicinal and non-medicinal compounds into specific categories relating to their origin—synthetic or biological; the purpose for which they are used—prophylactic, therapeutic, or other; and the period for which they will be taken—short, limited, or relatively indefinite. There would have to be a clear differentiation between disease-related drugs, whether taken for short or long periods, and compounds related to the concept of better positive health.

3. To define new safety criteria leading to the adoption of values and measurements on the basis of which it would begin to be possible to state that certain effects are within "normal biochemical limits" or within "normal biophysical limits" in the same sense as at present physiological data are accepted and interpreted.

4. To clarify and decide the experimental profiles necessary to reflect the new dimensions relative to the effects of chemical compounds on the vital organs at the cellular level.

5. As much of the foregoing is still in the realm of limited knowledge, it would be desirable to identify and encourage active liaison and cooperation between workers in research centres already concerned with these types of study.

PROGRAM TIMING

All the objectives just mentioned fall broadly speaking into three phases of work.

The first phase would be to appraise present systems of compound classification, and make revised recommendations in this regard on the basis of the points outlined under section (2) on "objects of the Working Party". This leads logically to a consideration and selection of the crucial experimental profiles of the vital organs on which new safety criteria should be based.

The second phase would involve the setting up of studies to determine the primary effects of selected examples of various classes of compounds on the biological activity and function of different tissues, having appraised the techniques available to obtain such measurements and values. The results of these studies will provide some of the data essential for working out the basis of the new safety criteria discussed as part of the first phase.

The third phase would comprise an analysis and critical evaluation of all the data thus far obtained, their relevance to the objectives of the working party's study, and, on the basis of this, the formulation of recommendations to revise regulations pertaining to safety, particularly of chemicals and non-disease related compounds.

A programme carried through on the lines suggested above would be a first step in the protection of the public health, and a safeguard against the irreversibility of internal pollution. It would help the pharmaceutical industry, which presently feels some of the restraints imposed on it by government agencies to be useless and hampering, while in other fields industry would like more guidance and tighter controls. It would streamline production and research and allow for the introduction of more efficient safer products in a shorter period of time. Finally, it would provide guidelines for justifiably proposing changes in existing legislation.

FOREIGN AID: A STUDY IN ABSURD EXPECTATIONS

Mr. CHURCH. Mr. President, it is now clear that the Senate's defeat, on October 29, of the administration's foreign aid authorization bill has struck a deeply responsive chord in the American people.

This is reflected in the press, in letters which I know all Senators have received, and in personal contacts with constituents.

A heading in the Evening Star, over a column written by Carl T. Rowan, summed up well much of what is wrong with foreign aid—"A Study in Absurd Expectations."

And, writes Rowan in his column:

There never has been anything very altruistic or humanitarian about our foreign aid program. It has served largely to buttress the political and economic interests of the United States.

Mr. President, I ask unanimous consent to print several editorial columns on the subject of foreign aid in the RECORD, including the following:

"Senators Dream Big," a column by Mary McGrory in the Washington Evening Star of November 2, 1971.

"Pax Americana Tumbles Down," a column by Martin Nolan in the Boston Globe of November 2, 1971.

"Church's Farewell to Foreign Aid," a column by Stephen S. Rosenfeld in the Washington Post of November 5, 1971.

"Foreign Aid a Study in Absurd Expectations," a column by Carl T. Rowan in the Evening Star of November 5, 1971.

"Church's Foreign Aid Turnabout," a column by Milton Viorst in the Evening Star of November 4, 1971.

"The End of 'Welfare Imperialism'," a column by Clayton Fritchey in the Washington Post of November 6, 1971.

I also ask unanimous consent, Mr. President, to insert in the RECORD at this point, a commentary by Eric Sevareid which was broadcast on the CBS television network on November 1, 1971, and a second commentary by Edward P. Morgan, broadcast on the ABC network on November 5, 1971.

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

[From the Washington Evening Star, Nov. 2, 1971]

FOREIGN POLICY POWER: SENATORS DREAM BIG

(By Mary McGrory)

Senators on the Foreign Relations Committee at last have a Presidential attention. They are anxious to tell him a few things.

For the first time since the Gulf of Tonkin resolution steamed through the Senate in August 1964, they feel they have made a differance in the conduct of the foreign policy. Killing the foreign aid bill was a shock tactic, but yesterday, at their first meeting since the death, they were conspicuously unrepentant.

The White House will press with all its might to get the Senate's foot out of the door, but the Foreign Relations Committeemen think they have a good chance to get all the way in.

They are dreaming big.

Chairman J. William Fulbright is suggesting that the administration cooperate with the committee in rewriting the foreign aid bill. What he really has in mind obviously is the rewriting of American foreign policy.

The "reordering of priorities," a phrase ceaselessly uttered in the past seven years, might actually get under way—if, of course, the Senators do not panic, as they have so often in the past, at the prospect that a powerful Executive will "pull the rug out" from under them as they make their stand.

Fulbright and his cohorts are hoping to give Uncle Sam a facelifting. He will be, if they have their way, feeding hungry children, rescuing refugees and teaching backward nations how to use tools.

It is a tall order, but they think their time has come.

They know Israel's critical military needs will be used as a stick to beat them back into line. They stand ready to extend the necessary military investment credits. But they want a country-by-country look at all other programs where billions of dollars in arms have been passed out to military dictatorships with a minimum of discussion and little information from the administration.

Their overriding preoccupation still is Vietnam. Sen. Frank Church, D-Idaho, emboldened by the startling victory of Friday, is planning to introduce the toughest anti-war amendment of a long history of such measures. He will demand total withdrawal, with none of the residual force the President hints may be necessary.

"We have cajoled and begged and compromised long enough," Church says.

Stunned detectives on Capitol Hill still are sifting the wreckage for clues as to what happened when the foreign aid bill met sudden death.

One of the culprits may be Richard Nixon. He seems to have sent out contradictory signals, just as he did on the U.N. vote which triggered the revolt of the right in the Senate.

He wanted the foreign aid bill—it contains $347 million for Cambodia, a matter dear to his heart—just as he wanted the retention of Taiwan. But last Wednesday he joined the "anti-glee club" that sprang up in the Senate after the U.N. vote; and some senators may have read that as a green light to vent their spleen against the U.N.

How else does one explain, for example, the presence in the Fulbright corner of the chairman of the Republican National Committee, Robert Dole of Kansas? Dole, who has flogged his colleagues—after the Carswell vote, for example—for "disloyalty," rather feebly explained that he has always voted against foreign aid.

Then there was the brutal statement delivered by Republican Leader Hugh Scott after a White House meeting last Thursday.

Scott said that the President would veto a foreign aid bill that contained the Cooper-Church amendment.

Cooper-Church would have cut off all funds for Vietnam save those necessary to bring the boys home. Henry Kissinger told 30 senators, Cooper among them, that this would intolerably tie the President's hands.

"A fatal mistake," growled Sen. George D. Aiken of Vermont, dean of Republicans on the Foreign Relations Committee.

At the committee meeting yesterday, Scott was conciliatory, and explained to colleagues that sometimes a man must say what he is told to say. He expressed great interest in the doves' ideas about our future course in the world.

Fulbright thinks this is the brightest moment in 25 years for burying what he calls a "cold-war bill" and replacing it with the "anti-imperialist" stand he has been begging two presidents to adopt since 1965.

[From the Boston Globe, Nov. 2, 1971]

PAX AMERICANA TUMBLES DOWN

(By Martin F. Nolan)

WASHINGTON.—At 4 p.m. last Friday, the chief of President Nixon's crack congressional liaison team, Clark MacGregor, was leaving town to make a speech somewhere. Monday morning, after the Senate's defeat of the President's foreign aid bill, White House Press Secretary Ron Ziegler still didn't know where MacGregor was going, but added in a blue-eyed deadpan, "He's back now."

Last Friday, Sen. Robert J. Dole of Kansas, chairman of the Republican National Committee, was preparing to vote on the bill that the President described as the "absolutely vital" bulwark of bipartisan foreign policy. Had Dole consulted with the White House before the vote? "I don't know," Ziegler replied.

Friday night, Dole became one of the 41 perpetrators of what the President called "a highly irresponsible action."

There was "no indication," Ziegler pleaded, that the Senate would "suddenly and unilaterally dismantle" the foreign aid program. No indication? Not a quarter-century of Republican rollcalls against the program? Nor a recent presidential threat of a veto of the bill if it contained prohibitions against military aid to Cambodia?

How about the President's own action Aug. 15 in part of his new economics which "suddenly and unilaterally" chopped off foreign aid requests by 10 percent? Or the President's recent rage at the "undisguised glee" of UN delegates cheering a defeat for America's two-China policy? Did not Ziegler say that this "shocking spectacle . . . could also affect foreign aid allocations"? Ziegler was asked whether the President's anti-outburst might not evolve into a self-fulfilling prophecy, but dismissed the question quickly, in apparent ignorance of the phenomenon.

The foundations of foreign aid the shibboleth of Pax Americana, are crumbling. One of the leaders in the assault, Sen. Frank Church of Idaho titled his speech against the program "Farewell to Foreign Aid; a Liberal Takes Leave." That sounds like soap-opera stuff, but Church's first sentence evokes the atmosphere of weary sentiment that eroded the program as relentlessly as waves lapping sadly against a seawall.

"We stand in this year 1971," Church told his fellow Senators, "at the end of one decade of disillusion, with no good reason to believe that we are not now embarked upon another."

Disillusion is often a self-inflicted wound and therefore hard to diagnose. A wise observer of America, former Canadian Prime Minister Lester B. Pearson, perceived the inevitability of the Senate vote in 1969, saying "The priorities in the United States are guns, butter, outer space and then foreign aid. And the danger is that, when the (budget) cuts come, the foreign aid gets hurt most."

The crowning cliche of American public discourse in the past decade has been "reordering our priorities," ever since people argued about directing money out of automobile tailfins and into education. The Vietnam war certainly didn't slow down this sentiment, nor did the grandiose aims of "the Nixon doctrine" and other messianic visions. Could anyone think that the process of reordering would be any more neat or statesmanlike than the monstrously gerrybuilt arrangement that led to the current set of priorities?

Humpty-Dumpty has fallen and all the king's horses congressional liaison men and cries of "isolationism" will not put Pax Americana together again.

[From the Washington Post, Nov. 5, 1971]

MYRDAL'S HIS MAN—CHURCH'S FAREWELL TO FOREIGN AID

(By Stephen S. Rosenfeld)

Had the foreign aid bill passed, Senator Frank Church's major speech and his vote against it doubtless would have been widely publicized as a striking if ineffective challenge to the conventional liberal wisdom on America's proper place in the world. But the bill was defeated, thus stealing from Church his Don Quixote role and denying his ideas the attention they might otherwise have received. The ideas, however, shouldn't be lost. Here is a review of "Farewell to Foreign Aid: A Liberal Takes Leave," an address which he had brooded on for weeks before last Friday's vote.

He said in essence that poor countries are poor and are getting poorer not because of some flaw in the amounts or techniques of aid but because rich countries like the United States systematically use aid to increase relatively and absolutely their own affluence and power: to buy political influence, to combat communism, to enforce "stability," to ensure a favorable climate for American investments, and so on. Military aid does this, the Idaho Democrat said, and economic aid does it too.

In many places, Church said, the United States supports narrowly based regimes "whose very existence is the principal barrier in their countries to real economic development and social justice." Just as these goals cannot be imposed from outside, they will not be pursued from inside if those regimes stay in power. We should "come to terms" with these "conditions of our time": our social engineering has been irrelevant and disruptive, and the threat of communism in the third world is exaggerated and, in any case, beyond the lasting reach of our aid.

Development programs based on "reform" disguise the American quest for "stability" and distract the local people from "thoroughgoing social revolution . . . the necessary prelude for the development of much of the third world. There is nothing the United States can or should due to promote revolution—to do so indeed would violate the U.N. Charter and sound traditional standards of diplomacy. What we can and should do is to stop promoting counterrevolution."

And if aid we must, then let us route all development spending through the multilateral agencies, confine direct aid to technical assistance, stand by for disasters, and give the poor countries better terms of trade, concluded Church. * * *

What about all this? Does it chiefly express the frustrations of a particular senator who finds life in Washington a lot more complicated than life back home in Boise—so he now can casually and at a safe distance assign to homegrown revolution the catalytic role in development that assistance was formerly intended to fill? Or is there a core of hard-learned wisdom in his call to remove the inhibiting hand of American "aid" from countries which might then be forced or freed to find in themselves the resources for self-improvement? This last of course is the contention of the formidable Swede, Gunnar Myrdal, whom Church approvingly cites.

Well, it's not the kind of question that a passing observer would want to try answering definitively, nor the kind that permits a simple yes or no. It's apparent, though, that the Vietnam war has made many Americans more receptive to the Myrdal argument than they previously were and more receptive than its merits alone may justify. He is unquestionably an economist for this season, a figure of great stature whose prescriptions complement and rationalize the longings of many of us to play a less ardent role in the world. How reassuring to be told in effect, less is more.

It is one thing, however, to grant that past aid and trade patterns—and the political framework in which they were carried out—have failed to bring about satisfactory economic development and social justice. It is quite another to abandon these patterns without having in hand a reasonable prospect of replacing them with something better (assuming, which one cannot, there is agreement on what is better). Ending an aid program, as we saw last week, was a snap. Drawing a new program, as we've seen this week, is no snap at all. Creating better terms of trade for poor countries would be a murderous exercise so powerful are the domestic interests which support the present terms.

That is to say, the conventional liberal wisdom on aid had an attribute, the attribute of political support, which Church's perceptions, however acute, do not yet have. It is going to take some time to build for a program of stepping back and waiting for revolutions to pop, a consensus like the one that existed for the Alliance for Progress program of stepping in and trying to hustle along reforms. Not merely our lingering interventionist impulses but our abiding humanitarian instincts—such as Church himself has demonstrated in respect to Pakistan—will counsel a more active part.

Finally, what is wrong or exceptionable in having more on our minds in respect to the world's poor than *their* welfare? It seems to me too simple to say that unless we can truly serve the poor nations, we ought to stay away from them. Our natural and legitimate range of interests is far broader. Unapologetically, Mr. Nixon in his first foreign aid message checked off the "practical reasons" for our various forms of aid: to "help avert violence and upheaval that would be dangerous to peace," to "maintain a world in which we ourselves are more secure," to "develop our own potential markets overseas," and to aquire the "respect and friendship" of others.

These "practical reasons" are as valid now as they were two years or a week ago. The large and important service Congress is called on to perform is to assess the specific programs the President has recommended to satisfy them. Frank Church said an eloquent farewell to foreign aid last week but maybe he'll consider coming part way back.

[From the Washington Evening Star, Nov. 5, 1971]

FOREIGN AID A STUDY IN ABSURD EXPECTATIONS

(By Carl T. Rowan)

As Congress and the administration struggle to recover from the Senate's stunning wipeout of the foreign aid bill, it is time for the American public to face up to some realities:

The first is that there never has been anything very altruistic or humanitarian about our foreign aid program. It has served largely to buttress the political and economic interests of the United States.

Foreign economic aid got its aura of glamour when U.S. dollars helped to rebuild the European economic and military strength needed to prevent the Soviet Union from overwhelming our war-ravaged allies. It continued to feed on Washington notions that U.S. dollars and arms could frustrate Communist efforts to woo the new, weak nations of "the third world" whose leaders were presumed to be intoxicated on the wine of sudden freedom.

The closest Americans came to humanitarianism was an occasional observation that a world in which vast millions are hungry, sick, disgruntled is too dangerous a world to ignore.

So year after year Congress appropriated three or four billion dollars (Mr. Nixon asked for $3.5 billion in the measure just killed in the Senate), leaving Americans in the false belief that they generously were carrying the social burdens of the world.

The truth is that we set up rules where more than 90 percent of aid funds were spent in the United States, a tidy bonanza for some 4,000 U.S. firms and extra job insurance for their workers.

Because of this, and because of the requirement that at least half of the aid cargo must be carried in American ships, recipient countries were paying 15 percent more than would have been required to purchase the commodities elsewhere.

Much of the money went not to aid foreigners but to give American bureaucrats cushy jobs in foreign lands where they often are viewed as meddlers, as the new imperialists. Sen. Frank Church, D-Idaho, a liberal who just turned against foreign aid, points out that "we have twice as many American officials administering our aid program in Brazil today as the British had in India governing that country before independence."

Yet, the $3.5 billion "foreign aid bill" was only the beginning of the foreign aid mess. We have hidden about $2.5 billion a year in military aid in the Defense appropriation bill—much of this used to finance our sales of surplus arms that helped small countries to stay in conflict with neighbors, or arms that enabled oligarchic or dictatorial regimes to keep their people suppressed.

It is interesting to note that in killing the foreign aid bill Congress did not kill the Pentagon "aid" programs that the Senate Foreign Relations Committee says will cost this country $13 billion over the next five years.

The Senate action knocked out a $100 million U.S. grant to the United Nations development fund, some $23 million to help the U.N. assist 1.5 million Palestine refugees, some $13 million for the United Nations Children's Fund and other similar programs, but it did not put the ax to some of the military shenanigans that have soured so many liberals on "foreign aid."

Church explained pretty succinctly why the Senate acted so drastically when he said:

". . . foreign aid, in all its forms, is costing the United States approximately $10 billion a year. This country simply cannot afford to sustain such an outlay . . . especially when in terms of its stated objectives—the containment of communism, the promotion of economic development, and the advancement of freedom—the program is on the whole a proven failure . . ."

Congress surely will bounce back with a piecemeal mishmash that restores parts of the foreign aid package. But we will still have too many of the wrong programs, maintained for the wrong reasons.

We have learned a bitter lesson, at the cost of hundreds of thousands of casualties, that all our military might will not scare even weak nations into doing our bidding. We now beg to learn the hard way that not even the poorest nation is so bereft of pride that it will sell its soul for a trifle of foreign aid.

Foreign aid has failed because our expectations were absurd. We assumed that woefully weak, disorganized countries could take a pittance from us and suddenly transform themselves into affluent democracies. But they must not become so strong, we made clear, that they would fail to show obeisance whenever Uncle Sam ordered it.

With that kind of negative, self-serving, conflict-fostering aid program that we have had, the Senate just might be right in concluding that while no program would be shameful, it might be less a blight on us than what we have tolerated.

[From the Washington Evening Star, Nov. 4, 1971]

CHURCH'S FOREIGN AID TURNABOUT

(By Milton Viorst)

In a remarkable speech in the Senate last week, Sen. Frank Church, D-Idaho, pointed out that 42 of the 74 United Nations members who stood against us on the China question were listed in the foreign aid bill as recipients of American funds.

But, unlike some of his more conservative colleagues, he did not propose to punish them for ingratitude. On the contrary, he saw their vote as evidence that we consider our foreign aid a far more munificent gesture than they do.

Then Church, for the first time in his Senate career, voted against the foreign aid bill and helped defeat it. He wasn't being miserly. He had, rather, concluded that our foreign aid program has long since ceased being of use to the developing countries—and probably was hurting them.

For Church, this was heretical—a rejection of the liberal tenet that foreign aid is enlightened, generous and important. Quite aptly, his speech was entitled: "Farewell to Foreign Aid: A Liberal Takes Leave." It was remarkable, because senators don't often repudiate positions held for 15 years.

Actually, Church has been going through the metamorphosis which led to the speech for some time. He's of the generation—like a lot of us, alas—who were seduced by the rhetoric of the Kennedy years which held that national virtue consisted of using our power for the propagation of freedom.

Church is convinced we were trapped by this rhetoric into the disaster in Vietnam. As a result, he's felt compelled to re-examine a whole range of foreign policy premises.

Church points out that John F. Kennedy's Alliance for Progress, which proposed to trade economic aid for domestic reform, was the only serious effort we ever made to strengthen democracy abroad.

"We failed," he said, "because we had neither the ability to impose reform from outside nor the will to pursue it from within. However much we may have wanted reform and development, we wanted stability, anti-communism and a favorable climate for investment more."

Church says that, idealistic as liberals have been in supporting foreign aid, the program has had these consequences:

Preference of military dictatorships in Greece, Pakistan, Brazil and elsewhere over democratic regimes that promise real reform but at the risk of some instability.

Financing of American export sales. American corporations receive 93 percent of nothing more than another hidden subsidy for American business.

Subsidies for the American merchant fleet. Our surplus food shipments, for which we lend poor countries the funds, actually cost an extra 15 percent because they must be carried in American bottoms.

Past foreign aid loans now cost many developing countries far more in interest than they receive in usable funds.

The bulk of foreign aid funds goes to making the world "a dumping ground for ships, tanks and planes." The Military Assistance Program is a "preposterous scandal."

Church quotes a Latin American economist who, looking back on the Alliance for Progress, said: "If that is what one decade of development does for us, spare us from another. Foreign aid has been used not to develop us but to achieve the political purposes of the donors, to smother us in debt, to buy up our most dynamic productive assets."

Church acknowledges that the Alliance has raised per capita income in Latin America—but the increase has been concentrated in the richest 20 percent of the population.

We have, Church says, "brought roads, transistor radios and Coca-Cola to the countryside . . . (but) distorted and inequitable development widens the gap between rich and poor."

Church insists he remains anxious to help other peoples improve their condition. He will support, he says, outright grants for technical assistance and lending through multilateral agencies like the World Bank and the Asian Bank. "But," he adds, "no longer will I endorse with my vote a foreign aid program which has been twisted into parody and farce."

Church concludes that for many countries, "radical revolution is the only real hope for development, and the single most helpful thing we can do is to leave them alone."

His confession could not have been easy for him to make. But that makes it more compelling—and more deserving of our most careful attention.

[From the Washington Post, Nov. 6, 1971]

THE END OF "WELFARE IMPERIALISM"

(By Clayton Fritchey)

Considering all that has happened in recent months, it is not surprising that many nations are beginning to believe that the signal from America is: Stop the world, the United States wants off. Actually, it doesn't want off—it just wants to change its perch.

Any significant change in America's world position is, of course, extremely important, but it should not be interpreted as a return to obsolete, primitive isolationism. The first order of business of the administration, therefore, is to make sure that the rest of the world understands what is really going on in the United States.

The abrupt junking of the foreign aid bill has naturally shocked our friends abroad, especially since it comes on the heels of a series of other sudden unilateral actions such as taking the dollar off gold, breaking the General Agreement on Tariffs and Trade and slapping on a 10 per cent surcharge on imports. The rest of the world can hardly be blamed for suspecting the United States is pulling up the drawbridge in a new retreat to Fortress America. Yet, despite appearances, that is not the case—at least not yet—for neither the White House nor the prevailing leadership in Congress want to return to isolationism.

The misunderstanding abroad is based not so much on what the United States has done, as how it was done, which is to say, crudely, arrogantly, without consultation or warning. Aside from these tactics being offensive, they have also been bewildering.

There is an urgent need for the United States to get back to international collaboration and co-operation, to negotiate the changes we desire and, above all, to make it clear that America's inclination to play a more modest, though active, role in the world does not mean we are going to turn our back on it.

A good place to begin is with foreign aid. For more than 20 years it has primarily served as an instrument of the cold war. Even former America Firsters supported it because it was used as a weapon against communism. In the present climate of detente, however,

it is only natural that there should be a review of the old approach.

In the Senate Foreign Relations Committee, some of the most outward-looking members of both parties voted against the foreign aid bill, not because they are indifferent to world problems, but because, in the words of Chairman Fulbright, they feel the aid program has become a form of "welfare imperialism" by which the United States seeks to dominate other countries.

Over 55 per cent of the $3 billion bills, for instance, was not for economic aid, but military assistance, chiefly for military dictatorships favored by the administration. The huge sums earmarked for Cambodia, Greece, South Vietnam and Korea, cost the bill many votes. Like some of his colleagues, Sen. Fulbright sees the vote as "the beginning of a new era—a change of our basic foreign policy."

The change, in time, ought to lead to more effective, if not larger, aid. There is a growing consensus favoring the separation of military and economic assistance and another consensus favoring the channeling of most economic aid through such multilateral institutions as the United Nations and the World Bank, rather than directly.

The object, of course, is to tie our aid into the co-operative efforts of other advanced countries in fostering the growth of the less-developed nations. Many Americans will be surprised to learn that the United States in recent years has dropped from first to twelfth place among the major nations contributing to development programs.

President Nixon is understandably critical of the Senate for its abrupt scuttling of the aid program, but as his friend, George Aiken, the senior Republican senator, says, Mr. Nixon invited trouble by "over-lobbying" his bill and by threatening a veto if it was amended against his wishes. The President has found that two can play this game, for when the administration succeeded in beating down all the changes it opposed, the Senate then exercised its own veto power. Sen. Aiken's final word to the White House was: "Most legislation results from compromise if it is any good."

EXCERPTS FROM CBS EVENING NEWS WITH WALTER CRONKITE, NOVEMBER 1, 1971

SEVAREID. The Washington air is filled with cries of horror, Pennsylvania Avenue flowing with tears, crocodile and otherwise. All because the U.S. Senate killed the foreign aid bill on Friday, the bill the President's people had said that he would himself veto if it sharply limited spending in Indo-China.

The White House now warns that the Senate action jeopardizes American security, others that it would create vacuums that Russia will leap to fill. The Washington statement-writing industry, cry of horror department, is in sad need of new blood. The liberal-conservative coalition that killed the bill did so because painful experience has proved that real reform of the program is impossible. There are times when no other instrument except the meat axe will serve; a surgeon's scalpel has never yet cleared a jungle.

This country is not about to stop helping disaster victims, refugees, Israel or hungry children. But if the Senate bloc wins this fight, we will stop or diminish surplus arms shipments to some 50 nations, loan arrangements that get poor countries hopelessly in debt to us, that mostly help the already affluent in those countries and amount to taxpayers' subsidizing of selected American business firms. The Senate bloc also hopes to reduce an aid program bureaucracy that now uses more people to run the program in Brazil alone than the British used to run all of India before its independence.

It all goes back to World War II and the immediate postwar years. The approach got a new shot in the arm with President Kennedy and the academic intellectuals around him who thought we could renovate the societies of Latin America in ten short years.

The program has been endlessly tinkered with to no avail because many of its promises were simply wrong. One was that peace, democracy and material progress are not only good, each in itself, but somehow interdependent; another that American money, arms and advisers could produce the kind of governments we would like in alien societies and preserve them; another that the spreading gap between rich and poor countries would produce, not just human misery, which we must try to alleviate, but World War III.

There will be an aid bill, an aid program and an aid apparatus, but if they closely resemble what now exists, then we will have learned from experience that we are unable to learn from experience.

COMMENTARY BY EDWARD P. MORGAN

This is Edward P. Morgan, ABC News Washington, with the Shape of One Man's Opinion. A look at foreign aid in trouble after this word.

Perhaps you've heard the story of the man who claimed he could talk to mules. A farmer who had a particularly stubborn mule summoned the expert who came and and walked slowly around the beast, then picked up a two-by-four and smote the mule such a mighty blow between the eyes that the animal was knocked back on his haunches. "What in the world did you do that for?" demanded the indignant farmer. "I thought you said you could talk to mules." "True," the man said. "But first you have to get their attention."

Idaho's Senator Frank Church, a ranking Democrat on the Foreign Relations Committee, likes to use this story to illustrate how the Senate felt the only way it could command the Nixon administration's attention to the growing discontent over the way foreign aid was functioning was to kill the whole foreign aid bill which it did in a stunning action last Friday night.

The action brought an avalanche of White House wrath down on the heads of Church, his Republican colleague John Sherman Cooper of Kentucky and other senators who helped do in the $3½ billion bill. They were accused of readying the collapse of the South Vietnamese government. One of Washington's most respected pundits, Newsweek Columnist Stewart Alsop declared they were guilty, not only of national irresponsibility but "gross immorality."

Church refuses to be ruffled by these charges. He feels the Senate has struck a sensitive public nerve. Reportedly thousands of messages of approval have been accumulating in the Senate. Foreign embassies and foreign correspondents in Washington have requested more than 850 copies of Church's Senate speech before the vote, critical of foreign aid. At a party for Director Mike Nichols the other night (which presidential hopeful George McGovern also attended) three prominent Washington women marched up to Church, congratulated him on the outcome and demanded to know why *he* wasn't running for president.

But the senator, who still preserves a beaming boyish look despite his 47 years, 15 of them in the Senate, denies that political gain was the impetus of the Senate vote. "Marshall plan days are gone," he said in an interview. "It's past time to reexamine the whole foreign aid philosophy. Aid has been taken over by the corporate establishment. Companies can get insurance—underwritten by the U.S. taxpayer—to cover their investment in aid projects abroad but they can't get insurance to cover aid to the slums in American cities. Ninety-three per cent of foreign aid is spent, by law, with U.S. firms. This is *foreign* aid? And we are told we must prop up dictators to reinforce our national security against Communism." (unquote)

The UN vote to oust Nationalist China torpedoed the mistaken belief that "aid" could buy support for U.S. policies. Many senators were riled by the warning that President Nixon would veto the aid bill if it contained the Cooper-Church amendment for a ceiling on military aid to Indochina. "The administration doesn't really want to get out of Indochina," Church insists. But he expects the Senate to pass a compromise aid bill protecting technical assistance and related projects but cutting as much as a billion in military aid, while—he hopes—including a revised Cooper-Church amendment, no matter how much the White House mule balks.

This is Edward P. Morgan, ABC News, Washington, with the Shape of One Man's Opinion. . .

SCHOOL DESEGREGATION: A NORTHERN VIEW

Mr. HART. Mr. President, we have reached that point in history where northern Senators feel impelled to make lengthy speeches on school desegregation and related financial problems in their home States.

Many will see an irony in this, and perhaps justifiably so. From time to time, southerners have been understandably infuriated with northern smugness on racial questions.

Self-righteousness and condescension have not been rare commodities in the civil rights debates of the past decade and southern arguments that discrimination is not totally regional were often lost in the confusion of conflict.

In the South, there was school segregation and it was labeled "school segregation"—deliberate separation of black and white. In part, certainly, it was the label on the bottle that made the contents unpalatable.

In the North, there was school segregation but the mass conscience remained unoffended because it was labeled something else: An accident of geography, perhaps, or a "logical" arrangement of school sitings and boundaries.

School desegregation in the South resulted largely from court findings of "de jure" racial separation—that is, separation as a result of deliberate policy.

Now recently there have been "de jure" court findings in the North—based on different facts, to be sure, but nevertheless findings of separation by deliberate official policy.

When a structure of long standing has to be changed, as no southerner need be told, the adjustment is often a painful one. Well, it can be painful in whatever part of the Nation it is implemented.

Several separate, but related, actions in my State, Michigan, should be described at this point.

First, a Federal judge found intentional school segregation in Pontiac and accepted a plan, drawn up by school officials in that city, that provides for some busing. The Court of Appeals has affirmed that decision and the Supreme Court has refused to set it aside.

Later, on September 27, another Federal judge found that there was racial segregation in the Detroit schools as a

result of public policy. That decision is being appealed

That judge subsequently instructed that among desegregation plans to be submitted for consideration one should include both Detroit and the surrounding suburbs. But no plan yet has been adopted and no order for cross line busing has yet been given.

In Kalamazoo, a Federal court is hearing allegations that school board policies have perpetuated segregation there.

In Grand Rapids, a suit seeks a Federal court decision on whether "de jure" segregation exists there. An effort is pending to join neighboring school districts to that suit, but the court has not yet ruled on the attempt to amend the complaint.

Finally, the Governor and attorney general of Michigan have filed a court suit to test the constitutionality of financing public education through the real estate tax. They ask, in effect, that the Michigan Supreme Court concur in the California Supreme Court finding that all children in a State are entitled to equal educational opportunities regardless of whether their home communities are rich or poor in tax revenue.

Understandably, these actions have generated widespread concern and uncertainty. Bigotry may play a part in some of these reactions, but I think it can honestly be said that a majority of the fearful are genuinely worried about the welfare of their children and the quality of education these children receive.

Strong feelings have indeed given birth to dire predictions, exaggerated fears and to rumors as frightening as they are unfounded.

But I think that much of the storming uncertainty will fade as clearcut solutions are proposed and accepted and as we begin to find time to sort rumor from reality.

Calm reason and logic, so easily shredded by fear and tension, will reassert themselves once the thunder and lightening of early confusion subsides.

NEIGHBORHOOD SCHOOLS AND BUSING

To begin with, there is nothing more appealing, I know, than the concept of neighborhood schools. They tend to bind the community in common effort, they ease disciplinary problems, they hold down transportation costs and they give parents easier access to curriculum decisions.

Moreover, it is comforting to have your children close by and within your sphere of influence. That is a sound case and one is not a bigot if he holds it.

Nor should one be accused of bigotry if he is reluctant to have his child bused to a school where the education is the same as or worse than the one within walking distance.

These are valid concerns and no one can properly ignore them when considering workable alternatives.

It is also not irresponsible to oppose busing small children over unreasonable distances and it is not improper to voice concern about possible tensions in the new school.

THE OBLIGATIONS OF UNCONSTITUTIONAL SEGREGATION

But competing with these concerns are certain clear principles and obligations. One is overriding and it says that deliberate racial segregation in the schools is wrong. That has been the law since 1954 and the morality of it, I think, is well established.

Since that historic unanimous decision by the Warren Court in 1954, not one Supreme Court Justice has even dissented from the view that the schools must be desegregated if there is a finding of "de jure" segregation.

Moreover, when a wrong is discovered, a law-abiding nation has the obligation to correct it with all possible dispatch.

Many blacks are convinced that money follows whites—that black children do not get the same deal that whites do unless they are going to school with white children. And let us face it, there is about 100 years of history to back up that belief.

So what happens when a court finds that blacks are being segregated as deliberate policy as for example in Pontiac? There a Federal court decided that new schools were located in a way that would insure some to be black schools and others to be white.

Well, you either fix it or forget it. Of course, one remedy would be to build new schools at new sites so they would draw from both white and black neighborhoods. But that would be very costly to a school district and very time consuming.

In Pontiac, it was found that immediate relief from an unconstitutional condition could be afforded by buses. Busing was found in that case to be the only reasonable remedy available.

And if we outlaw the bus as a tool, what then? Do we not signal that we are content with enforced segregation and that we are not about to fix it? Do we not signal that we are content with that most dangerous of conditions, a continued splitting of black and white?

I was a member of the Eisenhower Commission on Violence, and that commission's unanimous warning nags at my mind. It told us that continued separation of the races is certainly one of the greatest dangers to our society.

Whatever tensions and inconveniences we may feel in the desegregation process now, they will be nothing to the tensions we will endure 20 years from now if we do little or nothing in the meantime.

One does not really have to be a prophet to see what will happen to us if black children grow up exposed only to one set of values and white children grow up exposed only to a totally different set.

It is no secret either that the children of the poor do much better in schools where most are middle class and have the middle-class notion that education is necessary and valuable.

If we can accomplish this cross-pollinization of ideas and values, then we will most certainly diminish the dangers that threaten us.

I agree with the courts that busing is the least desirable of all solutions and that bus rides must never be unreasonably long.

But when the courts found deliberate segregation in the South, I supported desegregation, even if it occasionally included busing. Now the issue has come home and the courts are finding deliberate school segregation in the North. My logic and my conscience do not allow me to switch positions.

THE FEDERAL RESPONSIBILITY

The Federal Government, it seems to me, must see that the quality of education nowhere deteriorates as a result of Federal court desegregation orders.

The major problem, of course, is going to be money. Buses are expensive and so is their operation. On occasions, communities will seek to achieve racial balance by more careful selection of school sites. If the most appropriate site is also a more expensive one, then clearly integration is imposing a financial burden.

In many cases, integration can only be achieved by spending more money. We must see that this money is not drained from those funds that a community would ordinarily provide for teaching salaries, books, equipment and classrooms.

Thus I would urge swift passage of the bill, as approved by the Senate, to provide $1.5 billion in Federal aid to desegregating districts. The local school district should be free to use that money for costs incurred from busing.

THE BURDENS OF DESEGREGATION

Whenever there is a burden associated with desegregation, it tends to fall on the working class.

Wealthy whites are usually well removed from the ghettos, housed among the lakes and hills of the distant suburbs and—unlike the family living on $10,000 a year and up to its ears in debt—they can exercise the option of private schools.

The white factory worker's child, too, is getting a substandard education compared to that really affluent suburb—and that is not fair either.

This, clearly, is one reason we can all hope for the success of the suit filed by Michigan's Governor and attorney general.

Why, after all, should good public schools be an accident of geography? Is it right that rich children go to good public schools while poor children go to inferior public schools? That makes upward mobility pretty tough.

Is it not better to hold that all children in a State deserve an equal chance at good public education, regardless of where they live or how much money their parents have?

Certainly, racial busing creates concern and anxiety but the Southern experience has shown time and again that concern and anxiety can be quickly eased by sound leadership and cooperation.

Yes, busing may be inconvenient, but how much more "inconvenient" will it be for our children tomorrow if we do not move today to heal the split which threatens the Nation today.

Undoubtedly, a child does not learn arithmetic while riding a bus and busing alone will not insure a quality education, but life will not be very good for the best

mathematician if indeed the country is at war with itself when he or she becomes an adult.

It seems to me that our best course now is to embark early on long range solutions to our school problems instead of preoccupying ourselves with the temporary ones.

Some of the most sane words I have heard on the subject were spoken a few weeks ago by another officeholder, and the name of the author may come as a surprise to many.

They are excellent words of advice for any locality, North or South. Very likely, the long-term welfare of a city such as Pontiac, Mich., now that the Supreme Court, in effect, has upheld the desegregation decision there, would be well served if the community heeded this guidance. And it goes like this:

Nobody really wants it (busing)—not you, not me, not the people, not the school boards, not even the courts.

Yet the law demands, and rightly so, that we put an end to segregation in our society. We must demonstrate good faith in doing that . . . we must stop inviting, by our own intransigence, devices which are repugnant to us. In this way and only in this way can we stop massive busing once and for all.

Only in this way can we put the divisive and self-defeating issue of race behind us once and for all. And only in this way can we re-direct our energies to our real quest—that of providing an equal opportunity for quality education to all of our children. If there is another answer, I have yet to hear it. Tolerance is the key and I hope all citizens will use it in the days ahead.

The Speaker was Reubin Askew, Governor of Florida. Excellent advice for Florida? Certainly. But excellent advice also for all of us in every State.

It is probably no accident that the Nation finds some of its best advice on racial relations now coming from the South.

Gov. Linwood Holton, of Virginia, raised the utterly reasonable question of whether busing really disturbs children as much as it does adults. And his suggestion was this:

Let's leave it to the kids. They are more flexible.

SHIPBUILDING PROCUREMENT

Mrs. SMITH. Mr. President, Clark Mollenhoff, an eminent and highly respected journalist, has written a revealing article on shipbuilding procurement. In view of his reputation and standing as an unrelenting seeker of truth and the revelation of truth to the American public, I think this piece is worthy of the attention of the Senate.

Therefore, I ask unanimous consent that Mr. Mollenhoff's article, entitled "The Navy's Great Blunder," published in the Boston Herald Traveler of October 22, 1971, be printed in the RECORD.

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

THE NAVY'S GREAT BLUNDER

(By Clark Mollenhoff)

WASHINGTON.—The Navy is setting itself up for a scandal that some insiders say will be "a C–5A boondoggle and a TFX rolled into one."

The $2.5 billion contract involves construction of thirty DD–963 destroyers, awarded to the Ingalls shipbuilding division of Litton Industries in Pascagoula, Miss. in June of 1970.

The initial estimates in 1967 were $35 million for each ship. By 1969 the estimates had climbed to $68 million each, in 1970 to more than $83 million, and now estimates run more than $100 million each. And there is no reliable time schedule for delivery.

But, in addition to the problem of "cost overruns," other issues have emerged involving the quality of the products coming out of Litton's shipyards, and the whole question of whether it is wise to leave the future national security in the hands of too few ship builders.

Certainly, the Navy has had some hard choices to make from a standpoint of political power and clout in the Congress.

Because the Bath Iron Works in Maine was one of the competing firms, Sen. Margaret Chase Smith (Rep., Me.) has had an interest in the ship contract, and she has frankly said that one of her reasons for wanting the contract divided is that she wanted some of the destroyers to be built at the Bath Iron Works. Also, Sen. Edmund Muskie (Dem., Me.) has shown an interest for the same reason.

Although Mrs. Smith is the ranking Republican on the Senate Armed Services Committee, she was up against the power of the chairman of the Armed Services Committee, Sen. John Stennis (Dem., Miss.) and the influence of Roy Ash, president of Litton Industries, who has been serving as an advisor to President Nixon on Government reorganization.

At the time the DD–963 contract was before the Congress in 1970, Mrs. Smith raised some questions about the wisdom of one-source procurement and also the question of whether Litton could produce at the contract price and deliver on time.

Since then there have been some developments that have tended to corroborate Mrs. Smith's fears and support the challenges she has made.

The maritime commission has reported some serious problems with the time schedules on the Litton shipbuilding contracts, with the firm lagging more than a year behind on work for Farrell Lines and American President Lines.

One report to Mrs. Smith states: "The shell frames on the entire ship were not evenly lined up with the floor. The transverse bulkheads are out of line. Three weeks after the launching the entire superstructure sagged one-half inch and the shipyard had to go into the base of the ship and lift it to straighten up the vessel. Throughout the vessel patchwork prevails."

That report said the Farrell line appeared to be "very distressed not only about the delays, but the very poor quality of the ship with which they may be saddled."

Mrs. Smith has been critical of the frequent changes of personnel at Litton that left the firm with "no regular shipbuilders on hand, but only space experts."

"Not only has Litton been plagued by the lack of shipbuilding expertise in the management end, but a great number of workers are 'red necks' who are hardly skilled even in the art of welding let alone in intricacies of detailed shipbuilding," Mrs. Smith has quoted from the report from the maritime commission.

Such reports have taken some of the glow from the record of Litton Industries, but nothing has been more devastating than a House judiciary subcommittee report on the general operations of Litton Industries. The report said:

"Litton's image making has developed flamboyant sham into an art. Overstatement is a way of life . . . in the process of developing its image, Litton has utilized all the sophisticated accounting techniques and statistical gimmicks available. It is adept at concealment, misdirection and incomplete statement."

Such reports from a judiciary subcommittee that carried the responsibility of investigating to determine the actual contributions made by the big conglomerates, concluded that "a mystique has been generated in investor relations and corporate image making that serve to divert attention from products and efficiency to concepts, systems and the technologies of tomorrow."

Mrs. Smith has said that the record of the last year show "doubts about the credibility of Litton's ability to produce on time and at the contract price has significantly grown."

"I have received many reports of inefficiency on the part of Litton—and most of these reports have come from workers at the Litton shipyard in Pascagoula, Miss.," Mrs. Smith said.

The lady from Maine has not been impressed with the vigorous denials of these reports from the Navy, because she was disappointed a year ago with the Navy's lack of vigor of the investigation of the pre-award leaks of Bath's price that was an issue at the bidding on the destroyer contract.

At that time Rep. William Hathaway told Bath President James Goodrich of the pre-award leak of Bath's bid. "The Navy dragged its heels on my complaint," Mrs. Smith said, "and delayed its investigation and after much delay went to Rep. Hathaway to get him to identify his source on the leak of Bath's price."

Sen. Smith said Hathaway identified R. J. Farrington of Todd shipyards as the person who told him precisely the total price differential between Bath and Litton at a time that was significantly prior to the contract award.

"The Navy then went to Mr. Farrington and asked him where he got his information," Mrs. Smith said. "When he said he couldn't remember specifically, the Navy did not press him for a better recollection and did not press him for the identity of the persons so telling him."

"The Navy dropped the case, thus making a mockery of the law against such leaks of information," Mrs. Smith said.

A number of congressional committees as well as the GAO (General Accounting Office) are looking into the DD–963 destroyer contract, and it should be remembered that occasionally there is a thorough investigation of a military procurement and some of those involved in the final report writing do not come off well at later stages.

HALT IN SHIPMENT OF MILITARY SUPPLIES TO PAKISTAN

Mr. KENNEDY. Mr. President, the State Department has just confirmed to me this morning's news reports that the administration is halting the shipment of military supplies to Pakistan. I understand that this order involves the revocation of some $3,600,000 worth of outstanding shipping licenses—as well as some $10 million worth of potential licenses authorized by 24 "offer and acceptance contracts" negotiated by the Department of Defense with the Embassy of Pakistan after March 25. The order excludes, however, some $160.000 worth of items already cleared by customs in New York, and waiting for shipment to Pakistan. I also understand that the official estimate on the value of military supplies sent to Pakistan since late March approximates some $5 million.

Mr. President, I want to take this opportunity to commend the administra-

tion for this positive step in our national policy toward South Asia. For nothing has symbolized more the heavy measure of support we have been giving to the military regime in Pakistan, than the continued shipment of American military supplies—and nothing has symbolized more the bankruptcy of our approach to the crisis in South Asia—carried out in the name of leverage—than the continuing repression in East Bengal and the flow of refugees into India.

But—even at this late stage—the action announced today by the Department of State is a welcome first step in what I hope will be a redirecting of our policy in South Asia. There are a number of other things our country should do, as well. Some of these additional steps were outlined in a report I issued last week. The report is based on my recent visit to the refugee areas in India, and hearings before the Subcommittee on Refugees, which I serve as chairman.

One of the more important steps which should be taken is for our Government to facilitate an immediate visit with Sheikh Mujibur Rahman by representatives of the International Committee of the Red Cross Mission in Pakistan. Such a visit falls within the expressed mandate of the mission's program currently underway in Pakistan and East Bengal. Positive information relating to the welfare and fate of Sheikh Mujib—and the many others held in detention—will contribute to a reduction of tension throughout the area. Sheikh Mujib's only crime was the winning of a free election sponsored by a military regime that later refused to abide by the election's mandate. Sheikh Mujib's symbolic leadership of political forces opposing the present government in Islamabad, makes his just treatment and personal safety a matter of greatest importance in any efforts to encourage and accomplish a political settlement between Islamabad and its Bengali opposition.

Second, our Government, in cooperation with others, should encourage current initiatives to include the tragedy of East Bengal in the debate of the Third Committeee of the United Nations General Assembly. America's representatives at the United Nations should participate in this debate, and actively support reporting to the floor of the General Assembly a resolution noting the tragedy in East Bengal, calling on all parties concerned to seek a political settlement, and calling on the international community to contribute generously for the relief of the millions of men, women, and children in need.

Simultaneously, our Government should support the efforts of the Secretary General in bringing to bear the peacekeeping machinery of the United Nations on the threat to peace posed by the actions of the Pakistan Army in East Bengal, and the resulting confrontation between India and Pakistan. In a definitive memorandum of July 20, the Secretary General sought the involvement of the Security Council, saying:

> The United Nations with its long experience in peace keeping and with its varied resources for conciliation and persuasion must and should now play a more forthright role in attempting both to mitigate the human tragedy which has already taken place and to avert the further deterioration of the situation.

The time is long overdue for our Government, in cooperation with others, to respond positively to the Secretary General's recommendation to activate the peacekeeping function of the United Nations. Over 3 months have passed since this appeal, and time is not on the side of peace in South Asia today.

Third—to emphasize the urgency of our Government's concern over the deteriorating situation in East Bengal and South Asia—the President should appoint a special representative to communicate with the President of Pakistan, and other parties in the area. Given the long friendship between the United States and Pakistan, and the very substantial diplomatic and material support we have given to Pakistan, our country has a unique opportunity for offering leadership to help encourage the attitudes needed for achieving a political settlement between Islamabad and its Bengali opposition, and for bringing peace and relief to a troubled area.

Finally, we must move through the legislative process—as soon as possible—reasonable appropriations for relief needs among the refugees in India and the famine-threatened people of East Bengal.

Mr. President, South Asia today is on the brink of war and even greater human tragedy. I share the view of many Americans that our Government's policy toward the area has borne a special responsiblity in bringing about this situation; for our past policy has encouraged Pakistan intransigency and fed frustrations in India and East Bengal. Today's announcement by the Department of State must be followed up with additional steps to rescue our foreign policy from a course that has been disastrous both to our best traditions and interests in South Asia.

BLACK GETS DAV POST: PAUL C. WASHINGTON, WISCONSIN STATE COMMANDER, DISABLED AMERICAN VETERANS

Mr. PROXMIRE. Mr. President, a Madison, Wis., man has become the first black in the country to become a State commander of the Disabled American Veterans. He is Paul C. Washington.

As senior vice commander, Mr. Washington became State commander upon the death of Francis Awe, of Milwaukee. I offer my sympathy to the family and friends of Mr. Awe.

Wisconsin members of the DAV deserve praise for voting for a man such as Mr. Washington, based on his personal qualities. I believe it speaks well of the entire State of Wisconsin.

Mr. President, I ask unanimous consent that an article detailing Mr. Washington's career, published in the Madison Capital Times of November 2, be printed in the RECORD.

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

PAUL C. WASHINGTON BECOMES STATE DAV COMMANDER

(By Frank Custer)

A 37-year-old Madison native has become the first black in the nation to become a state department commander of the Disabled American Veterans.

He is Paul C. Washington, an Army ordnance veteran of the Korean War, who lives at 4902 School Rd.

Washington, who was senior vice commander of the state department, was elevated automatically to the post last week when the commander, Francis Awe, Milwaukee, died unexpectedly.

He is the first Korean war veteran to head a state DAV department in the United States. He is the youngest man ever to serve as a Wisconsin department commander.

The new commander is a city employe in charge of the night emergency calls at the Water Utility, where he has been employed six years. He also is a part time working special deputy, paid by the county. He has been assigned to the jail division the past two years and for a time was on duty in the juvenile detention quarters.

The DAV, organized in 1920, is made up of veterans who were wounded, gassed, injured, or disabled in this nation's wars.

Washington, who was commander of the Togstad-Glenn DAV chapter here and served as second district commander of the veterans' group, worked his way up through the various echelons of the state department. He is past president of the Madison Veterans Council.

He entered the service in 1953 and received his basic training at the Aberdeen, Md., Proving Grounds as on ordnance demolition technician.

* * * * *

Following his training he was sent to Pusan, Korea, where he was assigned to duty as a military policeman at the prison stockade. His escorted military prisoners from Pusan to Japan. His brother, Dr. Joseph Washington, was the confinement officer at the stockade.

Later Washington was transferred to the demolition squad near Pusan. He was wounded when a land mine, triggered by one of three men with him, exploded. One soldier was killed. Washington suffered wounds in the right foot and leg, resulting in 50 per cent disability.

After recovery in hospitals in Korea and Tokyo, Japan, he was reassigned to duty as a motor pool driver at Seoul, Korea. He received his honorable discharge from the service in March, 1955.

Returning to civilian life here, he reentered Central High School, which he had left on induction, to complete his high school education. He was married shortly after his return here.

His wife, Shirley, is commander of the local auxiliary chapter.

* * * * *

Washington is the son of the Rev. Joseph Washington, retired pastor of Mt. Zion Baptist Church. His brother, Dr. Joseph Washington, is with the University of Virginia; and a sister, Mrs. Lucille Davis, lives in Chicago. He is a nephew of Ald. Joseph Thompson, who recently was named president of the Water Utility Board.

He has six children, Joseph 15; Donald, 14; Larry, 12; Paulette, 9; Della, 8, and Paul Jr., who will be a year old Sunday.

Washington is a member of St. Peter's Catholic Church and of its usher committee and is on the board of Queen of Apostles High School. He is a past member of the Equal Opportunity Commission Police Community Relations committee, past member of the board of the Northeast Optimist Club, and former Boy Scout Troop 27 committeeman.

DEMOCRATIC SOLICITATIONS OF REPUBLICAN SENATORS

Mrs. SMITH. Mr. President, the chairman of the Democratic National Committee, Lawrence F. O'Brien, has a reputation for political genius, especially with respect to his imagination and timing. In his recent sortie into Maine, he demonstrated his superb sense of timing as he chose Halloween for his "trick or treat" dishing up of political hob goblins with his suggestion that President Nixon might seek to purge me from the U.S. Senate because of my independence.

Mr. O'Brien's credibility concerning Republicans is somewhat suspect, to put it mildly. But his lack of credibility is offset by what must be an intriguing sense of humor. In April of this year he sent me a form letter to 2121 Senate Office Building asking me for a contribution to the Democratic National Committee and concluding his appeal with "an early retirement for the Nixon-Agnew team depends on it."

Because of his impeccable accuracy on administrative matters, if not political matters, I could not really conclude that this was merely a staff error on mailing lists but rather that it was surely the product of his intriguing sense of humor. Since I could not give him a contribution, I felt that he at least deserved an answer.

So I wrote him on April 26, 1971:

I have bad news for you—if, as you write, your goal is dependent upon a contribution from me, then the reelection of the Nixon-Agnew team is assured.

At any rate, thank you for giving me a good laugh for the day. It equals the one that Senator McGovern gave me last Fall when he wrote me asking me to make a contribution to keep me from becoming Chairman of the Senate Armed Services Committee in seeking a contribution to help reelect a Democratic-controlled Senate.

Apparently Chairman O'Brien liked my answer so well that he very promptly sent me another form letter solicitation received on May 3, 1971, to which I responded on May 5, 1971, with:

You are persistent. Apparently my letter of April 26, 1971 failed to convince you that I will not contribute to your efforts to defeat President Nixon next year in view of your latest form letter received on May, 3, 1971.

Are you really trying to convert me or has someone programmed into your mailing list political propaganda instead of statistical facts?

But this year is by no means the first year that Mr. O'Brien has exhibited his sense of humor to me. Ten years ago when I urged President Kennedy to stop playing politics with defense contract announcements through Mr. O'Brien's White House congressional liaison scoops to the favored Democrats, Mr. O'Brien answered expressing regrets and promising an investigation of his own operations in the matter. The credibility gap of the O'Brien promise to investigate himself was apparent. Needless to say, he never kept his promise and never investigated himself. When the Nixon administration came in, Republican Senator John Williams stopped the defense political announcements with his amendment.

The record of these amusing Democratic solicitations this year is not limited to Mr. O'Brien's solicitations to me. They also include those two Democratic U.S. Senators who wrote my executive assistant, addressing their letter to him at my Senate Office, asking him to contribute funds to the effort to defeat me.

One wonders who will be next?

SICKLE CELL ANEMIA

Mr. KENNEDY. Mr. President, sickle cell anemia is beginning to receive the kind of attention needed to launch an effective program to combat this tragic disease.

Last summer the Senate accepted my amendment to the HEW appropriations bill for funds to treat sickle cell victims.

Last month, I joined with Senator TUNNEY and 29 other Senators to introduce legislation that will combat the ravaging effects of this disease among the children and adults of our Nation.

To obtain a broad range review of the requirements for research, treatment, education, rehabilitation and detection, I am scheduling hearings on that legislation, S. 2676, before the Senate Health Subcommittee for December 1 and 2. At that time it is expected that testimony will be received from physicians, parents, victims, and volunteer workers who know the full needs of those who must live with this malady.

Medical records show that in overwhelming numbers sickle cell anemia victims are black people. And, like most other things that only affect blacks, sickle cell anemia has been a neglected concern. Most victims who suffer from the chronic effects of this disease die before adulthood. Others are doomed to a life of excruciating pain and suffering. And carriers of the sickle trait, usually do not know it. But unwittingly, they may pass on the trait to their children, who can become afflicted with the sickness.

Thus, a full scale program to alert the public, and medical officials to the symptoms of sickle cell anemia is fully warranted.

Yesterday the District of Columbia City Council announced approval of a detection program for the city's schoolchildren. That program would require testing of all children entering the District of Columbia schools.

I am hopeful that the action of this Senate will produce resources needed to provide a full scale national attack on this disease. And I call upon all Members of this Senate to devote attention to items such as the one in today's Washington Post, that help to focus on the needs of this disease.

Mr. President, I request unanimous consent to place in the RECORD an article entitled "Sickle Cell Tests Backed for Pupils," published in the Washington Post.

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

[From the Washington Post, Nov. 3, 1971]

SICKLE CELL TESTS BACKED FOR PUPILS

The D.C. City Council gave preliminary approval yesterday to a regulation that would require every child entering schools in the city to be tested for sickle cell anemia, a hereditary blood disease that primarily afflicts blacks.

The proposed program drew criticism from Dr. Raymond L. Standard, director of the city's health services administration. He said that if the program is going to be limited it should concentrate on junior and senior high school students and children between 1 and 5 years of age.

Standard said his office was preparing a broad program to combat sickle cell anemia that would reach all blacks under 40 years of age at an initial first-year cost of about $1 million.

Dr. Henry Robinson, an orthopedic surgeon who is chairman of the Council's health and welfare committee, said the program that he recommended to the Council would cost about $60,000 the first year.

Standard said even a limited program should not be aimed at all schoolchildren nor limited simply to testing.

He said the group to reach first should be junior and senior high school students who will be marrying soon and having children. They should be advised of the effects of the disease on their children, he said.

According to Robinson, about 1,000 children in the District suffer from the disease. Its symptoms may include pallor, chronic ulcers on the ankles, or severe abdominal pain. An additional 45,000 children carry the sickle cell trait, an inherited disease so named because blood cells become sickle shaped.

The sickle cell anemia program was part of a regulation winning tentative Council approval that would require all school children in the District to be immunized against measles, polio, tetanus and diphtheria.

Robinson announced yesterday that he will soon recommend to the Council that mandatory smallpox vaccination for school children be abolished. Similar actions are being recommended in other areas following medical reports that the vaccinations are causing more harm than the disease, which has not been reported in the country in 22 years.

The Council yesterday also approved a regulation that permits the city to award a franchise to a private firm for placing and maintaining street litter baskets.

It also adopted a report of its landlord-tenant commission that calls for hiring of a mediator to resolve disputes and creation of a housing court to deal with more serious problems.

REDUCED BUS FARES FOR THE ELDERLY IN DISTRICT OF COLUMBIA

Mr. PERCY. Mr. President, I invite the attention of the Senate to an order issued last Wednesday morning by the Washington Metropolitan Area Transit Commission to extend for an additional 120 days the experimental program of reduced fares for senior citizens. For those of us who have spent much time with elderly citizens in an attempt to understand better their special needs and problems, and certainly for the elderly citizens themselves, this is indeed very good news.

When the Transit Commission appeared before our Appropriations Subcommittee last March to testify on its funding requests, I addressed some remarks in support of such a special fare program to George A. Avery, then serving as chairman of the Commission. He assured me that some action would be taken in the near future.

I was particularly gratified to learn that an experimental program was developed and went into effect on May 9 for a period of 90 days. Thereafter, the

experiment was continued for another 90 days, and yesterday's action will result in its running for a total of 300 days, until March 3, 1972.

As I understand it, this most recent order permits a 15-cent reduction in fare, during specified nonrush hours, on all regular route fares of at least 40 cents for anyone over 65 years of age. Whereas under the former orders, special registration was required of all persons desiring such passes, procedures have been simplified now to permit anyone holding a medicare card to travel under this program. It had come to my attention that in many cases the registration requirement was too burdensome for some to comply with and thereby foreclosed the opportunity to them. I commend the Commission for its responsiveness to this problem and for the simple solution adopted.

I am also encouraged to note that special efforts will be made to publicize this program in order to elicit the widest possible participation. For the first time, a structured mass media campaign will be undertaken to spread the word in a manner best calculated to reach these citizens.

Some reports indicate that there have been rather substantial revenue losses incurred by the D.C. Transit System, Inc., which are in part attributable to less than adequate participation in the program by those who are eligible. I should think that the increased and improved publicity effort would help to overcome these losses.

However, I would add one additional comment concerning the losses of revenue. I am frankly quite skeptical that these claims are accurate. I have seen no reports, for instance, indicating how much business has increased for D.C. Transit because of the reduced fares. I would think that those figures should be included in determining the overall cost of the program. My impression is that in determining the cost of this program, the number of discount rides has merely been multiplied by the 15 cents of lost revenue per ride. Such a figure would plainly be misleading. What additional costs have been incurred directly attributable to the senior fare program? Very little, I would presume.

The losses of revenue notwithstanding, this is precisely the sort of assistance that the elderly citizens need most, and it ought to be supplied for that reason alone. We have discovered in hearings before the Select Committee on the Aging that transportation takes an average of 9 cents out of every dollar in a senior citizen's budget. It is their third highest expenditure, exceeded only by housing and food costs.

More than 50 cities, including Chicago and New York, have adopted reduced fare plans. Most studies of these plans indicate that the number of elderly passengers has increased markedly. In New York it increased by 26.7 percent. In Chicago, though no conclusive analysis has been made, I am advised by the Chicago Transit Authority that the impact has been clearly noticeable, and it generally lightens the traffic load at peak periods and provides "plus" business, filling empty seats, in the nonrush period.

There seems to be every reason, therefore, to support not only this most recent extension of the experimental plan, but the adoption of a permanent program thereafter. I am confident that careful analysis of the data produced during this last leg of the experiment will support its inclusion in overall District of Columbia planning from then on, and I can assure the Transit Commission and the District of Columbia government that such an undertaking will not only continue to receive my support but that of the thousands of District residents affected directly and indirectly by it.

I commend the Transit Commission for its action and ask unanimous consent that the text of the order; the statement of Jeremiah C. Waterman, Chairman of the Washington Metropolitan Area Transit Commission; a list of the 50 cities who sponsor such reduced fare programs; and an assortment of articles on the Washington experimental program be printed in the RECORD.

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

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION, WASHINGTON, D.C.

(Order No. 1175)

Served November 3, 1971, Docket No. 237.

In the matter of establishment of reduced fares on D.C. Transit System, Inc., for senior citizens.

In Order No. 1052, the Commisson undertook the development of an "experimental program for the provision of reduced fares for senior citizens during non-rush hours" on bus routes of D.C. Transit System, Inc. (Transit).

This resulted in the issuance of Order No. 1129, wherein the Commission directed Transit to begin such an experiment on Sunday, May 9, 1971, for a period of ninety (90) days. The experiment consisted of a 15-cent reduction on all regular route fares of at least 40 cents for anyone 65 years of age or older, from 9:30 A.M. to 3:00 P.M., and from 7:00 P.M. to 3:00 A.M., Monday through Friday, and all day Sunday, upon presentation of a special identification card issued by Transit.

In addition, certain surveys and counts were ordered and the staff was directed to analyze and evaluate the ridership data after 45 days of experience and report its findings and recommendations to the Commission. Direct expenditures by Transit in connection with the experiment, not including reimbursement for any loss of farebox revenue, was authorized from the "Reserve for Commission-Ordered Projects" under the terms of Order No. 773.

The initial staff report concluded that the program was providing significant benefits for the elderly, and that the initial test period had been too short to provide a basis for full evaluation of the experiment. It further concluded that the losses being experienced by Transit were not so great that the experiment could not be continued for an additional period of time. It recommended that the additional time be used to gather additional data, improve publicity, and increase the number of registration locations.

Upon consideration of the staff report, the Commission issued Order No. 1158, continuing the experiment for an additional ninety (90) days, for a total of one hundred eighty (180) consecutive days, subject to further continuation by order of the Commission. That order also directed Transit to publicize the program with signs on the inside and outside of its buses, to conduct registration at its four division offices, and to continue the counts and surveys. The staff was directed to try to obtain increased publicity for the program through the mass media and to analyze and evaluate the ridership data and again report its findings and recommendations to the Commission.

The second staff report based on 135 days of experience recounted an increased publicity program including bus signs and newspaper, radio and television coverage. It pointed out increased senior citizen registration facilities, with the number of registrants going over 20,000 by the end of September.

Revised calculations in the second report indicated that the extent of revenue loss, originally estimated at $620 per weekday for the first 45 days of the experiment, should have been $430. Passenger data available in the second report based on 135 days experience indicate a net increase since the beginning of the program of 20 percent in senior citizens riding on a normal weekday. The latest available data now indicates a current rate of revenue loss per weekday of $560.

It was concluded in the staff report that the scope of the experiment might be expanded if Medicare cards, as well as the special identification cards, were accepted as valid senior citizen identification on the bus. The Commission recognizes that without the registration requirement in the initial stages of the experiment, a valuable tool for statistical control and analysis of the results would have been lost. According to the staff report, however, registration has tapered off as identification cards accumulated in the possession of a larger and larger percentage of those who could or would register for them. The Commission agrees with the staff's conclusion and believes that, to the extent the Medicare card may increase the number of senior citizens participating in the program, it should be accepted. However, the existing registration mechanism for special identification cards should be maintained for those persons who may not be eligible for the Medicare card.

The report concluded through statistical analysis and investigation that there was reason to question the accuracy of the ridership counts sufficient to warrant the collection of additional data before a fully accurate and final determination on the results of the program could be made. It recommended a further extension of the experiment for a period of at least 120 days to permit sufficient time to collect the necessary data. The Commission believes the 120 day extension is appropriate, particularly considering that a new factor in the experiment, the Medicare card, must be taken into account.

The staff report also concluded that additional senior citizen awareness and participation might be achieved through paid advertising in contrast to the public service announcement approach. The Commission believes that there are few, if any, existing senior citizen riders of Transit who are not now aware, at least, of the availability of the reduced fare, whether they choose to use it or not. Certainly there have been some senior citizens, not previously Transit's riders, who have heard of the program, have registered, and have made use of the reduced fare. Just as certainly, there are some senior citizens who, for one reason or another, have not even heard of the program. The Commission believes that a brief, but intensive, paid advertising effort to reach and attract these persons should be undertaken as early as it can be arranged in the 120 day extension period. Transit will be directed to undertake such a campaign, in consultation

with the staff, and will be permitted to recover the cost of an approved advertising effort from the "Reserve for Commission-Ordered Projects".

Further, the staff noted that a number of senior-citizen-related organizations have been in contact with the Commission, and suggested that these groups be enlisted to assist in making the program a success. The Commission will ask the staff to undertake this effort immediately.

Much of the correspondence received about the program, both from concerned organizations and from individuals, requested a public hearing on the matter. The Commission is interested in receiving the views of interested persons, and will schedule an early hearing for this purpose.

Finally, the staff will be required to report its findings and recommendations based on 265 days of experience.

Therefore, it is ordered:

1. That the senior citizen reduced fare experiment on D.C. Transit System, Inc., which was established for ninety (90) days on Sunday, May 9, 1971, by Order No. 1129 and was continued for an additional ninety (90) days by Order No. 1158, be, and it is hereby, continued for an additional one hundred twenty (120) consecutive days, for a total of three hundred (300) days, through Friday, March 3, 1972, subject to further continuation by order of the Commission.

2. That a public hearing on this matter be, and it is hereby, scheduled for 10:30 A.M., Tuesday, November 23, 1971, in the City Council Chambers, Room 500, District Building, 14th and E Streets, N.W., Washington, D.C.

3. That any interested person desiring to be heard on this matter should appear at the hearing.

4. That D.C. Transit System, Inc., publish notice of the time and location of the public hearing, and subject matter thereof, in a newspaper of general circulation in the Metropolitan District at least once on or before Tuesday, November 9, 1971.

5. That D. C. Transit System, Inc., post notice of the time and location of the public hearing, and subject matter thereof, in each of its buses, on or before Tuesday, November 9, 1971.

6. That the staff analyze and evaluate the ridership data through January 28, 1972, and report its findings and recommendations to the Commission on or before February 17, 1972.

7. That on and after Thursday, November 4, 1971, either the special senior citizen identification card isued by D. C. Transit System, Inc., or the Medicare card issued by the Social Security Administration shall be accepted as valid identification for purposes of tendering an appropriate reduced fare.

8. That D. C. Transit System, Inc., make such counts, reports and surveys as the staff may require.

9. That D. C. Transit System, Inc., in consultation with the staff, undertake a paid advertising campaign designed to reach and attract additional senior citizen patronage.

10. That direct expenditures in connection with this experiment may continue to be reimbursed to D. C. Transit System, Inc., from the "Reserve for Commission-Ordered Projects" under the terms of Order No. 773, after submission to and approval by the Commission. Eligible expenditures may include costs involved in registering persons and issuing special identification cards, the extra costs incurred in analyzing data, and the costs involved in publicity programs, including the paid advertising campaign herein ordered. Eligible expenditures shall not include reimbursement for any revenue loss due to reduced fares or diversionary patronage losses.

By direction of the commission:

JEREMIAH C. WATERMAN,
Chairman.

STATEMENT OF JEREMIAH C. WATERMAN, CHAIRMAN, WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

We have today ordered a 120-day extension of the experimental program of reduced fares for senior citizens during non-rush hours on the bus routes of D.C. Transit. This will bring to a total of 10 months what was originally contemplated as a three-month experiment.

In addition, beginning today, November 3, it will no longer be necessary for holders of Medicare cards to register for the special identification card which has previously been required. Now the Medicare card will be also accepted as valid identification. However, the special identification card will still be available for persons who may not be eligible for Medicare.

In response to a number of requests, the Commission will hold a public hearing to receive the views of interested persons on the reduced fare program. The public hearing is scheduled for 10:30 a.m. on Tuesday, November 23, in the City Council Chambers, Room 500, at the District Building.

Also, in an effort to reach anyone who is still unaware of the program, we have asked D.C. Transit to undertake an additional publicity effort.

This extension has been ordered to improve the program as well as public awareness of it and to allow additional time for analysis of the results of the program.

We appreciate the many kind commendations and suggestions we have received about the program, and the hard work of the many public and private organizations who have assisted in the registration of senior citizens. We would also like to take this opportunity to thank the management of D.C. Transit, and the members of Division 689 of the Amalgamated Transit Union AFL–CIO for their cooperation in this experiment in providing this very valuable social service.

WHERE SENIORS RIDE FOR LESS

[In cents]

City	Regular fare	Senior fare [1]
California:		
Gardenia	25	20
Los Angeles	30	20
Oakland	25	10
San Diego	30	20
San Francisco	20	5
Santa Barbara	30	15
Ventura	20	10
Colorado: Pueblo	25	15
Connecticut:		
Hartford	30	20
Meriden	30	20
New Haven	30	20
Stamford	30	20
District of Columbia	40	25
Illinois:		
Chicago	40	20
Springfield	25	20
Indiana:		
South Bend	30	15
Fort Wayne	30	20
Iowa:		
Cedar Rapids	25	15
Davenport	30	20
Des Moines	35	25
Massachusetts:		
Boston	25	15
Worcester	30	15
Michigan:		
Ann Arbor	30	25
Dearborn	30	15
Detroit	30	15
Flint	35	25
Grand Rapids	35	20
Saginaw	30	25
Minnesota:		
Minneapolis	[3]	[3]
St. Paul	[2]	[2]
New Mexico: Albuquerque	30	20
New York:		
Binghamton	30	20
Merrick	23–55	11–27
New York	20	10
Ohio:		
Cleveland	35	20
Euclid	25	15
Lorain	30	[4]
Maple Heights	25–45	15–25
Toledo	35	20
Pennsylvania:		
Erie	35	20
Philadelphia	30	20
Pittsburgh	35	20
Utah: Salt Lake City	30	[4]
Washington:		
Seattle	25	[5]
Tacoma	35	[5]
Texas: Dallas		

[1] Reduced fares usually apply during nonrush hour periods.
[2] Effective January 1972, free.
[3] Free.
[4] Unknown.
[5] $2 per month pass.

[From the Washington Post, Aug. 22, 1971]

MANY ELDERLY USE DISCOUNT BUS FARE

(By Jack Eisen)

Thousands of elderly low-income Washingtonians are taking advantage of cut-rate bus fares, but not in large enough numbers to assure that the experimental discount will be made permanent.

A recent study showed that qualified senior citizens now use the bus about 20 per cent more than they did before the discount fare went into effect in May, providing "significant benefits in the form of increased mobility" for many without automobiles.

The study showed that the typical user is a woman over 65 who lives in the District of Columbia, is unemployed and has a family income under $3,000. She uses the bus on weekdays to go shopping or visit a doctor, and on Sunday to go to church. Of all users, 71 per cent are women and 87 per cent live in the District.

The same study demonstrated that the increased bus usage must be more than doubled to keep the discount program from being a drain on the finances of the privately owned D.C. Transit System.

The Washington Metropolitan Area Transit Commission, which conducted the study, recently extended the discount fare program until Nov. 4 and launched an effort to spur its usage and assure its permanence.

The commission urged persons 65 and older to register for the special identification cards and to use them. Information on where and how to register is available from the commission at 382–4865.

When displayed to a bus driver during off-peak hours on weekdays and all day Sundays (not on Saturdays), the card grants a 15-cent discount from a regular District or Maryland fare. In the city, that cuts the regular adult fare from 40 to 25 cents.

On a typical weekday, D.C. Transit carries about 350,000 persons. By June 30, the cut-off date for the commission study, nearly 24,000 persons had registered for discount fare cards out of more than 120,000 estimated to be eligible.

Surveys and calculations showed that riding by senior citizens averaged 9,178 each weekday before the discount went into effect. This increased to 10,963 with the discount, an increase of 1,785 daily rides.

While more fares were collected, the report showed that the company's average revenue declined by $621 a day. To make this up would require 2,300 more discount rides by senior citizens, a goal the commission staff viewed as attainable.

Results to date have been achieved by "a relatively small cost," the study said.

During the experimental period, D.C. Transit is being permitted to pay the expense by dipping into a special fund established several years ago to rebate to riders an earlier fare found to be excessive.

At the end of the experimental period, however, the discount program would have to pay for itself or its cost would be absorbed by fares collected from other riders.

Senior citizen fares have been offered in several other American cities, but only by

publicly owned transit systems, many of which are subsidized out of taxes.

[From the Washington Post, Oct. 14, 1971]

SENIOR BUS RATES

Last Sunday's Post carried an article on Washington's senior citizens who use the bargain discount of 15 cents available to them on D.C. Transit bus routes within the city. And while it has been noted that this discount for the elderly during non-peak times has increased D.C. Transit patronage by an estimated 1,800 riders per day, it will likely be withdrawn since the company's overall revenue has declined in spite of this additional use.

It seems incredible that a program supposedly instituted to assist a small and needy portion of our population, who are forced to survive on almost unlivable pensions, must now forfeit this bit of relief because D.C. Transit shows no profit.

I would think that D.C. Transit would look to other methods to increase their revenues than to the group in our society which is overlooked continually in the day-to-day needs most of us take for granted.

MARY LOUISE FAUNCE.

[From the Washington Post, Oct. 22, 1971]

ELDERLY MAKE PLEA TO KEEP LOW FARE

(By Kirk Scharfenberg)

About 150 elderly Washington residents journeyed to the District Building yesterday to cheer demands by their leaders for a continuation and expansion of the D.C. Transit System's experimental program of reduced fares for persons over 65.

"We're not asking for charity," Sophia Rich, of the Washington Area Council of Senior Citizens, told her peers. "We are retired workers. In our productive years we helped to make this country what it is today.

"We are only asking to live in dignity."

The reduced fare program, ordered by the Washington Metropolitan Area Transit Commission in May, is scheduled to lapse Nov. 4.

During the experiment elderly persons who registered for the program have been able to ride buses for 25 cents—instead of the normal 40-cent fare—all day Sunday and between 9:30 a.m. and 3 p.m. and 7 p.m. and 3 a.m. Monday through Friday.

A spokesman for the transit commission said a decision is expected next week on whether to continue the program, which D.C. Transit says is unprofitable. About 27,500 elderly persons have registered for the reduced fares.

The commission has held no public hearings on the experimental program although the spokesman said yesterday the idea is being considered.

D.C. City Councilman Jerry * * * umptuous for the transit commission to make a decision about the reduced fare plan without a public hearing."

Alice Green, of the Sibley Plaza Senior Neighbors and Companions Advisory Council, said many of the plan's restrictions have cut down on its use.

"We have earned the 25-cent fare." she said. "Why should we have to get off the bus at 3 o'clock for 25-cents."

She said many persons attending health clinics cannot leave until after 3 p.m. and therefore are forced to pay the regular fare to get home.

Others, attending clinics at D.C. General Hospital, wait through the evening rush hour until they are eligible for the reduced fare, she said. "They're weary and worn out," she declared. "Yet they stay until 7 o'clock to pay the 25 cents."

Moore said one-half of the city's elderly residents have annual incomes below federally-established poverty lines.

"It is not that we weren't intelligent enough to save," said Mrs. Rich. "But the little bit we saved has dwindled to nothing because of inflation.

"We are not begging. We are asking for what is due to us."

BUS DISCOUNT AIDS ELDERLY, LOSES MONEY FOR D.C. TRANSIT

(By Jack Eisen)

One morning each week, Helen Curtis leaves the back door of her apartment house near the National Zoo, walks up the hill to Irving Street, climbs onto a bus on the H–2 crosstown line, flashes a pink card and pays her fare—25 cents.

An hour or so and two transfers later, Mrs. Curtis gets off the A–4 bus at D.C. Village at the city's southernmost tip.

The ride is one of the longest within the city that the D.C. Transit System offers, and the widowed 67-year-old Mrs. Curtis gets it for a bargain price 15 cents lower than most passengers pay.

She is one of about 27,500 senior citizens who have registered for special identification cards that, within restrictions, grant them the discount as part of an experimental program.

Mrs. Curtis' trip to D.C. Village, the city's home for the elderly, is to visit old friends and to meet new ones—to ease the loneliness of institutional life for them.

Like most senior citizen card holders, Mrs. Curtis depends almost totally on the bus to get around, just as she depended upon the streetcar to get to her job for 43 years at Bergmann's Laundry. A pensioner's slim pocketbook permits few cab rides, she observed.

"I use the bus for everything—for church, for meetings, for committees," Mrs. Curtis told a reporter a few days ago. "I go marketing, to the store, and every week to D.C. Village to visit. But I have to pay 40 cents, like everyone else, on the way back home—the card doesn't work after 3:30 in the afternoon."

Mrs. Curtis and a half dozen of her fellow residents at Harvard Towers, a National Capital Housing Authority facility for the elderly at 1845 Harvard St. NW, described their use of the discount cards in an informal group interview.

What worried all the women, and Walter A. Jones, transportation chairman of the Greater Washington Area Council of Senior Citizens who also attended, is that the bus discount program is scheduled to expire in November. They want it made permanent.

"We feel the bus company owes us this for the support we have given it for the 65 years before it decided we were senior citizens," said Jones, a 69-year-old retired pipefitter for the federal government.

D.C. Transit's problem is money. In the first six months of this year, the privately owned company continued running at a loss despite the basic 40-cent fare that went into effect in mid-1970.

Similar low-fare programs are in effect in numerous other cities, but most of them have publicly owned and subsidized transit systems.

While the discount for the elderly has increased D.C. Transit patronage by an estimated 1,800 riders daily, a study showed that total revenue has declined.

Harry W. Nice Jr., an administrative aide at the Washington Metropolitan Area Transit Commission, which ordered the discount experiment, said riding by senior citizens must increase dramatically in September and October or the program probably will be doomed.

He said prospective users may get information or registration by telephoning 382–4865.

If the discount ends, the women interviewed at Harvard Towers said they will have to curtail their travel around town, limiting it to essential trips, such as going to church or the doctor.

WANT USE LIBERALIZED

Instead of being ended, the women want the rules of the program liberalized.

"If we want to go somewhere on Saturday, a good marketing day, we have to pay the full fare," said Cora L. Williams, 72. "We try to take advantage of the cut rate."

"Whatever visiting I do, I do on the card," said Beatrice A. Morris, 70, the president of the Harvard Towers residents council.

A widow and a retired elevator operator for the government, Mrs. Morris said she uses the discount to vist her children's families when they can't drive over to pick her up.

Annie Walker, 65, said she is on a committee at the Tenth Street Baptist Church that is responsible for visiting sick parishioners. The lower fare permits more visits, she said.

With the discount, "I definitely use the bus more than I used to," she said.

Mrs. Curtis drew nods of agreement when she said the discount needs more advertising.

"The people," she said, "are just not clear as to what is going on. If they want more people to ride, more people have to know."

[From the Washington Star, Oct 22, 1971]

ELDERLY BUS RIDERS URGE EXTENSION OF LOW FARE

About 150 elderly Washington residents urged the Washington Metropolitan Area Transit Commission yesterday to extend and improve the program of cut-rate bus fares for the elderly.

The experimental program, which allows elderly riders to ride D.C. Transit Co. buses for 25 cents during off-peak hours and on Sundays, is scheduled to end Nov. 4 unless extended by the commission. The normal fare is 40 cents and D.C. Transit has maintained it is losing money on the program.

The Rev. Jerry A. Moore, chairman of the City Council's transportation committee, spoke on behalf of the senior citizens, who gathered at the District Building. Moore urged the commission to hold public hearings to give the elderly a chance to voice complaints about the program.

"For most senior citizens of the District, busses are the only means of transportation—to clinics, to recreation, to visit friends and families," Moore said. "Under these circumstances, it is presumptuous for the transit commission to make a decision about the reduced fare plan without a public hearing."

Among the shortcomings cited by elderly persons yesterday were that the 15-cent fare discount is insufficient, that registration procedures are too difficult and that not enough notice has been given to senior citizens that the program exists.

"There are plenty of us who ride, but if we can ride when we want to ride, not when Mr. Chalk (D.C. transit president O. Roy Chalk) tells us to ride," said Alice Green, of the Sibley Plaza Senior Neighbors and Companions Club.

The hours for the discount program are 9:30 a.m. to 3 p.m. and 7 p.m. to 3 a.m. except Saturdays and holidays. So far, about 27,500 senior citizens have registered for the special identity cards that qualify them for the discount fare.

Douglas N. Schneider Jr., executive director of the transit commission, said the experiment, which began in May, is being evaluated by the commission staff and that a recommendation to the three-member commission will be made "by the middle of next week."

He said the staff was giving "serious thought" to public hearings and may include the issue in its recommendations.

Schneider said he didn't know how much D.C. Transit is losing on the project "but I know there is some loss."

[From the Washington Post, Oct. 23, 1971[

TRANSIT FARE FOR ELDERLY IS EXTENDED

D.C. Transit System's experimental lower fare for the elderly was extended yesterday, but a company official said a government

subsidy is needed if the program is to be made permanent.

Under a Washington Metropolitan Area Transit Commission order, the reduced fare—25 cents in the city for persons over 65 at specified times—was to expire Nov. 4 after a six-month trial.

In apparent response to pleas from senior citizen groups, Jeremiah C. Waterman, the commission's chairman, announced the extension for an indefinite period.

The commission will hold a public hearing prior to making a permanent decision, Waterman said. Details of the extension and the date of the hearing will be announced before Nov. 4, he added.

Samuel O. Hatfield, executive vice president of D.C. Transit, expressed sympathy with the plight of the older riders, but said the company is being squeezed by increased costs and reduced revenues.

"We're for it," Hatfield said, "but we think we have to be paid for it as we are by the District of Columbia for the reduced school fare. A reasonable extension period we could agree to without such a subsidy might be 30 days." This would run about $200,000 a year or more, he said.

BIRMINGHAM'S FESTIVAL OF ARTS

Mr. SPARKMAN. Mr. President, I want to take this opportunity to call attention to a great event that occurs in my State every year. I refer to the Festival of Arts, an annual spring event in Birmingham. For many years we have had this event each year. In fact, it is the world's oldest continuous arts festival.

This festival has as its purpose the promotion of local visual performance of arts and artists. In addition, however, the festival salutes the arts and culture of a different country each year. In this way, our people have had the pleasure of having Ambassadors and other representatives of many countries to attend the Festival of Arts.

In previous years, the festival has honored: Japan, France, Latin America, the Netherlands, Mexico, Belgium, Sweden, Scandinavia, Greece, Italy, Great Britain, and Spain.

In 1971, more than a quarter of a million people enjoyed the Festival of Arts' Salute to Spain, browsing among the citywide art exhibitions, applauding the dozens of plays and concerts, viewing the television features, touring the spectacular International Fair, hearing noted authors.

In March 1971, Birmingham was named "All America City" by the National League of Municipalities and Look magazine. Cited as one of the principal reasons for this honor was the city's flourishing Festival of Arts.

Countries to be saluted are selected and contacted more than a year in advance. For 1972 it was decided to salute the arts of the United States of America. Ambassador and Mrs. George Bush have already accepted the invitation to attend. It is hoped that many more officials and dignitaries of the United States will attend.

In 1973 the salute will be to France. We know that this friendly and colorful country will contribute much to the success of the festival. It is a great event. I am delighted to call your attention to it. I hope that many of my colleagues, their families, and friends may be able to come visit the Festival of Arts and see what a great international show it is.

CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

CONSUMER PRODUCT WARRANTIES AND FEDERAL TRADE COMMISSION IMPROVEMENTS ACT OF 1971

The PRESIDENT pro tempore. Under the previous order, the Chair lays before the Senate the unfinished business, which will be stated.

The assistant legislative clerk read as follows:

A bill (S. 986) to provide minimum disclosure standards for written consumer product warranties against defect or malfunction; to define minimum Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes.

The Senate proceeded to consider the bill.

The PRESIDENT pro tempore. The bill is open to amendment.

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. MOSS. Mr. President, I was unable to be on the floor on Friday, and I understand there was some discussion of this bill. I should like to make a brief statement about it today, as we begin its consideration, and hopefully this matter can be disposed of today in the Senate.

Mr. President, the Consumer Product Warranties and Federal Trade Commission Improvement Act of 1971 has been designed to provide necessary safeguards on the use of warranties, and to provide the Federal Trade Commission with the adequate enforcement tools necessary to deal with commerce in the 20th century.

"The bold print giveth, and the fine print taketh away." Thus, Mrs. Virginia Knauer characterized the problem confronting a consumer attempting to have a product repaired under warranty. David Swankin of Consumer's Union summarized the reasons frequently given for not honoring a warranty or guarantee as follows:

"The guarantee doesn't cover this particular part";

"We don't handle this manufacturer's repair work";

"We don't have the part";

"You'll have to pay for the labor";

"The company that made the guarantee is out of business."

And so forth. It goes on and on.

Additionally, we have seen that even when a seller engages in a practice that is clearly unlawful, the consumer has no effective remedy. As former Senator Tydings stated last year in consideration of this matter—

An individual in any State has the right of a common-law fraud action . . . a great many States now have, in addition . . . statutes in the State making it illegal to defraud the people. But there are no effective remedies.

The problem is providing some meaningful way to protect the consumer from fraud.

Consumers are frequently misled and confused by many of the warranties they receive in today's marketplace. The committee report explained this situation as follows:

For many years warranties have confused and misled American consumers. A warranty is a complicated legal document whose full essence lies buried in myriads of reported legal decisions and in complicated State codes of commercial law. The consumers' understanding of what a warranty on a particular product means to him may not always coincide with the legal meaning.

American consumers are entitled to clear, understandable warranties. President Nixon has stated that an American buyer—

Has the right to make an intelligent choice among products and services.

The buyer has the right to accurate information on which to make his free choice.

The buyer has the right to expect that his health and safety is taken into account by those who seek his patronage.

The buyer has the right to register his dissatisfaction, and have his complaint heard and weighed, when his interests are badly served.

The FTC report on automobile warranties and an administration task force on appliance warranties and service reported that warranty performance frequently did not achieve the reasonable expectations of consumers even after voluntary industry attempts to improve warranty programs. Consequently, adequate warranty performance has not resulted in enough competitive advantage, at least in the short run, for producers and suppliers to offer consumers satisfactory warranties without legislative assistance.

Current Federal regulation is insufficient to stimulate better warranty performance. Generally, the FTC can move against warranty abuses only if they constitute deceptive practices under section 5 of the Federal Trade Commission Act. Under this section, the FTC is limited to the time-consuming cease-and-desist procedure. At the most, this procedure can result in an order to discontinue the practice. What is needed is a faster, more effective way to deal with warranty abuses at the Federal level.

I would like to quote from the American Bar Association's report and recommendations from the section on antitrust law concerning several concepts which are embodied in title II of S. 986.

The committee recommends the adoption of Federal legislation—

Which can effectively utilize Federal Enforcement agencies; which will provide for swift and efficient relief to injured consumers harmed by significant abuses; which will obviate complex and protracted private proceedings; and which can be harmonized with existing and proposed statutory controls on the state level.

Machinery would be established within the framework of the Federal Trade Commission for the prompt and uncomplicated recovery of actual damages by consumers who are injured by such practices.

Mr. President, the need for this bill is urgent. We dangled the carrot before the consumer last year when we passed the warranty measure. Let us come through this time and send on to the House a strong and equitable consumer warranty bill which coupled with Federal Trade Commission improvements will do much to satisfy the growing consumer needs and demands in our consumer culture.

The Consumer Subcommittee spent many hours fashioning this legislation. We held several days of hearings last year on both the warranty title and the Federal Trade Commission Act improvements. We spent 4 additional days of hearings this year on the legislation.

The Consumer Subcommittee spent numerous hours reviewing the legislation in executive session. I believe there were six executive sessions of the Consumer Subcommittee at which time, I would like to add, the ranking minority member of the subcommittee, Senator COOK, contributed much to make this a better consumer protection measure.

Mr. President, S. 986 was reported without objection from the committee. Separate views on the legislation were filed by Senator MARLOW COOK.

S. 986 contains two titles. Title I of the bill sets forth disclosure and designation standards for written warranties on consumer products costing more than $5 each, defines Federal content standards for full warranties, and provides meaningful consumer remedies for the breach of written warranty and written service contract obligations. Title II of the bill improves the Federal Trade Commission's ability to deal with unfair consumers acts and practices "affecting" interstate commerce by providing the commission with the power to seek preliminary injunctions, to initiate actions in district court seeking specific redress for consumers injured by unfair or deceptive acts or practices, and to secure civil penalties for knowing violations of the Federal Trade Commission Act. In addition, title II specifies the way in which the Federal Trade Commission is to promulgate rules defining acts and practices which are unfair or deceptive to consumers.

It is the purpose of this bill to improve the consumer's position in the marketplace by making the Federal agency responsible for his economic well-being more effective and by delineating with specificity the duties which suppliers of consumer products assume when offering warranties or service contracts in writing on consumer products. In addition, it is the purpose of this bill to improve the consumer's position in the marketplace by enabling him to make more informed product choices and by making it economically feasible for him to pursue his own remedies when suppliers of consumer products breach their voluntarily assumed warranty or service contract obligations.

III. BRIEF DESCRIPTION

Title I of S. 986 requires the supplier of a consumer product costing more than $5, who chooses to warrant in writing that product, to clearly and conspicuously disclose the contents of that warranty and to designate the warranty as either a "full" warranty in compliance with Federal standards, or to designate the warranty using words which indicate the specific limitation. Title I would prohibit a supplier offering a warranty in writing from disclaiming his implied warranties. In other words, the present practice of using very limited express warranties to reduce consumer rights which would have been available but for the disclaimer of implied warranties is proscribed in title I of S. 986.

If a supplier fails to honor his warranty or service contract promises, the consumer can avail himself of certain specified remedies. If that supplier has provided a bona fide informal dispute settlement mechanism by which disputes between suppliers and consumers are to be resolved, then the consumer would have to utilize that informal dispute settlement mechanism before pursuing other avenues of redress. If a supplier does not have an informal dispute settlement mechanism for resolving consumer complaints, or if the consumer is not satisfied with the results obtained in any informal dispute settlement proceeding, the consumer can pursue his legal remedies in a court of competent jurisdiction, having afforded the supplier a reasonable opportunity to cure the breach. Such pursuit is made economically feasible by the provision in the bill which awards reasonable attorney fees—base upon actual time expended—and court costs to any successful consumer litigant. In addition to private consumer remedies, the bill provides that any violation of title I is a violation of the Federal Trade Commission Act and allows the Federal Trade Commission or the Attorney General to seek preliminary injunctions against persons violating such provisions.

Title II of S. 986 would authorize the Federal Trade Commission to seek a preliminary injunction or temporary restraining order against parties committing acts or practices which are unfair or deceptive to consumers. Title I would also authorize the Commission to assess civil penalties—up to $10,000 per violation—against those suppliers of consumer products who knowingly commit unfair or deceptive acts or practices in violation of section 5(a)(1) of the Federal Trade Commission Act. Such penalties could be compromised, mitigated, or settled if the Commission provided a public statement of its reasons for such action and the court approved the compromise, mitigation or settlement.

In order to redress consumer injury resulting from violations of the Federal Trade Commission Act, the Commission is authorized to initiate civil actions in the district court seeking reasonable and appropriate consumer redress. Such action could include such things as recission, reformation, refunding of money, or return of property, among others.

Title II of S. 986 expands the Federal Trade Commission's jurisdiction beyond activities "in" interstate commerce to those acts or practices "affecting" interstate commerce. And the Commission is authorized in title II to act through its own attorneys to seek civil penalties against persons knowingly violating the Federal Trade Commission Act or against those persons failing to comply with an order of the Commission.

Finally, title II of S. 986 authorizes the Commission to define with specificity through legislative rules those acts or practices which are unfair or deceptive to consumers and in violation of section 5(a)(1) of the Federal Trade Commission Act.

Mr. President, this bill, which has been under consideration in one form or another for years and which has been so carefully worked through by the committee and reported to the Senate, should be adopted, and promptly. I hope that the Senate will proceed to do so today.

Mr. President, the bill is open to amendment now; is that not correct?

The PRESIDING OFFICER (Mr. GAMBRELL). The Senator from Utah is correct.

Mr. MOSS. Mr. President, I yield the floor.

AMENDMENT NO. 606

Mr. TUNNEY. Mr. President, I call up my amendment No. 606 and ask that it be stated. It is offered on behalf of myself and Senators CRANSTON, KENNEDY, and HARRIS.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read as follows:

On page 41, strike out lines 16 through 22 and insert the following:

"(b) Labeling, disclosure, or other requirements of a State with respect to written warranties and performance thereunder, inconsistent with those set forth in section 102, 103, or 104 of this title or with rules and regulations of the Commission issued in accordance with the procedures set forth in section 109 of this title, or with guidelines of the Commission shall not be applicable to warranties complying therewith. However, if, upon application of an appropriate State agency, the Commission determines (pursuant to rules issued in accordance with the Federal Trade Commission Act, as amended) that any requirement of such State (other than a labeling or disclosure requirement) covering any transaction to which this title applies (1) affords protection to consumers greater than the requirements of this title and (2) does not unduly burden interstate commerce, then transactions complying with any such State requirement shall be exempt from the provisions of this title to the extent specified in such determination for as long as the State continues to administer and enforce effectively any such greater requirement.

Mr. TUNNEY. Mr. President, last Friday I explained the purpose of the amendment in detail. I was pleased, at that time, to have an indication from the chairman of the committee, the distinguished Senator from Washington (Mr. MAGNUSON), that he was willing to accept the amendment. We also had an indication from the Senator from Kentucky (Mr. COOK) that he felt that the amendment was appropriate and deserved to be accepted. Basically, the amendment sets up a procedure whereby the State law may continue in effect if it affords greater consumer protection in areas other than the labeling and dis-

closure of S. 986. Upon application of an appropriate State agency, the Federal Trade Commission can grant an exemption for a tougher State law if it determines, first, that the State law—and it has to be an adequately enforced State law—can provide tougher consumer protection and that it will not be an undue burden on interstate commerce.

It may be that only as to certain classes of transactions does the State law afford greater protection than S. 986. The amendment makes it clear that the Federal Trade Commission may grant an exemption for all transactions or for some classes of transactions.

The enactment of this amendment to S. 986 would make it clear that Congress does not intend to preclude the various States from remaining partners with the Federal Government in effective consumer warranty protection.

Mr. MAGNUSON. Mr. President, we discussed the Senator's amendment on Friday at some length. At that time I suggested that I wanted to confer with other members of the Committee on Commerce, particularly with those on the minority side, to determine whether the amendment would be agreeable to them. I have done so, and as far as I am concerned, I would be glad to accept the amendment. I think it adds to the bill and is a good amendment.

Mr. TUNNEY. I thank the Senator from Washington.

Mr. KENNEDY. Mr. President, I would like to voice my full support for the Consumer Product Warranties and Federal Trade Commission Improvement Act of 1971, of which I am a cosponsor. Both of the titles of this bill constitute important legislative efforts to afford greater Federal leadership in the consumer protection field.

Title I of S. 986, as explained in the Commerce Committee report, sets forth minimum disclosure standards for warranties on consumer products, defines minimum content standards for warranties, and provides consumer remedies for the breach of a warranty or service contract obligations.

Title II provides the Federal Trade Commission with the power to seek preliminary injunctions, to order specific consumer redress, and to seek civil penalties for intentional violations of the Federal Trade Commission Act or of Commission orders.

There is little doubt that one of the most troublesome problems facing the consuming public is the scope of protection and coverage of the warranty received on purchases made. Often the consumer sees a formal, official-looking certificate or statement titled "Guarantee" and immediately believes that the manufacturer thereby fully stands behind his product. It is only when the item breaks down or does not work properly from the start that the purchaser carefully reads the fine print, assuming that he kept the certificate or container, only to discover that the particular defect is not covered by the warranty, or that he must pay service and handling charges to get it repaired or adjusted, or that at best he must pay for returning the item to some distant factory where months may ensue before the manufacturer is ever heard from again.

The Consumer Federation of America has said that:

In no area is honesty more sorely lacking than with respect to warranties, to the detriment not only of the misled consumer, but equally to the reputable businessman who cannot compete with the dishonest guarantor.

Without imposing onerous burdens on the suppliers of consumer products, and without requiring any minimum quantum of warranty in any given case, the warranty provisions of S. 986, as outlined by the committee report, meet four basic needs:

(1) the need for consumer understanding, (2) the need for minimum warranty protection for consumers, (3) the need for assurance of warranty performance, and (4) the need for better product reliability.

I am sure that the American public will welcome this legislative effort to meet these important needs.

Mr. President, this bill also gives the Federal Trade Commission much-needed and long-awaited powers to allow it more effectively to protect the public against "unfair or deceptive acts or practices in commerce." Long considered the "sleeping lady of Pennsylvania Avenue," the FTC has in the past 2 years awakened to its consumer protection responsibilities. It now finds itself, however, often ready and willing—but lacking in adequate tools—to afford the public fullest protection against unfair and deceptive practices.

In an article that appeared earlier this year in the Georgetown Law Journal, I traced the awakening of the FTC and described some of its recent activities. I wrote:

For years the FTC seemed impracticable and immovable. From its inception in 1914, it always seemed to misplace it priorities, mire in trivia, deliberate unduly, and act ineffectively. But within weeks after an extensive inquiry by the Senate Subcommittee on Administrative Practice and Procedure and an extensive report by the ABA Committee, things began to happen: The Commission began to stir and flex its muscles.

First, the Commission began cleaning up its backlog, screening cases, setting time limits on investigations, revamping its public disclosure policies, and restricting ex parte communications on pending matters. Next came a reorganization, a shuffling of personnel, and an internal reordering of priorities. A suitable new agency—same name, but otherwise hardly recognizable—was born. On December 5, 1970, the Chairman of the Commission told a group of businessmen: "The Federal Trade Commission is alive and well, and getting more active and stronger every day."

Suddenly, the Commission and its activities were everywhere. Local consumer protection committees were initiated from San Francisco to New Orleans to Boston. More authority was delegated to the staff, and more staff was placed in field offices. The public was encouraged to participate in formulating orders. Campbell Soup, Coca-Cola, Amaco transmissions, Firestone Tires, Readers Digest—cornerstones of our modern affluent society—found themselves under the Commission's fire. If the Food and Drug Administration would not take affirmative action on cyclamates, the Commission would. If the Federal Communications Commission wasn't interested in the impact of television advertising on children, the FTC was. If no government agency would question price-setting in the oil industry, the Commission would. And if the Justice Department couldn't muster a serious concern over problems related to concentrated industries and conglomerate mergers, the Commission could.

For the first time in its history, the Commission has begun to move beyond its basically ineffective, and often disregarded, cease-and-desist orders against deceptive advertising. For example, the Commission is making efforts: (1) to order a promoter of a deceptive contest to award prizes to contestants as if the contest rules were most liberally construed; (2) to shift to advertisers the burden of proving that their advertisement is truthful, rather than requiring the Commission to affirmatively prove deception; (3) to remove from the market completely those products whose purposes are based on deceptive premises; and (4) to require disclosure in a product's future advertising of a Commission finding of deception in past advertising.

The FTC fully supports title II to S. 986 and urges its enactment as soon as possible. Administration witnesses also basically supported this title. So do the consumer and public interest groups. I am thus glad that Congress is responding so fully to the wishes of the consuming public, and I add my voice of support for this portion of the bill.

I believe that the Commerce Committee, under the able and distinguished leadership of Senator MAGNUSON, has done an outstanding job over the past few years to provide straight-forward, comprehensive legislative protection for the consuming public in many areas. I believe special recognition should, in addition, be given Senator Moss and Senator HART, the chairman and vice chairman of the Consumer Subcommittee, for their continuing efforts in behalf of this Nation's consumers. This legislation, and the many other significant and valuable consumer protection measures reported and being considered by their subcommittee, have spearheaded and will continue to spearhead the Federal Government's consumer protection activities.

Due consideration and recognition should be given to those States that have shown themselves leaders in the consumer protection field, and I am proud to count my State as groundbreaker in that regard. That is why I have joined with the distinguished Senator from California (Mr. TUNNEY) in cosponsoring an amendment to S. 986 that would allow State laws to prevail and prevent Federal preemption where State laws are stricter in their warranty protection for the public.

In this decade the exclusively intrastate consumer transaction is virtually nonexistent. Goods move across State lines—even if only from one State to a neighboring State. Manufacturers offer warranty services from their State to consumers in another State.

The end result, recognized in title I of S. 986, is that the Federal Government must set the minimum standards for consumer warranty protection. Congress has already done this in a number of areas, such as automobile safety, food and drug purity, and labeling of packages. The Federal Truth in Lending Act allows for the most creative and flexible State involvement under Federal stand-

ards: That act provides that States may enact their own truth-in-lending statutes and apply to the Federal Reserve Board for exemption from the Federal law. The standard of that law is that State statutes must be "substantially similar," which has been interpreted minimally to mean identical with the Federal statute.

States are free, however, to enact truth-in-lending laws more stringent than the Federal law. Massachusetts was granted an exemption from the Federal law and, in the regulation granting the exemption, the Federal Reserve Board recognized that the Massachusetts law is stronger than the Federal law in many respects. The General Court of Massachusetts was therefore not deterred from continuing its efforts at consumer protection by passage of a Federal law covering the same territory.

Massachusetts has indeed often enacted consumer protection laws that served as precursors for Federal legislative action. In hearings just last week on the Federal Fair Credit Billing Act, the chairman of the Senate Subcommittee on Financial Institutions gave Massachusetts special recognition. In a dialog with witnesses from the Commonwealth, Senator PROXMIRE indicated:

I understand that you are leading not only in truth in lending, but credit card liability and credit reporting now.

He observed that:

Massachusetts is really advanced on these things.

And predicted:

Some day we will beat you to something.

Mr. President, in at least some respects Massachusetts has again beat the Congress to enacting warranty protection measures. In 1970, the general court, under the sponsorship of the attorney general, established minimum warranty protection for all consumer goods and services sold within the Commonwealth. It amended the Commercial Code to provide that manufacturers cannot disclaim warranties of merchantability implied by law and cannot modify remedies for breach, including availability of consequential damages.

I might also mention that the bill that passed Congress last year to regulate credit reporting agencies was preceeded by a Massachusetts law on the subject, enacted in 1969.

Congress is still considering several bills requiring unit pricing; in 1970, Massachusetts enacted the first unit pricing bill in the United States.

And congressional action regulating the use of credit cards came a few years after Massachusetts enacted such a law.

Of course, the examples are legion and they are not restricted to the Commonwealth of Massachusetts. It thus becomes extremely important that Federal legislation recognize and respect State laws that go beyond the purviews of the Federal laws. Surely the objectives of protecting the public in the area of consumer product warranties are best served by congressional refusal to preempt stronger State laws. I therefore urge my colleagues to support this amendment, which would allow and encourage States to play a significant role in affording maximum protection to consumers.

In hearings a few weeks ago before a House subcommittee, Prof. William Willier of the National Consumer Law Center in Boston presented an excellent discussion of the need for warranty legislation. I ask unanimous consent that a portion of Professor Willier's testimony be included in the RECORD at this point.

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

EXCERPTS FROM STATEMENT OF PROF. WILLIAM F. WILLIER

Anyone who purchases a product has a right to expect, and we submit does expect, that it will do what it is supposed to do and be what it is supposed to be. These expectations are induced by those who offer the goods. Therefore, at the very least, for a Federal law to be effective it must do two things: first, it must guarantee that this expectation is in no way frustrated; second, it must guarantee that the consumer is afforded adequate rights and remedies to insure that the goods continue to be fit for their ordinary purpose for a reasonable length of time and that the consumer will be duly recompensed for any loss, economic or physical, he incurs. That there is a definite need for strong and effective Federal legislation concerning the quality of the vast number of consumer goods bought annually is self-evident.

* * * * *

Somewhere in the not too distant past the warranty of the quality of goods has virtually been stripped of its primary function—to provide meaningful protections for the consumer in the event of the purchase of faulty goods.

Today it appears that the warranty serves a twofold purpose: first, it is a disclaimer whereby the manufacturer and/or seller shields himself from possible liability for defective products, and second, the warranty is employed by manufacturers and sellers as an advertising gimmick to induce the purchase of their particular products. In neither case does the modern day warranty truly benefit the consumer.

It would appear that part of the reason behind less meaningful warranties from the consumer's standpoint has been less emphasis on quality control by the manufacturers and sellers of products. The burden and cost of quality control are shifted to the consumer and the effect of this on him is devastating. He stands less chance today of buying defect-free goods and has less protections afforded him to seek a remedy for any economic loss or physical injury resulting from the purchase of those defective goods. Thus, the end product of many purchases in today's market-place is inconvenience, frustration, economic loss and/or physical injury.

There are those who argue that it is a basic commercial right for buyer and seller to bargain freely for the warranty protection which is to accompany the sale of goods or services. Therefore, any law which would impost basic warranty protections to accompany a sale is violative of this basic contract right. And although in theory this may sound logical and appealing, it has no basis in the reality of the marketplace.

I would ask when was the last time anyone present freely bargained, or even had the opportunity to meaningfully do so, for the type of warranty they received. The great majority of warranties present in today's marketplace are "boiler plate", prepackaged warranties presented on a take it or leave it basis. Nor is it possible to shop around for better bargains in warranties because the principal differences distinguishing warranties is the language, not the substance. Competition in the area of warranties is almost non-existent. There are no real differences in automobile warranties. Nor in television warranties. The manufacturer through design or accident have decided what kind of a warranty will be offered. * * *

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from California (Mr. TUNNEY).

The amendment was agreed to.

AMENDMENT NO. 585

Mr. PASTORE. Mr. President, I call up amendment No. 585 and ask that it be stated. It is a very short amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 29, line 22, before the period insert a comma and the following: "except that the Commission may prescribe rules pursuant to section 553 of title 5, United States Code, that the term of a warranty or service contract shall be extended to correspond with any period during which the purchaser is deprived of the use of a product by reason of a defect or malfunction".

Mr. PASTORE. Mr. President, the Senator from Kentucky (Mr. COOK) has a modifying amendment, which is amendment No. 603. It is also a very short amendment. I am perfectly willing to accept it as a modification of my amendment.

The PRESIDING OFFICER. The modification will be stated.

The legislative clerk read as follows:

On page 1, line 5, following the word "period," insert the following: "in excess of a reasonable period (not less than ten days)."

Mr. PASTORE. Mr. President, every day American consumers endure the exasperating, the nerve-wracking business of trying to get timely repairs to their new products under warranty. And every day these consumers endure frustration.

The American family buys a new car—they need it, and they need it working.

They buy a new clock-radio—they need it, and they need it working.

Or a new refrigerator—they need it, and they need it working.

They have a warranty or a service contract, but getting the product repaired in a reasonable time is not easy.

Millions of Americans have gone through that scenario with auto dealers which begins with driving into the service department.

The service manager approaches, with his clipboard, and you tell him that the car is under warranty, but it is malfunctioning.

He takes some information from you including your telephone number, jots a few words for the mechanic, and listens to your plea for return of your car as soon as possible.

"We'll call you," he says, and so you make your way to work or home as best you can, and you wait.

Late in the afternoon, when you have not heard, you call, and someone says the car will be ready, and so you make your way back to the dealer.

There is the car, parked in the lot, with the work ticket still on it—but with the work not yet done.

You go to the service manager, and, when you find him, you also find out that they could not get to your car today. You go home as best you can and you hope that you will get your car tomorrow.

But you also hope that when you get your car back the work will be done—and done properly. Congressional hearings on auto-repair practices overflow with evidence showing that consumers are plagued with poorly performed repair work.

With other new products, the consumer often is told that a repair part is not available. He may wait weeks before he has the use of his purchase.

We recognize that this is a vast problem and so the pending bill, S. 986, establishes—as a minimum duty—the performance of a warranty's coverage "within a reasonable time."

In the disclosure requirements in section 102(a) we included among the items which the Commission may determine should be part of a written warranty, No. 9, which would require the warrantor to denote "the period of time within which, after notice of malfunction or defect, the warrantor will under normal circumstances repair, replace, or otherwise perform any obligations under the warranty."

The Senate should take further action in this area concerning the life of a warranty and a service contract. We should insure that warranties and service contracts are extended on a day-for-day basis, for each day that the purchaser is denied the use of the product because it is defective or malfunctioning.

The extension would not be granted, of course, if the warrantor, or the supplier of the service contract, makes an equivalent product available for the use of the purchaser.

No action we can take will bring about more realistic and true adherences to the warrantor's duty "to repair or replace any malfunctioning or defective warranted consumer product within a reasonable time," as this bill provides, than to extend the warranty or service contract for the days a consumer does not have the use of his product.

Reasonable time, as the committee points out, is hard to define. On page 16 of the report, the committee said:

> The concept of "reasonable time" can not be precisely defined. Reasonable time will vary according to the customary time for repair of similar consumer products, the location of the consumer, the consumer's day-to-day needs for the product and other factors.

We also know, and we should accept, the fact that there is a human factor involved. If there are two cars up for repair, and one involves a profitable overhaul but the other involves a stubborn malfunction covered by a warranty, profit is very likely to come before principle.

Including warranty extension in S. 986 would remedy this problem because it carries with it the incentive to perform under the warranty in a professional manner.

The 6-week wait for parts, and the repeat trips to the dealer, the dispatching of repairmen to your home who are not competent to repair, will become less frequent.

The warranty and the service contract—to the consumer—is a guarantee of the use of a product—a guarantee of a minimum period of usefulness.

If the consumer gets a full 1-year warranty or service contract, he believes he is going to get at least a full year's use of the product fault free.

If the product is in the repair shop for 3 or 4 weeks, and if an equivalent product is not made available to him, he has lost its use for the period of time it is not in his possession.

Justice requires that his warranty or his service contract be extended. Justice demands that the warranty of the service contract cover an actual year of possession—not a mere calendar year.

When the consumer picks up the repaired toaster, or clock-radio, or when once again the family's food can safely be stored in the refrigerator or cooked on the stove, the consumer should be handed a new warranty, or a new service contract, which expires on a date that takes into account the number of days the consumer has been denied the use of the product.

We have a bill which meets several consumer needs.

This amendment would improve the bill by extending the term of warranties and service contracts.

This amendment would help also to restore something that badly needs restoring—the faith of the American consumer that government is capable of acting equitably—that American government can work and does work on behalf of the people.

My amendment is a very simple amendment. All that it does is to give authority to the Commission to formulate rules and regulations so that if a person is deprived of his property for a time because of a breach of warranty, that time shall be added to the term of the warranty itself. According to the amendment suggested as the modification, it would be for not less than 10 days.

I understand, Mr. President, that the Senator from Washington is willing to accept the amendment.

Mr. MAGNUSON. Mr. President as with the prior amendment, I think this is a good perfecting amendment. As far as I know, the committee is willing to accept it. The Senator from Kentucky is also willing to accept it. Therefore, I would like the matter to be put to a vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from Rhode Island.

The amendment was agreed to.

ORDER OF BUSINESS

Mr. MAGNUSON. Mr. President, the bill, as I understand it, is open to further amendment.

The PRESIDING OFFICER. The Senator is correct. The bill is open to further amendment. Is there further amendment?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MAGNUSON. 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. MOSS. Mr. President, by referring to the RECORD on the debate held on this bill on Friday last I see that the Senator from Nebraska has raised one or two questions about the bill to which I would like to respond at this time.

On page 17702 of the RECORD of Friday, November 5, 1971, the Senator from Nebraska (Mr. HRUSKA) asked the Senator from Kentucky (Mr. COOK) whether the provisions of S. 3201 of last year bear very little or any resemblance to the provisions of title II of S. 986. The Senator from Kentucky replied that there was very little resemblance.

Title II of S. 986 is quite similar to title I of S. 3201. First, section 101 of S. 3201 is identical to sections 201 and 205 of title II of S. 986. Second, section 102 of S. 3201 is identical to section 201 of S. 986. Third, section 103 of S. 3201 is almost identical to section 203 of S. 986.

However, section 203 has been narrowed to allow the Federal Trade Commission to bring action only after a final cease and desist order has been issued. Section 103 of S. 3201 did not so limit the Commission's authority to seek specific consumer redress.

Fourth, the second part of section 103 of S. 3201 is substantially the same as section 202 of S. 986. Section 202, however, does not require the Commission to initiate civil actions—"may" has replaced "shall"—and does not require a public hearing if the Commission decides to compromise, litigate, or settle any civil penalty.

Fifth, section 104 of S. 3201 is substantially the same as section 204 of S. 986.

Sixth, section 105 of S. 3201 is similar to section 102 of S. 986. Both sections provide that rules promulgated by the Federal Trade Commission would have the force and effect of law. Both sections permit the Commission to limit any cross examination as to scope or subject matter. Both provide for preenforcement judiciary review based upon substantial evidence of the record. However, section 206 of S. 986 spells out in more detail the procedures to be followed by the Commission in promulgating "legislative" rules.

Seventh, title 2 of S. 986 contains two sections which were not included in S. 3201, title 1. These sections, however, are not controversial and relate only to the power of the Commission to issue writs of mandamus commanding persons to comply with the provisions of the Federal Trade Commission Act and authorizing the Commission to enforce its orders to submit information to the Commission.

Therefore, the 400-page hearing record that the Committee on the Judiciary compiled on S. 3201 in the 91st Congress indicates that the Judiciary Committee has already considered much of the subject matter of title II of S. 986. In addition, the Committee on Commerce has held 12 days of hearings to consider the subject matter of title II of S. 986. Is

it any wonder that there are some of us who look upon the request to send title II back to the Committee on the Judiciary as nothing but a delaying tactic to forestall the conferring of important powers on the Federal Trade Commission—powers that would enable the Federal Trade Commission to become a true protecter of the American consumer.

Mr. President, I would like to point out that a detailed comparison has been made by the Federal Trade Commission for the two sections we are talking about, those that were considered in the 91st Congress in S. 3201, and title II of S. 986, which is now before us in the bill which is pending. I ask unanimous consent that the comparison may be printed in the RECORD at this point.

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

PREFATORY COMMENT

It is important to note that this comparison between S. 986, 92d Congress and S. 3201, 91st Congress, deals only with Title II of S. 986 and Title I of S. 3201, the counterpart title.

Title II ("Enforcement of Consumer Interests") of S. 3201 is omitted from S. 986 and, therefore, no comparison can be made. A brief summary of Title II of S. 3201, which follows, is here included, however, to indicate the breadth of scope of S. 3201 over S. 986:

Title II enumerates some sixteen "unfair consumer practices" and provides for the expansion of this category by trade regulation rules to be promulgated by the Federal Trade Commission as may be necessary from time to time. Among those included are "bait and switch," unnecessary or needlessly expensive repairs to appliances, deceptive "unconditional guarantees," bogus "free home trial" offers, offering as "new" goods which are not new, misrepresentations of standards or quality, deceptive "fire" or "close out" sales, fraudulent use of trademarks, failure to refund deposits or failure to deliver goods, overexaggerated "puffing," fraudulent substitution of goods materially different from those ordered, dishonest business opportunity schemes offered to consumers, offering but not furnishing free gifts, etc., to induce sales, deceptive referral selling, sales by coercion or harassment, etc.

Such unfair consumer practices would be declared unlawful and violations would be enforced by the Attorney General. Civil penalties to a maximum of $10,000 and criminal sanctions of fines up to $10,000 or imprisonment not to exceed one year are authorized. The Attorney General would be empowered to seek redress of consumer injuries by court orders which could include:

(1) cease and desist orders;
(2) damages to aggrieved consumers;
(3) refund of purchase price;
(4) restitution;
(5) repair or replacement of unsatisfactory goods;
(6) proper serving.
(7) reform or rescinding of transactions;
(8) public notification of court order; and
(9) civil penalty in addition to the foregoing.

Title II of S. 3201 also authorizes private consumer suits in the district courts based on practices which have been held unlawful in finally adjudicated cases brought by the Attorney General or the Federal Trade Commission where the transactions involve not more than $10.00. Judgment in favor of the Government enjoining such consumer practices would be prima facie evidence against the defendant in subsequent private actions based on the same acts. In cases involving more than $10.00, class action suits would be authorized provided the Federal Trade Commission had been given 90-days notice of the practices involved and the Federal Trade Commission and the Attorney General had both failed to commence an action. In the event that the Attorney General or the Federal Trade Commission should bring an action involving the same matter which is the subject of such a consumer class action, Title II would permit consolidation of the private class action with the Government action to eliminate multiplicity of actions based on the same practice.

S. 986 contains no provisions which are comparable to the foregoing, as it deals exclusively with amendments to the Federal Trade Commission Act and consumer product warranties.

COMPARISON BETWEEN TITLE II OF S. 986, 92D CONGRESS (FEDERAL TRADE COMMISSION IMPROVEMENTS ACT OF 1971) AND TITLE I OF S. 3201, 91ST CONGRESS (CONSUMER PROTECTION ACT OF 1970)

S. 986, 92D CONGRESS	S. 3201, 91ST CONGRESS	COMMENTS
TITLE II—FEDERAL TRADE COMMISSION IMPROVEMENTS	TITLE I—DECEPTIVE SALES AFFECTING COMMERCE	
	EXPANDED FEDERAL TRADE COMMISSION JURISDICTION	
SEC. 201. Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is amended by striking out the words "in commerce" wherever they appear and inserting in lieu thereof "affecting commerce".	SEC. 101. Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is amended by striking out the words "in commerce" wherever they appear and inserting in lieu thereof "affecting commerce".	Identical.
SEC. 202. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by inserting after paragraph (6) thereof the following new paragraph: "(7) The Commission may initiate civil actions in the district courts of the United States against persons, partnerships, or corporations engaged in any act or practice which is unfair or deceptive to a consumer and is prohibited by subsection (a)(1) of this section with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair and deceptive and is prohibited by subsection (a)(1) of this section, to obtain a civil penalty of not more than $10,000 for each such violation. The Commission may compromise, mitigate, or settle any action for a civil penalty if such settlement is accompanied by a public statement of its reasons and approved by the court.	SEC. 103. * * * "(C) The Commission shall initiate civil actions in the district courts of the United States against persons, partnerships, or corporations knowingly engaged in any act or practice which is an unfair consumer practice under section 201 of the Consumer Protection Act of 1970 in addition to any other action ordered under this section, to obtain a civil penalty of not more than $10,000 for each such violation. In seeking such penalty, the Commission shall give consideration to the appropriateness of the penalty, to the size of the business of the person charged, to the gravity of the violation, and to the history of previous violations. The Commission may compromise, mitigate or settle any civil penalty if that action is accompanied by a public statement of its reasons following a public hearing at which interested parties may be heard."	These provisions differ in language but are comparable except that S. 3201 provides that the penalty of not more than $10,000 may be ordered in addition to damages, refund of purchase price, reformation or recession of contract, repair or replacement, servicing, and public notification of violation. S. 3201 requires a public hearing before the Commission may settle the penalty.
SEC. 203. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by inserting after paragraph (7) as added by section 202 of this Act the following new paragraph: "(8) After an order of the Commission to cease and desist from engaging in acts or practices which are unfair or deceptive to consumers and proscribed by section 5(a)(1) of this Act has become final as provided in subsection (g) of this section, the Commission, by any of its attorneys designated by it for such purpose, may institute civil actions in the district courts of the United States to obtain such relief as the court shall find	CONSUMER REDRESS AND CIVIL PENALTIES SEC. 103. Section 5(a)(6) of the Federal Trade Commission Act (15 U.S.C. 45(a)(6)) is amended by inserting "(A)" after the paragraph designation (6) therein, and by adding at the end thereof the following: "(B) The Commission is further empowered and directed to institute civil actions in the District Court of the United States against persons, partnerships, or corporations engaged in, or engaging in, any act or practice which is unfair or deceptive to a consumer and is prohibited by subsection (a)(1) of this section, to obtain such relief as the court shall find necessary to redress injury	S. 3201 would allow the Commission to institute district court action at any time to redress an injury to consumers, but S. 986 would authorize such action only after the Commission has issued a cease and desist order which has become final.

COMPARISON BETWEEN TITLE II OF S. 986, 92D CONGRESS (FEDERAL TRADE COMMISSION IMPROVEMENTS ACT OF 1971) AND TITLE I OF S. 3201, 91ST CONGRESS (CONSUMER PROTECTION ACT OF 1970)—Continued

S. 986, 92D CONGRESS	S. 3201, 91ST CONGRESS	COMMENTS
necessary to redress injury to consumers caused by the acts or practices which were the subject of the cease and desist order, including but not limited to, recision or reformation of contracts, the refund of money or return of property, public notification of the violation, and the payment of damages."	caused by such acts or practices to consumers, including, but not limited to, payment of damages, refund of money or return of property, restitution, reformation or recision of contracts, repair or replacement of goods, proper servicing, and public notification of violation.	
SEC. 204. Section 5(1) of the Federal Trade Commission Act (15 U.S.C. 4(1)) is amended by striking subsection (1) and inserting in lieu thereof the following new paragraph: "(1) Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States or the Commission in its own name by any of its attorneys designated by it for such purpose. Each separate violation of such an order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the Commission each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission."	PENALTY FOR VIOLATION OF CEASE AND DESIST ORDER SEC. 104. Section 5(1) of the Federal Trade Commission Act (15 U.S.C. 45(1)) is amended to read as follows: "(1) Any person, partnership, or corporation who violates an order of the Commission to cease and desist, after such order has become final and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States or the Commission. Each separate violation of such an order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the Commission each day of continuance of such failure or neglect shall be deemed a separate offense."	These provisions of the two bills are the same except: (a) S. 986 specifically authorizes the Commission to institute penalty proceedings by its own attorneys in the name of the Commission. (b) S. 986 spells out the authority of the court which is only implied in S. 3201, to issue mandatory injunctions and other equitable relief to enforce the Commission's final orders.
SEC. 205. Section 6 of the Federal Trade Commission Act (15 U.S.C. 46) is amended by striking out the words "in commerce" wherever they appear and inserting in lieu thereof "in or whose business affects commerce".		This provision removing the interstate commerce limitation on the Commission's investigative and reporting authority is merely included as a complement of section 201 of the bill—its omission from S. 3201 was probably a drafting oversight.
SEC. 206. Section 6(g) of the Federal Trade Commission Act (15 U.S.C. 46(g)) is amended by striking subsection (g) and inserting in lieu thereof the following: "(g) From time to time to classify corporations and to make rules and regulations for the purposes of carrying out the provisions of this Act. Such rules and regulations as are specifically provided for hereinafter shall be promulgated in the following manner and shall have the stated substantive force and effect: "(1) The Commission is authorized to issue procedural rules to carry out the provisions of this Act. Any such rule shall be promulgated in accordance with section 553 of title 5 of the United States Code and without regard to the exemption in subsection (b) thereof for rules of agency procedure or practice.	SEC. 105. Section 6(g) of the Federal Trade Commission Act (15 U.S.C. 46(g)) is amended to read as follows: "(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.	While S. 3201 simply reenacts existing law which permits procedural rules to be promulgated informably under Sec. 553 of the Administrative Procedure Act, S. 986 states that procedural rules will be made under Sec. 553, but negates the portion of Sec. 553 which provides that notice of such rules need not be published in the Federal Register, nor need interested persons be given an opportunity to participate in rulemaking. S. 986 thus requires both such notice and the opportunity for participation by interested persons.
"(2) The Commission is hereby authorized to issue legislative rules defining with specificity acts or practices which are unfair or deceptive to consumers and which section 5(a)(1) of this Act proscribes. "(i) When issuing legislative rules the Commission shall (a) issue an order of proposed rulemaking stating with particularity the reason for the rule; (b) allow interested persons at least thirty days to comment on the proposed rule in writing or at an agency hearing and make all such comments publicly available; (c) provide the Commission staff and other persons an opportunity to respond within a designated period of time to comments initially received and make such responses publicly available; (d) if on the basis of the record compiled in accordance with subparagraphs (a), (b), and (c) there is a disparity of views concerning material facts upon which the proposed rule is based, provide for an agency hearing in accordance with sections 556 and 557 of title 5 of the United States Code at which the Commission may permit cross-examination (limited as to scope or subject matter) by one or more parties as representatives of all parties having similar interests; (e) pro-	Whenever it appears to the Commission to be in the public interest, the Commission shall promulgate trade regulation rules defining unfair or deceptive acts or practices in a manner sufficiently specific to reasonably inform affected parties of the acts or practices prohibited. Such rules shall be promulgated in accordance with section 553 of title 5, United States Code, after reasonable notice, an opportunity for interested persons to participate in the rulemaking through submission of written data, views, or arguments and, if requested, the Commission shall hold a hearing in which interested persons shall have reasonable opportunity to present the same orally in an appropriate manner. The Commission shall permit cross-examination, limited as to scope or subject matter, by one or more parties as representative of all parties having similar interests where it determines that the granting of such cross-examination is not inappropriate. The testimony in any such hearing shall be reduced to writing, shall be filed in the office of the Commission, and together with written submissions shall constitute the record. Such record shall be open to public inspection. After consideration of all relevant	S. 3201 calls for the informal procedures of Sec. 553 of the APA for substantive rulemaking. By contrast S. 986 requires the most formal rulemaking procedures including in most instances an agency hearing pursuant to Sections 556 and 557 of the APA, elaborate cross-examination, etc. for substantive rules which are designated as "legislative rules".

COMPARISON BETWEEN TITLE II OF S. 986, 92D CONGRESS (FEDERAL TRADE COMMISSION IMPROVEMENTS ACT OF 1971) AND TITLE I OF S. 3201, 91ST CONGRESS (CONSUMER PROTECTION ACT OF 1970)—Continued

S. 986, 92D CONGRESS	S. 3201, 91ST CONGRESS	COMMENTS
mulgate a final rule based on the record compiled in accordance with subparagraphs (b), (c), and, if applicable, subparagraph (d) of this paragraph. "(ii) Following the final promulgation by the Commission of any legislative rule that rule and a brief in its support based upon the Commission proceedings shall be referred to the House of Representatives and the Senate. If within sixty calendar days (which sixty days, however, shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than thirty calendar days to a day certain) from the date of referral the Senate or the House of Representatives by resolution do not disapprove the rule, it shall become effective.	matter presented upon such record, the Commission shall incorporate in any rule adopted a concise general statement of its basis and purpose.	In addition to the formal rulemaking procedure required by S. 986, it calls for a "Reorganization Plan" type of procedure whereby substantive rules which have been finally promulgated are referred to the House and Senate where for 60 days they may be disapproved, and become effective if not disapproved. S. 3201 has no provision for congressional review.
"(iii) Following the final promulgation by the Commission of any legislative rule, any interested person may, at any time prior to the tenth day after the expiration of the period for review as provided in subparagraph (ii) of this paragraph, file a petition for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Chairman of the Commission or the officer designated by him for that purpose. The Commission shall file in the court the record of the proceedings on which the Commission based its rule, as provided in section 2112 of title 28 of the United States Code. "(iv) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there was no opportunity to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Commission in a hearing or in such other manner, and upon such terms and conditions, as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file any such modified or new findings, and its recommendation, if any, for the modification or setting aside of its original determination, with the return of such additional evidence. Upon the filing of the petition, the court shall have jurisdiction to review the determination of the Commission in accordance with chapter 7 of title 5 of the United States Code, including that provision requiring the rule to be supported by substantial evidence on the basis of the entire record before the court (including any additional evidence adduced). "(v) Any legislative rule which has become final shall have prospective application only. "(vi) Nothing in this Act shall be deemed to foreclose judicial review of a legislative rule when the Commission issues a final order based upon such rule. "(3) Any person seeking judicial review of a rule may obtain such review in the United States Court of Appeals for the District of Columbia Circuit, or any circuit where such person resides or has his principal place of business."		S. 986, but not S. 3201, permits petition for a judicial review of any legislative rule by "any interested person", such review to be made by one of the United States Circuit Courts of Appeal.
	When any such trade regulation rule is promulgated and becomes final, a subsequent violation thereof shall constitute an unfair or deceptive act or practice in violation of section 5(a)(1) of this Act. Such rules and regulations shall be reviewable in the Court of Appeals for the District of Columbia in accordance with chapter 7 of title 5, United States Code. In addition the reviewing court shall hold unlawful and set aside agency action, findings, and conclusions found to be unsupported by substantial evidence upon the record as herein defined.	S. 986 has no similar provision because its legislative rules are defined as acts or practices which are prohibited by Sec. 5(a)(1) of the FTC Act. Post-violation appeals of legislative rules would therefore be subject to the review procedures of Section 5(b) of the FTC Act.

COMPARISON BETWEEN TITLE II OF S. 986, 92D CONGRESS (FEDERAL TRADE COMMISSION IMPROVEMENTS ACT OF 1971) AND TITLE I OF S. 3201, 91ST CONGRESS (CONSUMER PROTECTION ACT OF 1970)—Continued

S. 986, 92D CONGRESS	S. 3201, 91ST CONGRESS	COMMENTS
SEC. 207. Section 9 of the Federal Trade Commission Act (15 U.S.C. 49) is amended by— (a) deleting the word "corporation" in the first sentence of the first unnumbered paragraph and inserting in lieu thereof the word "party". (b) inserting after the word "Commission" in the second sentence of the second unnumbered paragraph the phrase "acting through any of its attorneys designated by it for such purpose"; (c) deleting the fourth unnumbered paragraph and inserting in lieu thereof the following: "Upon application of the Attorney General of the United States or the Commission, acting through any of its attorneys designated by it for such purpose, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the Commission made in pursuance thereof."		This is a technical amendment made in S. 986 but not S. 3201 to insure that the Commission shall have right of access to documentary evidence of noncorporate as well as corporate parties. These two amendments to Sec. 9 of the FTC Act are necessary to carry out the overall concept of S. 986 that Commission attorneys should have direct access to the courts without reliance upon the Attorney General. No comparable provisions are contained in S. 3201.
SEC. 208. Section 10 of the Federal Trade Commission Act (15 U.S.C. 50) is amended by deleting the third unnumbered paragraph and inserting in lieu thereof the following: "If any corporation required by this part shall fail to do so within the time fixed by the Commission for listing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States and shall be recoverable in a civil suit brought by the United States or by the Commission, acting through any of its attorneys designated by it for such purpose, in the district where the corporation has its principal office in any district in which it shall do business."		This section too of S. 986 makes one of the amendments needed to give the Commission's attorneys direct access to the courts.
SEC. 209. Section 12 of the Federal Trade Commission Act (15 U.S.C. 52) is amended by striking out the words "in commerce" wherever they appear and inserting in lieu thereof "in or having an effect upon commerce."		This is one of the several amendments needed to remove the interstate commerce restriction on the Commission's jurisdiction which was apparently omitted by oversight from S. 3201.
	PRELIMINARY INJUNCTION	
SEC. 210. Section 13 of the Federal Trade Commission Act (15 U.S.C. 53) is amended by redesignating "(b)" as "(c)" and inserting the following new subsection:	SEC. 102. Section 13 of the Federal Trade Commission Act (15 U.S.C. 53(a)) is amended by redesignating subsection (b) and all references thereto as subsection (c) and by inserting after subsection (a) thereof the following new subsection (b) as follows:	Except as will be explained, these provisions authorizing pendente lite restraints are the same. S. 986 specifically provides for restraining orders whereas S. 3201 does not. As the authority to grant preliminary injunctions implies discretion to grant restraining orders, there is no difference in practical effect. S. 986 contains a proviso which requires the court to set a time limit within which it will dissolve any temporary restraint which it orders in the event the Commission fails to file a complaint under § 5 of the FTC Act. S. 3201 has no such safeguard to prevent undue delay by the Commission in proceeding after the restraint order is issued.
"(b) Whenever the Commission has reason to believe— "(1) that any person, partnership, or corporation is engaged in, or is about to engage in, any act or practice which is unfair or deceptive to a consumer, and is prohibited by section 5, and	"(b) Whenever the Commission has reason to believe— "(1) that any person, partnership, or corporation is engaged in, or is about to engage in, any act or practice which is unfair or deceptive to a consumer and is prohibited by section 5, and	
"(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 5, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission made thereon has become final within the meaning of section 5, would be to the interest of the public—the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond under the same conditions and principles as injunctive relief against conduct or threatened conduct that will cause loss or damage is granted by courts of equity: *Provided, however,* That if a complaint un-	"(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 5, and until such complaint by the Commission or set aside by the court on review, or the order of the Commission made thereon has become final within the meaning of section 5, would be to the interest of the public—the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon proper showing a preliminary injunction may be granted without bond under the same conditions and principles as injunctive relief against conduct or threatened conduct that will cause loss or damage is granted by courts of equity. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business."	

COMPARISON BETWEEN TITLE II OF S. 986, 92D CONGRESS (FEDERAL TRADE COMMISSION IMPROVEMENTS ACT OF 1971) AND TITLE I OF S. 3201, 91ST CONGRESS (CONSUMER PROTECTION ACT OF 1970)—Continued

S. 986, 92D CONGRESS	S. 3201, 91ST CONGRESS	COMMENTS
der section 5 is not filed within such period as may be specified by the court after the issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business.' SEC. 211. If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Act and the applicability thereof to other persons and circumstances shall not be affected thereby.		S. 3201 omits this routine standards "separability" provision.
	STATE LAWS NOT AFFECTED SEC. 106. The amendments made by this title shall not affect the jurisdiction of any court or agency of any State or the application of the law of any State with respect to any matter over which the Federal Trade Commission has jurisdiction by reason of such amendment insofar as such jurisdiction or the application of such law does not conflict with the provisions of the Federal Trade Commission Act, regulations thereunder, or the exercise of any authority by the Commission under such Act.	S. 986 has no "preemption" provision. As the preemption provision of S. 3201 is simply a restatement of the Federal Supremacy Doctrine as set forth by the Supreme Court, the inclusion or omission of this section would have no legal consequences.

Mr. MOSS. Mr. President, there is one other matter I would like to speak about briefly at this time. It has to do again with the comparison of these two titles.

Mr. COOK. Mr. President, would the Senator yield?

Mr. MOSS. I yield.

Mr. COOK. Does the Senator have any information as to when the detailed comparison which has been submitted for the record was made by the Federal Trade Commission? I have asked the minority staff and they do not have any knowledge of it and they do not have a copy of it. I wonder when the comparison was made and whether it was made for the whole committee so that it will be available for the membership.

Mr. MOSS. I am advised by the staff that this request was sent to the Federal Trade Commission on Friday last and the comparison was just delivered this morning at approximately 10:30 a.m.

Mr. COOK. Are other copies available so that other members of the committee might have it at the earliest convenient time?

Mr. MOSS. Yes, indeed. I will see that copies are made available at once to the Senator and other Senators who would like to look at this comparison. That is certainly a reasonable request. We should have done it immediately but the material just came in.

The other matter to which I wish to call attention has to do with the statement that was made on Friday last by the Senator from Nebraska having to do with whether or not the Federal Trade Commission should be divided into a Federal Trade Practices Agency and a separate Federal Antitrust Board.

On page 46 of the hearing record on S. 986, I specifically referred to the Ash Council's proposal to separate the Federal Trade Commission into a Federal Trade Practices Agency and separate Federal Antitrust Board. Chairman Kirkpatrick responded to the report by saying that he believed that:

Having an antitrust and consumer protection law enforcement responsibility under one roof is important in the overall protection of the American consumer's interest.

I responded by saying:

Would your inclination to support the existing framework of the Commission with the added enforcement tools provided in this bill, enable you to carry out that function better than if the two agencies were created?

Mr. Kirkpatrick responded by saying "yes," and the Senate Commerce Committee accepted his recommendation for improving the Federal Trade Commission rather than dividing it into a Federal Trade Practices Agency and a separate Antitrust Board.

That is the reason for adding the additional tools that are provided in title II of the bill that is before us.

I wanted to point out the fact that, in response to the testimony of the Chairman of the Federal Trade Commission, the committee was persuaded that we ought to take this direction.

PRIVILEGE OF THE FLOOR

Mr. MAGNUSON. Mr. President, I ask unanimous consent that the committee be allowed to have an extra member of the staff present on the floor during the debate of this bill.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 586

Mr. HRUSKA. Mr. President, I call up my amendment No. 586 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 24, strike out line 5 and insert in lieu thereof the following: "ranties and Consumer Remedies Study Act".

Beginning with line 20, page 42, strike out all of TITLE II—FEDERAL TRADE COMMISSION IMPROVEMENTS to and including all of page 52, and in lieu thereof insert the following:

"TITLE II—CONSUMER REMEDIES STUDY

"SEC. 201. (a) The Director of the Office of Consumer Affairs, in consultation with and with the assistance of the Attorney General of the United States, is authorized to contract with the National Institute for Consumer Justice (hereafter referred to as the 'Institute'), a nonprofit corporation of the District of Columbia, to conduct a study or studies of means for improving the grievance-solving mechanisms and legal remedies of consumers, including, but not limited to the following:

"(1) methods of preventing consumer grievances from arising and of improving seller-buyer and debtor-creditor relationships;

"(2) existing and potential voluntary settlement procedures, including arbitration; and

"(3) the desirability of establishment of a nationwide system of small claims tribunals.

"(b) The Director of the Office of Consumer Affairs shall, within eighteen months of the enactment of this Act, submit a final report on such study or studies to the President and to Congress along with its recommendations, if any, for legislation.

"SEC. 202. (a) The Institute and each recipient of a contract from the Institute under this title shall keep such records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and

other records as will facilitate an effective audit.

"(b) The Comptroller General of the United States, or any of his duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of any funds provided under this title as are pertinent to the disposition and use of such funds.

"SEC. 203. There is authorized to be appropriated $500,000 to carry out the provisions of this title.

"SEPARABILITY

"SEC. 204. If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Act and the applicability thereof to other persons and circumstances shall not be affected thereby."

The PRESIDING OFFICER. Does the Senator from Nebraska ask unanimous consent that the two amendments be considered en bloc?

Mr. HRUSKA. Mr. President, I did not know that there were two subjects in the amendment.

The PRESIDING OFFICER. There are two parts to the amendment.

Mr. HRUSKA. I do ask unanimous consent at this time that they be considered en bloc.

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

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

Mr. HRUSKA. I yield.

Mr. MAGNUSON. As I understand, the amendment strikes out all of title II; is that correct?

Mr. HRUSKA. That is a part of the amendment.

Mr. MAGNUSON. A part of the amendment; yes.

Mr. HRUSKA. The other part of the amendment, Mr. President, as the text clearly shows, is that a new title II would be inserted. That new title II would be entitled "Consumer Remedies Study."

Section 201 of that "Consumer Remedies Study" would read as follows:

(a) The Director of the Office of Consumer Affairs, in consultation with and with the assistance of the Attorney General of the United States, is authorized to contract with the National Institute for Consumer Justice (hereafter referred to as the 'Institute'), a nonprofit corporation of The District of Columbia, to conduct a study or studies of means for improving the grievance-solving mechanisms and legal remedies of consumers, including, but not limited to the following:

"(1) methods of preventing consumer grievances from arising and of improving seller-buyer and debtor-creditor relationships;

"(2) existing and potential voluntary settlement procedures, including arbitration; and

"(3) the desirability of establishment of a nationwide system of small claims tribunals.

"(b) The Director of the Office of Consumer Affairs shall, within eighteen months of the enactment of this Act, submit a final report on such study or studies to the President and to Congress along with its recommendations, if any, for legislation.

Section 202 of title II as proposed in the amendment reads as follows:

(a) The Institute and each recipient of a contract from the Institute under this title shall keep such records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and other records as will facilitate an effective audit.

(b) The Comptroller General of the United States, or any of his duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of any funds provided under this title as are pertinent to the disposition and use of such funds.

Section 203 reads:

There is authorized to be appropriated $500,000 to carry out the provisions of this title.

Section 204 is entitled "Separability," and reads as follows:

If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

So the answer to the question of the Senator from Washington is that a new title II would be inserted in place of the present title II which is in the bill as reported by the committee.

Mr. MAGNUSON. As I understand it, should the Senator's amendment not be adopted, that would not prejudice the right of anyone to introduce another title.

Mr. HRUSKA. That is correct. As a matter of fact, another amendment is pending——

Mr. MAGNUSON. For a title III.

Mr. HRUSKA (continuing). In which an effort is made to strike section 203 and to insert the text of the language I have just read in the bill as title III.

Mr. MAGNUSON. One other question to clarify this: Is there not a National Institute for Consumer Justice now in existence?

Mr. HRUSKA. There is, and it is a nonprofit corporation.

Mr. MAGNUSON. Appointed by the President?

Mr. HRUSKA. And it is resident in the District of Columbia. That is correct.

Mr. MAGNUSON. The next question: When the Senator refers to the Director of Consumer Affairs, we are talking about the Consumer Affairs Division in the White House. Is that correct?

Mr. HRUSKA. That is correct. That is my understanding.

Mr. MAGNUSON. Mrs. Knauer.

Mr. HRUSKA. She is the head of it. She is the Director of the Office of Consumer Affairs.

Mr. President, we all are aware of the too frequent facts of commercial life that consumers do not always get what they have paid for and that product guarantees are sometimes written in language that is hard to understand, and sometimes they are not exactly all they purport to be. Warranty obligations, furthermore, are disregarded; no means for implementing them are provided; with the result that they totally break down as a means of securing for the consumer the type of service and the type of quality for which he pays and which he expects to have delivered.

That is why I am pleased, in association with many Members of the Senate, that the Committee on Commerce has reported a bill, S. 986, which has title I, which deals with this subject in a number of worthwhile features that would be important studies toward solving some of these problems in the field of substantive law pertaining to warranties—warranties of all kinds, whether they be total or partial, express warranties or implied warranties.

Of course, that is what title I purports to do. It would set forth minimum disclosure standards for written warranties on consumer products costing more than $5 each. It would define Federal content standards for full warranties. It would provide consumer remedies for the breach of written warranty and written service contract obligations.

In title II, however, it seeks to expand and improve on the Federal Trade Commission's ability to deal with unfair consumer activity; and that is the title in the bill which, of course, will be discussed at length, because it is objectionable for reasons that I will detail very shortly.

Mr. President, I strongly support the goal of title I of S. 986. It is an area in which the Committee on Commerce has achieved a good deal of expertise. It is a subject matter which belongs in that committee. It is a subject matter that has received detailed study, much testimony, and much evidence as to justifying the provisions that find their way into title I of S. 986.

However, when we get to title II, we get into a different situation. There we get into a situation that, if title II is enacted as reported by the committee, many more problems would be created than would be solved. It has language that is extremely vague and does not define those acts or practices upon which recovery may be had when it comes to provisions of section 203, which creates legislatively a consumer class action in the courts.

Instead of having a definition of those acts and practices upon which recovery may be had, recovery would be based on the rather indefinite standards of acts or practices "unfair and deceptive to consumers." It does not establish any statute of limitations on actions based on those unfair or deceptive acts. It does not identify the real parties in interest who would be entitled to recover in such actions, and it does not specify how a final judgment would be apportioned. This provision fails to provide for the effect on judgments rendered by the Federal Trade Commission in private litigation where cases are brought after the Government's action.

These are a few of the objections which lie in the field of title II, and it is for that reason that this Senator has seen fit to submit and present and now expounds upon the amendment which would seek to strike title II and insert in its place the substance of a provision which would call for further study in this particular field, in an effort to find some means,

other than the rather harsh and far-reaching impact that title II would otherwise have on the entire judiciary system, whereby the claims of consumers in the field of warranties and in the field of the Federal Trade Commission jurisdiction are based.

For many years, efforts have been made to enact various portions of title II as it has been reported by the committee. Starting back in 1914, when the original Federal Trade Commission Act was enacted, efforts were made, for example, to incorporate as one of the express powers for the Federal Trade Commission the authority to issue legislative or substantive rulemaking powers. That issue was debated very throughly and very extensively, I might add, in 1914. In a little while, I intend to go into some of the detail that was involved in this debate and in the consideration of that power. Efforts were made periodically since 1914 with respect to the rulemaking power on a substantive or legal basis. There was a period of approximately 50 years in which the Federal Trade Commission conceded, through its various memberships, that it did not have the power to legislatively make rules, to make rules of legislative equivalent. Two years ago, the issue was raised again. But it is noteworthy that in each instance, starting in 1914 and continuing to the present day, each of those efforts to vest the Federal Trade Commission with substantive or legislative rulemaking power has been rejected by Congress. It has been rejected by Congress deliberately. It was, nevertheless, in each instance, rejected by Congress firmly.

Mr. SCOTT. Mr. President, will the Senator from Nebraska yield?

Mr. HRUSKA. I yield.

Mr. SCOTT. Without going into the merits of the bill itself or specific amendments, on some of which I have not been able to refresh myself, I feel that it would be desirable to refer the bill for a brief time to the Committee on the Judiciary, which customarily does handle matters relating, for example, to penalties, and rulemaking, and which handles a number of matters which are covered in the consumer-type legislation proposed. We are all in favor of adequate and effective consumer legislation, but I would like to see some oversight by the Committee on the Judiciary. I certainly commend the distinguished ranking Republican member of that committee, the Senator from Nebraska, for bringing up this question at this time.

Mr. HRUSKA. I thank the Senator from Pennsylvania. He would be interested in the proposition, which will also be gone into in some detail, that title I is self-contained and self-sufficient unto itself. It can be enacted. The process of getting it into operation can go forward as soon as the other body acts on it and works its will and then is signed into law by the President. In the meantime, we have title II embracing a subject which has been gone into extensively by the President's Commission on Reorganization of the Executive and by other study bodies. It involves and has a tremendous impact on the entire judiciary system. It is of such volume and has such a far-reaching impact on that system that there are fears and misgivings on the part of many that it would, in some respects, tend to immobilize or certainly impair its effectiveness and, hence, the reference in that part of the bill; namely, title II, to the Judiciary Committee, would be very much in order and the Senate as well and the other body would profit therefrom.

Mr. SCOTT. I thank the distinguished Senator from Nebraska very much. I can understand the many reasons for his position.

Mr. MOSS. Mr. President, will the Senator from Nebraska yield?

Mr. HRUSKA. I yield.

Mr. MOSS. In response to the suggestions raised by the minority leader just now, I want to point out that the bill was referred to the Judiciary Committee, which had it for 90 days this year, and that a similar bill that had most of the same provisions in it, on which I earlier placed in the RECORD some information as to comparability, was subject to hearings in the Judiciary Committee and over 400 pages of testimony are in existence; so that the matter has been considered extensively by the Judiciary Committee. I merely want to make that point clear.

Mr. HRUSKA. The Senator from Nebraska agrees completely with the Senator from Utah. The bill was referred on July 16, by agreement between the respective chairmen of the Commerce Committee and the Judiciary Committee, to the Committee on the Judiciary for a period of 90 days; but, what a hollow mockery that turned out to be. That was July 16, the last week or 10 days of a session in which all of us were busily engaged getting ready for the summer recess which began in early August, I believe, and lasted until September 8, after Labor Day.

Consider, then, that all that period of time can be eliminated from the so-called 90-day reference to the Committee on the Judiciary. Consider also the fact that the Committee on the Judiciary is a very busy committee. It was busy already, before we adjourned pursuant to plans well laid in advance and booked pretty solidly from time to time, as I shall show by introduction of an exhibit or reference to one, which will show how solidly the several subcommittees of the Judiciary Committee were tied up in committee from there on, not only through September and into October, but also for most of November.

It was beyond the capability of either the staff or the membership of the Judiciary Committee. Literally, they could not find time in which to be able to summon the witnesses and find a place and a room and the warm bodies of various members of the Judiciary Committee to assemble and there consider this far-reaching measure which would have such a big impact upon the country's judiciary system, which is the primary responsibility of the Judiciary Committee.

Let me suggest further, Mr. President, that we had the bill before us last year pertaining to class actions. Principally we held hearings on it for 5 days. We compiled a record of about 400 printed pages of testimony and evidence; yet, we still did not have enough time, due to the closing days of the session last year, to get into the subject or make our recommendations and our findings.

Now the Committee on Commerce has had time to consider this, but they did so on a leisurely scale. They reported the bill 7½ months after the first of the year of this calendar year. They considered it a very important measure, but they took that long a time to do it.

As to title I, they did a splendid job. I would most respectfully suggest that all they did on title II, so far as consumer class actions were concerned and the rulemaking power, was to create the source and the beginning of troubles myriad, serious, grave, and menacing.

So that we can readily say that reference has been made to the Judiciary Committee but it has not been effective and it has not been meaningful.

Mr. MOSS. Mr. President, if the Senator from Nebraska will yield further, what the Senator just said is true as to the time of reference which was made pursuant to a unanimous-consent agreement, so that the Commerce Committee agreed to permit the Judiciary Committee to have 90 days in which to conduct hearings or make any examination the committee wanted.

It is also true that 32 days happened to fall in the recess period, although many of us held hearings during that recess period. I know that would be true as to the Judiciary as well as to other committees, but there were 58 days remaining in which the committee had the bill. No hearing was held and, so far as I know, nothing was done on the bill and the time merely expired as a matter of fact.

Now the Senator from Nebraska points out that the Commerce Committee did take some time to look at the bill. That is true. I related for the RECORD earlier the number of days of hearings we had, the executive sessions, and the markup of the bill which consumed a good part of that time, also considering title II, which we are discussing now.

To my mind, but I think not in the mind of the Parliamentarian or anyone else, the jurisdiction lies in the Commerce Committee, but as a matter of comity and accommodation the Judiciary Committee was permitted to look into part of the bill it wanted to look at. Having had that time, and the matter now being here before us, and the necessity for moving on, I believe that the Judiciary Committee has had its opportunity to examine this title and we might as well proceed in the Senate to determine whether title II should remain in the bill. I am convinced, in order to have a truly effective bill, that we must have title II.

Mr. HRUSKA. The Senator from Utah simplifies the matter in an overly and easy fashion. Of course 90 days less the vacation period leaves 58 days. Apparently, it did not take into consideration the suggestions I made, that on July 16 this body was very well occupied and we were doing all kinds of things in preparation for the things we felt were necessary to be done to qualify us to earn the summer recess which we took dur-

ing August. There was no possibility of getting any hearing scheduled at that time, nor even the possibility of arranging for witnesses.

I have already recounted that by the time the 90-day period was given, and it was extended by comity in the committee, and the chairman was very cooperative as to that time—a little bit stingy—the Committee on Commerce was well committed upon a reconvening of the Senate. Why would it be that a matter of this kind of importance would take 7½ months in the Committee on Commerce and then be given a period which would be less than 30 days for the Judiciary Committee to consider it when it is of such far-reaching importance? That does not seem to be very consistent.

I suggest that it has a lot of parallel to one of the facts. In title II, the Federal Trade Commission is authorized to issue legislative rules and give legislative rulemaking power. That is something that has been many time argued and often proposed, but always very firmly rejected by Congress in an effort to show that this is fair to Congress because when that rule, just before a copy of that rule applied by the Federal Trade Commission pursuant to all of the many provisions and lines of statutes found in section 206 is promulgated and before they can make it final, they must report it to the committee, to the House and to the Senate, and if the House or the Senate expresses displeasure with the rule thus proposed, then the rule will not become effective.

It sounds good on its face. It sounds fair and equitable. But it does not take anyone who has lived for very long in the Congress to realize that 60 days in the life of a busy Congress is not very long at all. In fact, that period of time is totally ineffective insofar as trying to direct the attention of the composition of any committee in either body to be directed upon a rule proposed by the Federal Trade Commission, let alone the scheduling of hearings, making of a study, making of recommendations and findings, arranging for its getting on the calendar and, at long last, getting to a place where we will debate the measure and then vote upon it.

It is totally ineffective, a point which I shall make in due time and illustrate. As a matter of fact, we are now considering in the field of court rules, rules promulgated by the Judicial Conference in which a similar period of time was given to Congress to enact. This time we are now considering in the Judiciary Committee an extension of this 60-day or 90-day period, whichever it is, a formula something like this, that if any such rule is submitted to the Congress any time before May 1 by the Judicial Conference, that Congress would have to the end of that calendar year, or to the end of the sine die adjournment of Congress for that year, in which to consider that rule and decide to approve or not to approve it.

This is in recognition of the proposition that a 60-day or a 90-day period is not enough in a Congress that is so busily engaged with so many things and that has succeeded in making itself a 12-month operation instead of the operation we had in the old days and in previous years. It is my hope that when that matter comes before the Senate, the Senate will be kindly toward it and enact it so that the other body can do likewise.

Now then, getting into the proposition of title II, title II is properly a subject for the Committee on the Judiciary, dealing as it does with adjective, procedural law and having a direct and massive impact upon the entire judiciary.

One reason is that the courts are already overburdened, as we know, with respect to those items. For example, criminal trials are given high priority in the judicial system. They are under the direction of the Judicial Conference, and under the rules of the court criminal cases are heard first. Yet, we have constantly a waiting period between the time a case is ready for trial in a criminal court and the time it goes to trial. The time necessary to get to trial ranges all the way from a year to 3 years, in a class of cases that enjoys and should have the highest priority in the trial of such cases.

Mr. President, I yield to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. COOK. Mr. President, relative to the remark made by the Senator from Utah with reference to the Parliamentarian, I want to suggest that in reading the original caption of the bill, I think it is easily discernible. But I would suggest that we are trying to make a comparison of the operations of Congress and the operations of the Judiciary Committee. When we get into title II, we get into a rather brand new field that I am not quite sure is in the jurisdiction of Congress at all. And I am convinced it is within the complete jurisdiction of the Judiciary Committee.

I point out that this will be the first agency in the Federal Government that will have the absolute authority to bring actions on its own, outside of the Department of Justice.

Now, there is one slight deviation in that, and that is that on an appeal of the ICC, the lawyers for the ICC have authority to go into court along with the attorneys for the Justice Department. However, here we have the situation where it is no longer necessary for the FTC to discuss causes of actions and discuss whether it is in order and whether they are in shape to discuss whether they really have a logical cause of action, just as the Justice Department brings an action for it on behalf of the Federal Trade Commission.

Second, we have also in title II, as the Senator from Nebraska well knows, now the expanded authority of the Federal Trade Commission which it would assume under title II, if passed, and we are extending to the Commission the right to hold its hearings under which it has then legislative rulemaking power and, as a result of that legislative rulemaking power, an absolute cause of action immediately within the Federal court system unless there is an appeal from that rule.

We have the language on page 46 from lines 14 through 19, reading:

> . . . there is a disparity of views concerning material facts upon which the proposed rule is based, provide for an agency hearing in accordance with sections 556 and 557 of title 5 of the United States Code at which the Commission may permit cross-examination (limited as to scope or to subject matter) by one or more parties as representatives of all parties having similar interests; . . .

This is not a matter that deals with commerce or is within the field of commerce. It deals with the judiciary. This is the way that the FTC shall arbitrarily rule, if it so desires, that when it has five or six or eight individuals or organizations that wish to testify on a given rulemaking procedure, and can just say: "Gentlemen, we are sorry that all of you lawyers cannot present your different viewpoints. We are going to allow one of you to testify before us on behalf of all of you."

I think that gets to be a direct denial of due process and also a direct denial of the right to cross examine.

I can only say that within the framework of title II are a couple of rather serious subject matters that I am not quite sure as to what they have to do with commerce other than being imposed by Congress, but they are subject to the will of the Committee on the Judiciary which, I think, is the point the Senator from Nebraska is making.

Mr. HRUSKA. I thank the Senator for his contribution. It is true that the subject matter of title II reported by the committee does belong in the Committee on the Judiciary and that not sufficient consideration has been given to it in the form in which it has been reported to the Senate.

The Senator from Kentucky well remembers and is familiar, no doubt, with the so-called Ash report, the report made by the Commission which was appointed by the President to revise and consider revision of the executive department. That report had findings particularly applicable to the Federal Trade Commission as well as other agencies. In addition, there was another study and report made, and that was by the American Bar Association committee headed by Mr. Kirkpatrick, a very notable character and personality in the field of law and the practice of law and jurisprudence in America. It was he who headed that committee. He is now on the Federal Trade Commission himself and probably, in some degree, because of the splendid showing he made in the study, analysis, and work of the committee on which he was so active.

Just to indicate the depth of the matter, to indicate the scope that is involved here, the American Bar Association made recommendations to aid the work of the Federal Trade Commission. They say that now they are carrying a very heavy load, that they are concerned with consumer complaints and deceptive practices, antitrust law in all of its aspects, they are concerned with investi-

gating and hearings on complaints and in issuing cease and desist orders, and going on to the matter of prosecuting those cease and desist orders pursuant to present statute. They are charged with all those things. The American Bar Association report, the details of which I shall not give, in general stated this work is too monumentally large and vast in scope. The complaints and processing thereof, the unfair and deceptive practices that are charged, and the enforcement thereof, and their powers, their mechanics and procedures should be modernized, and so forth. Here we have coming out of the Committee on Commerce, notwithstanding this tremendous need for a fundamental revision, a rather summary and I must say troublesome proposal to get into the field of restructuring and theoretically changing the nature of the Federal Trade Commission. We have that coming from the Committee on Commerce and not the Committee on the Judiciary.

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

Mr. HRUSKA. I yield.

Mr. MOSS. The Senator said the American Bar Association recommended dividing the functions of the Federal Trade Commission. Is the Senator referring to the Ash commission recommendation? I am not aware of any American Bar Association decision made on this matter.

Mr. HRUSKA. It was the Ash report that had the express finding and recommendation for splitting the function of the Federal Trade Commission, but the American Bar Association report did find that improvements in administration of the Federal Trade Commission should be made.

Mr. MOSS. But as a matter of fact, when the Chairman of the Federal Trade Commission responded to the questions in the hearings about whether or not there should be a revision as the Ash commission had recommended, he testified to the contrary—the American Bar Association supported the position of the Chairman of the Commission. So the opinion of the American Bar Association apparently would be contrary to the recommendation of the Ash commission.

Mr. HRUSKA. It may not necessarily have been contrary; it was different in some of its contexts and recommendations. But the point made by the Senator from Utah illustrates the position that this Senator is trying to explain.

Here is a subject on which there is a difference of opinion as to detail and approach. When Mr. Kirkpatrick appeared before the Committee on Commerce, it was not as a member of the American Bar Association Commission. He was there as the Chairman of the Federal Trade Commission. He had his views on that, perhaps. His individual views might be one thing, the American Bar Association report might be another, and his views as Chairman of that Commission would be still another.

The point suggested by the Senator from Utah just fortifies the position this Senator is trying to explain.

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

Mr. HRUSKA. I yield.

Mr. COOK. I hope to be able to clear up some of this argument. I am saying this is a matter of fact and really making inquiry of the Senator from Utah and his staff if they are aware of the position in the report of the American Bar Association and the study of the Federal Trade Commission made public February 15, 1969. I might suggest on that subject that these views expressed in this report are those of the commission to study the Federal Trade Commission. This report has not been considered by the Board of Governors of the American Bar Association and pending approval by that board cannot be considered the report by the association.

I wonder if the staff has any information that this was adopted in toto by the Board of Governors of the American Bar Association or if it still represents the attitude of the members of the Commission, including the dissenting views therein. I am making inquiry.

Mr. MOSS. So far as I know this never has been considered by the Board of Governors of the American Bar Association but was the position of the commission appointed to make the study. Also, the Antitrust Section of the American Bar recommended that hearing examiners determine specific relief.

Mr. COOK. What I am saying is that the report to the American Bar Association by then-counsel Mr. Kirkpatrick has not been published as an approved report of the Board of Governors of the American Bar Association.

Mr. MOSS. No, not to my knowledge.

Mr. HRUSKA. The Senator has the report in his hand. How many pages does it contain?

Mr. COOK. 119 pages.

Mr. HRUSKA. There are over 100 pages, therefore indicating on its face, coming from a committee of the American Bar Association, the depth to which they delved to get at the conclusions and the recommendations they made.

PRIVILEGE OF THE FLOOR

Mr. CASE. Mr. President, will the Senator yield for a unanimous-consent request without losing his right to the floor?

Mr. HRUSKA. Mr. President, I yield to the Senator from New Jersey for the purpose of making a unanimous-consent request.

Mr. CASE. Mr. President, I ask unanimous consent that a member of my staff, Gar Kaganowich, be permitted to remain on the floor at all times today except during record votes, whether I am here or not.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. COOK. Mr. President, I would like to make the same request with respect to my staff man.

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

Mr. COOK. Mr. President, if the Senator will yield, I would like to ask unanimous consent that the distinguished junior Senator from Kansas (Mr. DOLE) be made a consponsor of my amendment No. 470.

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

Mr. COOK. Mr. President, I would like to say to the Senator from Nebraska, if I may have that report for a minute, there is some rather interesting language in there, from the committee chaired by Mr. Kirkpatrick, that is absolutely contrary to some of the situations we find ourselves in now.

One conclusion I would like to read is on page 34, where it is stated:

> Nevertheless, it is our impression that there are too many instances of incompetence in the agency, particularly in senior staff positions.

Then, it states:

> We agree with the chairman of the FTC and others that Congress is partly responsible for the FTC's problems because of its practice of committing new legislative programs to the agency without commensurate increases in budget.

The reason I bring this up is that on page 41 of the report that is on the desk of each Senator, with respect to S. 986, under "cost" the committee estimates the cost of implementation of title I of S. 986 to be as follows:

An increase of $200,000 the first year, $200,000 the second year, and $150,000 the next year.

It then says apparently there will be no additional cost, as I read it, in the operation of title II—no additional cost to expand this act for its own lawyers anywhere in the country to go into court to bring these actions.

I might suggest that, conceivably, there may have been deleted from the report what I have been told on the increased costs of title II. These were the original cost estimates that were given to some members of the committee, but perhaps it is inadvertently not in the budget. So the first year under title II, the increased cost will be $725,000. The second year the increased cost will be $875,000. The third year it will be $1 million. The fourth year it will be $1.250 million. The fifth year it will be $1.4 million. All of these are increases. For title I the increase will be $150,000 the first year, $250,000 the second year, $300,000 the third year, $325, the fourth year, and $350,000 the fifth year.

In the report we have been given, unlike the $300,000 for the third year, it shows $150,000. The report shows $200,000 for each of the first 2 years.

Mr. Kirkpatrick, as chairman of the commission, in his report felt that we were giving to the Federal Trade Commission more authority but not giving it the resources to carry out that authority. But I am afraid that, if his staff made these estimates, or if they were inadvertently left out for what they did put in, they are falling into the same trap of what he felt was necessary to have a functional Federal Trade Commission when he was on the outside looking in—and that was that authority was given to the Federal Trade Commission, but, unfortunately, the funds provided were not commensurate with the authority.

I repeat, we have a situation in which it was told to me by the Federal Trade Commission—and perhaps it did not get into the report, and I do not know why—that the costs of title II would run any-

where from $725,000 the first year to $1,400,000 in the fifth year, all representing increases.

Mr. HRUSKA. What is the source of those estimates?

Mr. COOK. These estimates were obtained by me from sources within the Federal Trade Commission. I will be very frank. I was told that, if these figures were given as estimates here on the Hill and we utilized those figures, "we would be blown right out of the Hill" with regard to title II. If we are not going to be honest and we are not going to say what the real costs of title II will be, as well as not put them in the report, we will come to the conclusion that with title II, with the expanded jurisdiction of the Federal Trade Commission, no longer having the utilization of the Justice Department with regard to the commencement of actions, we had better be ready to have the Federal Trade Commission ask for a tremendous increase in the budget over what it is now receiving. Obviously, something has been left out of the report when it says there will be no increased cost under title II, because the only report of increases before the Senate is contained on page 41 of the report, which shows an increase in cost over the 3-year period under title I.

These are some of the problems we have in regard to the report and in regard to the American Bar Association Commission that specifically made clear that one of the unfortunate circumstances in the past has been that the Congress has given far too much legislative authority to the Federal Commission, but has not provided funds commensurate to the authority to see that the job is done, and therefore the Federal Trade Commission has been in a position where it has failed to act.

Mr. HRUSKA. I than the Senator for his contribution.

It was my intention to pursue the matter of the budget at a later time, but one of the mysterious parts of the whole suggestion, that the cost associated with the increased powers under title II might be in the neighborhood of $150,000 per year for the first 5 fiscal years, I would respectfully suggest is something that should be carefully canvassed.

Here is a commission that does not now have the authority to initiate, through its own attorneys, any of the tools that are mentioned in title II. They are getting into that now. They are in the matter of injunctions and in many other respects. As we go through the bill, we will find that many of the functions now exercised by the Attorney General's office and by the appropriate U.S. agencies are now being transferred, on an alternate, coextensive basis, to the Federal Trade Commission. For example, in section 203, in new subsection (1) of section 5, which is a pivotal section in the Federal Trade Commission Act, there is the idea that after an order has become final and it has been violated, the civil penalty for that violation is raised from $5,000 for each violation to $10,000 for each violation. Perhaps that is in order for a number of considerations but here is an item that bears on the matter of budget. Such a violator "shall forfeit and pay to the United States a civil penalty of not more than $10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States."

And here, Mr. President, is the new language:

> Or the Commission in its own name by any of its attorneys designated by it for such purpose.

We also have in the preceding section, the section that legislatively creates a consumer class action, language which will become part of subparagraph (7) of section 5:

> After an order of the Commission to cease and desist from engaging in acts or practices which are unfair or deceptive to consumers and proscribed by section 5(a)(1) of this Act has become final as provided in subsection (g) of this section, the Commission, by any of its attorneys designated by it for such purposes, may institute actions in the district courts of the United States to obtain such relief as the court shall find necessary to redress injury to consumers caused by the acts or practices which were the subject of the cease and desist order . . .

Then it goes on with this virtually unlimited grant of authority by way of penalties, including but not limited to, recision or reformation of contract, refund of money or return of property, public notification of the violation, and payment of damages.

All of that will be done in a consumer class action which will be conducted by any of the attorneys of the Federal Trade Commission designated for that purpose.

A little later we are going to get into the cost and durations of these consumer class actions. In one of the cases presently pending, money damages have been assessed and by settlement have been paid into a court of $100 million. There is testimony by Judge Murrah, who is head of the Judicial body, that it costs $300,000 just to give notice to the various parties which are party to the action. Each time notice must be given at a cost of $300,000. The attorneys, presumably, are working all this time, and I would doubt very much that under $50,000 is going to go very far, when we take into consideration not only the class action involved but all other actions in which the Federal Trade Commission will become directly involved, and the expense, with the very solid concept that Congress has adhered to up until this time, of having the law enforcement in charge of the Department of Justice, unless there is some very special occasion and special reason to dispense with the factors upon which that decision and that doctrine is based.

So, at a later time, perhaps, we can get into the matter of the budget. But I would venture to say that it will not be under $50,000 per year for the next 5 fiscal years, and that is certainly very, very open to close scrutiny, and in my judgment very inadequate if they are going to do a job.

Now, the answer of these commissions—and the chairman of the Committee on Commerce and I shared the privilege for a while, or each of us had his own privilege, to sit on the subcommittee that had to do with the subject of budgets for independent agencies, of which the Federal Trade Commission was one—was the complaint, and in large measure it was justified, that many more duties and much more work had been heaped upon the Federal Trade Commission, and they did not have ample budgets to do the job.

Time and again we took issue with them. We had explanations given, and there were more generous allocations made, more manpower furnished, and so on; and yet the same story is constantly told.

No agency can do a better job than the money and the manpower will permit, that part of the money and the manpower that will be appropriated for their use. I recall the very historic battle between the Federal Trade Commission and the Packers and Stockyards Administration, Mr. President, that came about some 10 years or so ago, when the Senator from New Mexico was still chairman of the Agriculture Committee. It was in 1958, 13 years ago, my staff informs me.

We found the position taken by many people advocated that the Federal Trade Commission get into the picture of consumerism, of guaranteeing to consumers a lot of things they ought to have in the meat industry. They took the position that the Packers and Stockyards Administration was not doing its job. That was an agency in the Department of Agriculture at that time, and it still is.

When we got to digging into the proposition, there was a reason why the Packers and Stockyards Act was not administered properly, thoroughly, comprehensively, and in satisfactory fashion; and that reason lay within the Halls of Congress—within the Halls, initially of the Appropriations Committee—and then the respective bills and the votes that were had thereon in the House of Representatives and the Senate.

They acted very well indeed for the budgets that were allowed them, but those budgets showed plainly that obviously Congress did not want the Packers and Stockyards Administration to have enough funds to get into various additional areas assigned to them by the statute.

I yield to the Senator from Kentucky.

Mr. COOK. In connection with the problem of which the Senator has spoken, I refer to the hearings record, where, on page 35, is a letter addressed to the Honorable FRANK E. MOSS, chairman, Subcommittee on Consumers, written by Paul Rand Dixon, who is a member of the Federal Trade Commission. I read from his letter:

> I am vitally concerned with the substantially increased burden which would be placed upon the staff by enlarging our jurisdiction to include local law violations. I realize that, as indicated in the Chairman's statement, we could use our discretion and not act as a giant neighborhood law office. However, should this amendment be adopted, it is obvious that with the increasing number and activity of consumer groups, our enlarged jurisdiction will be well known. Undoubtedly, pressure to act in each instance of an alleged law violation brought to our attention will increase. Certainly, we could not deny that we have the responsibility. I strongly believe that we should leave this responsibility with local governments and continue our programs of cooperation with those governments.

Since the amendment would substantially increase our responsibility, I must add one further comment. It would indeed be tragic if our jurisdiction were expanded to practices "affecting" commerce without a concurrent increase in funds to enable us to assume the added responsibility. With our limited funds, I am convinced that we could not begin to reach even the most flagrant of those practices coming within our expanded authority.

The letter is signed by Mr. Paul Rand Dixon, Commissioner of the Federal Trade Commission.

Mr. HRUSKA. The rest of that paragraph, if the Senator from Kentucky will permit—and I know he left it out because he wants to conserve time—reads as follows——

Mr. COOK. I would be delighted to add it, if the Senator will permit me to do so.

Mr. HRUSKA. Will the Senator read the rest of it?

Mr. COOK. Yes.

Frankly, to provide the Commission with this authority without increased funds for enforcement is to hold out false hope to the consumer. There would be increasing pressure to act and no funds to perform. I strongly urge that, if this amendment is adopted, additional funds be immediately provided to enable the Commission to carry out its *full* responsibility.

That is why I am a little surprised to see in the report, a copy of which is on every Senator's desk, that the increased cost of all this expanded authority in title I is limited to $200,000 the first year, $200,000 the next, and $150,000 the third, and the increased cost of title II, with all of its commensurate lawsuits, attendant problems, and investigations, is shown as nothing.

Mr. HRUSKA. I thank the Senator for that contribution.

Getting back and reverting, Mr. President, to the situation of the Packers and Stockyards administration and the Federal Trade Commission, I do so because I think there is an analogy and a lesson to be learned from the factual situation and the manner in which that situation was handled. It is a matter of record, from hearings through several years, that there was a great lack of confidence in the fashion in which the Packers and Stockyards Act was being administered. From both sides of the aisle, concrete suggestions were made. I know that in the Subcommittee on Agriculture, which happens to be one of those on which I serve and was serving at that time, there were recommendations made and suggestions made, based upon the disclosures within the hearings themselves, as to what had to be done if confidence in the Packers and Stockyards administration was to be restored and the matter might go forward.

Eventually, the dispute between the respective jurisdictions of the Federal Trade Commission and the Packers and Stockyards administration was resolved, but one of the things that was the basis for that resolution was this: That there would be a revision, a revitalization, and a correction of many of the faulty procedures under the Packers and Stockyards Act; and if that were done, there would be a funding of those activities.

That meant that Congress would first have to be satisfied that the methods that were resorted to for the purpose of restoring confidence actually possessed merit. At that point, then, we could look for the increase of appropriations that would be necessary in order to have a good job done.

That was done. In this situation here, where we have a subject within the purview and the actual jurisdiction of the Judiciary Committee, centering, as it does, in adjective law and in statutes, in penalties, and in its impact upon the judiciary, and realining many of these things and enlarging the type of action that is taken insofar as the Federal Trade Commission is concerned, certainly, Mr. President, we should make every effort to reach a point where there is a consensus here that the provisions by which a satisfactory basis for the Federal Trade Commission revision and restructuring should be acceptable and would be considered workable.

But at that point we could go forward, confident in the idea that to the extent that the commission is in sympathy with that point of view, the activities would be funded, and in adequate degree.

Mr. President, getting back to the situation in the courts, we have high priority criminal cases now which are suffering tremendous delays. Justice delayed is justice denied—an old, hackneyed principle, but of course it is true. We have many efforts from many sources by which we are trying to improve that picture, and some progress is being made. Further progress is on its way. But superimposed upon the load that the Federal judiciary system now has are almost daily incursions upon the burdens of the judiciary.

Before we get to a characterization of these incursions, we ought to consider this: The Federal courts are courts of limited jurisdiction. They are created that way; they are designed that way. They are supposed to have—and they have had, in the main, traditionally and historically—limited jurisdiction; that jurisdiction which must necessarily be exercised by the Federal authorities and which the States cannot do, and then these additional assignments which come to it as we progress in our Nation's development in a rather more sophisticated and more complicated society than we originally had. Notwithstanding that, the Federal courts are courts of limited jurisdiction.

A prime proof of that is found in this fact: The total number of judges in the Federal system exceeds 400 by 6 or 8. That includes district judges, who are the trial judges; the appellate courts, which are the circuit courts of appeal; and the United States Supreme Court. Compared with or contrasted with judges on a State level—not the justices of the peace and the county courts—contrasted with the bench of the 50 States, on which we find a total in the range of 4,000 judges, that spells out very definitely and indisputably that the Federal courts not only are intended to function but also are functioning as courts of limited jurisdiction, and necessarily so, under our system of a federated republic of 50 States and therefore 50 jurisdictions in the field of jurisprudence and of the judiciary.

What is happening by way of incursions upon this Federal judiciary system? Last year, Chief Justice Burger spoke before the American Bar Association on this subject, and he commented upon the overburdening of the courts, on the fact that they were running behind in their work, that they were struggling valiantly, that efforts were made to streamline and to reduce the waiting time, and so forth. But he said, over and above this.

Third an entirely new kind of cases have been added because of new laws passed by Congress and decisions of the court.

Two recent statutes alone added thousands of cases relating to commitment of narcotics addicts and the mentally ill. These additions came when civil rights cases, voting cases, and prisoner petitions were expanding by the thousands. In 1940–1970, personal injury cases multiplied five times.

Petitions from State prisoners seeking Federal habeas corpus rose from 89—not 890, not 8,900, but 89 cases—to 12,000 cases.

This leaves us without the impact of such environmental cases as are coming along the way, these consumer cases, and almost every month Congress produces some sort of bill of one kind or another which adds to the jurisdiction and the workload and the responsibility of the Federal court system.

So the Chief Justice called attention to the fact that petitioners for State prisoners seeking Federal habeas corpus rose from 89 to 12,000. He continued in his speech:

Meanwhile, not a week passes without speeches in Congress and elsewhere and editorials demanding new laws to control pollution, for example, and new laws allowing class actions by consumers to protect the public from greedy and unscrupulous producers and sellers.

No one can quarrel with the needs nor can we forget that large numbers of people have been without protection which only lawyers and courts can give. The difficulty lies in our tendency to meet new and legitimate demands with new laws which are passed, without adequate consideration of the consequences in terms of case loads. Now we must make a choice of priority.

That was from Chief Justice Burger's speech in St. Louis on August 20, before the American Bar Association convention.

There is the background. There is the foundation for one of the troubles of title II when it expands again the number of cases that will be heard—first of all, not only commerce, but affecting commerce as well; second, in consumer class actions, which will rise rapidly in number, which are protracted, which are very complicated, and which will monopolize the time and resources of many of our courts.

We have, for the first time, the capacity sought to be invested in the Federal Trade Commission of bringing several types of actions by attorneys on their own staff or of their own designation, instead of having that syphoned through and properly processed by the Department of Justice, which is the department in which law enforcement resides inherently, and properly so, and for good reason.

We are going to find the situation one in which there will be this much added burden to the judiciary system. So we should take this into consideration.

The second part of my amendment, which is the pending business of this body, would have to do with one method whereby we could make some progress in finding a way to do what is necessary in the field of bringing to the consumers of this Nation and the purchasers of goods and services those things which they are entitled to have when things go wrong and they need a remedy in some judicial or quasi-judicial body. In addition to that, of course, we go into the matter of how to revise the Federal Trade Commission itself.

Mr. President, it seems to me that the better part of wisdom at this juncture—we have the time to do it, inasmuch as the other body has not taken much action in this particular field—would be to enact title I at this time and to defer action on title II. Title I is self-sufficient, in its own terms, to proceed with the vital and the highly important program for consumer protection, in the field of warranty and substantive law on warranties. It is entirely self-contained and self-sufficient. Its going into effect would not be impaired in the slightest by deferring action on title II until a later time and subject to proper processing by the proper committee. That was part of the administration's program. The administration's program was that there should be a separate consideration of the various subjects. Three bills were sent up to Congress. The first one was S. 1219, introduced last year, in March, to amend the FTC act. Then there was another bill, S. 1221, which calls for increased warranty protection—section 1222 calling for class actions and proposing various provisions in that field.

The point I make is that the plans and subjects were designed for individual attention, and they should be. There should not be an attempt to capitalize on the obvious popularity of a bill having to do with warranties and promising many things to consumers if they only support passage of one title and then append to that, in the same bill, a provision that has to do with an entirely disrelated one—disrelated because it has to do with proceedings whereby, in some instances, the recoveries may be had and remedies afforded to those who justly complain about malfunctioning warranties or defects in servicing, and so forth.

So the better part of wisdom would indicate that that is a better way to go about it in the long run, considering that the FTC has been the subject of extensive study and that all the alternatives, together with a meticulous examination of each, would give a chance to be heard and a decision to be made. That result would be brought about in several ways. One way is to find favor for the adoption of the amendment now pending. That amendment would strike title II, not because it is not necessary, not because it does not have merit, but because it should have further study and it should have, within its own framework, many amendments, even if the bill is gone forward with.

In due time, if good judgment should not prevail and the amendment is not approved, we can get into some of those. So that one way to approach it would be to delete title II at this time and put in that part of the bill which would become title II providing for this study commission to find out, among other things, if it would not be practical to create a small claims court for the purpose of processing this type of case in a way that would be more fair, more direct, and more productive of results than a consumer class action, which is not only unwieldy and expensive but which does not do the job so far as practical achievements are concerned.

Another way would be a motion to deal with this instant situation, to move that title II and its contents be referred to the Judiciary Committee for its consideration, hearings, discussion, and report; notwithstanding the abortive attempt to make a reference of the bill to the Judiciary Committee which was not effective and productive.

The third alternative, of course, is to go into the subject matter as best we can, part by part of title II, and see if we can revise it and amend it and put enough corrections in some of its more glaring respects where amendment is necessary, and see if we can turn out a better bill.

Mr. President, Congress should once again reject the legislative rulemaking authority which is sought by title II and section 206 in favor of the FTC. This pending bill seeks to authorize the Federal Trade Commission to "issue legislative rules defining with specificity facts or practices which are unfair or deceptive to consumers and which section 5(a)(1) of this act proscribes."

This language just quoted is found in section 206 of the bill. That section would strike present section 6(g) of 15 U.S.C. 46(g) and add a new subsection, (g), dealing with rules. Part of that section 406 deals with procedural rules, a sensible and a fine topic, one that is commendable and properly attuned to the needs of the day.

Then the second part, dealing with the legislative rules that the FTC would be authorized to issue, that is the pernicious part of the bill. Thus we find ourselves, Mr. President, in full cycle once more.

In 1914, when the original FTC Act was adopted, a very complete and detailed consideration was accorded the proposition as to whether the Commission should be granted substantive or legislative rulemaking power.

That concept was decidedly rejected. It was rejected deliberately and firmly. That position has been reiterated by Congress on several occasions since 1914, when efforts have been made to revive the issue in one form or another.

The rationale and policy of Congress, briefly stated, is that judgments as to what may or may not be in the best interests of consumers are keenly individual. They are subjective judgments. The phrase, "acts or practices which are unfair or deceptive to consumers" defies limitation, it defies definition. It can be characterized only in most general terms but its reaches are virtually infinite in terms of Federal legislation pursuant to the phraseology which we find in title II, section 206; hence, such judgment should be made in a body that is representative, one that is elected and, therefore, not only receptive to the many factors involved, the short-term and the long-term impact of a given rule or law or statute, but also a body which is responsible to those who are governed by the legislation which evolves.

The FTC, a group of five persons, is legislatively created. It is appointed by the President. Therefore, it is not a body such as should be making the type of judgment referred to. It is almost unthinkable that we would ask for the approval into law of legislative rules, Mr. President, that are based upon subjective judgments, and that we would entrust that very, very important and vital subject to the decision of as few as two men appointed for 7 years, responsible to no one and who cannot possibly possess attributes which are necessary in order to arrive at a decision which is subjective in nature, which will meet the test of being an acceptable and workable bill and one which will satisfy a nation of 208 million, every one of whom will be affected by that decision which will be made by the Federal Trade Commission.

It is a commission composed of five members. However, by its working rules, only three of them are required for a quorum. It is conceivable that only two of them can decide a matter and turn a rule into a statute having full force and effect of law with penalties and sanctions which are very substantial—$10,000 by way of such damages for each violation and, in some cases, each day of violation. $10,000 a day for a goodly number of days would be a very substantial penalty, in addition to some of the penalties made available under section 203 in the consumer class action bill, a legislative consumer class action bill.

Congress has historically taken a position in this regard that the Federal Trade Commission is not to be granted power to promulgate as law whatever it might feel would be good for the consumer. Congress has consistently felt that only the Congress is equipped and is so representative as to weigh what, in widely varying and often conflicting interests within a nation of over 200 million people, will be affected by such judgments and enactments. Only Congress should strike balances and weigh equities after weighing all questions and factors involved in this type of consumer legislation which seeks to define and enforce with specificity acts or practices which are unfair to consumers.

Only Congress should enact such statutes, Mr. President. As already noted, the pending bill authorizes the Federal Trade Commission to issue these legislative rules defining with specificity acts or practices which are unfair or deceptive to consumers and which section 5(a)(1) of this act proscribes.

Now, therefore, to get the full tenor of the extent of this grant of authority, we should consider the text of section 5(a)(1) of the Federal Trade Commission Act which is found in 15 U.S.C. at section 49. Subsection 1 reads as follows:

> Unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce are declared unlawful.

That area would be added to the first area, to the express words of section 206,

which I have just read in order to define the area in which the Federal Trade Commission may function to legislate.

What a concept of legislation. It is a total abdication of the legislative power which this Congress derives from the Constitution.

Article I, section 1 of the Constitution says that all legislative power shall be vested in the Congress. And there are instance of the delegation of that power. But they are instances limited in character and defined in such a way that Congress still essentially keeps control of the situation. Yet here we have an instance where an effort is made to abdicate our responsibility in a very, very wide field, the width and the breadth and the depth of which we will go into in a moment.

It is unprecedented that such a general grant of legislative rulemaking power be granted to any agency of the Federal Government validly.

An effort was made in the early thirties to do this. Many of us remember the blue eagle that used to be pasted in the doors and window of the shops and factories stating that they were sworn to defend the National Recovery Act.

We had a lot to do with it, but the Supreme Court said, in the field of poultry, of all things, that Congress cannot do that, that it cannot give such a broad delegation of power to individuals, presidential appointees, responsible to no one, that that very vital control is a constitutionally created legislative power which belongs in the Congress, and it is only when it is limited and when it is restricted that it will be found to be valid and within the constitutional limitations and in compliance with the Constitution.

So here we have an unprecedented effort to try to vest the Federal Trade Commission with that kind of legislative power. It just does not seem that it is at all the way to go about it in view of the past history of this Nation and our traditions as a Government that is run by a representative legislative body with coequal branches of the judicial and the executive.

Justice Cardozo had this to say in his concurring opinion in the Schechter decision, found at 295 U.S. Reports, at page 552:

> The delegated power of legislation which has found expression in this code is not canalized within banks that keep it from overflowing. It is unconfined and vagrant, if I may borrow my own words in an earlier opinion. Panama Ref. Co. v. Ryan, 293 U.S. 388, 440, ante, 446, 55 S. Ct. 241.
>
> This court has held that delegation may be unlawful though the act to be performed is definite and single, if the necessity, time and occasion of performance have been left in the end to the discretion of the delegate. Panama Ref. Co. v. Ryan, supra. I thought that ruling went too far. I pointed out in an opinion that there had been "no grant to the Executive of any roving commission to inquire into evils and then, upon discovering them, do anything he pleases," 293 U.S. at p. 435.

Mr. President, that is the situation here. We are giving the Federal Trade Commission investigatory power. They are being given power to issue cease and desist orders and to hold hearings upon those orders.

They have the power to pursue cease and desist orders into court—the circuit court first, then the Supreme Court, skipping one court altogether, much to the detriment of litigation resulting therefrom. We are not only giving them all those powers, but we have been discussing the evils they can do. They can do anything they choose or anything they please with their power, which is exactly what took place in the Panama case and again in the Schechter case, the poultry case. I resume the quotation from the opinion of Mr. Justice Cardozo:

> Choice, though within limits, had been given him "as to the occasion, but none whatever as to the means." Ibid. Here, in the case before us, is an attempted delegation not confined to any single act nor to any class or group of acts identified or described by reference to a standard. Here in effect is a roving commission to inquire into evils and upon discovery correct them.
>
> 552 I have said that there is no standard, definite or even approximate, to which legislation must conform. Let me make my meaning more precise. If codes of fair competition are codes eliminating "unfair" methods of competition ascertained upon inquiry to prevail in one industry or another, there is no unlawful delegation of legislative functions when the President is directed to inquire into such practices and denounce them when discovered. For many years a like power has been committed to the Federal Trade Commission with the approval of this court in a long series of decisions. Cf. Federal Trade Commission v. R. F. Keppel & Bros., 291 U.S. 304, 312, 78 L. ed. 814, 819, 54 S. Ct. 423; Federal Trade Commission v. Raladam Co. 283 U.S. 643, 648, 75 L. ed. 1324, 1329, 51 S. Ct. 587, 79 A.L.R. 1191; Federal Trade Commission v. Gratz, 253 U.S. 421, 64 L. ed. 993, 40 S. Ct. 572. Delegation in such circumstances is born of the necessities of the occasion. The industries of the country are too many and diverse to make it possible for Congress, in respect of matters such as these, to legislate directly with adequate appreciation of varying conditions. Nor is the substance of the power changed because the President may act at the instance of trade or industrial associations having special knowledge of the facts.
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> Their function is strictly advisory; it is the imprimatur of the President that begets the quality of law. Doty v. Love, 295 U.S. 64, ante, 1303, 55 S. Ct. 558, 96 A.L.R. 1438. When the task that is set before one is that of cleaning house, it is prudent as well as usual to take counsel of the dwellers.
>
> But there is another conception of codes of fair competition, their significance and function, which leads to very different consequences, though it is one that is struggling now for recognition and acceptance. By this other conception a code is not to be restricted to the elimination of business practices that would be characterized by general acceptation as oppressive or unfair. It is to include whatever ordinances may be desirable or helpful for the well-being or prosperity of the industry [553] affected. In that view, the function of its adoption is not merely negative, but positive; the planning of improvements as well as the extirpation of abuses. What is fair, as thus conceived, is not something to be contrasted with what is unfair or fraudulent or tricky. The extension becomes as wide as the field of industrial regulation. If that conception shall prevail, anything that Congress may do within the limits of the commerce clause for the betterment of business may be done by the President upon the recommendation of a trade association by calling it a code. This is delegation running riot. No such plenitude of power is susceptible of transfer. The statute, however, aims at nothing less, as one can learn both from its terms and from the administrative practice under it. Nothing less is aimed at by the code now submitted to our scrutiny.
>
> The code does not confine itself to the suppression of methods of competition that would be classified as unfair according to accepted business standards or accepted norms of ethics. It sets up a comprehensive body of rules to promote the welfare of the industry, if not the welfare of the nation, without reference to standards, ethical or commercial, that could be known or predicted in advance of its adoption. One of the new rules, the source of ten counts in the indictment, is aimed at an established practice, not unethical or oppressive—the practice of selective buying. Many others could be instanced as open to the same objection if the sections of the code were to be examined one by one. The process of dissection will not be traced in all its details. Enough at this time to state what it reveals. Even if the statute itself had fixed the meaning of fair competition by way of contrast with practices that are oppressive or unfair, the code outruns the bounds of the authority conferred. What is excessive is not sporadic or superficial. It is deepseated and pervasive.
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> [554] The licit and illicit sections are so combined and welded as to be incapable of severance without destructive mutilation.
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> But there is another objection, far reaching and incurable, aside from any defect of unlawful delegation.
>
> If this code had been adopted by Congress itself, and not by the President on the advice of an industrial association, it would even then be void unless authority to adopt it is included in the grant of power "to regulate commerce with foreign nations and among the several States." United States Constitution, Art 1, § 8, cl. 3.
>
> I find no authority in that grant for the regulation of wages and hours of labor in the intrastate transactions that make up the defendants' business. As to this feature of the case little can be added to the opinion of the court. There is a view of causation that would obliterate the distinction between what is national and what is local in the activities of commerce. Motion at the outer rim is communicated perceptibly, though minutely, to recording instruments at the centre. A society such as ours "is an elastic medium which transmits all tremors through its territory; the only question is of their size." Per Learned Hand, J., in the court below. The law is not indifferent to considerations of degree. Activities local in their immediacy do not become interstate and national because of distant repercussions. What is near and what is distant may at times be uncertain. Cf. Board of Trade v. Olsen, 262 U.S. 1, 67 L. ed. 839, 43 S. Ct. 470. There is no penumbra of uncertainty obscuring judgment here. To find immediacy or directness here is to find it almost everywhere. If centripetal forces are to be isolated to the exclusion of the forces that oppose and counteract them, there will be an end to our Federal system.
>
> To take from this code the provisions as to wages and the hours of labor is to destroy it altogether. If a trade or an industry is so predominantly local as to be exempt [555] from regulation by the Congress in respect of matters such as these, there can be no "Code" for it at all. This clear from the provisions of § 7a of the act with its explicit disclosure of the statutory scheme. Wages and the hours of labor are essential features of the plan, its very bone and sinew. There is no opportunity in such circumstances for the severance of the infected parts in the hope of saving the remainder. A code collapses utterly with bone and sinew gone.
>
> I am authorized to state that Mr. Justice Stone joins in his opinion.

Mr. President, here we have the language that the Federal Trade Commission shall issue legislative rules defining with specificity acts or practices which are unfair to consumers.

Then, we get to section 5 of the act which reads in similar fashion that unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce are declared unlawful.

So as Justice Cardozo pointed out way back in 1935, over one-third of a century ago, even if the statutes do fix the meaning of fair competition by way of contrast with practices that are oppressive or unfair, the code outruns the bounds of the authority conferred.

The code has followed this precedent since 1914. Although from time to time there were efforts made in the early history of the Federal Trade Commission Act to revive the idea so very firmly rejected by Congress that the FTC had no substantive rulemaking power, there finally became accepted that idea, and for almost one-half a century not even the Federal Trade Commission took the position they possessed that power. They worked on the idea they did not have that power.

Only in the last several years have voices been raised and there is litigation pending in the courts regarding aspects of this new abuse, namely legislative rulemaking power, and now we have an attempt to come right back into the arena with the same arguments and the brand of authority Congress turned down in 1914, and the rules and the reasons for rejecting it are the same now as they were 57 years ago.

The position of the Commission that it lacked substantive or legislative rulemaking power was consistently held until about 1961 or 1962, according to some authorities, and this also appears in the legislative history of the statutes enacted after the Federal Trade Commission Act that conferred on the commission in limited area substantive or legislative type rulemaking power. There are four such acts that have been enacted: The Wool Products Labeling Act, the Fur Products Labeling Act, the Fiber Products Identification Act, and, more recently, the Packaging and Labeling Act. In each instance there was a relatively new field. The context of the grant of legislative rulemaking power was such that it was contained in that narrow field and it was not given broad or general application and jurisdiction.

The Wool Products Labeling Act was the oldest of these. It was passed in 1940 with the active support of the Commission. The Commission supported such an important factor in the passage of the law and this fact was sometimes used to refute the argument by the bill's opponents that the Commission could handle the problem with its existing powers.

Congressman CASE stated it this way:

> The second argument is that the evils of false labeling are being curbed and gradually cured by the Federal Trade Commission. If that were so the Federal Trade Commission itself would not be on record in favor of the passage of the bill and the Federal Trade Commission did testify in favor of the bill. It testified that something like this was needed to put teeth into their recommendations to the trade. (86 Cong. Rec. 11320 (1940.))

In 1951 Congress passed the Fur Products Labeling Act, and in 1958 the Textile Products Labeling Identification Act. Both of these measures were also supported by the Federal Trade Commission. One reason the Commission desired these two laws was to provide it with jurisdiction over deceptive labeling and advertising at the local level. But equally important was that the Commission did not believe that it had the power affirmatively to require members of an industry to adopt practices not otherwise required by section 5.

Henry Miller, Assistant General Counsel for the Commission, testified in favor of the Fur Products Labeling Act as follows:

> Our trade practice rules do not require mandatory labeling unless we have felt that we have not the power to require them.

The citation for that statement is found in the hearings on H.R. 23211 before the Interstate and Foreign Commerce Committee of the House in the 82d Congress, which was in 1951.

Mr. Miller continues:

> Under the trade practice rules Mr. Gold, [a previous witness], said he is very much in favor of our making those rules do what is intended in this bill. That is all well and good, but if there is no legal authority to do it, neither Mr. Gold nor his clients can do it, nor can we. (Id. at 161.)

And then we get to hearings which are within the memory of most Members of this body, and that is the Fair Packaging and Labeling Act. The chairman of the committee, as recently as 1966, candidly recognized the difference between the type of power that the bill would confer and the power the Commission possesses under the Federal Trade Commission Act.

At one point, testifying before the House Interstate and Foreign Commerce Committee, he stated:

> So it (the procedure described under the Packaging and Labeling bill) would be quite a different procedure. Here it is very clearly rulemaking authority if these limited fields are granted. We have no ultimate rulemaking authority across the board on deceptive practices as such.

That is found in the hearings on H.R. 15440 before the House Interstate and Foreign Commerce Committee in 1966. The chairman also explained how the rulemaking powers under the Fair Packaging and Label Act would occur:

> Once a regulation was promulgated—

He said—

> a violation would be a per se violation of section 5 of the Federal Trade Commission Act and what we would do is say, "You violated a regulation which was duly promulgated under this legislation."

Then would follow the judgment and the penalty, whatever it was.

So we have the situation leading to this conclusion: That, in sum, there can be no doubt, that the provisions of the Federal Trade Commission Act, read in their entirety, do not confer upon the commission substantive or legislative type rulemaking power. That conclusion is confirmed if provisions of the Federal Trade Commission Act are read together with the contrasting provisions of other statutes the Commission administers. The conclusion is further confirmed when one examines the legislative history of the Federal Trade Commission Act.

It would be well to consider what the Federal Trade Commission could legislate under the proposal authorizing it to issue legislative rules. In what areas could it become active? The extension of power, the authority, is broad. It says "authority to issue legislative rules with specificity to acts or practices which are unfair to consumers." And what is unfair to consumers? We could, of course, add to that language the language of section 5 itself, because the rest of the language is that, "Acts or practices which are unfair or deceptive to consumers and which section 5(a)(1) of this act proscribes."

When we get to section 5(a)(1) of the present act we have even more general language: "Unfair methods of competition in commerce or unfair or deceptive acts or practices in commerce declared unlawful."

This bill goes that one better. It says not only commerce, but matters affecting commerce or goods affecting commerce. That means everything. It is of universal application.

What are some of the areas that the Federal Trade Commission could get into if it were granted this very drastic power? It could get into the field of wage and price controls. Why not? Do not wages affect the consumer? When there is spiral after spiral of wages, followed by or preceded by and interlarded with increases in prices, does that not impinge upon the well-being and happiness and progress of the consumer? It does indeed.

We can fulminate since August 15 that we are going to have a renewal in phase II of the President's program. We can fulminate all we want to. Later this week or next week we are going to take up some tax measures necessary, on a legislative basis, to implement the President's program. Some of them will be in the field of legislation that only Congress can act on. Yet some persons who advocate granting to the Federal Trade Commission power which would include this power so that this body of 5 appointees could, with their own rules, decide what should be done by way of prices and wages. I imagine that would raise quite a furor. Many people would make themselves immediately heard, vocally or otherwise. Nevertheless, it is within the power of the Commission.

Does not this type of example make the situation so pernicious? The idea, though, is to illustrate the length and breadth to which the Federal Trade Commission may go if this power is granted.

Another area is of great importance in my part of the country. I come from an agricultural part of the country, the big breadbasket and the meat locker of the Nation. We have a farm program that has been going on for many years now. Part of that farm program is based upon the idea that there should be a limitation of production so that there will not be such surpluses of agricultural products that the market will become so depressed that the agricultural industry, the raisers of wheat, feed grains, hogs, and cattle, will not get into an economic stricture which would make it impossible for those engaged in that industry

to continue their activities. The program involves setting aside a certain number of acres which will not be tilled and which will not produce agricultural goods.

Yet that program could well become grist in the mill for the Federal Trade Commission if it were armed with the authority which section 206 seeks to give it. Certainly it could be said it is unfair and it is bad for the consumers to be deprived of those products which could be grown on those unused acres "and we therefore make a rule that there shall be no laws that will forbid the use of acres."

So you see, Mr. President, it is not only in new fields that this power would enable the Federal Trade Commission to function; it could take existing laws and existing statutes and say, "These laws and these statutes are unfair." The Commission could say that featherbedding is unfair to the consumer "and therefore we are going to make a rule that featherbedding is unfair and it will be a violation per se if featherbedding is engaged in by labor unions or anyone else," and that will be the law of the land.

Why did not they think of this sooner? Look at all the trial and travail of 535 individuals being divided into committees, having hearings, calling witnesses, having executive sessions, and deciding, after considering all the factors in a complicated piece of legislation, on particular words and figures in reporting a bill.

Then it is debated here, and it is voted on. The other body goes through a similar process, we have a conference, and eventually the differences are ironed out and the bill goes to the White House; and there happens one of two events: Either the bill is signed or it is vetoed.

All of that folderol is disregarded in this modern way of instant legislation, Mr. President. All you have to do is follow the rather sketchy, inadequate, trouble-making provisions of rule 260, have the Federal Trade Commission pass a law-making rule, a legislative rule, and that becomes the law of the land.

Can it be challenged in the courts? Yes, it can be challenged in the courts. And what will the court hold? The court will hold, if the precedents which have been extant in this field for decades obtain, that whether a given course of conduct is fair or not is something which Congress has delegated to the members of the Federal Trade Commission to decide. They have decided it is unfair; there is nothing upon which to predicate an appeal, and that is the law of the land.

Is provision made for congressional review? Yes, there is provision for congressional review. After all the steps that are outlined in section 206 are more or less complied with, together with their outstanding feature of disregarding due process in the process of legislation, but after they are all completed and before the rule becomes final, it must be sent to Congress by the Federal Trade Commission, and Congress, in all of its majesty and in all of its leisurely course of dealing, will have 60 whole days, Mr. President, to consider whether it wants to disapprove of the rule.

Already we have discussed, earlier in the colloquy which transpired here, the impracticality and the lack of reality and realism in such a provision. Congress cannot gear itself up to take action on a matter of that kind, with its busy schedule and its many commitments, within the time that is allotted. There is no question about that. That type of congressional review has been tried in other instances—in the Reorganization Act, for example, and in other situations—and it is not practical whatsoever.

Mr. President, what are some of the other examples to which the Federal Trade Commission could repair for the purpose of establishing its newly derived, newly constituted authority?

The field of antitrust: Some years ago, in fact, some 8 or 9 years ago, or maybe a little more, before the Judiciary Committees of Congress, there was what in the Senate was known as S. 11, a bill that was introduced, as I remember, under the authorship of the late Senator Kefauver, and it had a number of cosponsors. The bill was actually passed in the House of Representatives in one session, though when it was proposed in the next session it was absolutely rejected.

What did it have to do with? It dealt with the Clayton Act, as amended by the Robinson-Patman Act. There the idea of cutting prices was forbidden, unless there was a defense of good-faith in meeting price cuts by others.

That was upheld by the Supreme Court. The thrust of the bill, S. 11, was to eliminate the defense of good-faith cutting of prices in order to meet price cuts which are made by others.

By that time, Mr. President, this litigation was some 16 or 17 years of age. It had started in Detroit back in 1940, as I remember, and it went through all the paces leisurely and thoroughly, and went to the Supreme Court. The Supreme Court sent it back after 5 or 6 or 7 years, and then another round of the same thing occurred and it went back up to the Supreme Court, and the Supreme Court sent it back again.

The net effect of that second Supreme Court decision was that this defense would stand, and that accounted for the introduction of this bill that has never followed into law, and properly so I say as one who became very familiar with the merits and the details of the proposal.

All of that would be thrust to one side. The Federal Trade Commission, as is any commission, is anxious to be possessed of powers, implements, and tools to go forward with its great humanitarian mission—and I do not say this in any sarcastic or downgrading way. Each one conceives of its mission as being important, and they have faith in the idea that if they could only have the tools and the implementation, they could make greater progress to serve the mission entrusted to them.

Under the circumstances of eliminating the defense of good faith price cutting in order to meet price cuts by others, by one competitor, would there be much doubt as to where they would go in the hands of a commission of five commissioners, appointed by the President and responsible, virtually, to no one? They could—I do not know if they would or not, but they could—say, "That good faith defense is nonexistent; from now on, it will not be a defense to say, 'I cut my prices because a competitor of mine cut his first, and I do that because I have to meet competition.' "

I am informed and it is my recollection that some of the commissioners did testify in favor of this. But whether they did or not, they have the capacity, Mr. President, under this act, if this authority is granted to them, to get into this phase of the Clayton Act, as amended by Robinson-Patman, or virtually any other phase of antitrust.

Why not? Every one of the decisions in the antitrust field does impinge, in one way or the other, more or less directly upon the well-being or the alleged well-being of consumers, wherever they are, and the allegation could be made that this practice or that practice, or this way of doing things or that law to do certain things, is unfair.

That decision made, compliance made with the very sketchy and unsatisfactory rules found in section 206, and a new statute would be born—a rule, to be sure, but a rule having the force and effect of law. And anyone violating it would per se be guilty, and would be subject to the penalties which would follow.

Included in those penalties, of course, would be the consumers' class action business, created legislatively, without reference to many, many factors that should be considered when a class action venue is laid. When a remedy of consumers' class action or any kind of class action is created, it would have to be done in a way that would fit into the general system of jurisprudence and into the judicial system of this country.

Now, there are some exceptions which it is said might not be affected. There is subsection (a) (1) (6), found in section 45, title 15 of the United States Code.

It deals with the general subject of section 5, "Declaration of unlawfulness," and then "Power to prohibit unfair practices."

Subparagraph (6) of that section reads as follows:

(6) The Commission is empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended, except as provided in section 406(b) of said Act, from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

Section 206 in title II does not say that these exceptions will be made when it comes to the power of the Federal Trade Commission to engage in the authority to issue legislative rules. All it does is to refer to the first sentence of that paragraph, which reads:

Unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce are declared unlawful.

It is that which is a part of section 206, and it is that to which we must go to determine the purview of section 206. But even if it were to be extended, even if these exceptions found in subparagraph (6) are to be extended to limit rule-making power for which authority is sought in section (6), there would be

many areas in which there would be regulation by other bodies besides the Federal Trade Commission, in which the Federal Trade Commission would be authorized to pass rules and enact rules that would have the force and effect of law.

Why would it not apply to the Federal Power Commission? That is one of the exceptions. It would. Does power have any impact upon consumers in the sense of fairness or unfairness? I would think it does. I think everyone would agree that in the field of power, that would be true.

There is another field in which it would very likely find it very handy to have that power, and that is the field of advertising—in newspapers, in TV, in radio. Then we would not have any quarrel about the authority of the Federal Trade Commission to get into the field of legislating on ads for cigarettes or tobacco; because all that the Federal Trade Commission would have to do would be to say it is deceptive to advertise in this sort of way, that is the rule, and anyone who advertises in that sort of way is immediately guilty of a violation of the law and is subject to all the penalties contained therein. It is a per se violation, the mere fact of doing it. So that it would apply to advertising—TV and radio and newspapers.

Another field is the Food and Drug Administration. They have many rules. They have many laws that govern. Certainly, in food and drug and pharmaceuticals and all that goes with drugs and the Packaging and Labeling Act, all those subjects would be grist for the mill, for the Federal Trade Commission to come in and attempt to exercise its authority to issue legislative rules. Having done so, they would supersede any statute on the books, because they have the force and effect of law, and they would be the law, and a violation thereof would be a per se violation.

The same would be true in all merchandising fields, including franchises. We had extensive hearings on the $100 billion plus annual output of franchises. The Federal Trade Commission would make life simple.

It would make a decision that a certain part of franchising would be unfair or deceptive and therefore would not have to bother about hearings and about balancing the good and the merit that exists in franchises, and they would not have to bother with that which does not.

In the field of merchandising, what about the field of co-ops and the field of trading stamps and of contests and of credit? Banks are excluded by subsection (6), if that subsection applies. I do not think it does, in my reading; but even if it does, banks are excluded, but not credit.

As to brands, there is thinking on the Federal Trade Commission today that the use of brands and building up of goodwill is not for the benefit of the consumer, that it is unfair to the consumer, because he is there asked to pay, as a part of the merchandise he buys and uses, for an effort to build up goodwill, and that that is not necessarily reflected in the quality of the product.

So America would then be asked to forgo the tradition it has always had of favoring brands, when we say we want a Ford or when we say we want Del Monte or when we say we want a Camel rather than a True. But there are those who would say that brands are no good, that you should simply say "tomatoes with heavy syrup," "tomatoes with light syrup," or "tomatoes with no syrup," and put them in a plainly wrapped can marked "tomatoes." They would be either lumped or sliced, and that would be it. They feel that the customer would get a better bargain, because then he would be paying only for the merchandise and the labor and the material that goes into it and not all these goodwill programs and campaigns.

That gets back into the matter of advertising again. That is within the purview of the power that section 206 is seeking to authorize the Federal Trade Commission to issue these legislative rules.

We get into another field. What about patents and trademarks? Are patents unfair to users? We had that argument advanced and we battled on this floor, in 1962, an attempt to do away with patents in pharmaceuticals and to have compulsory cross-licensing under a formula spelled out in the bill. But where would the incentive have come from to pioneer or invent new pharmaceuticals, or to induce boards of directors to spend the money of stockholders for something new if they did not have enough advantage, at least to recover their capital or the moneys expended for them? The good judgment of the Senate prevailed, and that provision was stricken. I hope it will never be renewed. It was a derivative of patent law, which derives from a situation itself. Yet we had it before us. It was a provision to give the Federal Trade Commission the power to issue rules to say that patents are unfair to consumers; and having made that decision, they could promulgate it. They complied with the many provisions contained sketchily and, in some instances, harmfully in section 206; and when they reached the final point, they said that would be the law of the land.

In an instance like that, perhaps Congress would leap into action before the 60 days or the 90 days had expired, if the period were extended. Nevertheless, it is the law.

The same is true of copyrights and trademarks, not to forget the appliances installed on automobiles. We have a law which seeks to achieve for automobiles certain standards of cleanliness, such as the nonpollution of air. Under that law, a manufacturer, after a certain time, must have certain safety features installed on cars. The Federal Trade Commission could cut all of them and say, "It is unfair to the consumer if between the dashboard and the place where the driver sits behind the steering wheel there is no air bag"—which may or may not work; it may do the driver more harm than good. But that would be beside the point. The Federal Trade Commission would have decided that that is the procedure that must be followed; that it is unfair to the consumer not to provide the air bag; therefore, it must be installed. But who will pay for it? The consumer will have to pay for it. I have an idea that he might kick a little bit about it.

Even in the field of health, the current theory of health care would be under the Federal Trade Commission's jurisdiction. It is a service. It does affect consumers. Not only are there the automobile safety acts, but there are also the Inflammable Fabrics Act and the Mine Safety Act.

This may sound ludicrous. It may sound like an exaggerated laundry list of things that the Federal Trade Commission could get into. Yet it is the fact. We would be faced with just that in connection with the substantive power given to the Federal Trade Commission. There would be a traditional lack of due process or of the regular, traditional way of legislating. It is not in the nature of the business, as it is described and provided for in title II, section 206.

When it comes to the matter of the formulation of law, there is no requirement that there be a hearing. The Federal Trade Commission may order a hearing, but it does not have to. It can call witnesses; but if it does, it is a matter of grace, not of right; and when additional witnesses are called in response to a rule that is proposed tentatively and there are a large number of people who are examined, maybe from a certain industry or from a certain part of the country, and they present themselves, and the Commission says, "There are too many of you. We cannot be bothered with you. We will appoint one and he will speak for all of you and he will address himself only to certain, specified aspects of the rule and not the law." That is in the bill. There is no opportunity for anyone who is opposed to the bill to cross-examine witnesses who testified for the rule—not the bill, the rule—no opportunity to cross-examine. Here is an instance in which, unfortunately, a decision is not made on empirical fact or on objective standards but one made on the basis of the subjective judgments of five members, or if five members are not there, then on three, and the three would prevail if there are five there. They are subjective judgments.

There is no opportunity to cross-examine them and ask them, "Do you, in deciding whether a given practice is fair or unfair, take into consideration this, that, or the other thing, or certain statistics that bear upon the situation here or there and, if so, how do you evaluate it?"

That is part of the procedure given here.

Due process? There is no due process. It is a bureaucratic process. Bureaucracy has its place. We cannot run a government without it. In the main, the bureaus or the agencies are competent and dedicated people who want to do the best they can with the programs they are charged with by way of responsibility.

However, they are not in their element when it comes to passing legislation or the equivalent of legislation that will govern a nation of 208 million people. Unless it is restricted, as it was in the four exceptions which I have given, that is for Congress to do. We are elected. We

are responsible to the people that we represent. We are receptive to their views. We are receptive to the cross currents of "for and against" in any given major proposal. We process it. We call people in and we get evidence and take testimony. We cross-examine witnesses, much as Mr. Powell is being cross-examined right now by some of my colleagues in the Judiciary Committee on the matter of whether he is competent and proper to serve on the Supreme Court of the United States. Nothing is sacrosanct from that business of asking questions by the elected representatives of the people, and it should not be restricted in that section. In the case of section 206, it is not only restricted but nonexistent.

So Congress should relegate unto itself and guard most jealously that kind of delegation of authority turned down flatly in the NRA case—the Schechter case. That is the only example where an effort was made on that broad basis, to delegate legislative power to an agency to a presidentially appointed agency, and the Supreme Court said, "No; you cannot do it. It is a violation of section 1 of article I of the Constitution. That power belongs to Congress."

In the fur case and in the fabric case and in the case on wool notwithstanding the fair packaging and labeling, there is a restricted and a limited use of the legislative rulemaking power. In each instance, of course, it will be subject to the committee that followed the bill in the first place and, nevertheless, it will be within that area which the Supreme Court has said is all right, is sufficiently restricted, is sufficiently surrounded by standards, and that it is acceptable.

But to hand to a single Federal agency a blank check, a book of blank checks, volumes of blank checks and say, "Here, write your own check. We will honor it, unless within 60 days we repudiate it," that is no congressional review of the matter because it is a totally impractical length of time in which to meet the situation.

Well, Mr. President, I have indicated, in the few remarks I have just made, some of the grounds on which we can form a firm foundation for an affirmative vote on the amendment that is before us and is the pending business.

It will be without violence to the idea of advancing the cause of well-being and the welfare of consumers and their protection. It will be without violence because the position of this Senator is that we should approve into law the provisions of title I having to do with the substantive law in the field of the law on warranties—long overdue as a matter of fact, and subject to possible changes as would be wrought by the other body in conference. The thrust of the bill is good, and it should go forward.

It seems to me the better part of wisdom is to go forward with that where our ground is sure, and defer action on title II where our ground is not sure, where we have not yet gone into the analysis and the prescriptions for those things necessary to remedy those ills in which the FTC as personally constituted is now afflicted

My hope is that we can engage here in some colloquy and a little dialog so that we can ask some of these questions and test them out; but, in the main, the suggestions I have made are documented—perhaps the sources of the documents are not relevant, but that is something for the Senate to decide. But, I have an idea that when the distinguished Senator from Kentucky (Mr. COOK) gets busy on his analysis of the legislative consumers class action, we will hear some further very applicable and relevant details on the "atrocities" which in some instances this type of tool will perpetrate, not because of lack of good faith on the part of the Committee on Commerce, because they want to do the right thing and they give every evidence of it, but because the inevitable result is in the fashion in which title II is drawn, which will mean that more problems and more evils will be created than will be solved.

Mr. President, I yield the floor.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had agreed to the amendments of the Senate to the bill (H.R. 5060) to amend the Fish and Wildlife Act of 1956 to provide a criminal penalty for shooting at certain birds, fish, and other animals from an aircraft.

The message also announced that the House had passed a bill (H.R. 8293) to continue until the close of September 30, 1973, the International Coffee Agreement Act of 1968, in which it requested the concurrence of the Senate.

HOUSE BILL REFERRED

The bill (H.R. 8293) to continue until the close of September 30, 1973, the International Coffee Agreement Act of 1968, was read twice by its title and referred to the Committee on Finance.

CONSUMER PRODUCT WARRANTIES AND FEDERAL TRADE COMMISSION IMPROVEMENTS ACT OF 1971

The Senate continued with the consideration of the bill (S. 986) to provide minimum disclosure standards for written consumer product warranties against defect or malfunction; to define minimum Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes.

Mr. COOK. Mr. President, during the opening of debate on the pending measure (S. 986), the Senator from Nebraska discussed at some length the bill's creation in the Federal Trade Commission of a totally new and radical power to "issue legislative rules defining with specificity acts or practices which are unfair to consumers," and so forth.

Some of the remarks frankly are directed to remarks made by the chairman of the committee, the distinguished Senator from Washington, and I merely put them into the RECORD because I was concerned at the time he made them relative to the legislative rulemaking. The Senator from Washington caused me to research this to some extent, the extent to which it has been approved either judicially or otherwise. I merely want to get these points into the RECORD.

There was a rather broad statement that these things are acceptable when, in fact, they are not.

The Senator from Nebraska made out a clear case that to vest the Federal Trade Commission with power to legislate by such legislative rulemaking power was not only new for any regulatory body or Government agency to possess, but that it was dangerous.

It totally disregards "due process" in the enactment of such rules. Hearings are not required. There is no right to cross examination. There is no recourse to all of the usual proceedings attendant upon the enactment of statutes by Congress.

Such rulemaking power would result in rules having the force and effect of law, with severe and even harsh penalties. Such penalties would be up to $10,000 for each violation. As the chairman knows, I agreed and thought it was proper to increase the fine from $5,000 to $10,000.

Mr. President, I submit that the Senator from Nebraska made out a very well-documented and virtually conclusive case proving:

First, authority to issue such "legislative rules" as provided in section 206, is without valid precedent—it was tried in the 1930's in the NRA—National Recovery Act—statute. But the Supreme Court struck it down in the Schechter poultry case.

Second, that such power is radical and dangerous.

Third, that it would enable "legislation" on a very wide range of subjects to be enacted without due process but having full force and effect of law upon promulgation.

Mr. President, with all of the documentation furnished by the Senator from Nebraska, there appeared at the conclusion of his remarks a most unique, and difficult-to-believe statement by the Chairman of the Committee on Commerce—the Senator from Washington.

He cited language in the report—from page 26—describing and characterizing "legislative" rulemaking as distinguished from "interpretative" rulemaking. After quoting that language from the report, the chairman stated:

> So this (the phrase "legislative rule") is not new or radical; it is traditional as the administrative agencies themselves.

Mr. President, nowhere was there any citation of any instance where such legislative rulemaking power had ever been validly authorized by Congress to any commission or agency. No such citation could be made because there is no instance.

The chairman only made the proposition that "legislative rule" as a phrase is a traditional law characterization that the Supreme Court has recognized.

This proposition would not be disputed by Senator HRUSKA nor would I undertake to dispute it. Of course, it exists as a phrase and as a legal concept.

But, Mr. President, it has never been approved and authorized validly in any congressional enactment in favor of any commission or agency. Several proposals have been made in recent decades that this be done. Some of these proposals have been made for, or by, or on behalf of the Federal Trade Commission. But in each instance these proposals have been rejected by the Congress as being unsound and as being undesirable as national policy.

Hence, it is necessary to make the within remarks because the statement of the Senator from Washington quoted above cannot be permitted to stand without this challenge.

There are several instances of legislative rulemaking power being granted, but such power related to particular subjects, and was limited by them alone.

Professor Shapiro, 78 Harvard Law Review 921, 960 (1965) wrote:

In several crucial areas of administration, no grant of authority to issue prescriptive regulations in the sense used here is to be found. Two noteworthy examples relate to the powers of the NLRB and FTC: with a few exceptions resulting to particular subjects (citing the Wool Products Labeling Act), neither agency has express authority to give content to the general statutory prohibitions by promulgating regulations requiring certain acts to be performed or declaring specific acts or practices to be unlawful.

The narrow and limited exceptions include Wool Products Labeling Acts, 15 U.S.C. 68d(a), 1940; Fur Products Labeling Act, 15 U.S.C. 69f(b), 1951; Textile Fibre Products Identification Act, 15 U.S.C. 70e(c), 1958; and Fair Packaging and Labeling Act, 15 U.S.C. 1454, 1966.

Gilbert Weil, at page 227, Senate Judiciary Committee 1970 Hearings on S. 3201:

In sum, there can be no doubt that the provisions of the Federal Trade Commission Act, read in their entirety, do not confer upon the Commission substantive or legislative-type rule-making power. The conclusion is confirmed, if the provisions of the Federal Trade Commission Act are read together with contrasting provisions of other statutes the Commission administers. The conclusion is further confirmed when one examines the legislative history of the Federal Trade Commission Act.

It must not be allowed to stand as basis for implication or inference of the existence and the functioning of a legislative rulemaking power anywhere in the Federal Government. There is no such legislative rulemaking in operation in this field of Federal Government.

It is dangerous.

It would be a drastic mistake to venture into the area of an extensive and virtually unrestricted abdication by Congress of its legislative power derived from article I, section 1 of the Constitution of the United States.

Such delegation, moreover, would be to a legislatively created commission created by the President. It—the Federal Trade Commission—has only five members. With three as a required quorum, a vote of two Commissioners could conceivably engage in extensive legislative forays into a great variety of vital subjects of national import and immense significance.

Mr. President, in order to set the matter in full context, I set out the comments of the Senator from Washington, as appearing in the CONGRESSIONAL RECORD for November 5 on page S17703—. They read as follows:

Mr. President, I listened with great interest to the Senator from Nebraska. Unfortunately, I had to leave the Chamber for a few moments, but I wish to clarify the phrase he discussed at some length, the phrase "legislative rule." This is a traditional law characterization that the Supreme Court has recognized.

I refer to page 26 to the report on the bill which states:

Paragraph (2) of subsection (g) of the Federal Trade Commission Act, as amended by section 206 of title II, would authorize the Commission to issue "legislative rules defining with specificity acts or practices which are unfair or deceptive to consumers and which section 5(a)(1) of this Act proscribes." The Committee chose to characterize these rules as "legislative" for three reasons: 1) the procedures prescribed resemble the procedures followed by Congress in formulating legislation; 2) the sales are to be reviewed by the Congress as well as the courts; and 3) the rules are to have the force and effect of law following their adoption as compared to rules which simply interpret a statute without having the force of law. There is precedent for such characterization. Professor Davis states that the strongest authority for the distinction between interpretative and legislative rules is the action and attitude of the Supreme Court, even in the absence of specific articulation of the distinction. Explicit recognition of the distinction is found in a few opinions of lower courts, in Congressional action, in administrative action, in reports or special studies of administrative law, and in remarks of leading commentators." (Davis, Administrative Law Treaties § 5.04 (1958))

So this is not new or radical; it is as traditional as the administrative agencies themselves.

That much is true.

But nowhere has such legislative rulemaking been authorized validly by Congress in express form.

To enact section 206 of the pending bill would indeed and in truth be "new and radical."

If adopted, it would be to the direct and heavy disadvantage of all concerned—the consumer, the general public, those in management and in labor who produce goods or render services for consumers, as well as direct and heavy disadvantage to the Government itself.

It would be dangerous.

It should be rejected.

Mr. COTTON. Mr. President, I wish to express my support for the amendment which has been offered by the distinguished Senator from Nebraska (Mr. HRUSKA) to strike all of title II of S. 986 and I wish to associate myself with the remarks which he has made in connection with this amendment.

Mr. President, there are many troublesome features associated with the provisions of title II of S. 986. Perhaps no one in this body can appreciate the sweeping impact of these provisions better than the Senator from Nebraska (Mr. HRUSKA), who is the senior Republican member of the Committee on the Judiciary, I, myself, have been troubled with various sections of this title. For example, I am concerned over the new authority which section 203 would seek to vest in the Federal Trade Commission to assume the role of "consumer advocate" and to seek redress in the courts on the behalf of consumers. I am equally concerned about the expansive rulemaking power proposed to be vested in the same Commission by virtue of the provisions of section 206. Accordingly, I consider the amendment offered by the distinguished Senator from Nebraska (Mr. HRUSKA) to be a most appropriate one. Quite frankly, I personally feel that we would be well advised to consider amendments to the Federal Trade Commission Act such as are being proposed in title II in a separate piece of legislation rather than "tacking it on" so as to ride on the back of the meritorious provisions of title I of S. 986 dealing with consumer product warranties.

Mr. President, it has been my constant observation and belief, laying aside all of the learned legal analysis and arguments of other Senators who have spoken on this matter, that as a practical matter we should be very careful in creating too many agencies with too much authority in the field of so-called "consumer-protection." After all, in the final analysis there is one vital interest common to all the consumers of this country and that is in the prices they must pay for goods, as well as the taxes to support such agencies and authority.

Now, I am proud of the record of our Committee on Commerce since, under the leadership of its distinguished chairman, the Senator from Washington (Mr. MAGNUSON), over the past several years it has blazed the trail in consumer protection, which has long been needed. But, at the same time, if we continue on this path too long and if we are too liberal in vesting authority in too many people, almost everything we would be doing beyond a certain point would only serve to increase costs to manufacturers and dealers of consumer goods with the burden of the expense ultimately to be borne by the consumer through higher prices. So I think there is a point where we have to move cautiously. We should make sure we are getting needed protection for the consumer at commensurate cost. Otherwise, we simply are putting a heavier burden on the consumer's back because, in the last analysis, the expense of enforcement; and the expense of the bureaucracy necessary to accomplish these things, when added to the manufacturer and the dealer, will reflect itself in what is being paid by the poor person at the end of the line—the American consumer.

Mr. President, therefore, I support the amendment proposed by the distinguished Senator from Nebraska (Mr. HRUSKA) to strike title II of S. 986 and urge my colleagues in the Senate to similarly support this meritorious amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. MAGNUSON. Mr. President, I suggest the absence of a quorum, unless someone wishes to speak.

Mr. ALLOTT was recognized.

Mr. MAGNUSON. Mr. President, I withdraw the request for a quorum.

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

Mr. ALLOTT. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. MAGNUSON. Mr. President, I will place in the RECORD certain statements in regard to some of the questions that were raised today and which were raised on Friday and about which we had colloquies. Those questions were also raised in the committee during many days of hearings.

The senior Senator from Nebraska and the junior Senator from Kentucky have expressed concern that the rulemaking authority described in section 206 of title II somewhere constitutes an unauthorized or questionable delegation of legislative authority. The full answer to their concern is that there exists not the slightest doubt as to the complete propriety of the rulemaking authority described in section 206.

Indeed, Congress has, on numerous occasions, granted legislative rulemaking authority to Federal agencies. Among others, such rulemaking authority has been granted to the Food and Drug Administration, the Department of Agriculture, the Department of the Treasury, the National Labor Relations Board, the Internal Revenue Service, the Interstate Commerce Commission, the Federal Power Commission, and the Federal Communications Commission.

The Federal Power Commission has been granted sweeping legislative rulemaking authority—15 U.S.C. 717 (1958) authorizes that Commission:

> To prescribe, issue, make, amend and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this act.

The Federal Power Commission's substantive, legislative, rulemaking authority was challenged and sustained by the U.S. Supreme Court in *Federal Power Commission* v. *Texaco, Inc.*, 377 U.S. 33 (1964). The Supreme Court there held that Commission rules limiting the type of price changing provisions which could be included in contracts of independent natural gas producers were permissible and had the force and effect of law.

The National Labor Relations Board has been authorized pursuant to the provisions of 15 U.S.C. 46(g) (1958):

> From time to time to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary to carry out the provisions of this act.

In *National Labor Relations Board* v. *Wyman-Gordon Co.*, 394 U.S. 759, the Supreme Court went to great lengths, not only to sustain the NLRB's substantive rulemaking authority under the Administrative Procedure Act, but to point out the need for rulemaking procedures in administrative agencies. Similarly, the Federal Communications Commission's legislative rulemaking authority, granted to it by Congress, was sustained by the Supreme Court in 1956 in *United States* v. *Storer Broadcasting Co.*, 351 U.S. 192. On numerous occasions, Congress has granted to the Federal Trade Commission substantive rulemaking authority in connection with the Commission's duties under specific acts. Thus, the Commission has the authority to make legislative rules in connection with its duties and responsibilities under the Textile Fiber Products Identification Act, 15 U.S.C. 70e(c); the Wool Products Labeling Act, 15 U.S.C. 68(a); the Fur Products Labeling Act, 15 U.S.C. 69f(b); the Flammable Fabrics Act, 15 U.S.C. 1194(c); the Commission also has authority to promulgate quantity-limits rules under section 2a of the Clayton Act, 38 Stat. 730 (1964), as amended by the Robinson-Patman Price Discrimination Act, 15 U.S.C. 13(a).

Indeed, in title I of S. 986, now before us, Congress once again intends, in section 102(b), and in section 109, to confer upon the Commission substantive, legislative rulemaking authority for the purpose of enabling the Commission to carry out its responsibilities under title I.

The purpose of section 206 of title II is to clarify the Commission's rulemaking authority under section 5 of the Federal Trade Commission Act which prohibits unfair and deceptive acts and practices which injure consumers.

The authority sought to be conferred by section 206 is, if anything, less far-reaching than that which Congress has granted on countless other occasions, some of which I have already mentioned, to virtually every other department and agency of the Federal Government. To suggest that the authority granted under 206 is somehow new or novel to the federal system is to ignore countless previous grants of such authority to other departments and agencies, which authority has been deemed by the courts and commentators alike, not only as salutory, but as essential to the efficient administration of government. Professor Fuchs, in his important article entitled "Agency Development of Policy Through Rulemaking," which appeared in 59 Northwestern Law Review 781 (1964), makes it plain that the exercise of such rulemaking authority within the confines of the procedural safeguards contained in the Administrative Procedure Act represents a constitutionally sufficient procedure assuring interested and affected parties that their due process rights will be protected. The Federal judiciary, in numerous decisions, is in full accord with the views expressed by Professor Fuchs; and, as I understand the Senators from Nebraska and Kentucky, they do not claim that section 206 is in any respect unconstitutional.

Thus, the single question which is now before the Senate with respect to section 206 is whether we shall clarify the Federal Commission's rulemaking authority under section 5. That question presents no constitutional issues, no novel problems, but only a routine matter testing the genuineness of this Senate's desire to render assistance to the consumer.

I listened to the statement by the Senator from Nebraska and I have no objection to the way he analyzes the section. Legally I think what he said is correct. I disagree with his statement that some of these things should not happen. I want them to happen. We disagree on that, and the committee disagreed. The committee did not agree with the suggestion by those who oppose title II.

Mr. President, I suggest the absence of a quorum. I would like to have a rollcall vote on this amendment, and I would like to get a sufficient number of Senators present to ask for the yeas and nays.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer (Mr. STEVENSON) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of Senate proceedings.)

CONSUMER PRODUCT WARRANTIES AND FEDERAL TRADE COMMISSION IMPROVEMENTS ACT OF 1971

The Senate continued with the consideration of the bill (S. 986) to provide minimum disclosure standards for written consumer product warranties against defect or malfunction; to define minimum Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes.

PRIVILEGE OF THE FLOOR

Mr. MOSS. Mr. President, I ask unanimous consent that Mr. Jack Lewis, assistant to Senator SPONG, who has done a great deal of work on this bill, have the privilege of the floor during further discussion of the bill before the Senate.

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

Mr. MAGNUSON. Mr. President, I ask for the yeas and nays on the Hruska amendment.

The yeas and nays were ordered.

Mr. MAGNUSON. Mr. President, I understand the Senator from Colorado (Mr. ALLOTT) wants to speak on the amendment.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLOTT. Mr. President, I intend to concentrate on two major topics embraced by title II of S. 986, both of great concern: the delegation of substantive rulemaking powers to the FTC and the broad expansion of agency enforcement powers.

Before turning to title II of S. 986, I

would like to note that the effort at accommodation and compromise between the contending positions is apparent from a comparison of the previous versions of this bill and the present one, as reported out by the Senate Commerce Committee on July 16 of this year. Even so, I must continue to oppose the broad delegation of power that this bill would give to the Federal Trade Commission to promulgate legislative rules. This is a central objection to the bill and I will enumerate and examine the reasons for these objections shortly.

The specific focus of my remarks does not permit broader treatment of all problem areas. In concentrating on section 206, I am not here addressing other provisions of S. 986, notably sections 202—civil actions by FTC for practices unfair or deceptive to a consumer—and 203—FTC actions in Federal courts for damages or other relief for injured consumers—which likewise present substantial problems—uncured in the face of laudable efforts toward resolution by the drafters in the latest version of the bill.

I propose to discuss only section 206 of title II. I envision as one of the most serious, long-run dangers of the section the conversion of the flexible, adaptable language of section 5 of the Federal Trade Commission Act into a rigid, detailed codification of unfair consumer practices. This would run directly counter to the successful experience of the Commission and the courts in functioning for many years under the broad language of section 5. In legislating the Federal Trade Commission Act, Congress deliberately and wisely chose the broad, general language of section 5 because it realized that a specific, detailed code of law could not be adapted to changing business practices. Because delineating section 5 through rulemaking proceedings is much easier administratively than through case-by-case adjudication, I am fearful that this section would result in the Commission promulgating a raft of rules to cover the entire scope of American business practices in the most detailed respects. Inflexible rules are not designed, in the nature of things, to deal with dynamic, changing industry practices. I am convinced that such rules would lead to unreasonable regulation as business practices emerge which were not envisioned at the time the rules were implemented. I submit that it is highly unlikely that the Commission would be able to make swift and responsive changes in rules to keep abreast of changing business practices.

Though the new version of this section provides some of the procedural safe guards missing from the provision, I remain unconvinced. First, there is the root problem of discerning precisely what kinds of rulemaking power the Commission would have after the enactment of this section. Section 206 specifically provides for two kinds of rules to be announced according to procedures prescribed by that section. These are the procedural rules and "legislative rules defining with specificity acts or practices which are unfair or deceptive to consumers." To begin with, there is the question of definition. For it would seem that this section is not exclusive of the rulemaking power of the Commission. Indeed, the committee report so states:

> Nothing in Section 206 is intended to affect the past or present rule-making activities of the Federal Trade Commission (including Trade Regulation Rules); and future activities would only be affected to the extent specifically discussed in Section 206. Advisory Opinions and guides would not be considered [s]uch rules and regulations as are specifically provided for hereinafter. . . .

Are advisory opinions and guides the only types of "nonrules" not contemplated by section 206? What about substantive, interpretive rules?

Where, then, would we be, after the enactment of this section? How broad or narrow is the power delegated to the Commission under subsection (2), permitting the issuance of legislative rules? Would all acts or practices proscribed by section 5(a)(1) be considered to have a deceptive effect upon the ultimate consumer, thereby permitting the Commission to sweep the entire breadth of 5(a)(1) into a legislative rulemaking power? I cannot be certain of the answers to these questions from the language of S. 986 or from the committee report's analysis of the bill.

Under the provisions of subsection (2)(i) as explained by the committee report, the Commission need not grant the right of cross-examination. The only crack in the procedural door could occur when the Commission itself determines that there is a "disparity of views concerning material facts upon which the proposed rules is based," and permits a limited right of cross-examination. Granting the very serious due process deficiencies which could flow from FTC refusal to grant even limited cross-examination, if the Commission determines that there is not such a disparity of views, could that decision be appealed immediately to the Federal courts or would any "interested parties" be required to follow the specific review procedure provided for in the other subsections of section 206?

Even getting to the question of disparity of views concerning material facts might be burdensome in the extreme, given the procedure laid down by subsection (2)(i). Under the procedures there provided, the Commission has two opportunities to lay a foundation for the rule, while potential respondents have but one. The Commission must first "issue an order of proposed rulemaking stating with particularity the reason for the rule." During the next 30 days or more "interested persons" are to be permitted to comment on the proposed rule. Following that time, the Commission staff and "other persons" are to be permitted an opportunity "to respond." If these "other persons" do not include the "interested persons" in the second step of the procedure and if the responses are to be limited to the comments of the "interested persons" only, then the possibility of developing a disparity of views concerning material facts is significantly limited, for such a disparity may become apparent only after the responses from the Commission's staff and "other persons" have come in, at which time rebuttal or other further comments on these step two comments would presumably be impermissible. In short, the Commission may respond to initial comments in such a way as to minimize controversy over a proposed rule without affording persons or entities whose business affects commerce the opportunity to rebut.

This foreshortening of the process for developing disparity may simply lead to protracted court battles that could be otherwise avoided by providing for rebuttals from both sides of the question.

Under subsection (2)(ii), either House of Congress is given at least 60 days to disapprove of the rule. I submit that this will prove to be an extremely unwieldy procedure that proves the unwisdom of the entire section. This subsection was apparently added to dispel serious doubts about the constitutionality of the delegation. But what has resulted smacks more of an albatross than an anchor.

And, Mr. President, I want to say that I do not think anyone who is acquainted with the legislative procedures of the House of Representatives of the Senate, either jointly or as they operate separately, can contend for a moment that the opportunity for either House to respond unfavorably in the course of 60 days is a realistic form of control over this particular matter.

As a matter of fact, I do not recall at this moment, although I suppose it has happened, an instance where the Houses have responded in their own way to negate such acts. They are extremely rare, simply because of the legislative process. They are rare first of all because a resolution to do so has to be introduced; second, it has to be referred to a committee; and that is the committee, probably in all instances, or in this instance at least, which would have dealt with the matter in the first place.

Then there is the matter of getting hearings and getting proceedings going in the committee to make a determination of the matter. So, from a legislative standpoint, the institution of a resolution to negate an action taken by the Federal Trade Commission is an unrealistic one; and, in fact, I believe it is a deceptive one.

If every legislative rule must in turn be referred to Congress, then the appropriate committees of Congress must necessarily concern themselves with business they wished to avoid in the first place. Moreover, by putting the initial rulemaking, law-framing power in the hands of an agency rather than in the Congress, the normal political procedures such as ex parte lobby efforts that are entirely permissible when a bill is pending before the Congress become blunted, if not emasculated altogether.

Finally, with respect to this veto provision, the language does not take account of the possibility of a partial legislative veto or affirmative modification of a rule by Congress. Such action should surely be anticipated.

It should be clear that judicial review of legislative rules would not be de novo. Rather, as would be expected when a court reviews administrative action, the court must uphold the rule if it is "sup-

ported by substantial evidence on the basis of the entire record before the court." Although this is an important safeguard for the extreme case, it means as a practical matter that plaintiffs, for the most part, will be limited to arguing that the Commission's policy and interpretation of section 5(a)(1) are invalid.

Mr. President, this is a mighty poor recourse to our courts. It is a mighty poor appeal for the corporation or the individual who is affected. Though our Federal courts exercise independent judgment, they will nevertheless accord great deference to the views of the Commission, experienced as it is in matters of trade policy. Furthermore, the courts will be more hesitant to substitute their judgment for the Commission in matters of policy, where "legislative rules," as opposed to interpretive rules, are involved. We have considerable latitude to engage in speculation here as to whether the failure of Congress to veto a rule will constrain the courts to narrow their scope of review.

I repeat again that it is unacceptable that the court must uphold the rule if it is "supported by substantial evidence on the basis of the entire record before the court."

Mr. President, that is not a full appeal. It is not three-quarters of an appeal. It is not half an appeal. It is not even a quarter of an appeal.

Section 206 provides for a two-tiered system of judicial review. Not only may an "interested person" challenge the rule by bringing a suit in the nature of a declaratory judgment, but presumably he may also challenge the rule at a later time when he suddenly finds himself a Commission respondent. The new subsection (2)(vi) states that "nothing in this act shall be deemed to foreclose judicial review of a legislative rule when the Commission issues a final order based upon such rule."

However, as the Commission report points out—

> Section 206 contains a provision that assures that there would be no legislative prohibition against judicial review of rules when applied in Commission enforcement proceedings. Of course judicial review of rules previously reviewed may be restricted for judicial reasons—*e.g.* by the application of the doctrine of *"Stare decisis* or *res adjudicata."*

While theoretically a procedural safeguard, as a practical matter, this second tier of judicial review may be of limited utility. For, obviously, if a court of appeals for a certain circuit holds a rule valid under subsection (2)(iii), the question of the validity of the rule will be settled within that same circuit and may be accepted as precedent in other circuits as well. Thus, though a litigant may never have had a chance to contest the validity of the rule—judicial review is, after all, an expensive procedure, especially if you are unaware of the rule or do not believe the rule would ever be used against you—the respondent may be effectively barred from challenging the rule in court.

I also note that under section 202 the Commission may seek civil penalties in the Federal district courts, but by section 206(3), original judicial review of a legislative rule may be had only in the U.S. courts of appeals. Thus, section 206 appears to prohibit a defendant sued by the FTC under section 202 for a violation of a "legislative rule" from challenging the validity of the rule in Federal district court. This denial of review in the bill is inconsistent with the committee report, which clearly states that the invalidity of a rule is a defense in a civil penalty action brought in a Federal district court under section 202.

With no or only limited right to cross-examination, and faced with a ruling by a circuit court of appeals that the rule is valid, a respondent may find himself automatically liable under section 202 of the bill for a fine of $10,000 for each violation of a rule he never supposed would apply to him.

The problems that are still deeply inherent in section 206, despite the addition of some procedural safeguards, defy resolution. The opportunities for abuse in the sweeping delegation of rulemaking power embodied in section 206 are not in the public interest. Indeed, some of the well-intentioned efforts of the drafters to add procedural safeguards have only served to encumber the bill with new problems of interpretation which, in turn, present serious due process objections.

I submit that the effectiveness of the Federal Trade Commission to protect the interest of the consumer is assured by other proposals contained in this legislation, such as preliminary injunction powers; the power of the Commission to proceed on its own in the courts for violations of Commission orders; the power of the Commission to enforce its subpoenas; and the extension of agency jurisdiction to acts or practices "affecting commerce." Enactment of these other proposals, coupled with adequate appropriations, imaginative programs, and high caliber staff, will assure that the Federal Trade Commission can effectively fulfill its function as a protector of consumer interests.

Finally, experience with the Commission's trade regulation rulemaking power suggests the potential for abuse of the broad rulemaking power that would be delegated to the Commission.

Mr. President, at this point I should like to say a few words about my philosophy with respect to this bill.

I have pointed out that the review which is supposed to be apparent and present in section 206 is grossly inadequate—in fact, I think that parts of it are a charade. It is not that this Senator has any criticism of the FTC as such or of its individual members. The truth is that Congress, in its lack of infinite wisdom, has foisted up on the FTC, during the last 10 years particularly, every form of policing we could think of foisting upon them. These people, however, are human, just as we all are human.

I am glad that the distinguished chairman of the Commerce Committee is in the Chamber, because just 5 or 6 years ago, when he was chairman of the Independent Offices Subcommittee on Appropriations and I was the ranking minority member, in a rather detailed cross-examination of the FTC we found out some very startling facts. I think that all of us up to that time thought that when we filed an income tax statement with the IRS, it was confidential. Nothing could be further from the truth.

In a examination which was not aimed at this point, we found out that afternoon that the FTC had access to all the IRS returns—that does not just take in the big corporations of the country; that includes access to the returns of John Doe and Pete Smith and Mabel White and Suzy Jones—yes, Mr. President, if they wished it, to the tax returns of every man, woman, and child and every company and every partnership and every corporation in this country.

In order to effect the use of this, they actually had, if my recollection serves me correctly, approximately 30 employees of the Federal Trade Commission resident in the offices of the IRS, doing this sifting and analyzing and poking around.

So I think there is adequate reason here for looking at the broad powers vested in the FTC in this situation—not against them as individuals, no; but just recognizing that human beings are such that if Parkinson's law comes into effect—and it always does—they are going to expand the number of their employees, they are going to reach out for more power, and they are going to reach out with that power for more employees to support the ones who have not yet been replaced.

So I am very much concerned about this whole matter, particularly with the lack of real judicial appeal which appears in the limitation contained in section 206.

In recent years, the Commission has taken the position that it already possesses the power to issue trade regulation rules under the Federal Trade Commission Act with the same force and effect of law as "legislative rules" would have under S. 986. The Commission has not been as flexible as it should be in this regard. For example, a trade regulation rule covering games of chance in the food retailing and gasoline industry has been so stringently written and construed that games where all contestants are winners, or where game pieces are mixed by undeceptive alternative methods to the one method prescribed by the trade regulations rule, have been held to be deceptive and violative of the rule.

Significantly, the drafters of S. 986 carefully avoided the problem of broad rulemaking problems in title I. Title I, dealing with consumer product warranties, has carefully defined standards under which rules in the warranty field could be promulgated. The provisions there specify with particularity the areas with which the Commission's rulemaking power may deal, wholly unlike the limitless delegation of authority contained in section 206 of title II. Title I, therefore, offers a less objectionable approach to the delegation of substantive rulemaking power. This comports with the narrowly drawn delegations in other acts administered by the Federal Trade Commission—for instance, the Wool Prod-

ucts Labeling Act, other clothing identification acts, and the Fair Packaging and Labeling Act.

By drawing the lines and specifying in what areas rules may be promulgated, everyone—the consuming public, businessmen and the FTC itself—has some idea of just how far the agency may go.

I urge deletion of section 206. The Commission does not need this rulemaking power; it is overly broad and ill-defined; and the power is not clearly constrained by adequate administrative procedural safeguards. It would, moreover, unwisely reverse the studied, deliberate position of Congress for almost 60 years that the flexible language of section 5 of the Federal Trade Commission Act should be preserved to govern business misconduct in a world where the tempo of change is ever increasing.

The potentially omnipotent control over American industry that would be given to the Commission by the stated power to promulgate legislative rules under section 206, without adequate safeguards, presents a fatal defect in the present bill. This is regrettable in light of other worthwhile features of this legislation, such as expansion of the Commission's jurisdiction and the power to seek preliminary injunctions, that, coupled with a superior agency staff, adequate appropriations, and other considerations would very likely achieve the same objectives.

Mr. President, relative to this, I would like to comment that before allowing more consumer class action, and heaven knows we have a plethora of that now, before allowing additional agencies the right to go into district court, I submit to my colleagues in the Senate that we should act first upon a bill which I have introduced in the Senate, the Federal Judiciary Council bill, S. 1440, which is a bill to evaluate the effect that this congressional action and others like it will have on the Federal court system. I am deeply concerned with the vague language in the bill, particularly section 206, that we are in danger of further bogging down the Federal courts.

The old adage, "Justice delayed is justice denied," is as true here as it is in justice in the Supreme Court.

If we continue by our action—that is what we are doing here, in my opinion—to open the door wide not only to 100, but thousands, tens of thousands, and perhaps hundreds of thousands of vague and indefinite appeals to various people who may be interested parties, or who may be respondents, or who may just be the "other people" that the bill talks about, then I think we are in danger of bogging down the Federal courts. I do not think this is an insignificant consideration, in making a decision on the merits of the bill.

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

Thhe PRESIDING OFFICER (Mr. FANNIN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SYMINGTON. In legislation considered today, the Senate focuses again on the rights of and protection for consumers.

One part of this two-pronged measure authorizes strong powers for the Federal Trade Commission in policing consumer frauds. The other section deals with and attempts to remedy a specific long standing problem in the marketplace—the gulf between what the buyer of a warranted product thinks he will receive and what service the supplier may be legally obligated to perform under a given warranty.

In fact, the Senate Commerce Committee reports that the warranty provisions contained in S. 986, the Consumer Product Warranties and Federal Trade Commission Improvement Act of 1971, are designed to meet four basic consumer needs:

First, the need for consumer understanding;

Second, the need for minimum warranty protection for consumers;

Third, the need for assurance of warranty performance; and

Fourth, the need for better product reliability.

To achieve those objectives, the legislation requires any supplier who warrants a product to fully disclose in simple and understandable language the terms of the warranty with respect to such items as to what the warrantor will do in the event of a defect or malfunction and at whose expense and for what period of time. The warrantor is required to state also what the purchaser must do and the expenses he must bear, along with an outline of the procedure the purchaser should take to obtain performance.

No supplier is required to provide a warranty; however, should a warrantor elect to incorporate the minimum standards prescribed by the legislation, then the guarantee is to be designated a "full warranty" so as to show that he is undertaking an obligation to repair or replace any malfunctioning or defective consumer product within a reasonable time and without charge. Suppliers who do not undertake to provide a full warranty are required to make plain that the warranty is a limited one.

Moreover, under terms of the act, warrantors are prevented from using limited express warranties to avoid the fictional warranties of fitness and merchantability that the law implies in order to protect in at least a minimal way a buyer of goods.

The legislation also affords the consumer a feasible means of remedying a breach of a written warranty by legal action in courts of competent jurisdiction for if he prevails the consumer is allowed to receive his costs and expenses, including attorney fees.

I believe the warranty provisions of the legislation the Senate considers today are particularly constructive and should be of benefit both to consumers and to conscionable and reliable manufacturers.

DEATH OF FORMER SENATOR HOLLAND

Mr. LONG. Mr. President, we are saddened at the news of the death Saturday of our beloved colleague, Spessard Holland, who retired from this body last year on the advice of his doctors.

Mercifully, Senator Holland passed away in his sleep. It is the peaceful death that all of us would have asked for such a fine man, who served here with us for 24 years.

Spessard Holland exemplified what we southerners like to regard as a true gentleman. No one ever questioned his honesty, courage, diligence to duty or his sincerity during his years of service here.

Mr. President, he acquired the reputation of a conservative in the best definition of the word—one who would preserve the better things of the existing order. His efforts here, to a considerable degree, helped save for this government its first fundamental—the right of the people to govern themselves.

Spessard Holland understood the right of self-government and fought to keep the Federal Government from stripping away from the States the powers vested to them.

The theory of judicial usurpation of the States' powers was repugnant to Spessard Holland, who believed that political sovereignty trickled up to the Federal Government through the cities and States and not down to the people from here.

As a result, Mr. President, Spessard Holland led the battle that restored to the States the submerged lands within their historic boundaries. This was more than an act to vest title to submerged lands. It was an act to restore sovereignty to the people of America.

From the day he arrived in this body in 1948, Spessard Holland fought for repeal of the poll tax through a constitutional amendment. The 24th amendment to the Constitution, adopted in 1964, will stand as a lasting tribute to Spessard Holland and his doggedness in fighting for principles dear to him.

Spessard Holland was known as the "father" of Everglades National Park in his native Florida, an idea that was born to him in his years of admiring the unusual nature of that primeval area.

He began to put together the park while serving as Governor of Florida in World War II and continued to support its expansion and improvement in his 24 years here.

Mr. President, it was Spessard Holland who persuaded his southern colleagues—including me—to join in bringing statehood to Alaska and Hawaii. He had the vision to see that this was a just status for our two newest States.

I offer my deepest sympathies to Spessard Holland's wife, Mary, in the loss of her partner in life for over a half century. We here in this body mourn the passing of a friend, a decorated World War I aviator who devoted 50 years of elected public service to the people of Florida and this country.

His memory will live with us.

ORDER FOR PRINTING OF TRIBUTES TO THE LATE SENATOR HOLLAND, OF FLORIDA, AS A SENATE DOCUMENT

Mr. MAGNUSON. Mr. President, I am sure that many Senators would like to

express their deep grief over the death of our former colleague, Spessard Holland.

I ask unanimous consent that the record be kept open so that those of us who may wish to do so may make remarks about our departed colleague.

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

Mr. BYRD of West Virginia subsequently said: Mr. President, a little earlier today the distinguished Senator from Washington (Mr. MAGNUSON) secured unanimous consent that the record be kept open so that Senators who may wish to do so may make remarks about our late distinguished colleague, Senator Spessard Holland.

I ask unanimous consent that the record be kept open for a period of 15 days, and that the tributes expressed be collected and printed as a Senate document.

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

CALL OF THE ROLL

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

The PRESIDING OFFICER (Mr. FANNIN). The clerk will call the roll.

The legislative clerk called the roll and the following Senators answered to their names:

Allott	Cotton	Randolph
Baker	Fannin	Roth
Bible	Hruska	Saxbe
Brooke	Magnuson	Talmadge
Buckley	Mansfield	Young
Byrd, W. Va.	Moss	
Cook	Pastore	

The PRESIDING OFFICER (Mr. FANNIN). A quorum is not present.

Mr. MANSFIELD. Mr. President, I move that the Sergeant at Arms be directed to request the presence of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

After some delay, the following Senators entered the Chamber and answered to their names:

[No. 293 Leg.]

Aiken	Goldwater	Nelson
Allen	Hansen	Packwood
Anderson	Hart	Pearson
Bayh	Hartke	Pell
Beall	Hatfield	Percy
Bennett	Hollings	Proxmire
Bentsen	Hughes	Schweiker
Boggs	Inouye	Scott
Burdick	Javits	Smith
Byrd, Va.	Jordan, N.C.	Sparkman
Cannon	Jordan, Idaho	Spong
Case	Kennedy	Stafford
Church	Long	Stennis
Cooper	Mathias	Stevens
Curtis	McClellan	Stevenson
Dominick	McGee	Symington
Eagleton	McGovern	Taft
Eastland	McIntyre	Thurmond
Ervin	Metcalf	Tower
Fong	Miller	Tunney
Fulbright	Mondale	Williams
Gambrell	Montoya	

Mr. BYRD of West Virginia. I announce that the Senator from Florida (Mr. CHILES), the Senator from California (Mr. CRANSTON), the Senator from Louisiana (Mr. ELLENDER), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from Maine (Mr. MUSKIE), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

Mr. SCOTT. I announce that the Senator from Oklahoma (Mr. BELLMON) is absent on official business.

The Senator from Tennessee (Mr. BROCK), the Senator from Kansas (Mr. DOLE), the Senator from Michigan (Mr. GRIFFIN), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from Florida (Mr. GURNEY) is absent to attend the funeral of a friend.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The PRESIDING OFFICER. A quorum is present.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, will the distinguished Senator from New York yield to me, without losing his right to the floor?

Mr. BUCKLEY. I did not hear the Senator.

Mr. MANSFIELD. Would the distinguished Senator from New York yield to me, without losing his right to the floor? I understood he was about to offer an amendment.

Mr. BUCKLEY. I yield.

LEGISLATIVE PROGRAM

Mr. MANSFIELD. Mr. President, for the information of the Senate, the joint leadership is doing all in its power to bring about an adjournment sine die, if possible, by the 1st of December. To achieve that objective, it is going to take the cooperation of all Senators collectively and every single Senator, in accommodating himself, not to the wishes of the leadership, but, may I say, to the wishes of the Senate as a whole.

It was announced by notice of Saturday, October 30, that on Wednesday last, November 3, what is now the pending business would be taken up. Every Senator was on notice on both sides.

On Wednesday, November 3, a whip notice was sent out which stated:

> The present plan is to take up S. 986, the Consumer Product Warranties bill, which had previously been scheduled for action on late yesterday—
>
> This was on Thursday—
>
> or early this morning, but which, upon the request of two of the Senators most interested, was not taken up.

I believe that the distinguished assistant minority leader, the Senator from Michigan (Mr. GRIFFIN), sent out a notice last week to the effect that this matter would be taken up today, and that record votes would be anticipated. The same statement was made by the distinguished assistant majority leader, the Senator from West Virginia (Mr. BYRD), and the Senate was therefore put on notice that there would be rollcall votes today.

Whether or not that resulted in 96 Senators being present I do not know. But they came here expecting votes. Now we find that what we have had is a lot of debate, with rumors to the effect that there will be a certain number of talks today and maybe no vote at all.

Well, that may be so. There may be no votes today. This bill will be set aside temporarily. But this bill will be taken up and disposed of before the Senate adjourns this year.

In this body, either you win or you lose. I have had my share of defeats. I have had a few victories. But you take them as they come, and you bow to the will of the majority. That is the way democracy is supposed to work. And while this is a deliberative body, it is supposed to be a democratic body as well.

So I would hope that all Members would keep in mind just what confronts the Senate.

UNANIMOUS-CONSENT AGREEMENT

The schedule for tomorrow is the Okinawa Treaty. At this time I ask unanimous consent that the agreement entered into relative to the tax bill being taken up on Wednesday be laid aside temporarily, and that one of the foreign aid authorization bills replace it.

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

Mr. MANSFIELD. Following the foreign aid bill—either one, or perhaps both of them—the Senate will turn to the President's economic package. Also, it is my understanding that the phase 2 proposals will be reported out of the Committee on Banking and Currency late this week.

Then we have other matters. Among them are the Department of Defense, District of Columbia, and supplemental appropriation bills, all of which will be worked into the program from time to time. Then is other legislation of a vital nature and conference reports on various bills, and the two Supreme Court nominations, which will not be reported out, I believe, before next week, at the earliest, all remain to be completed.

So what the joint leadership would like to do would be to have the pending business disposed of, one way or the other. We would like to face up to the Okinawa Treaty, the foreign aid bills, the President's economic tax package, the President's phase 2 proposals, other critical legislation where possible and the Department of Defense, District of Columbia, and supplemental appropriation bills, together with conference reports, and the two Supreme Court nominations.

I do not know whether we can achieve the objective of adjourning by December 1; but I will tell the Senate one thing: The joint leadership cannot do it alone. If it is to be achieved, or even approximately achieved, it is going to take all the Senators on that side of the aisle and all the Senators on this side of the aisle, and it means Senators will have to accommodate themselves to the two Senators who have the least standing so far as power is concerned in this body—the Senator from Montana, now speaking, and the Senator from Pennsylvania (Mr. SCOTT), to whom Senators have given re-

sponsibility. The only way we can exercise any degree of responsibility is through your understanding and your cooperation and your accommodation.

That is all I have to say.

CONSUMER PRODUCT WARRANTIES AND FEDERAL TRADE COMMISSION IMPROVEMENTS ACT OF 1971

The Senate continued with the consideration of the bill (S. 986) to provide minimum disclosure standards for written consumer product warranties against defect or malfunction; to define minimum Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes.

Mr. BUCKLEY. Mr. President, I would like to comment briefly on the pending business, S. 986, the Consumer Product Warranties and Federal Trade Commission Improvement Act of 1971.

Like many of my colleagues, I have mixed feelings about the bill before us. On the one hand, I believe that extant devices for the redress of consumer grievances need to be updated; on the other hand, I do not believe that a regulatory straitjacket ought to be imposed on American business. I believe it is both necessary and possible to protect the consumer without imposing excessive penalties upon the honest businessman. My great fear about the bill before us, a fear shared by a good many of my colleagues, is that in seeking to protect the consumer it would impose a remedy that may end up punishing many for the sins of the few.

A balance ought to be struck between the legitimate claims of wronged consumers and the equally legitimate rights of business to engage in robust but honest competition. What many of us fear about the present bill is that it threatens to tip the balance too far to one side.

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

Mr. BUCKLEY. I yield.

Mr. COTTON. Mr. President, the sound system is not a help to the Senate unless it works. I do not know what is wrong with it now. We just sent word up and asked that the volume be turned up higher. Sitting back here, we cannot hear what the Senator from New York (Mr. BUCKLEY) is saying. I think we are entitled to hear what he has to say.

Mr. BUCKLEY. Perhaps the Senator from New Hampshire should turn himself up. Would that help?

Mr. COTTON. It might. But, I think we should have the sound system high enough so that we can hear.

Mr. BUCKLEY. Shall I suspend while the mechanics go to work?

Mr. COTTON. I do not want to delay the Senator.

Mr. BUCKLEY. I will speak louder.

S. 986 has two titles, one dealing with disclosure standards for written warranties on consumer products; the other with the expansion of the power of the Federal Trade Commission to deal with consumer problems. It is in the latter title only that serious difficulties arise.

Title I, I believe, represents a significant improvement in the law of warranty protection, both in the substantive requirements that it imposes and in the procedural devices it establishes for the redress of grievances. In its substantive aspects, it comes to grips with the nature of written warranties by requiring suppliers to spell out in a reasonable way just exactly what it is that the consumer is getting—or not getting—when he sees that magic word "warranty"—followed by all the small print—attached to a product. Title I would require the supplier to state what the written warranty covers, or—what may be more important—what it does not cover; it would require him to spell out in ordinary, everyday English just who is covered by the warranty; and it would require him as well to specify the time limits, if any, on the warranty. Perhaps above all, title I provides the consumer for the first time with a reasonable, workable, and simple, and inexpensive procedure for the satisfaction of grievances arising from breach of written warranty.

I am happy to support title I in its present form. I think it will be welcomed by the American consumer—and as well by the honest businessman who is prepared to back up what he promises. All of us, I am sure, can recall more than a few instances of agonizing frustration with defective products. And there are few of us, I am sure, who have not muttered to ourselves, "There ought to be a law," when confronted by the necessity of having to translate the legalistic hieroglyphics in which so many written warranties are couched. I am a lawyer myself, but I must confess to being more than a little puzzled from time to time by the artful legalisms and subtle disclaimers found in all too many warranties. Unscrupulous businessmen have too often taken advantage of loopholes in the law, creating the impression that they would do thus-and-so in the event of product failure, when in fact they were actually undertaking—in legal terms—to do far less. And the beleaguered consumer, confronted by a defective product he thought was fully guaranteed, often has no place to turn. And even where some sort of legal redress is available, it is often prohibitively time-consuming and expensive. The committee report, I think, states it well:

> In the marketplace today many warranties which promote consumer understanding and honor the implied warranties are, nevertheless, unsatisfactory because the warrantor does not live up to the promises he has made. There is no practical way to enforce these warranties except through the courts—a process which is prohibitively expensive for most consumers. But economic sanction can be a very effective enforcement tool. If warrantors who did not perform as promised suffered direct economic detriment, they would have strong incentive to perform as promised. Therefore, there is a need to insure warrantor performance by monetarily penalizing the warrantor for nonperformance—and awarding that penalty to the consumer as compensation for his loss.
>
> One way to effectively meet this need is to provide reasonable attorney fees and court costs to successful consumer litigants, thus making consumer resort to the courts feasible.
>
> Such feasible court action would also encourage suppliers to develop workable informal dispute settlement procedures for the expeditious settlement of consumer complaints.

This last point, Mr. President, deserves special attention. One of the most promising features of title I, I think, is the encouragement given to private remedies. Section 110 of the bill provides, among other things:

> Congress hereby declares it to be its policy to encourage suppliers to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms.
>
> Such informal dispute settlement procedures should be created by suppliers in cooperation with independent and governmental entities pursuant to guidelines established by the Commission.
>
> If a supplier incorporates any such informal dispute settlement procedure in any written warranty or service contract, such procedure shall initially be used by any consumer to resolve any complaint arising under such warranty or service contract.

This provision, I believe, is an excellent example of how the private and public sectors can work together to achieve a common goal. The exhaustion of private remedies prior to the pursuit of public redress is, I believe, a sound principle of procedure—one that I wish were followed more widely in other areas of the law.

The existence of such a provision in title I seems to me to demonstrate the reasonable spirit which characterizes title I as a whole.

It is on balance a well-thought-out measure that will go a long way toward alleviating the just grievances of the consuming public. I am therefore happy to support it.

Title II of the bill—that section expanding the prosecutorial and legislative authority of the Federal Trade Commission—is quite another matter. I wish it were possible for me to support title II as it now stands, Mr. President, but unfortunately I cannot. Some aspects of title II, of course, are relatively noncontroversial and under other circumstances probably ought to be enacted.

It is for that reason that I believe that titles I and II ought to be treated as separate bills.

Among the reasonable provisions of title II are those which would extend the Commission's jurisdiction to unfair or deceptive acts "affecting" commerce; those which would authorize the Commission to seek temporary injunctions in cases involving unfair practices; and those which would empower the Commission to proceed through its own attorneys in such matters as subpena enforcement and civil penalty actions.

Two other provisions of title II, however, are of rather more serious import.

Taken together, they could convert the Federal Trade Commission into a virtually all-inclusive judge, jury, and prosecutor for consumer grievances in the United States. However much we may sympathize with the just grievances of the American consuming public, I think we would do well to proceed cautiously in devising remedies for their proper redress.

In particular, I think we would do well to take a long hard second look at the provisions of title II.

The first provision which concerns me, Mr. President, is section 203, which would authorize the Commission—after it has entered a final cease and desist order in any proceeding involving an act or practice which is unfair or deceptive to consumers—to initiate civil actions in court to secure redress for consumers injured by the act or practice. Redress which might be obtained would include, but not be limited to, recision or reformation of contracts, refund of money or return of property, public notification of violation, and the payment of damages.

This provision represents an improvement over the provision contained in the legislation as it was orginally introduced, which would have authorized the Commission itself to order consumer redress in its own administrative proceedings. Court procedures obviously provide a surer guarantee of due process than those conducted by administrative agencies.

But the reported provision does present the danger that punitive and exemplary, as well as compensatory, damages may be sought and assessed. While few would object to legislation empowering the Commission to seek court redress for consumers injured by established "deceptive practices" for the purpose of making them whole, there is little justification under the Federal Trade Commission Act for fashioning types of legal recovery which transcend this objective. Particularly where the act for which recovery is sought may not previously have been known to be unlawful. Redress, in short should be limited to compensating consumers for injury actually suffered as the result of known unfair practice. Provision for such remedies as exemplary or punitive damages could result in the creation of a fund which could be used for purposes having no relationship whatever to the extent or nature of the injury which might flow from the practice in question. The reward, if any, to consumers from this use might or might not confer any benefit upon those injured by the practice.

Additionally, prior to initiating any civil action for consumer redress, the Commission should ascertain if the supplier involved has in effect any plan providing for voluntary settlement of consumer complaints of the nature involved in the proposed suit. If so, and if the settlement program is fair and reasonable under standards to be established by the Commission, the agency should be required to pursue the satisfaction of claims under the terms of this program without resort to litigation. Since under these circumstances consumers can be made whole in an efficient and expeditious manner there would be no need to undertake a costly, time-consuming civil action to secure the same result. I think it worthy of note, Mr. President, that title I of the bill establishes just such a procedure for the violation of the warranty provisions. I think an even stronger case can be made for the inclusion of a similar provision here.

Finally, Commission suits under proposed section 203 would be in the nature of consumer class actions, with the FTC acting as representative of the class.

If redress for consumers is secured through this mechanism, by either action or approved settlement, there is no need to authorize private litigation relating to the same facts. As the Commerce Committee report on S. 3201, 91st Congress, second session, 1970, acknowledges, if the Government is the appropriate representative of a consumer class and if the Government has initiated action, private class actions should be precluded. Yet the act does nothing to foreclose such dual litigation.

The second section of title II which concerns me, Mr. President, is that provision which would amend section 6(g) of the FTC Act and authorize the Commission to promulgate trade regulation rules prohibiting certain practices as unfair or deceptive to consumers.

According to the Commerce Committee report, such trade regulation rules promulgated by FTC would have the force and effect of law.

In permitting the Commission to legislate without limitation throughout the "free" sector of the economy, Congress would be engaging in a virtually unprecedented delegation of its legislative authority which involves serious constitutional questions. Outside of the public utilities or licensed industries, or the narrow confines of fair packaging or labeling, Mr. President, I know of no parallel to the broad legislative authority here proposed to be delegated to a Federal agency. The legislative power here proposed to be given to the FTC would not be confined in any way by boundaries other than the broad prescription that the act or practice must be unfair or deceptive to consumers and prohibited by the FTC Act. It is well recognized that the Commission enjoys wide latitude under this statute to attack and prevent through trial-type adjudication innumerable types of business conduct, many of which have not been generally considered improper until challenged by the agency.

If trade regulation rules are to have the "force and effect of law," a respondent in an administrative enforcement proceeding based on an agency rule would be allowed only to prove that this conduct is not covered by the rule: he would be precluded from asserting that the rule does not describe a violation of law. With this power, the Commission would assume all the prerogatives of a minilegislature. Five commissioners, or as few as two acting in a quorum of three, could enact "laws" throughout the economy. Not only would business be bound by these rules, but violation would entail the imposition of substantial fines, as the Commerce Committee report declares that violation of a trade regulation rule would constitute a "knowing" violation of the FTC Act within the meaning of section 202 of the bill.

It is almost beyond question that Congress never intended the Commission to exercise legislative, as contrasted with interpretive, rulemaking power, and there is no reason why this power should be granted now. In fact, there are already numerous ways in which the Commission can announce its interpretations concerning commercial practices. These include guides, advisory opinions, and enforcement policies without resort to administrative legislation.

Even if the Commission were to be vested with authority to issue legislative-type rules, the procedures specified in S. 986 for the formulation of these rules are woefully inadequate to protect the rights of affected parties.

First, the availability of a public hearing would turn on whether the Commission determines that there is material dispute as to the facts on the basis of documents filed in a preliminary phase of the rulemaking proceeding.

More important, S. 986 would empower the Commission narrowly to limit cross-examination and possibly, according to the Commerce Committee report, to deny this right altogether.

This denial could be of critical importance, since the facts relied upon by the Commission in the course of any rulemaking hearing often include complex economic or technical data prepared by the Commission's own staff or by non-Government sources with a direct interest in the outcome of the proceeding.

Unless this testimony is subject to such full cross-examination as will test its validity, there is a substantial danger that Commission action will be based on unreliable and even distorted evidence.

Of course, the officer presiding at a rulemaking proceeding in which cross-examination is authorized possesses ample authority to prevent its use as a dilatory device.

Finally, the Commerce Committee report in particular threatens seriously to limit the scope of judicial review. Under the proposal, a trade regulation rule once issued by the Commission does not become effective until it has been referred to Congress for a period of 60 days and neither House has voted to disapprove the rule.

The Commerce Committee report would insinuate that the failure of one or the other House to reject a Commission rule entitles that rule to particular respect by a reviewing court.

Any realistic understanding of the byways of congressional procedures would properly forbid the creation of any such presumption.

Ordinarily, congressional silence is not taken as an indication of either approval or disapproval of administrative action.

With the press of ordinary legislative business, Congress cannot be expected to spend any time reviewing such rules except, perhaps, when there has been an egregious misuse of delegated legislative authority. The fact remains, however, that the provision in question will have the inevitable effect of giving the Commission's rules the force of law.

In conclusion, Mr. President, let me express my hope that nothing in my remarks will be interpreted as a criticism of the Federal Trade Commission. The Commission has performed many valuable services in the elimination of unfair and deceptive trade practices in the past,

and I would hope that it will continue to perform a vital role in the future.

But to invest the Commission with the type of authority proposed in title II of this bill would, I believe, serve neither the public interest nor that of the consuming public.

I, therefore, strongly urge that the Hruska amendment be adopted.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HRUSKA. 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, the pending amendment is to strike title II of the bill providing for a revision and restructuring of the Federal Trade Commission and to put in its place a title which would call for a study commission to study restructuring the Federal Trade Commission, including the practicality of a system of small claims courts, if that would be indicated after inquiry, to take jurisdiction over consumer claims on warranties, thus enabling the judiciary system to escape that degree of impairment which would follow if we were to have title II as it exists now, together with a duplicate jurisdiction of the Federal Trade Commission and the Department of Justice in many areas, and particularly the creation of a legislative consumer class action.

There has been rumor around here that there is no doubt about the result of this vote; that nobody is going to vote against consumer legislation. That seems to me some of the rumor going around. A vote in favor of the Hruska amendment is not an anticonsumer vote. Such a vote will be in favor of the consumer in that it will allow title I dealing with substantive law on warranties to go into force and effect as of now. It would also take out of the bill what will prove to be a false and illusory basis in the form that exists now that they will get paid for broken warranties. Nothing could be further from the truth than that. Under title II of the bill it will impair their ability to make claims under any kind of Federal jurisdiction and there will not be a delivery—in fact, prospects of delivery of relief for violation of warranties or unfair or deceptive trade practices will be lesser.

It would seem the better part of wisdom to agree to the amendment, dispense with title II as it presently exists, put in title II that is being proposed, and then we can go on with the business at hand.

It was suggested a while ago that there may have been an idea that this bill, if it were debated long enough, would be set aside and not considered in this session. I do not think in the 17 years I have been in the Senate that this Senator has been considered a filibusterer. The Senator from New Hampshire and I happen to be celebrating an event today. Seventeen years ago at 12 o'clock noon the Senator from New Hampshire and I were sworn into the Senate. We are now 4½ hours into our 18th year of service in the Senate. I know we are still junior Members. I say that partly when I look at the chairman of the Committee on Commerce. We are willing to retain that junior status for a long time and we hope it will be that way for a long time. But there never has been a time when I have spoken on a matter for dilatory purposes alone, and I did not intend that that be done today.

In my judgment the granting and passage of title II into law is as important a measure as we have had in the domestic field this session. It would reverse and overturn a national policy determined by acts of Congress for over 57 years, to wit, denial to the Federal Trade Commission of the power to legislate—a high class, vast, extensive field in which they can legislate rules which will have the force in effective law. It is that important and I would think that from 11 o'clock until 4:30, with some interruptions, is not too great a length of time to devote to that purpose.

My mind goes back to the 50 days devoted in this Chamber not too long ago on a most leisurely scale to one measure—50 days and not 4½ hours. I regret more Senators have not engaged in this colloquy and discussion of the bill because in due time we are going to find ourselves right back where we are now trying to find out why we did not give greater resistance than we are giving it now.

There is another amendment coming up. It will be for the striking out of section 203, the consumer class action provision, if the Hruska amendment is rejected. Following that will be another amendment to strike section 206, because it gives rulemaking power virtually without limit by Congress, not in the field of consumer activity, but in the field of business generally, all business activities, because all these business activities have the basis for a conclusion by some one that they are unfair to someone in his interest. Following that are some technical amendments. One is not a technical amendment. One has to do with whether there will be due process in adopting these rules, whether there will be such a thing as a right to a hearing, whether there will be such a thing as a right to call witnesses to testify, and whether there will be such a thing as cross-examination, an opportunity for cross-examination during the hearings on the rules that will be on a tentative basis considered and made available to the public for their comment and for various interests in this measure; and additionally for full judicial review of the products of this rulemaking process.

These are not for the purpose of taking the time of the Senate but to call attention to the troubles and the dangers that will be spawned if present title II is enacted into law in its present form.

Mr. President, I yield the floor and as far as I am concerned, I am ready for a vote on the motion.

Mr. MAGNUSON. Mr. President, I, too, want to move this bill as fast as possible. I would be much more tolerant of many days of debate on this matter if it were not for the fact that we are getting close to what we hope will be a deadline. The majority leader pointed out other bills that will come along. After 4 years or more working on this kind of bill, the majority did not want to be in a position where we are shut out.

The Senator from Nebraska, the Senator from Colorado, and the Senator from New Hampshire have been very cooperative. I appreciate it.

I want to join in the Senator's celebration today of 17 years and 4½ hours of service in this body. When the Senator mentioned that he was still junior to some of the rest of us, may I suggest that, if I were to give the Senators a toast today, I would say that neither one of them was junior in his dedication to his duties and his job here.

Mr. HRUSKA. I thank the Senator.

The Senator mentioned the idea of spending 4 years on this bill.

I know of a Senator from the State of Tennessee, who was highly esteemed, the distinguished late Senator, Mr. Kefauver—"Estes the Bestest," we used to call him most affectionately—who for 10 years tried to get a bill passed in the form of S. 11, to negate the decision of the Supreme Court that under the Clayton Act, as amended by the Robinson-Patman Act, the act of lowering a price to meet a competitive's price was a good defense. After 10 years of trying, he failed to get that bill on the statute books at all.

Let me say to the Senator from Washington that if there is any way in which I can resist this procedure of granting legislative rulemaking power to the Federal Trade Commission, I will continue to do so. It might be 10 years, and those forces could ultimately prevail, but I feel that strongly about it. Nevertheless, on behalf of the Senator from New Hampshire and myself, I thank the Senator for his felicitation.

Mr. COTTON. Mr. President, if the Senator will yield, my name has been mentioned two or three times and I am not even in this alleged filibuster. But, first, I would like to thank the Senator for his kind remarks about the Senator from New Hampshire and the Senator from Nebraska celebrating today our 17th anniversary of service as Senators.

As the senior minority member of the Commerce Committee, let me say that the committee considered the bill very thoroughly, ably led by the distinguished chairman, who is always fair and considerate.

It so happens that the distinguished Senator from Kentucky (Mr. COOK) and I are a minority of two who shared to a great extent the views of the distinguished Senator from Nebraska.

Frankly, Mr. President, I feel that title I of the bill is of such importance and is such a boon to consumers that I do not like to see it jeopardized by a scrap on title II. This bill also must go to the House for its consideration.

However, I feel very strongly that if we now establish the precedent for the Federal Trade Commission and other quasi-judicial bodies in the Government

to recruit their own prosecuting attorneys, then what are now the duties of the Department of Justice will be spread all over every department and this Government is going to be in chaos.

For that reason, I am going to vote for the amendment of the distinguished Senator from Nebraska (Mr. HRUSKA). If that fails, I am going to support and vote for the amendment of the distinguished Senator from Kentucky (Mr. COOK). I do so perfectly aware of the fact that this bill came out of the Commerce Committee, as far as I know, with only two dissenting votes of the committee.

I do hope Senators will consider the advantage of taking out this controversial feature, which has the seeds of real mischief in the years to come, and will send a real bill to the House to get relief to the consumers rapidly.

I want to say to the chairman of the committee that, as far as I am concerned, with these few comments, and perhaps adding something in the RECORD on the amendment to be offered by the Senator from Kentucky (Mr. COOK), this is all the time I will take except to speak briefly on an amendment that I expect to offer, just before the bill is passed, which I think will be adopted unanimously.

Mr. MAGNUSON. Mr. President, I appreciate what the Senator has said. There was a difference of opinion in the committee about whether we should give protection when we grant this authority. Some of us think that we have provided ample protection procedures—due process, if you will—in the bill. There is a difference of opinion about that, and I respect that difference of opinion. I do not want to say any more about it. Some of us feel it is needed.

We followed the long study made by the present chairman of the commission, who was head of the American Bar Association study, and who set up these procedures. We followed the advice of Mr. Weinberger, who is now with the Office of Management and Budget, one of the able men in the administration, who urged this authority, and to which every member of the commission and other witnesses testified.

We felt, generally speaking, that the commission has been hampered for a long period of time in not being able to do the job it should do. After a cease and desist order, many of which the commission issues, there is no right to sue for a violation of that order, unless an individual suit were brought in a State court.

I do not think it is going to be a cause for cluttering up the calendars of the courts. We disagreed with that view. But if it should happen, if somebody is hurt, he should have the right to go to court. Perhaps we will need more judges. I do not know. I think that they are cluttered up now.

The Senator from Nebraska and I disagree as to whether this is the new process we would have, but we think we have selected correctly.

For years the argument has been going on about the Federal Trade Commission not having the authority it should have. We tried to fashion a bill. I, myself, had some doubts about the rulemaking authority, but I think the bill covers it very well. The administration sent a bill up to Congress which contained a part of the section the Senator is attempting to strike out, which provides for expanding jurisdiction in matters affecting interstate commerce. It permits the granting of authority to issue preliminary injunctions, which the administration has suggested.

I do not know how many times we have had the matter of preliminary injunctions in all kinds of bills, such as the truth-in-packaging bill, the labeling bill, and a score of other bills coming out of the committee. That authority has been recommended by pretty nearly everybody. Then we provided for an increase in the civil penalty.

I just feel that this is a step forward that has been needed for a long time. It is going to help protect the consumer and it is going to supplement title I. I do not think it will be abused in any way.

When the Senator said that all businesses might be affected, I agree that they might be affected if they did something wrong, but 98 percent of the businesses in this country believe in their warranties and want to carry them out. I shall take only a half a minute to say that I think most manufacturers that issue warranties believe in those warranties. They want to have a good product.

But when Mrs. Smith bought something and it did not work, there was no liaison and no dialog between the manufacturer and her. If she took it down to the store, the dealer would say, "You have to send it back to the factory." And the warranties were a little bit fuzzy; they are still fuzzy, and full of fine print. Some of them say, "You have got to pay all of the labor costs; we will just take care of the bolt that was out so the vacuum cleaner did not work," or something like that. By the time you pack it up and send it to the factory, your wife is on top of you to get a vacuum cleaner. That is what you usually do; you buy another one, hoping you will get something better.

I do not think any honest businessman in the United States is going to be hurt by this bill. So I strongly oppose the amendment for many reasons.

I am strongly opposed to the amendment striking title II. There are three noncontroversial provisions: First, expanding jurisdiction to matters affecting interstate commerce; second, granting authority to issue preliminary injunctions; and third, increasing the civil penalty from $5,000 to $10,000. These are supported by the administration as well as the Commerce Committee.

Votes on the two controversial features should be considered in separate amendments. We should not try to resolve the tough questions by ignoring them and killing the entire title.

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

Mr. MAGNUSON. I yield.

Mr. COOK. The Senator's remarks about the fact that someone has to pack up a vacuum cleaner and send it back have nothing to do with the argument relative to title II.

Mr. MAGNUSON. I did not say that. I said the bill provides this. I said the problem has been that there has never been any dialog between the manufacturer and the person who gets the product. The dealer says, "I cannot repair this." That is a part of title I.

Mr. COOK. Yes.

Mr. MAGNUSON. But I think title II supplements title I. The Senator from Kentucky disagrees with that, and so does the Senator from Nebraska.

I suggest that there are some arguments on both sides. But I think it will not help the bill, or our objectives, to knock out title II.

Mr. COOK. My only point is that the arguments the Senator is talking about relative to warranties have been spelled out, and he is satisfied with them, and certainly I am satisfied with them, in the language under title I. I did not want there to be any doubt about which section they applied to, and that the amendment presently before the Senate deals with title II, which is outside the scope of the warranty and guaranty provisions we worked on.

Mr. MAGNUSON. That is where we disagree.

Mr. COOK. All right.

Mr. MAGNUSON. Title II will better insure that products are reliable. That is what title II is for, to bolster what we should have done a long time ago.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. COOK. Mr. President, I do not want the record to show that somehow or other, by rejection of title II, we will be in a position that this is going to apply to the manufacturer, to see that he does something more than he is required to do under title I in regard to the warranty or guaranty he must give to the consuming public.

Title II deals with expanded authority of the Federal Trade Commission. It does not deal with the manufacturer in respect to what he must put into his warranty. It does not deal with the manufacturer, the distributor, or the dealer as to what their responsibilities are in regard to warranty, repair, price, or any of those things.

Title II says that if in fact the Federal Trade Commission brings an action, which it can bring now, but which it can bring under this bill for a trade practice, it can impose a liability of $10,000, where today it can be $5,000, and that it can impose a consumer class action.

This has nothing to do with the fact that his warranty or his guarantee must be in explicit and basic terms, as provided under title I. I would not want the record to show that somehow or other, title I is not a good piece of legislation and would be worthless without title II. We can debate that, but to say that the manufacturer, somehow or other, is under additional requirements and additional responsibility by reason of his warranty and guarantee than would be required if title I passes by reason of the rejection of title II, frankly, I could stand here and debate about all night long. Whether this bill is or is not finished today, I think it is important to make that distinction, and to understand it.

Mr. MAGNUSON. Mr. President, a warranty can be an example of an un-

fair practice, which title II would affect. That is the connection. We may disagree on this, but that is the way we see it.

Mr. HRUSKA. Mr. President, it has been suggested that nothing in this title is to be feared by the honest, reliable businessman. Testimony before the Committee on the Judiciary—and it was not, for some reason, developed, so far as I know, in the Commerce Committee—was directed to this point.

There are two aspects about a reliable businessman trying to do the right thing, who never tried to do anything overreaching in his life. In the first place, products which he may create could be found by a ruling of the Federal Trade Commission, almost ex post facto, to be violating the law, and that would be particularly true if the Federal Trade Commission can pass regulations with the force and effect of law.

Mr. COOK. That is what makes title I so important, and makes title II the subject of this debate. Title I says in specific statutory language what the guarantee should be, and what it should be composed of. It is in clear language for Congress, the manufacturer, and everyone in the United States to see.

The trouble with title II is that it gives broad legislative authority, over and above the statutory authority involved in title I. Title I is specific and clear; title II is nebulous and vague.

Mr. HRUSKA. But the bill is not limited to knowing, intentional behavior, or to dealing with fraud only. It also deals with the man who tries to deal, manufacture, and sell honestly, but he is caught in this proposition of something being held to be illegal or fraudulent or deceptive when that is not his intention at all.

The second aspect is the consumer class action. The dealer can be as honest as the day is long, plus an hour, and yet if he gets caught or is sued in a class action, he has no means of getting out except buying his way out or trying the case to the last remedy that is available to him, and there are problems within that area, with the lack of safeguards in it, which are much greater than any civil damage or any fine could be.

So it is not a matter of the honest dealer and the honest manufacturer not being affected, and that he should not fear. He should fear, Mr. President. He should fear more mightily because this will be a very, very unfair bill for him. He will be affected.

Mr. MAGNUSON. Mr. President, the act prescribes that he has got to knowingly do it, and for those, who are good, reliable businessmen it would not bother them. There would be no reason to bring them in. A judge would throw a class action like that out of court in 5 minutes.

Mr. HRUSKA. Mr. President, the history of class actions in this country does not bear out that contention.

Mr. COOK. I suggest that under section 203, there is no such language as "knowingly," and no limitation on the damages that can be assessed.

Mr. MOSS. Mr. President, there is a bill on class actions pending in the committee. This has nothing to do with class actions. It is not a class action bill.

Mr. HRUSKA. Mr. President, then I misunderstand section 203 of the bill. Its plain language says the Commission may institute an action on behalf of consumers, and that is a class action bill if there has ever been a definition of class action.

This comes as a complete surprise, but it is contended this is not a class action bill. There it is in section 203, and again in section 202, and I will leave that to the expert and the authority over here, the Senator from Kentucky. This is a class action bill, period.

Mr. COOK. Mr. President, if the Senator will yield, I am neither an expert nor an authority on it, but, Mr. President, if it can be said at the last minute, before a vote on an amendment, that this is not a class action bill, that there is a class action bill before the committee, then I really wonder what we marked up and what we spent all of our time in the executive session on, after marking up S. 986, in the committee. If the language in section 203 is not as clear as it can be that the Federal Trade Commission is substituted for and put in the place of the consuming public, once a cease-and-desist order has been issued, once the practice has been established, that then, after an order of the Commission to cease and desist from engaging in actions or practices which are unfair or deceptive to consumers and proscribed by section 5(a)(1) of this act has become final as provided in subsection (g) of this section, the Commission, by any of its attorneys designated by it for such purpose, may institute civil actions in the district courts of the United States to obtain such relief as the court shall find necessary to redress injury to consumers.

This is not to redress the Federal Trade Commission, unless somebody on the Federal Trade Commission bought the product. This is to secure damages to the consumers caused by the acts or practices which were the subject of the cease-and-desist order, including, but not limited to, recision or reformation of contracts, the refund of money or return of property, public notification of the violation, and the payment of damages.

Mr. President, I would only suggest that in the Pfizer case that was settled in 1968, it was done by private action, a class action under the statute. A recovery was made by a settlement of more than $100 million. Not a penny has been paid out of that settlement since it has been done, because they are arguing over who should get the money. No individual consumer is going to get a dime, because those who will get it will be large corporations and institutions which had records. A little gentleman or a lady who bought drugs at the hospital or at a drug store is not going to get a thing back. But now the drug company can get it back, so they can recover on this. They marked up the drug when they got it, and they had a higher price for it, and they can get it at both ends.

Under this proposal, the Federal Trade Commission is going to do all this for the benefit of the institutional customer, because the individual customer is not going to keep all the stubs of what he buys.

To say that this is not a class action and that this section does not deal with class actions is really to shock the conscience of the whole debate that has been going on since the bill was introduced and to shock the conscience of all the work that has been done in the executive committee in trying to propose this as a present dangerous practice to forward to the Federal Trade Commission. Frankly, I cannot understand the remark.

Mr. MOSS. Mr. President, there is no right of any consumer to form a class and bring an action under this bill, as the Senator so well explained in reading from the bill.

The Commission itself, the Federal Trade Commission, may bring an action, but it is not a class action. The Senator well knows, from having participated in the committee discussions at great length on a class action bill, where the consumers themselves get together and form a class and bring a suit—that is what you talk about in a class action. This is something entirely different.

I do not want to prolong the discussion. All we are talking about here is giving the Federal Trade Commission a right to go into court as the Federal Trade Commission. Some people may benefit from that, but it is not forming a class and going in to file a class action, in the first instance, in court. That is what I meant when I said it was not a class action bill.

I would like to vote, Mr. President.

Mr. HRUSKA. Mr. President, if the Senator from Utah would put that explanation in writing and be willing to reduce it in the form of an amendment to section 203, to say, to wit, that this does not authorize class actions, that it is not intended to create class actions nor any attributes thereof, that would be a happy circumstance, indeed, and I imagine that we would have ground upon which to temporize in that regard; and even I would go along with that section. I would certainly go along with it—I speak for no one else—if it is stated within the text of section 203 that it is not going to be the foundation for the creation of class action.

If the Senator from Utah wants to offer that kind of amendment, we would then have a good deal of this debate clarified. It would also then explain why much of the testimony given on this bill devoted to class actions was not necessary at all.

The PRESIDING OFFICER. The question is on agreeing to the amendment. 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. SCOTT (after having voted in the affirmative). On this vote I have a live pair with the Senator from Maryland (Mr. MATHIAS). If he were present and voting, he would vote "nay"; if I were at liberty to vote, I would vote "yea." I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Florida (Mr. CHILES), the Senator from California (Mr. CRANSTON), the Senator from

Louisiana (Mr. ELLENDER), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from Maine (Mr. MUSKIE), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

I further announce that, if present and voting, the Senator from Louisiana (Mr. ELLENDER), the Senator from Alaska (Mr. GRAVEL), the Senator from Washington (Mr. JACKSON), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Minnesota (Mr. HUMPHREY) would each vote nay.

Mr. SCOTT. I announce that the Senator from Oklahoma (Mr. BELLMON) is absent on official business.

The Senator from Tennessee (Mr. BROCK), the Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from Maryland (Mr. MATHIAS) and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from Florida (Mr. GURNEY) is absent to attend the funeral of a friend.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The pair of the Senator from Maryland (Mr. MATHIAS) has been previously announced.

The result was announced—yeas 24, nays 57, as follows:

[No. 294 Leg.]

YEAS—24

Allen	Curtis	Miller
Allott	Dominick	Saxbe
Baker	Eastland	Stennis
Bennett	Ervin	Taft
Buckley	Fannin	Talmadge
Byrd, Va.	Hansen	Thurmond
Cook	Hruska	Tower
Cotton	Jordan, Idaho	Young

NAYS—57

Aiken	Hartke	Nelson
Anderson	Hatfield	Packwood
Bayh	Hollings	Pastore
Beall	Hughes	Pearson
Bentsen	Inouye	Pell
Bible	Javits	Percy
Boggs	Jordan, N.C.	Proxmire
Brooke	Kennedy	Randolph
Burdick	Long	Roth
Byrd, W. Va.	Magnuson	Schweiker
Cannon	Mansfield	Smith
Case	McClellan	Sparkman
Church	McGee	Spong
Cooper	McGovern	Stafford
Eagleton	McIntyre	Stevens
Fong	Metcalf	Stevenson
Fulbright	Mondale	Symington
Gambrell	Montoya	Tunney
Hart	Moss	Williams

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Scott, for.

NOT VOTING—18

Bellmon	Goldwater	Jackson
Brock	Gravel	Mathias
Chiles	Griffin	Mundt
Cranston	Gurney	Muskie
Dole	Harris	Ribicoff
Ellender	Humphrey	Weicker

So Mr. HRUSKA's amendment (No. 586) was rejected.

Mr. MOSS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. MAGNUSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AIRPORT AND AIRWAY DEVELOPMENT ACT—CONFERENCE REPORT

Mr. CANNON. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 7072) to amend the Airport and Airway Development Act of 1970 to further clarify the intent of Congress as to priorities for airway modernization and airport development, and for other purposes.

I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER (Mr. TUNNEY). Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report, which reads as follows:

CONFERENCE REPORT (S. REPT. No. 434)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 7072) to amend the Airport and Airway Development Act of 1970 to further clarify the intent of Congress as to priorities for airway modernization and airport development, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That section 12(h)(5) of the Airport and Airway Development Act of 1970 (49 U.S.C. 1712(h)(5)) is amended by striking out January 1, 1972" and inserting in lieu thereof "January 1, 1973".

SEC. 2. The first sentence of section 14(d) of the Airport and Airway Development Act of 1970 (49 U.S.C. 1714(d)) is amended to read as follows: "The balance of the moneys available in the trust fund may be allocated for the necessary administrative expenses incident to the administration of programs for which funds are to be allocated as set forth in subsections (a), (b), and (c) of this section, and for research and development activities under section 312(c) (as it relates to safety in air navigation) of the Federal Aviation Act of 1958.".

SEC. 3. Section 14 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1714) is amended by adding at the end thereof the following new subsection:

"(e) PRESERVATION OF FUNDS AND PRIORITY FOR AIRPORT AND AIRWAY PROGRAMS.—

"(1) Notwithstanding any other provision of law to the contrary, no amounts may be appropriated from the trust fund to carry out any program or activity under the Federal Aviation Act of 1958, except programs or activities referred to in subsections (c) and (d) of this section, as amended.

"(2) Amounts equal to the minimum amounts authorized for each fiscal year by subsections (a) and (c) of this section shall remain available in the trust fund until appropriated for the purposes described in such subsections.

"(3) No amounts transferred to the trust fund by subsection (b) of section 208 of the Airport and Airway Revenue Act of 1970 (relating to aviation user taxes) may be appropriated for any fiscal year to carry out administrative expenses of the Department of Transportation or of any unit thereof except to the extent authorized by subsection (d).".

SEC. 4. (a) Paragraphs (8) and (11) of section 11 (49 U.S.C. 1711), subsection (b)(3) of section 13 (49 U.S.C. 1713), and subsection (b)(2) of section 15 (49 U.S.C. 1715) of the Airport and Airway Development Act of 1970 are each amended by inserting immediately after "Virgin Islands," wherever appearing therein the following: "American Samoa, the Trust Territory of the Pacific Islands,".

(b) Paragraphs (1) and (2) of section 14(a) of such Act (49 U.S.C. 1714) are each amended by inserting after "Guam," the following: "American Samoa, the Trust Territory of the Pacific Islands,".

(c) Subsection (c) of section 17 of such Act (49 U.S.C. 1717) is amended (1) by inserting immediately after "VIRGIN ISLANDS" in the heading of such subsection a comma and the following: "AMERICAN SAMOA, and THE TRUST TERRITORY OF THE PACIFIC ISLANDS", and (2) by inserting immediately after "Virgin Islands" in the text of such subsection a comma and the following: "American Samoa, or the Trust Territory of the Pacific Islands".

SEC. 5. (a) Section 51(b)(4) of the Airport and Airway Development Act of 1970 is amended by striking out "two-year period" and inserting in lieu thereof "three-year period".

(b) Subsection (b) of section 612 of the Federal Aviation Act of 1958 (49 U.S.C. 1432(b)), as added by section 51 of the Airport and Airway Development Act of 1970, is amended by striking out all after "transportation" in the third sentence thereof and inserting in lieu thereof a period and the following: 'Unless the Administrator determines that it would be contrary to the public interest, such terms, conditions, and limitations shall include but not be limited to terms, conditions, and limitations relating to the operation and maintenance of adequate safety equipment, including firefighting and rescue equipment capable of rapid access to any portion of the airport used for the landing, takeoff, or surface maneuvering of aircraft.".

SEC. 6. Section 609 of the Federal Aviation Act of 1958 (49 U.S.C. 1429) is amended by inserting "(including airport operating certificate)" immediately after "air navigation facility certificate".

And the Senate agree to the same.

HOWARD W. CANNON,
VANCE HARTKE,
PHILIP A. HART,
JAMES B. PEARSON,
HOWARD BAKER,
Managers on the Part of the Senate.

HARLEY O. STAGGERS,
JOHN JARMAN,
JOHN M. MURPHY,
BROCK ADAMS,
WILLIAM L. SPRINGER,
SAMUEL L. DEVINE,
JAMES HARVEY,
DAN KUYKENDALL,
JOHN D. DINGELL,
Managers on the Part of the House.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 7072) to amend the Airport and Airway Development Act of 1970 to further clarify the intent of Congress as to priorities for airway modernization and airport development, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of

the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate, with an amendment which is a substitute for both the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below except for minor technical and clarifying changes made necessary by reason of the conference agreement.

SHORT TITLE

House bill

No comparable provision.

Senate amendment

Section 101 of the Senate amendment provided that the legislation could be cited as the "Airport and Airway Development and Revenue Acts Amendments of 1971".

Conference substitute

The conference substitute omits the short title provided by the Senate amendment.

REPORTING DATE OF AVIATION ADVISORY COMMISSION

House bill

The first section of the House bill extended the final reporting date of the Aviation Advisory Commission established under section 12(h) of the Airport and Airway Development Act of 1970 from January 1, 1972, to January 1, 1973.

Senate amendment

Section 103 of the Senate amendment extended the final reporting date of the Commission to July 1, 1972.

Conference substitute

The conference substitute is the same as the House bill.

ADMINISTRATION OF THE TRUST FUND

Airport and Airway Development Act of 1970

House bill

Section 2 of the House bill amended section 14(d) of the Airport and Airway Development Act of 1970 to permit rather than require the allocation of money in the Airport and Airway Trust Fund for administrative expenses incident to the administration of the airport development program and to the acquisition, establishment, and improvement of air navigation facilities. This section of the House bill also removed from existing law the authority to allocate money in the trust fund for the maintenance and operation of air navigation facilities.

Senate amendment

No comparable provision.

Conference substitute

The conference substitute is the same as the House bill.

House bill

Section 3 of the House bill added a new subsection (e) to section 14 of the Airport and Airway Development Act of 1970, relating to the preservation of money in the trust fund and the priorities for expenditure of money in the trust fund.

Paragraph (1) of the new subsection (e) provided that, notwithstanding any other provision of law to the contrary, no money could be appropriated from the trust fund to carry out any program or activity under the Federal Aviation Act of 1958, except programs or activities referred to in subsections (c) and (d) of section 14 of the Airport and Airway Development Act of 1970, Subsection (c) of such section 14 refers to the acquisition, establishment, and improvement of air navigation facilities. Subsection (d) of such section 14 (as amended by the House bill and the conference substitute) refers to (1) administrative expenses incident to the administration of programs for airport development and for the acquisition, establishment, and improvement of air navigation facilities, and (2) research and development expenses under section 312(c) of the Federal Aviation Act of 1958, as it relates to safety in air navigation.

Paragraph (2) of the new subsection (e) provided that amounts equal to the minimum amounts authorized for each fiscal year for airport development ($280,000,000) and airway facilities ($250,000,000) must remain in the trust fund until appropriated for such purposes.

Paragraph (3) of the new subsection (e) provided that none of the user taxes transferred to the trust fund by section 208 of the Airport and Airway Revenue Act of 1970 could be appropriated for any fiscal year to carry out administrative expenses of the Department of Transportation except to the extent such administrative expenses were incident to the administration of the airport development program or the acquisition, establishment, and improvement of air navigation facilities.

Senate amendment

Section 101 of the Senate amendment also added a new subsection (e) to section 14 of the Airport and Airway Development Act of 1970, relating to the preservation of moneys in the trust fund and the priorities for expenditure of money in the trust fund.

Paragraph (1) of the new subsection (e) contained a provision identical to that contained in the House bill providing that amounts equal to the minimum amounts authorized for each fiscal year for airport development and for airway facilities must remain in the trust fund until appropriated for such purposes.

Paragraph (2) of the new subsection (e) provided that none of the user taxes transferred to the trust fund by section 208 of the Airport and Airway Revenue Act of 1970 could be appropriated for any fiscal year to carry out activities referred to in subsection (d) of section 14 of the Airport and Airway Development Act of 1970 (relating to administrative research and development, and maintenance and operating expenses) until the minimum amounts authorized for airport development and for airway facilities had been appropriated for that fiscal year.

Conference substitute

The conference substitute is the same as the House bill.

AIRPORT AND AIRWAY REVENUE ACT OF 1970

House bill

No comparable provision.

Senate amendment

Section 201 of the Senate amendment amended paragraph (1) of section 208(f) of the Airport and Airway Revenue Act of 1970 to eliminate language authorizing expenditures from the trust fund for specific purposes and revising the language to provide that the amounts in the trust fund would be available, as provided by appropriation Acts, for expenditures to meet obligations of the United States authorized under the Airport and Airway Development Act of 1970, thus incorporating by reference the priorities established under section 14 of the Airport and Airway Development Act of 1970.

Conference substitute

The conference substitute omits the Senate amendment to the Airport and Airway Revenue Act of 1970.

AMERICAN SAMOA AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS

House bill

No comparable provision.

Senate amendment

Section 102 of the Senate amendment amends sections 11, 13, 14, 15, and 17 of the Airport and Airway Development Act of 1970 to permit American Samoa and the Trust Territory of the Pacific Islands to participate in the Federal grant-in-aid program for airport development provided for in that Act.

The amendments to section 11 provided that American Samoa and the Trust Territory of the Pacific Islands be included within the definitions of the terms "planning agency" and "public agency". Their inclusion within the definition of the term "planning agency" would make them eligible to receive grants of funds for airport system planning and airport master planning under section 13 of the Act. Their inclusion within the definition of the term "public agency" would permit them to submit applications for grants of funds for airport development projects under section 16 of the Act.

The amendment to section 13 provided that American Samoa and the Trust Territory of the Pacific Islands would be subject to the same limitation with respect to the allocation of funds for planning grants that applies with respect to the several States, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam. The limitation provides that not more than 7.5 per centum of the funds made available for planning grants for any fiscal year may be allocated to any one State.

The amendments to section 14 provides that the Secretary of Transportation could make grants for airport development projects in American Samoa and the Trust Territory of the Pacific Islands.

The amendments to section 15 provided that the discretionary fund would be available for making grants for approved projects for airport development in American Samoa and the Trust Territory of the Pacific Islands.

The amendments to section 17 provided that the United States share of allowable project costs of any approved project for airport development in American Samoa and the Trust Territory of the Pacific Islands could not exceed 75 per centum of the allowable project costs. This grants them the same preferential treatment accorded the Virgin Islands under that section. The United States share of allowable project costs is otherwise generally limited to 50 per centum.

Conference substitute

The conference substitute is the same as the Senate amendment.

AIRPORT CERTIFICATION REQUIREMENTS

House bill

No comparable provision.

Senate amendment

Section 104 of the Senate amendment amended section 51(b)(4) of the Airport and Airway Development Act of 1970 to postpone from May 21, 1972, to May 21, 1973, the effective date of the airport certification requirements added to the Federal Aviation Act of 1958 by section 51(b) of the Airport and Airway Development Act of 1970.

Section 104 of the Senate amendment also amended section 612(b) of the Federal Aviation Act of 1958, as added by section 51 of the Airport and Airway Development Act of 1970, to remove from such section 612(b) language requiring that each airport operating certificate contain terms, conditions, and limitations relating to the installation, operation, and maintenance of adequate air navigation facilities and to the operation and maintenance of adequate safety equipment, including firefighting and rescue equipment capable of rapid access to any portion of the airport used for the landing, takeoff, or surface maneuvering of aircraft.

Conference substitute

The conference substitute follows the Senate amendment insofar as it extends from May 21, 1972, to May 21, 1973, the effective date of the airport certification requirements.

The conference substitute also amends

section 612(b) of the Federal Aviation Act of 1958 relating to the terms, conditions, and limitations required to be included in each airport operating certificate. The conference substitute does not remove from section 612 (b) all language relating to required terms, conditions, and limitations, but revises the language to provide that, unless the Administrator of the Federal Aviation Administration determines that it would be contrary to the public interest, each airport operating certificate must contain terms, conditions, and limitations relating to the operation and maintenance of adequate safety equipment, including firefighting and rescue equipment capable of rapid access to any portion of the airport used for the landing, takeoff, or surface maneuvering of aircraft.

House bill

No comparable provision.

Senate amendment

Section 105 of the Senate amendment amended section 609 of the Federal Aviation Act of 1958 to provide that the authority of the Secretary of Transportation to amend, suspend, modify, or revoke an air navigation facility certificate includes authority to amend, suspend, modify, or revoke an airport operating certificate.

Conference substitute

The conference substitute is the same as the Senate amendment.

HOWARD W. CANNON,
VANCE HARTKE,
PHILIP A. HART,
JAMES B. PEARSON,
HOWARD BAKER,
Managers on the Part of the Senate.

HARLEY O. STAGGERS,
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BROCK ADAMS,
WILLIAM L. SPRINGER,
SAMUEL L. DEVINE,
JAMES HARVEY,
DAN KUYKENDALL,
JOHN D. DINGELL,
Managers on the Part of the House.

Mr. CANNON. Mr. President, the conferees have agreed to the conference report on the airport and airway trust fund. I move that the conference report be agreed to.

Mr. MAGNUSON. Mr. President, this is a very important bill which, because we have had so many matters to handle, has gone unnoticed. We all owe a debt of gratitude to the Subcommittee on Aviation headed by the distinguished Senator from Nevada (Mr. CANNON) which held hearings and got the bill moving. The conference report has now been agreed to by the conferees.

For the benefit of all Senators, we made the airport and airway fund a trust fund. Some people downtown had different ideas. The Senator from Nevada called their attention to the fact that when we say "trust fund," we mean trust fund.

Mr. CANNON. The Senator is correct. We have closed the barn door and locked it so that it will be a trust fund which was the purpose for which it was intended.

The PRESIDING OFFICER (Mr. TUNNEY). The question is on agreeing to the motion of the Senator from Nevada.

The motion was agreed to.

PROGRAM

Mr. SCOTT. Mr. President, I rise to ask the distinguished majority leader if he can give us some insight as to the further procedures tonight and also comment on what the schedule looks like for later in the week.

I know the distinguished majority leader has in mind some of the problems which are facing us.

Mr. MANSFIELD. Mr. President, in response to the question raised by the distinguished Republican leader, it is hoped that it would be possible to finish the bill tonight. I understand that the distinguished Senator from Kentucky (Mr. COOK) has an amendment, that the distinguished Senator from Virginia (Mr. SPONG) has a substitute, that the distinguished Senator from Nebraska has another amendment, and that there may be others. If, perchance, we finish all amendments tonight and get to a third reading and our colleagues who have gone to Florida to attend the funeral of our late colleague, former Senator Spessard Holland, this afternoon, are not back tonight, the joint leadership would be willing to put off the final vote until 9:30 in the morning so that they would be protected.

Mr. SCOTT. Mr. President, the majority leader is correct. We have discussed this and agreed that we would like to have the vote tonight if our able colleagues are able to return in time from Florida. If not, we could vote in the morning.

I understand that a number of Senators will be away tomorrow night, and we have the Okinawa Reversion Treaty. Has the majority leader come to a conclusion as to when he would like to schedule that matter for a vote?

Mr. MANSFIELD. Yes. If possible—and no one can tell before the Senators go away on a very important engagement—those Senators who are going to be away can be absolutely certain that their rights will be fully protected. There will be no votes while they are away. If need be, we will try to complete the treaty tomorrow, and if they return too late, we will ask unanimous consent that the vote occur sometimes the next day, to make sure that all Senators are back from the vantage point to which they have gone.

Mr. SCOTT. I am glad the Senator said "vantage point." That makes it bipartisan.

I understand there will be no votes on Tuesday on the Okinawa Reversion Treaty in any event and we will try to set it at such hour, around the middle of the day on Wednesday to enable Senators to return from distant points.

Mr. MANSFIELD. That is right. If perchance we get to the conclusion before they leave we could get to a vote, but it looks like Wednesday and we will pick a time acceptable to those the greatest distance away.

Wednesday we will take up the humanitarian and economic aspects of foreign aid and hopefully following that will be the military aspects. Then, that will be followed by the tax package which was reported by the Committee on Finance today. In turn, it will be followed by the phase II package which will be reported later this week.

So we will have a full week and we will have them from now on.

Mr. SCOTT. So that Senators may be on notice, aside from Tuesday night I take it there is reasonable expectation of late sessions for the remainder of the week, and we have not excluded the possibility of a Saturday session.

Mr. MANSFIELD. There will be a Saturday session, and in response to the first part of the Senator's question, as the fellow said, "indubitably."

Mr. SCOTT. Indubitably. I thank the Senator.

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

Mr. MANSFIELD. I yield.

Mr. RANDOLPH. Can the distinguished majority leader help us by indicating, if possible, whether there will be rollcall votes on the one or more amendments to be considered today?

Mr. MANSFIELD. I assume there will be with very little question, and possibly two.

CONSUMER PRODUCT WARRANTIES AND FEDERAL TRADE COMMISSION IMPROVEMENTS ACT OF 1971

The Senate continued with the consideration of the bill (S. 986) to provide minimum disclosure standards for written consumer product warranties against defect or malfunction; to define minimum Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes.

Mr. COOK. Mr. President, I call up my amendment No. 478.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. COOK. Mr. President, I ask unanimous consent that further reading of the amendment may be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment ordered to be printed in the RECORD is as follows:

On page 24, strike out line 5 and insert in lieu thereof the following: "ranties, Federal Trade Commission Improvements, and Consumer Remedies Study Act".

Beginning with line 18, page 43, strike out all of section 203 to and including line 10, page 44, and appropriately renumber succeeding sections.

On page 51, between lines 21 and 22, insert the following:

"TITLE III—CONSUMER REMEDIES STUDY

"SEC. 301. (a) The Director of the Office of Consumer Affairs, in consultation with and with the assistance of the Attorney General of the United States, is authorized to contract with the National Institute for Consumer Justice (hereafter referred to as the 'Institute'), a nonprofit corporation of the District of Columbia, to conduct a study or studies of means for improving the grievance-solving mechanisms and legal remedies of consumers, including but not limited to the following:

"(1) methods of preventing consumer grievances from arising and of improving seller-buyer and debtor-creditor relationships;

"(2) existing and potential voluntary settlement procedures, including arbitration; and

"(3) the desirability of establishment of a nationwide system of small claims tribunals.

"(b) The Director of the Office of Consumer Affairs shall, within eighteen months of the enactment of this Act, submit a final report on such study or studies to the President and to Congress along with its recommendations, if any, for legislation.

"SEC. 302. (a) The Institute and each recipient of a contract from the Institute under this title shall keep such records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(b) The Comptroller General of the United States, or any of his duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of any funds provided under this title as are pertinent to the disposition and use of such funds.

"SEC. 303. There is authorized to be appropriated $500,000 to carry out the provisions of this title."

On page 51, line 23, strike out "SEC. 211.", and insert in lieu thereof "SEC. 304.".

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, will the Senator from Kentucky yield once more?

Mr. COOK. I yield.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the pending business be temporarily laid aside and that the Senate go into executive session to consider four nominations reported by the Committee on the Judiciary this afternoon. This matter has been cleared on both sides.

The PRESIDING OFFICER. Is there objection?

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

U.S. DISTRICT JUDGE

The legislative clerk read the nomination of William J. Bauer, of Illinois, to be a U.S. district judge for the northern district of Illinois.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

U.S. ATTORNEY

The legislative clerk read the nomination of Herbert J. Stern, of New Jersey, to be U.S. attorney for the district of New Jersey for the term of 4 years.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of James R. Thompson, Jr., of Illinois, to be U.S. attorney for the northern district of Illinois for the term of 4 years.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

U.S. MARSHAL

The legislative clerk read the nomination of Thomas E. Ferrandina, of New York, to be U.S. marshal for the southern district of New York for the term of 4 years.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be notified of the confirmation of these nominations.

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

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

There being no objection, the Senate resumed the consideration of legislative business.

Mr. MANSFIELD. Mr. President, I thank the Senator for his unfailing graciousness.

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills:

H.R. 1680. An act to extend for an additional temporary period the existing suspension of duties on certain classifications of yarn of silk; and

H.R. 5060. An act to amend the Fish and Wildlife Act of 1956 to provide a criminal penalty for shooting at certain birds, fish, and other animals from an aircraft.

The enrolled bills were subsequently signed by the President pro tempore.

CONSUMER PRODUCT WARRANTIES AND FEDERAL TRADE COMMISSION IMPROVEMENTS ACT OF 1971

The Senate resumed the consideration of the bill (S. 986) to provide minimum disclosure standards for written consumer product warranties against defect or malfunction; to define minimum Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes.

Mr. COOK. Mr. President, upon my assuming responsibility as ranking minority member of the Consumer Subcommittee of the Senate Committee on Commerce at the beginning of this session of the 92d Congress, I found there were a number of pieces of consumer legislation left over from the preceding Congress. One such bill was a bill to provide minimum disclosure standards for written consumer warranties. That bill, S. 3074 in the 91st Congress, passed the Senate without a dissenting vote on July 1, 1970, but was not acted upon by the House of Representatives during the last Congress. I supported that bill then and I support warranty legislation along the lines contained in title I of S. 986 now.

If S. 986 were limited to warranty legislation, as I would have preferred, we would not be involved in this debate at present. I believe it is safe to say that there remains virtually unanimous support for the type of legislation contained in title I of S. 986.

Unfortunately, when S. 3074 was reintroduced this session as S. 986, it was coupled with amendments to the Federal Trade Commission Act substantially expanding the powers of the Federal Trade Commission in the consumer area.

Those amendments make up title II of the bill, S. 986, which is presently under consideration. I intend to confine the remainder of my remarks to that title and the effect which my amendment, cosponsored by the distinguished ranking minority member of the Senate Committee on Commerce and the distinguished ranking minority member of the Senate Committee on the Judiciary, would have on the bill, S. 986.

Mr. President, I have characterized the amendments of the Federal Trade Commission Act, which would be affected by title II of this bill, as sweeping. Principal among them are amendments which would, if adopted—

First. Expand the jurisdiction of that Commission to include all acts or practices affecting interstate commerce and not just those in interstate commerce as at present;

Second. Give to the Federal Trade Commission, acting through its own attorneys, the power to seek preliminary injunctions;

Third. Double the penalty for violation of a Commission cease-and-desist order from $5,000 to $10,000.

Fourth. Authorize Commission attorneys in the field to bring actions seeking compliance with Commission-issued subpenas;

Fifth. Give the Commission a clear legislative mandate to engage in rulemaking;

Sixth. Authorize the Commission to bring actions seeking civil penalties against persons knowingly engaged in acts or practices which are unfair or deceptive to a consumer; and

Seventh. Authorize the Commission, acting through its own attorneys, following entry of a final cease and desist order to go into court for the purpose of obtaining redress for consumers alleged to have been injured by the unfair or deceptive act or practice which formed the basis for such order.

These amendments represent in effect a rewriting of the Federal Trade Commission Act and would, in my opinion, and the opinion of numerous and well respected FTC practitioners substantially change the character and mission of that agency in the consumer protection field. They were worthy of consideration on their own merit and should have been so considered, in my view.

A number of the amendments are desirable and necessary to assist the Commission to better perform its present mission. For example, the first three of the amendments, listed above were proposed by the administration in legislation sent up by it which was introduced

by request as S. 1219. The increased powers which would have been given the Commission under those amendments were considered sufficient by the administration for the time being.

While I am on the subject of the position of the administration with respect to this bill and the Federal Trade Commission, let me say, Mr. President, that I believe no one can justifiably question the dedication of this administration to revitalizing the Federal Trade Commission as a body for the protection of consumer interests. Not only has the administration proposed to substantially broaden the powers of this Commission as I have just indicated, but more significantly it has, when taking office, appointed a man to be Chairman of that agency who has brought it out from under the clouds of consumer, legal and business dissatisfaction which hung over the agency. Prior to the Nixon administration taking office cries for the abolition of the Commission were being heard from all quarters. Not only Ralph Nader but also the American Bar Association had undertaken studies of the Commission raising serious questions as to the efficiency of its continued existence. The decline of the Commission has been reversed in 3 short years under a Chairman appointed by President Nixon. Is the Nixon administration anti-FTC? Let the record speak for itself.

I personally was inclined to give the Commission somewhat broader powers than those recommended by the administration. For example, I believe the provision permitting more flexibility in enforcing FTC subpenas in the field is desirable. Likewise, I can see merit in permitting the FTC through its own attorneys to enforce its final cease-and-desist orders instead of requiring it to rely on the Department of Justice to do so as at present. These provisions taken together would, in my opinion, have given the Commission sufficient authority to perform its present mission effectively. The Chairman of the FTC, I might add, has confirmed to me in private discussions that only these provisions are necessary to do so although he regards other provisions in the bill to be desirable additions to the Commission's authority.

Regardless of the desirability of the amendments beyond those which I have already discussed, no one doubts that adoption of them will dramatically and radically alter the role of the Federal Trade Commission with respect to consumer protection. To date, the Commission has operated as a normal administrative agency in defining conduct which is unfair or deceptive and, therefore, proscribed by section 5(a) of the act.

The Commission's judgment that a particular practice is henceforth to be deemed a violation of section 5(a) and its order to cease and desist from that practice have had prospective application only, even as to the person against which the order is entered. Under section 202 and 203 of the proposed amendments to the Federal Trade Commission Act, the Commission would, for the first time, be authorized to go into court and seek civil penalties, damages, or other relief on behalf of consumers aggrieved, based on the conduct which may have been declared unlawful for the first time by entry of the Commission's final cease-and-desist order.

These amendments, I believe, will raise more problems than they will solve. This is particularly true of the amendment contained in section 203 of the bill which would authorize the Commission to bring actions in Federal courts on behalf of consumers alleged to have been injured by acts or practices concerning which it has obtained a final cease-and-desist order. I believe this provision is both untimely and ill-advised.

Among the more troublesome questions presented by enacting this section at this time are the following:

First. How will the Federal Trade Commission in its new role as parens patria for aggrieved consumers interface with other consumer agencies, the establishment of which is presently being considered. For example, the Product Safety Commission or Administration under S. 983 and S. 1797 presently pending before our committee and the Consumer Protection Agency under H.R. 10835, a House passed bill presently pending before the Senate Committee on Government Operations.

Second. Will the Federal Trade Commission be able to operate under this provision without a substantial increase in manpower and budget or will the provision simply hold out a promise to consumers which cannot be kept? If, as I believe, the Commission will be unable due to budgetary and manpower limitations to implement this provision, consumers will be more disillusioned than helped by its passage at this time. If, on the other hand, the Commission attempts to proceed with implementation of section 203 there are innumerable legal problems which may stand in the way of its becoming operable.

I might repeat again that in the report on the bill, S. 986, on page 41, in response to a request made of the Federal Trade Commission as to the increased costs, it is indicated that under title I the increased cost would be $200,000 for the first year, $200,000 for the second year, and $150,000 for the third year. Unfortunately, they gave no figures—if they did give figures, they do not appear in the report—on the cost of title II, so that no one understands what the increased costs of the Federal Trade Commission would be by reason of title II.

They did not ask for an additional sum of money. They apparently said it would not increase the cost, but I have estimates of the increased cost from the Federal Trade Commission which shows that if title II is enacted, it will cost $725,000 the first year, $875,000 the second year, $1 million the third year, $1,250,000 the fourth year, and $1,400,000 the fifth year.

Why these figures are not in the record, why these figures are not available, I do not know, but to subtantiate the fact that they are important, I would suggest that in the ABA report on the Federal Trade Commission—and I might suggest that the chairman of that body at that time was Mr. Miles Kirkpatrick, distinguished Chairman of the Federal Trade Commission—he said in the report:

> We agree with the Chairman of the Federal Trade Commission and others that Congress is partly responsible for the Federal Trade Commission's problems because of its practice of committing important new legislative programs to the agency without commensurate increases in budget.

Yet there is no anticipated increase in budget pursuant to the record of the Federal Trade Commission itself.

We also would like to make Senators aware of the fact that in a letter to the committee, dated March 11, 1971, on S. 986, Mr. Paul Rand Dixon, who is a Commissioner of the Federal Trade Commission, said:

> I am vitally concerned with the substantially increased burden which would be placed upon the staff by enlarging our jurisdiction to include local law violations.

I do not want to read it all, but it goes on:

> It would indeed be tragic if our jurisdiction were expanded to practices "affecting" commerce without a concurrent increase in funds to enable us to assume the added responsibility. With our limited funds, I am convinced that we could not begin to reach even the most flagrant of those practices coming within our expanded authority. Frankly, to provide the Commission with this authority without increased funds for enforcement is to hold out false hope to the consumer.

And yet it will be seen that in the report there is no—I say again "no"—language or information, and there is no testimony by the Federal Trade Commission, that title II, with its broad, sweeping powers under section 203, would increase the costs of the Federal Trade Commission. Yet we know that, with the increased authority to bring actions, with the increased authority to enforce the actions, with the increased authority for its lawyers to go into a field they have not gone into before, and with the authority to go into it anywhere in the United States, the cost is going to increase greatly.

Third. Is the term "unfair or deceptive act or practice" sufficiently well defined to make exercise of the authority contained in section 203 by the FTC constitutional and, even if it is constitutional, is it wise? I think not. Under existing law, the FTC has authority to issue cease and desist orders against "unfair or deceptive" acts or practices; these orders apply prospectively only. Of course, many types of conduct are well known to be "unfair or deceptive" as a result of prior FTC proceedings. However, the problem is that the FTC frequently breaks very new ground in these proceedings and finds that conduct is "unfair or deceptive" when the conduct had previously been widely regarded as proper. This has been one of the primary missions of the FTC—to give specific meaning to a very general statutory term and in doing so it could be far reaching in its decisions because the cease-and-desist order only operated to bar such conduct in the future. Under section 203 there is now a risk of poten-

tially ruinous retroactive liability if the FTC breaks new ground in a cease-and-desist proceeding and finds that a course of conduct is "unfair or deceptive" when it previously had been generally thought to be proper.

Under this section the same conduct which forms the basis for the cease-and-desist order would be the base for the court action thereby subjecting the defendant to potentially ruinous liability without advance notice that the conduct in question is unfair or deceptive. Where such conduct is engaged in knowingly, the imposition of liability may be appropriate, however this is accomplished by section 202 of the bill. To be noted is the fact that the civil penalty provided under that section is limited to $10,000. Liability under this section whereby action may be brought even though the defendant has not knowingly engaged in an unfair or deceptive act or practice is limited only by the size of class of consumers which the Commission may allege to have been adversely affected and the value of the product.

There is no other way the language can be interpreted. Otherwise, what is the point of the Federal Trade Commission's bringing an action for civil damages on behalf of consumers, if it is not going to be because of the size of the group alleged to be consumers and alleged to have been damaged?

I may suggest that members of the Commerce Committee staff itself have indicated that this is not something they can very well find out, because on Thursday, November 4th, the Washington Star had a story the headline of which reads "FTC Charges Ads For Mouthwash Lie."

The article reads in part:

A spokesman for the Senate Commerce Committee, which approved the bill, said even if the provision is enacted it would be difficult to get refunds for purchasers of a product such as Listerine, which has been marketed for years.

So it says in the article that they have no knowledge of how they would go about doing that, under those circumstances.

While on this subject, I must note that the section contains no provision for a determination of the consumers who are entitled to recover damages and no provisions indicating the manner in which the court is to administer such an action brought by the Commission.

Fourth. In view of the retroactive liability which would be associated with Commission cease-and-desist for the first time upon enactment of section 203, will not the courts reviewing such orders be less inclined to sustain orders breaking new ground in the area of defining unfair or deceptive practice. If so, and I believe it necessarily follows that they will, the Commission may be hamstrung in expanding the list of unfair and deceptive practices. This would be a most undesirable result from every point of view. I believe, Mr. President, it would be far preferable for the FTC to retain the flexibility it has enjoyed to date in expanding the frontiers of the law of unfair and deceptive practices and to place the function of consumer redress elsewhere.

Fifth. Additional legal problems which should be considered before a provision such as section 203 is enacted, but have not been, included the following:

There is no statute of limitations provision setting forth how far back the FTC may go to recover damages—that is, all consumers injured x years prior to the commencement of the FTC cease-and-desist action? All consumers injured from the date of commencement of the FTC cease-and-desist action? Or what?

There is no provision to cover the problem of a private damage action by a consumer—either individually or in a class action—commenced subsequent to the FTC section 203 action. Is such a private action banned by the doctrine of res judicata since the FTC section 203 action presumably is on behalf of all consumers? If so, should a consumer or group of consumers have the right to object to a proposed settlement of the FTC section 203 action since the settlement would be binding on them? Conversely, what if there is a consumer class action prior to the FTC section 203 damage action—are the persons in that action entitled to a second chance of recovery in the FTC section 203 proceeding?

The section ignores entirely the question of the effect the cease and desist order shall have in the subsequent section 203 damage action. Cease-and-desist orders are entered by the FTC after an FTC administrative hearing; if these hearings there is, of course, no right to a jury and court rules of evidence are not controlling. The question is—what weight should the cease-and-desist order have in the subsequent section 203 action. If it has res judicata effect it may violate the defendant's constitutional right of a trial by jury. Should it have prima facie effect? Should it have no effect, with the court conducting a complete trial de novo? The section totally ignores this question.

For all of these reasons I believe that enacting section 203 at this time would be unwise. It will impair the ability of the Commission to adequately perform its present functions and offer precious little if any relief for consumers.

Accordingly, my amendment to which I will now address my remarks, proposes, among other things, to eliminate that section. It also provides for a comprehensive study of consumer remedies which I believe to be both desirable and necessary.

Before I get to that point, Mr. President, I should like to go back to the hearings record just a moment, and ask, of all the testimony that was taken on S. 986, how much testimony is there that title II was absolutely necessary

Let me state it. It is from the Chairman of the Federal Trade Commission himself, Mr. Kirkpatrick, on page 36. What is his reason for wanting the additional sections, of which 203 is one? Says he:

The Federal Trade Commission, as the agency which over the years has developed a special expertise in identifying fraudulent and deceptive practices and which always has had primary responsibility for dealing with such practices, should have a complete array of weapons and discretion to select the more appropriate sanction for use in a particular case.

I think Senators will find that all of the rest of the testimony in this record is opposed to section 203.

I would also point out that Mr. McLaren, in his testimony, on page 225, stated as follows:

Since another bill submitted by the administration, the proposed Consumer Fraud Prevention Act, authorize private suits on behalf of those injured by an unfair or deceptive practice after the Commission has entered a final order against that practice, we tend to believe that administration of consumer remedies by the Commission is unnecessary and may detract from the Commission's overall enforcement effort.

To give the Commission such powers would substantially alter the existing framework of the Federal Trade Commission Act. It would convert the Commission from a body whose orders are designed to operate prospectively into an instrument whose decisions are designed to redress injury and, in effect, to punish. It would effect this conversion without changing any of the procedures now governing the Commission's proceedings. If such a substantial revision of the Commission's purpose is to be made, we believe that it must be accompanied by a modification of the Commission's procedures to make them more like a court of law in order to protect the rights of parties appearing before the Commission.

Moreover, to authorize the Commission to be represented in the courts by its own attorneys, rather than by the Justice Department, runs counter to the governmental policy that litigation in the court should be centralized in the Justice Department. It seems to us that this policy is important in order to assure that the United States and its agencies have an uniform policy with respect to positions asserted in the course of litigation; to secure objectivity in the filing and handling of cases; and to achieve and maintain better rapport with the courts.

Mr. McLaren proceeded to say:

I am aware that Chairman Kirkpatrick testified that "delay between the time when a matter is sent to the Department . . . and the date it is filed has become a serious and vexing problem." We are not unaware that on occasion in the past this period of time has been longer than desirable. However, I have looked into that situation and I have reached certain conclusions. I found that time was often consumed in discussions between the Department and the Commission as to the soundness of a particular proposed case; as to whether the Commission had proposed a realistic penalty; as to whether the Commission's evidence supported the allegations proposed to be made in the complaint; and in settlement negotiations. Candidly, within the past year, Commission personnel have been doing a much better job, and the Department has, on its part, developed procedures which we believe will insure the speedy filing of sound Commission cases. We therefore oppose authorizing the Commission to be represented solely by its own attorneys in litigation.

I am gratified, Mr. President, that the distinguished junior Senator from the State of Virginia (Mr. SPONG), the distinguished chairmen both of our committee (Mr. MAGNUSON) and of the Consumer Subcommittee (Mr. Moss) share my view as to the desirability of a study of the sort that would be provided by the adoption of title III to the bill as proposed in my amendment. In view of their position, I do not believe there is any need, if there ever was, to defend the credentials of the body which would be authorized to undertake the study or of the value of their

report on the subject matter of consumer grievances and remedies some 18 months hence.

Nonetheless, they are prepared to move ahead with an amendment to radically restructure the role of the FTC. In the words of Assistant General McLaren in his testimony before the subcommittee:

> Section 203 would substantially alter the framework of the FTC Act . . . (and) would convert the commission from a body whose decisions are designed to operate prospectively into an instrument whose decisions are designed to redress injury and, in effect to punish.

This would be done in the absence of any demonstration that such a change in the role of the FTC is necessary or desirable. It would be done without any study as to how the FTC in its new role would fit into the overall framework of consumer protection at the Federal, State, and most important, local levels. To enact section 203 at this time would be an example of piecemeal legislation at its worst.

Mr. President, 18 months is not too long to wait to bring some coherence to legislation covering the area of consumer remedies. Even without section 203, the Commission will be given broad new powers which it should be given a chance to implement before embarking on a new and unchartered course. Eliminating the requirement that they attempt to do so at this time by eliminating section 203 is an attempt to expedite revitalization of the FTC, not retard it.

For all of these reasons, I urge all Members interested in the orderly revitalization of the FTC as a consumer protection agency to vote "No" on the Spong amendment, which would have the effect of reinstating section 203 of the bill, and to vote "Yes" on my amendment for its elimination.

The point I am trying to make is that it seems rather strange that one would be in favor of title III, to set up an agency to study, to set up an agency to develop the theory of a small claims court, and at the same time say, "Even though this study is going on, we want to give this broad, overall power to the Federal Trade Commission," and, consequently, probably never get around to seeing whether the real way to remedy the consumer in this country is to give him a private course of action.

I might suggest, in conclusion, that even Mr. Kirkpatrick, who is now Chairman of the Federal Trade Commission, as chairman of the special committee studying the Federal Trade Commission of the American Bar Association, said, on page 63:

> We recommend that private rights of action for damages and injunctive relief be created for and on behalf of consumers and other persons who are injured by deceptive practices which are violations of Section 5 of the FTC Act. This private right of recovery, particularly to the extent that it does not depend upon the utilization of FTC resources, would multiply the effectiveness of the enforcement mechanism and the seriousness of the sanction against violation.

Mr. President, I yield the floor.

Mr. HRUSKA. Mr. President, I rise in support of the amendment proposed by the Senator from Kentucky.

The amendment would strike section 203.

Section 203 authorizes the Commission, after issuance of a cease-and-desist order, to commence an action in Federal court "to redress injury to consumers caused by the acts or practices which were the subject of the cease-and-desist order." This section, in effect, is a class action provision with the Federal Trade Commission as the plaintiff suing on behalf of consumers for retroactive damage and other types of relief. Assuming that it is desirable to have these actions, the following specific issues are raised:

DAMAGES

The section does not specify in even the most rudimentary fashion how damages or other injury are to be proved or how awards are to be made to individual injured consumers. Does the section mean therefore that once liability has been determined, a court may simply create a money fund of unspecified proportions out of some ill-defined general damage assessment against a defendant, issue a press release inviting any consumer with a colorable claim of injury to collect from the fund, and turn the uncollected funds over to the Federal Trade Commission or the Treasury? Is it the intent to eliminate jury trial, if requested, on factual claims relating to damages? Should the court have a master to supervise damage claims? Or does the section mean that proof of specific injury is not required at all—that relief will be afforded at someone's flat?

There is, for example, no requirement or suggestion in either the text of the section or the committee report that, when a section 203 class action has been filed, either the Commission or the court should issue notice to the consumers on whose behalf the Commission has brought the action. If neither the court nor the Commission knows which specific consumers are being represented in the action, neither one will be able, let alone be required, to assess the extent of each individual consumer's injury prior to levying a money judgment against a defendant.

The possibility of damage windfalls without proof of specific injury also suggests that section 203 may constitute the most extensive penalty provision ever devised. There is language in the committee report which states that the class action provision was designed not only to benefit consumers but also to enable the Commission to punish recalcitrant defendants with whatever sanctions the Commission or the court can devise.[1]

In view of the open-ended nature of this section, which conceivably authorizes both general and punitive damages without proof of individual injury and without any other clearly defined limitations, it is a mystery why the committee ever bothered to include in title II a special provision—section 202—authorizing the Commission to seek civil penalties for "knowing" violations of section 5 of the act and why any effort was made in section 204 of the bill to raise from $5,000 to $10,000 the civil penaty for violation of an outstanding cease and desist order. The potentially overwhelming impact of cumulative penalty sanctions was a prime topic of concern in the Judiciary Committee hearings last session on S. 3201. This pending bill and report not only totally ignore these concerns but add immeasurably to them by creating the possibility of unlimited liability in section 203.

UNDEFINED VIOLATIONS

Section 203 in no way specifies what violations of the Federal Trade Commission Act will subject a defendant to a section 203 class action. The lack of specificity is critically important. The Commission frequently pioneers new law in its cease and desist order proceedings. That, in fact, is traditionally its primary mission: To give evolving content to very general statutory terms. Section 203 thus creates a potential for unlimited liability for past conduct in situations where such conduct does not violate the law until the Commission, acting both as prosecutor and judge, decides to outlaw it. Jeopardy is not only unrelated to the law at the time an act is committed, but is not even remotely limited to acts otherwise known to be "deceptive." Yet the jeopardy may be far more serious than the penalties imposed for "knowing violations" under section 202.

MULTIPLE AND OVERLAPPING ACTIONS

As noted above, there is no requirement that notice be given to the consumers represented by the Commission, and no mechanism by which consumers can be required to "opt-in" or "opt-out" of the Commission action, and thus no means by which any members of the so-called class can be bound by the ultimate court decision. There is, moreover, nothing in the section to deal with multiple, overlapping and possibly successive class actions on behalf of the same consumers with respect to the same subject matter in both State and Federal courts. It is not even clear that a plaintiff who loses a private action on the same claims would be barred from a recovery under section 203.

As a result, a defendant may be forced to defend simultaneous or successive actions—whether brought as class or individual actions—involving the same subject matter and for the same beneficiaries if it wins the section 203 action brought by the Commission, if it wins the private suits, or if the Federal Trade Commission or private plaintiffs wish to improve their position even though the claims have yet to be litigated in plaintiffs' private actions.

Certainly no plaintiff is entitled to more than one day in court, and neither defendants nor the court system itself should be subjected to duplicative and wasteful litigation. Accordingly, section 203 suffers from the absence of a provi-

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[1] The Report states that the "Committee's intent in giving these remedial powers [section 203]," was not only to "enable the Commission . . . to utilize the results of that [cease and desist order] investigation for the benefit of the damaged parties," but also to "reinforce the Commission's credibility in policing the marketplace by authorizing sanctions which could realistically be expected to inhibit unlawful business practices." (Sen. Comm. Rep., p. 24.)

sion which binds consumers represented in the section 203 action, or stays Federal class actions and precludes the initiation of State court class actions involving the same or substantially the same relief as that sought in the section 203 action filed by the Commission.

SETTLEMENT

The section makes no provision whatsoever for settling consumer class claims out of court or for providing other reasonable settlement alternatives. Yet this is clearly desirable to avoid the problems of litigating thousands of claims—or millions—in a single proceeding. Indeed, in the guaranty and warranty provisions of title I, for example, there is a section encouraging the establishment of informal dispute settlement mechanisms and requiring "any purchaser" potentially injured by breach of warranty agreements to pursue such settlement mechanisms prior to bringing court action. It makes no sense to leave out a similar settlement[2] provision for title II, where the range of potential violations is so much broader and the potential burden on the courts so much greater than in title I.

DISTRICT COURT PROCEDURES

The section is silent as to the procedures the district court is to follow in determining the merits of the claim in the section 203 action and the relationship of that action to the cease and desist order and appellate review proceedings that precede it. The Commission cease and desist order may be viewed, for example, in one of four or five separate ways,[3] and any determination of the effect to be given that order must take into account the accompanying review proceeding by a court of appeals. Appellate review normally gives great, if not conclusive, weight to the Commission's expertise, a deference which is reasonable in some areas of the Commission's responsibility, but which may make no sense in the consumer fairness area where the Commission has no special expertise in dealing with the innumerable fact situations that can constitute fraud or misrepresentation.

If the district court in turn defers to the appellate ruling, the result in the end will have been dictated in effect by the Commission acting as legislator, prosecutor and judge. Equally significant, the respondent's ultimate liability will have been determined in proceedings that do not conform even to basic rules of evidence. It is also possible, of course, to eliminate appellate review of a cease-and-desist order where the Commission elects to bring a section 203 action and to constitute that action as a review de novo of all the liability issues presented. But whatever the solution, the question must be directly addressed.

STATUTE OF LIMITATIONS

The section in effect permits the Commission to reach back to award damages on a retroactive basis with respect to past behavior without any limit on how far back the Commission can reach, and whether or not the behavior was lawful at the time it occurred. It is highly unreasonable to permit the Commission to seek damages for a past practice while also having the ability to postpone determination of issues and let the damages add up. The issues go not only to the need to limit the jeopardy of defendants, but also to the ability to award effective consumer relief: for old violations, it may be impossible to locate or identify consumers potentially injured.

POTENTIAL ABUSE OF SECTION 203 BY COMMISSION

As currently drafted, section 203 can be used by the Commission as a powerful weapon to coerce defendants into accepting unreasonable consent decrees in order to avoid the harassment and abuse of a section 203 class action. The Commission should not have untrammeled authority to legislate, prosecute and judge a violation of law all at the same stroke, where the potential liability, whether for actual or punitive damages, is unlimited.

Mr. President, the amendment should be approved. Section 203 should be deleted.

Mr. President, I ask unanimous consent to have printed in the RECORD a part of the testimony by Milton Handler in the August and September meetings of 1970 on S. 3201. It is that portion of the testimony that begins with the first full paragraph on page 107, and continues through to the next to the last paragraph on page 110.

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

PORTION OF TESTIMONY BY MILTON HANDLER

This brings me to what I believe is the most serious and troublesome aspect of this legislation—Title II's provisions for private damage remedies and class actions. With all due respect for the good intentions of the bill's sponsors, I must state that these sections of the bill proceed from false premises and reach a result which might well impose an impossible administrative burden upon the federal courts.

No one will disagree with the propriety of injunctive relief against fraudulent consumer practices at the behest of a government agency. But this legislation goes further and sets forth a comprehensive blueprint for an avalanche of suits in the federal courts by consumers seeking to recover money damages suffered as a result of unfair consumer practices as defined in Section 201(1).

The Commerce Committee in its Report (p. 2) quotes Mrs. Knauer as indicating that, according to the Food and Drug Administration's estimates, about $1-billion is spent annually on worthless or extravagantly misrepresented quack devices and drugs. She also is quoted as asserting that about $300-million is spent annually on worthless arthritis remedies. Assuming that its claims are legally provable, would it not be better for the Food and Drug Administration to utilize its ample powers to suppress this improper traffic rather than to encourage the millions of purchasers of these products to start a legion of penny ante law suits?

I should be the first to acknowledge the social desirability of banning the 15 business improprieties prohibited by Section 201. I, nonetheless, must ask whether these are the kind of derelictions that warrant all of the following consequences mandated by the bill:

1. The institution of administrative proceedings by the Federal Trade Commission.
2. An application by the Commission to the court for a preliminary injunction.
3. A plenary suit by the Commission under Section 103(b) for injunction, payment of damages, refund of money or return of property, restitution, reformation or recission, repair or replacement of goods, proper servicing and public notification of violation.
4. Suit by the Department of Justice under Section 205 for a variety of decretal provisions to which I have already adverted.
5. Suit by the Department of Justice for the recovery of civil penalties.
6. In certain cases the institution of criminal prosecution.
7. Private suits by aggrieved consumers for the redress of their own injury.
8. Class suits for the recovery of damages for the members of the class.

Are we not losing our cool, and are we not triggering off a train of consequences that are totally disproportionate to the type of wrongdoing that is involved? Does not ordinary common sense dictate a more balanced and rational approach? Is not the job at hand to attack the evil at the source rather than to provide for massive actions to recover damages which might not be provable?

The fundamental premise underlying the bill's damage provisions is that every species of consumer fraud invariably results in pecuniary harm for which a compensatory damage remedy should be made available. This premise, as appealing as it may be in the abstract, is demonstrably incorrect, as a brief look at some of the practices prohibited by Section 201(1) of the bill itself will demonstrate.

For example, Section 201(1)(A) would prohibit "offering goods or services intending not to sell them as offered." This, of course, is the familiar bait and switch, plainly an undesirable and improper sales technique, but rarely practiced on a national level. Indeed, this is purely a local practice indulged in by local merchants, and one might well ask why the municipalities and the states should not be principally responsible for its elimination. How is the victim of a bait and switch sale damaged in an amount capable of measurement in dollars and cents? To be sure, he may have bought something he never intended to purchase; but unless he was overcharged for the product he actually bought (which would be more than simply a bait and switch), it's hard to see how he was damaged at all.

Similarly, Section 201(1)(G) would prohibit false statements concerning price reductions—deceptive price advertising such as repeated "fire sales," close-outs and the like. Again, this local practice is plainly reprehensible, but it is difficult to see how the victim is pecuniarily damaged if the price he paid was commensurate with the value he actually received.

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[2] The efficacy of the guaranty and warranty settlement provision in Title I has been gratuitously emasculated by the Senate Commerce Committee Report, which states (at p. 20) that when class actions are involved, only the representatives of the class need pursue such informal settlement procedures. The Report thus amends the text of the bill to read "any *representative* purchaser" must have afforded the supplier an opportunity to settle a dispute. If the Judiciary Committee is to borrow a settlement provision from Title I for use in Title II, therefore, it must be careful to disavow the change made in the Title I provision by the Commerce Committee Report.

[3] The cease and desist order could be res judicata; it could have prima facie effect; it could simply shift the burden of going forward to the defendant, with the ultimate burden of proof still resting on the Commission; or finally, it might have no effect whatsoever, with the district court conducting a complete trial de novo on the question of both liability and damages.

Subsections (H) and (J) are also illustrative. They deal with the fraudulent use of well-known trademarks on the seller's goods. Here, as well, if the buyer was not actually overcharged, he may not have gotten what he expected, but pecuniary damage would be absent, or, at the very least, insusceptible of proof.

The point is a simple one. A practice may be improper and subject to injunctive relief against its repetition without necessarily giving rise to a provable damage claim. Yet this bill, as a practical matter, invites the consumer to seek damages willy-nilly in a federal court. Moreover, this error is compounded by providing for, and encouraging, class actions on behalf of allegedly injured consumers. It should be borne in mind that it is only after the trial of such a class action which may involve hundreds of thousands if not millions of consumers that the absence of damage will be judicially determined. In the meantime, the court will be burdened with a mammoth suit and the defendant confronted with the heavy expense of defending himself.

While I share the general concern for consumer rights, I believe that the common assumption that the class action is a God-given panacea for all consumer ills is not only profoundly mistaken but disregards the significant threats to fair judicial process inherent in this device. The purpose of class suits has traditionally been to allow the courts to deal with a multiplicity of claims in an economical manner by permitting the actual parties to a litigation also to represent the interests of persons who are not before the court but who occupy substantially the same legal positions with respect to the controversy in question. The reasons for caution in utilizing such a device are readily apparent. On the one hand, there is a danger to potential defendants, since a plaintiff with even a miniscule claim (or with no realistically provable claim at all) may increase the *in terrorem* effect of his action by invoking the claims of untold numbers of other persons; on the other hand, since absent claimants are, in effect, made to stand or fall with their purported representatives, it is essential that there be every assurance that their interests are in fact being adequately represented. In addition—as the courts have shown themselves to be acutely aware—the class action procedures can have the effect of instantly transforming a litigation into a gigantic burden on the court's resources beyond its capacity to manage or effectively control. This is particularly so in the consumer fraud context, where the individual plaintiff's claims are likely to be quite small.

It is gratifying that the Commerce Committee has provided that class actions under the bill will be subject to all of the procedural safeguards set forth in Rule 23 of the Federal Rules of Civil Procedure. It is important, however, to note that if the Rule is applied by the courts with careful attention to its requirements, it is possible that very few consumer class actions will be maintainable as such. For example, the Rule requires that the claim of the putative class representative be typical of those of the class. This homogeneity of claim may often be lacking in the consumer context. Similarly, Rule 23 requires the Court to determine the class action is manageable before it may be maintained.

How can a court conceivably process claims in the thousands and millions, particularly in light of the Seventh Amendment's jury trial requirements? The conclusion is virtually inescapable that the courts will have to reject many of these class suits as inappropriate under the provisions of Rule 23 itself. In such a circumstance, one may question the wisdom of arousing expectations which cannot, as a practical matter, be realized. And I am satisfied that those judges who uphold a class suit and then go through the harrowing experience of administering a multitude of small claims will call on Congress for legislative relief, supported by other litigants whose cases will be held up indefinitely.

The proposed class action procedure may also result in great inequity for the potential defendants in such suits. In considering the interests of such persons—which would include all of the businesses in America, both large and small, which produce for or sell to consumers—we should remember that we are talking about persons who, in the main, are not unscrupulous defrauders of the public. Many of the deceptive acts and practices which the Federal Trade Commission has dealt with in the past do not concern hard-core frauds. Whether or not the law has been violated is not always clear. To put a businessman to the expense of defending himself against a class suit may place him in a position where the costs of litigation by themselves can impose upon him a penalty completely disproportionate to the offense. Ultimately these costs like all costs of doing business, will be borne by the consumer.

The bill's class action provisions suffer from an even more fundamental defect. It is wrong to assume that every dollar of damage which may have been incurred must be compensated in a federal court without regard to the enormous administrative expense inherent in the process. In the first place, the cost of a broad class action cannot be underestimated. Not only is there the expense of providing notice to all class members and the cost of assembling the evidence; more significantly, the fact is that attorneys do not bring these cases as a public service. Our experience in the four years since amended Rule 23 became effective has shown that huge attorneys' fees have been awarded out of moneys paid to the class in settlement. Since it is reasonable to expect that most monetary claims will be relatively small, any recovery due to the consumer is likely to be largely eroded by the costs of litigation. Take *Gas Service Company* v. *Coburn*, recently before the Supreme Court, where the plaintiff's claim amounted to $7.81. Is it not likely that the administrative costs may well exceed the amount of the claim itself? In any event, how much of the $7.81 overcharge would remain for each consumer plaintiff after all costs have been deducted?

But the most harmful effect of large consumer class actions will be the burden they will invariably place on the federal judicial system. I want to underscore, at the risk of repetition, that, despite proper federal concern, consumer fraud remains essentially a local problem, and the wholesale transfer of local disputes to the already overworked federal courts violates the most fundemental precepts of our federalism. A large consumer class action, if tried, could put a federal court out of action for a long time and disqualify it from performing its other important duties.

If Congress feels that the public interest nevertheless requires that consumer damages, however small, be recoverable, it should face up to the problem and create a network of federal small claim courts and local legal aid or community assistance law offices to counsel consumers and bring these actions, all at governmental expense. In that event, there would be no heavy deductions from the amounts consumers would receive. Would it not be better to create new machinery to process consumer claims than to impair the vital operations of the federal judicial system?

The class action device has two purposes: one to deter wrongdoing and the second to compensate those who have suffered injury. So far as deterrence is concerned, aren't there better and more efficient ways of accomplishing this result? If the consumer councils which the President has recommended should be established, act as consumer Ombudsmen and process their complaints, and if prompt action by the Government is taken to halt deception, would we not achieve more than we would by overloading the courts with litigations they are unequipped to administer? As to compensation, should we not consider whether we are achieving anything for the consumer by putting him to a great deal of trouble in pressing his claim when most of the recovery will be eaten up by the costs of administration? In theory, everyone injured should be compensated, but doesn't theory have to yield to the practicalities of life? We don't advance the consumer cause by creating a vast and expensive bureaucracy to process claims at the consumer's expense, and putting into effect a procedure calculated essentially to enrich the bar.

There are other aspects of the bill's class action provisions which merit serious reconsideration. Section 205(c) in particular is most revealing of what the draftsmen of this legislation had in mind. That section expressly and candidly encourages the settlement of consumer class actions, apparently recognizing the *in terrorem* effect of such gargantuan litigation and the likelihood that many defendants would be forced to settle rather than risk bankrupcty in an effort to prove their innocence. And the bill goes on to impose upon defendants the enormous cost of communicating settlement offers to the class members. This, to me, is little more than the legitimation of legal blackmail which the Congress of the United States should not countenance.

Section 205(d) also illuminates the mistaken premises of this legislation. It provides that, whenever a consumer shall prevail in a class action, he shall recover costs and attorneys' fees in addition to damages, and that the costs "may be awarded from money damages which the defendant *owes* to members of the class who cannot be located with due diligence." How, one may ask, is the court to determine the dollar amount of damages suffered by unnamed persons, who assert no claims? Manifestly, the draftsmen of this section assumed that damages inevitably accrue from every consumer fraud and can be ascertained in the abstract without regard to the facts. The disregard for the defendant's right to due process of law is plain.

Section 205(d) goes on to provide that if a class action is found to have been frivolously brought, the court may award costs and attorneys' fees to the defendant. What we are not told is who is to be assessed for these sums. Is it the single consumer who claimed to represent the class? Is it his attorney? What happens if neither has the money to pay? May the courts require the filing of a bond for costs when such an action is brought?

Time does not permit me to deal with the chaos that will occur when both governmental and class actions are brought simultaneously and when consolidation or intervention is permitted. Senator Cook deals with this problem in his separate statement, which I endorse.

Mr. BAKER. Mr. President, I would like to give my unqualified support to Senator Cook's proposed title III amendment to S. 986, which would initiate a thoroughgoing consumer remedies study.

I have always been strongly in favor of affording realistic relief to injured consumers. Now that we have an excellent, concrete proposal before us, I feel very strongly that we should give it the attention it deserves. Despite the great publicity generated by the consumer movement, no one up until now has ever really tried to deal adequately with the

fundamental issue of actually providing adequate and speedy relief to consumers who have suffered some sort of loss as a result of a shoddy product or service. Instead, we have been forced to consider only stopgap measures that make great headlines but little sense for the consumer who has actually been hurt. It is high time that we went back to fundamentals, and addressed ourselves to realistic solutions to consumer problems.

Section 203 of title II, which would be replaced by Senator COOK's proposal, is an excellent example of the kind of hastily conceived legislation that I mean. That section provides that the Federal Trade Commission will bring consumer redress actions on behalf of injured consumers. No thought has been given to the following problems:

How does a court, sitting in Washington, for example, hear the claim of a consumer residing in Kansas or Hawaii? Having made a decision, how does the Washington court make relief available to the Kansas or Hawaii resident? If the case involves millions of individual claims, how does a court reach a decision and dispense relief in a short enough period of time to make the relief meaningful? If a defendant businessman thinks the problem affects only a few products and purchasers and is willing to provide a refund or replacement to the complete satisfaction of those consumers, how is he to make them whole while the lawsuit hangs over his head? Or do those consumers have to wait years until the suit is concluded? If a consumer prefers to pursue his remedies in a nearby, local State court, or simply to go directly to the store where he bought a product, will he find his efforts frustrated because of some dim, distant and hazy lawsuit brought by an unfamiliar Federal agency? And if the consumer is unaware of the Commission lawsuit and therefore cannot obtain relief available in it, does he thereby forever lose his claim because of the essential requirement of fairness that a defendant not be subjected to endless suits regarding the same problem?

Many of these problems are inherent in massive types of litigation. Perhaps some day we must deal with problems this way. But this type of massive litigation is simply not designed to deal with localized consumer-related problems and we should not pretend that it is. I have no doubt that section 203 will result in numerous headlines that are highly complimentary to the Commission and highly embarrassing to defendants. But I am also convinced that the public—the actual consumers themselves—will be lost and forgotten in the shuffle. I do not see the housewife in Peoria, Ill., even hearing about, let alone benefiting from, these section 203 actions. All I see is another broken promise of consumer relief.

One fact which becomes clearer to me is our lack of knowledge about the problems we are really trying to solve. A new approach is necessary, one that will make relief available to a consumer speedily, effortlessly, and on the spot where that consumer lives and not where someone else has chosen for him to sue. This may involve a specialized system of small courts designed to deal solely with consumer claims, or it may involve the monitoring of a voluntary settlement procedure that puts a consumer in direct and fruitful contact with his seller. It may involve finding out and curing consumer complaints which do not ever get raised.

We do have a new approach in Senator COOK's proposal, which calls at the outset for a comprehensive study of the problem which curiously has never been made and which is woefully needed. This is the kind of proposal I have been waiting for to give my support. I feel too strongly about the consumer remedies problem to continue to lead on consumers without tackling the real questions head on. I feel too strongly to support anything less than a truly adequate measure. Senator COOK's title III amendment is just such a measure and I hope it will be adopted.

AMENDMENT NO. 561

Mr. SPONG. Mr. President, I call up my amendment in the nature of a substitute to amendment No. 478.

The PRESIDING OFFICER. Will the Senator identify the number.

Mr. SPONG. No. 561.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 1, beginning with line 4, strike out through line 6.

The PRESIDING OFFICER. The Senator has identified this as a substitute.

Mr. SPONG. Yes.

The PRESIDING OFFICER. In fact, it is a perfecting amendment to the pending amendment.

Mr. SPONG. That is correct.

Mr. President, Mr. COOK's amendment No. 478 has the admirable effect of authorizing a study of consumer remedies through the National Institute for Consumer Justice, a nonprofit corporation recently set up in Washington.

But amendment 478 removes important consumer protections which were unanimously supported by the Commerce Committee in the reported bill. In effect, section 203 of the act is stricken under amendment 478. As desirable as the study conducted by the National Institute would be, we cannot let a study result in a significant delay in providing those needed consumer remedies proposed in section 203.

Section 203 gives the Commission the power to seek without further administrative proceeding, following an order to cease and desist, remedial relief on behalf of consumers in an action initiated in district court. This provision would enable the Commission to more adequately protect consumers by affording them specific redress. At the present time cease and desist orders have prospective application only and afford no specific redress to those already injured.

As the committee report states:

It was, of course, not the intention of the Committee in granting new powers to the Commission to supplant private actions by consumers. The Committee's intent in giving these remedial powers was (1) to reinforce the Commission's credibility in policing the marketplace by authorizing sanctions which could realistically be expected to inhibit unlawful business practices and (2) to enable the Commission, where its investigation of an act or practice revealed damage to consumers, to utilize the results of that investigation for the benefit of the damaged parties.

The nature of the relief the Commission could obtain from the court on behalf of consumers would be limited only by the nature of the injury done and the remedial powers of the court. The enumeration of types of relief available are advisory only and would not limit the Commission in pleading or the court in acting to fashion other appropriate relief.

This section would not affect whatever power the Commission may have under section 5 to fashion relief in its initial cease-and-desist order, such as corrective advertising or any other remedy, which may be appropriate to terminate effectively unfair or deceptive acts or practices. Section 203 is applicable to those situations where the Commission acts to make specific consumers whole and not to general actions designed to dissipate the prior effects of unfair or deceptive acts or practices.

Let us look at an example of the need for this type of redress. In the Curtis case, following the termination of publication of the Saturday Evening Post, the Commission said there were at least two categories of restitution cases:

First, where a refund may be the only effective method of restoring the competitive status quo which was disrupted by the deceptive practices.

Second, where a seller's retention of its customers' money or property was an unfair practice in and of itself.

Look at the implications. The Commission stated that it was an unfair or deceptive practice to transfer magazine subscriptions to different magazines. The Commission found this a violation of the Federal Trade Commission Act, because many people did not want other magazine subscriptions; they either wanted their money back or the Saturday Evening Post. In effect, a cease-and-desist order would prevent Curtis Publishing from future attempts to transfer magazine subscriptions to other publications against the wishes of the subscribers, but they were going out of business. What good is prospective relief in this case? No good, other than to serve as a warning to other firms. Here is a perfect example of the need for the Commission to go into court to seek consumer redress for grievances which are caused by violations of the Federal Trade Commission Act.

The Commission is not going to try to obtain refunds for automobiles purchased as a result of unfair or deceptive advertising. No one purchases an automobile based only upon an advertisement. But there are cases, such as the Curtis Publishing case, and the Relaxicizor case in which deceptive practices resulted in consumers being out considerable amounts of money and the Commission being unable to seek restitution.

Some have said this would be the back door to consumer class actions, and Senator COOK and Senator HRUSKA persist in calling these class actions. Nonsense. the American Bar Association's antitrust section filed a report with the Commerce Committee last year. In that report, which is published on page 512 of serial 91–48, the ABA states:

The Committee recommends the adoption of federal legislation which can effectively utilize federal enforcement agencies; which will provide for swift and efficient relief

to injured consumers harmed by significant abuses; which will obviate complex and prioracted private proceedings; and which can be harmonized with existing and proposed statutory controls on the state level.

Referring to the sort of trigger mechanism of Government action, the ABA goes on to say:

It has eliminated the provision for consumer class actions, and has substituted therefor a means by which injured consumers can obtain prompt relief upon successful termination of a government suit.

The ABA report also states:

Machinery thus would be established within the framework of the Federal Trade Commission for the prompt and uncomplicated recovery of actual damages by consumers who are injured by such practices.

Mr. President, I want to make it clear that it was my thought in introducing this amendment and, I believe the committee's intention in unanimously approving it, that it would be an infrequently used authority of the FTC. Only where there is a flagrant deception of consumers, and only in areas where rules and practices have been well established by the FTC would this power be used. It will serve, however, to lend credibility to the FTC's enforcement actions. We will no longer have businesses calculating as a risk of their operation that some clearly deceptive or fraudulent practice might be discontinued as a result of an FTC order, but discontinued only.

As I indicated earlier in my statement, I support that section of Senator COOK's amendment which would authorize a study of consumer remedies through the National Institute for Consumer Justice. I would suggest that most of the questions which now are asked about class actions can only be answered through experience. Section 203 as it appears in the bill will provide for experience on a very limited and controlled basis. It is my hope that the Institute will carefully review the operation of this section and practice and provide a report to the Congress together with its other suggested remedies for redressing consumer grievances.

Mr. President, in view of the support by the Commerce Committee for inclusion of section 203 providing for consumer remedies controlled by the Federal Trade Commission, in view of the ABA's endorsement of this approach, and in view of the administration's long stated desire to arrange for a trigger mechanism in the matter of class actions, I urge consideration and adoption of my amendment in the nature of a substitute for amendment 478, so that important rights are retained by the public, and important tools for policing the marketplace are controlled by a Federal agency which understands the practical aspects of commerce today.

Mr. President, I should like to close with a few observations. First, the Senate should be mindful of the fact that section 203, on which testimony was given and on which the hearings were held, would give the FTC the power to issue ancillary remedial orders on its own. Section 203 as amended by me in committee requires that the FTC go to court to obtain such an order. The bill on which the hearings were held contained a section which gave the FTC the power to issue cease-and-desist orders, but also in certain cases to go on and make the damage awards.

I am very happy that the Senator from Kentucky (Mr. COOK), in the very fine remarks he made, acknowledged that my approach was superior to what was originally in the bill. This is a limited step, in my judgment, and I see no inconsistency in being for the study. I am for the study. But some agency of the Federal Government dealing with this should be gaining experience with these problems. I am hopeful that section 203 as unanimously adopted by the committee will provide that experience. It will be helpful to us.

Second, the distinguished Senator from Kentucky (Mr. COOK), in his remarks last week and today—those that I heard—talked about the statute of limitations. The National Labor Relations Board acts under statutes similar to this and they have no statute of limitations.

The State of Washington has an act similar to this which authorizes the attorney general of the State of Washington to proceed. It has no statute of limitations.

I would be the first to concede and say to the Senator from Kentucky that I do not want anyone prejudiced by overdue action. Although there are State statutes dealing with this and the NLRB approach does not have a statute of limitations, I am perfectly willing to amend this bill and have a 2-year statute of limitations apply.

I believe that the Senate should be mindful that section 203 as written was an alternative approach to: First, the Federal Trade Commission's having complete power to issue cease-and-desist orders and then to award damages without any resort to judicial remedy; and second, to the incorporation in these proceedings of class action and we have plenty of class-action legislation before us. So, contrary to the opinion of some, this is not a large step. It is a modest step which should give us the experience we need to better determine the advisability of class action.

Several Senators addressed the Chair.

Mr. MOSS. Mr. President, will the Senator from Virginia yield?

The ACTING PRESIDENT pro tempore (Mr. METCALF). Does the Senator from Virginia yield to the Senator from Utah?

Mr. SPONG. I yield.

Mr. MOSS. Mr. President, I wish to commend the distinguished Senator from Virginia and point out, of course, that I have cosponsored the perfecting amendment that he now has before the Senate, and would like particularly to underline what the Senator has explained about his amendment—that, in fact, it is a modest step.

Earlier in the discussion before the Senate today, I made the statement that we were not talking, in title II, about a class-action bill. We had some discussion on that. What I had in mind has now been made clear by the discussion of the Senator from Virginia.

In the class-action bill before the committee, we had a great deal of discussion about using this mechanism to enable the consumer to seek redress when he had been damaged and when the amount involved was small, and, therefore, a class could be created in order to get redress.

The administration's proposal, contrary to the provisions of the class-action bill, was that there be a trigger mechanism first, that either the Commission seek action, or the court or the Department of Justice would do it, in order to establish that there was, indeed, a violation and then, that having been established, the class be able to be created and take advantage of it. In effect, this is what the amendment of the Senator from Virginia would do.

It says that the Federal Trade Commission having found that there is a deceptive or fraudulent practice of some sort and having issued a cease-and-desist order may go into court—not decide on its own—to establish that the damage has occurred by that action to a number of consumers and that, therefore, they will be able to receive a recovery.

So, that accords very closely with what the administration proposed in the other bill. I think it is a modest and reasonable effort. We have come to decision within the committee that makes good sense. Therefore, I believe this makes the bill sound and secure.

I certainly want to support the modified amendment. I believe also that we ought to have a part of the Cook amendment. I gladly support that part.

Mr. SPONG. Mr. President, I thank the Senator from Utah.

I would like to point out some little distinction between the administration's approach and this bill. I had reservations about class actions and about groups of people getting together, and about lawyers going out and creating business and soliciting class actions.

If I understood the administration's proposal, it allowed that, upon the successful conclusion of an action by the Federal Trade Commission or by the Department of Justice, individual class actions could take place. Federal action would trigger them. We do not have that personal right given under this section. That right is not given. The FTC under this section is given the responsibility for following through after the cease-and-desist order. If it thinks there has been a flagrant violation, it can follow through and bring an action for relief of the consumers.

Frankly, I was not prepared to support class action until we had more experience. However, if we adopt the amendment of the Senator from Kentucky as perfected by my amendment, we will have a study of these problems and have experience to go with it. Under present law, all that can happen if there is a flagrant violation is that a cease-and-desist order will be entered. That means that unscrupulous businesses—and I hope that there is not too much of it—can do business knowing that the worst that can happen to them is that they may be made to stop. There would be no

right of redress on the part of any consumer who has been injured as a result of flagrant violations or practices.

Mr. MAGNUSON. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. SPONG. Mr. President, a parliamentary inquiry.

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

Mr. SPONG. Mr. President, earlier in my remarks I expressed my willingness in answer to the inquiry from the Senator from Kentucky concerning the statute of limitations to amend the amendment which I have offered as a refinement of his amendment. Am I precluded from doing that now that the yeas and nays have been ordered?

The ACTING PRESIDENT pro tempore. The Senator needs unanimous consent to modify his amendment.

Mr. SPONG. Mr. President, in view of what has taken place here, I ask unanimous consent that I be allowed to amend the amendment that I have offered to the Cook amendment in order to provide for a 2-year statute of limitations.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. COOK. Mr. President, reserving the right to object, I would like to see the proposed amendment, because under the present amendment of the Senator from Virginia, as a perfecting amendment it is merely an amendment that would delete from my amendment the deletion of section 203.

Mr. SPONG. I am prepared to submit it in writing at this time.

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

The assistant legislative clerk read as follows:

Page 44, line 10, after the word "damages" add the following:

"No action may be brought by the Commission under this subsection more than 2 years after an order of the Commission upon which such action is based has become final."

Mr. COOK. Mr. President, again reserving the right to object, I am not sure what substance the language the amendment of the Senator from Virginia here has to his perfecting amendment, to mine, or any material change in my amendment.

This is an amendment which goes directly to the bill itself and not to my amendment, nor to his amendment as a perfecting amendment.

The ACTING PRESIDENT pro tempore. The Senator is completely correct. It is not a proper amendment to the amendment. It is an amendment to the bill and is not a modification.

Mr. COOK. Mr. President, may I suggest to the Senator from Virginia that I have no objection if he prepares it as a separate amendment. We can certainly take it up after we have completed action on the pending amendment.

Mr. SPONG. Mr. President, we can do that. I would prepare to offer it as an amendment. I yield the floor.

Mr. COOK. Mr. President, first of all, there is one thing that I think ought to be corrected in the remarks of the Senator from Virginia. Section 203 in its present language was not unanimously adopted by the committee. It was agreed to by the committee, and I must say it was rather with a sigh of relief, because in the bill as it was originally submitted to the committee by the distinguished chairman of the committee, who was its cosponsor, it provided that the Federal Trade Commission itself would assess damages and make a determination of what the damages were. So it came as rather a breath of fresh air when we got this far.

So, I have some problem with the word unanimous vote of the committee. But I will not argue the matter to any great extent.

The Senator from Virginia says that somehow or other section 203 will only be used by the Federal Power Commission if there is a flagrant violation, as he puts it. Where in that section does anyone find the phrase "flagrant violation."

It merely says that:

After an order of the Commission to cease and desist from engaging in acts or practices which are unfair or deceptive to consumers and proscribed by section 5(a)(1) of this Act has become final as provided in subsection (g) of this section. . . .

And that is by an informal hearing of the Federal Trade Commission.

There is no right of cross-examination within the determination of the part of the Federal Trade Commission as to whether there really will be a right of cross-examination. There is no effort toward due process. Once a cease-and-desist order is issued, they then take the cease-and-desist order and come into court and say—and I suggest that the distinguished Senator from North Carolina listen to the language—they go into any court and institute a civil action in the District Court of the United States to obtain such relief as the court shall find necessary to redress the injury to consumers from the acts or practices which were the subject of the cease-and-desist order, including, but not limited to, recision or reformation of contracts, the refund of money or return of property, public notification of the violation, and the payment of damages.

I ask my distinguished colleague from North Carolina, whom I consider to be one of the finest constitutional lawyers we have, when is a class action a class action? Is it when somebody who is an individual can bring action for himself in a group or if the Federal Trade Commission brings it on behalf of a class to accomplish the same thing?

The Senator from Virginia gave me a dissertation how he considered this could not be considered in any way as a class action. If he does not believe it to be a class action we do not need a 2-year statute of limitations. We are not going into that field, but we are going into the field where the FTC, not for itself but for individuals who constitute a class, will bring an action in court for the purpose of redressing the injury, reforming the contract, and securing damages for the benefit of the class.

If they do that, is the doctrine of res adjudicata applicable to others who wish to bring the action? Is the doctrine of estoppel available? If a class action is already in existence is he barred? Must he join, because this is not a class action?

What kind of animal is this? Under the rights of an individual today, for instance under rule XXII is he precluded from bringing it if the FTC brought one and settled the individual's damages for him and he did not want them settled on that basis?

Is the court going to say, "We are sorry. It has already been done and we are sorry you are not satisfied with the judgment rendered, but because the case has been established and damages awarded, here you are, whether you like it or not."

Is this what we are saying? Or are we saying he can double up, that the FTC can bring it for an aggrieved consumer, put $100 million in the bank and say, "Come and get it whoever is entitled to it." Then somebody else says, "I will get mine over there, and then come over and get what I can from you."

Is this the animal we create in section 203? If it is to represent a class of consumers, do we not have to say consumers? Do not consumers constitute a class? Are they in limbo? Are we to say, "You are not a class, but something"? I do not see how we can take this point of view as intelligent, objective people.

I can only say that here it is for whatever it is. It does not say "flagrant violation," and the Senator from Virginia repeated and repeated "flagrant violation." It does not say that anywhere in section 203. It says once it decides it has a cease-and-desist order—not based on trial, not based on a jury, not based on due process, not based on rules of evidence, not based on cross-examination—based on an agency hearing under 556 and 557 of the Administrative Procedure Act where that makes a determination as to who can testify and who cannot, and they make a determination what is and what is not to be heard as to whether a cease-and-desist order shall occur.

But once they decide—remember that during the course of this the Federal Trade Commission is the judge, jury, prosecutor, they are everything—they decided to have a hearing because their investigators decided to go look at the situation and their investigators testified what is wrong. The employees will testify to what they found. Are they going to turn their staff down and say they have not done a good job? Are they going to ruin the morale of their own department or come up with a cease-and-desist order, because the fellows did a good job? This is what we are talking about.

We are talking about taking the cease-and-desist order out of a five-man board that has been judge, jury, prosecutor, determiner of rules of procedure, and say that based on this they can go into a Federal court and bring this action for all of a class of people that they feel by reason of their own hearing and investigation and their own determination have been aggrieved and asked that determination of sums of money be awarded so somebody can split it up.

This is what we are talking about in section 203. This is what we are talking about when I sat here and listened that

this is not a class action and not a determination that will destroy the marketplace.

I can only say that I wish after this discussion the Senator would seriously consider my amendment and to that extent I hope the Senate will defeat the amendment of the Senator from Virginia.

Mr. President, I yield the floor.

Mr. SPONG. Mr. President, I think we should distinguish in this matter of class actions that a class is generally not preidentified as it would be under section 203 procedures.

I want to answer the inquiry of the Senator from Kentucky about res adjudicata. There is no individual right created or taken away under this bill. The question the Senator from Kentucky posed with regard to res adjudicata would imply that there is a private right of action based on a violation of the Federal Trade Commission Act. That is not so. I refer the Senator to the case of Holloway against Bristol Myers Corp., decided in the District Court for the District of Columbia on April 15, 1971, where the court held there was no private right of action created when 5(a)(1) of the Federal Trade Commission Act was violated. Therefore, any suit brought by a consumer individual would be based upon a cause of action distinct from that conferred in 203 and the doctrine of res adjudicata would have no application.

Mr. COOK. The right of action in a class is now allowed under rule 23. If right of action is brought under rule 23 and those standards have been met would you not find yourself in conflict if the same type action representing the grievance had been brought under the Federal Trade Commission, under 203, even if it were not a private right of recovery? We are talking about recovery of damages and whether they can occur twice or not at all if the Federal Trade Commission had taken action.

Mr. SPONG. The answer is no. I repeat, no private right is impaired by virtue of this section and this is a class action only to the extent we broaden the use of the word and say those represented by the Federal Trade Commission are a class. The Senator can call it that, but it is not the type of class action that is contemplated by class action legislation pending before this Congress and it is not the type of class action recommended by the administration. That involved a trigger device where only following a successful action by the Justice Department or by the Federal Trade Commission, could individuals come in.

Section 203 does only two things: First, it is a substitute for allowing the FTC to render final judgment in this matter; second, it is an alternative to individual class actions.

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

Mr. SPONG. I yield.

Mr. COOK. What is the case to which the Senator referred?

Mr. SPONG. Holloway against Bristol Myers Corp.

Mr. COOK. In that case is it not a fact that the cause of action was brought in reliance on the cease-and-desist order? There was no prohibition in bringing the private action with the same question. Is this not correct?

Mr. SPONG. That is the whole point. There is no prohibition now.

Mr. ERVIN. Mr. President, if the Senator will yield, I have a little trouble following the Senator from Virginia. Most acts of deception now can be raised as a tort action under State law. Undoubtedly, many of the acts of deception which give rise to a tort action under State law would fall also within the category of acts and practices covered by a cease and desist order.

This clearly gives the Federal Trade Commission the power to bring a suit in a Federal court on behalf of all persons who have suffered injury on account of those acts and practices that are subject to the cease and desist order, and also subject to a right to bring actions under State law. It says the Federal Trade Commission can recover for injuries to consumers.

So the question comes up—and I think the Senator from Kentucky is on pretty solid ground—that they either have to have an estoppel by judgment or there is going to be a double recovery, one by the aggrieved party, the consumer and another by the Federal Trade Commission for the benefit of the consumer.

In other words, this is either going to take causes of action out of the control of the consumers and give to the Federal Trade Commission a monopoly of suing on those actions where there is a cease and desist order or it is going to allow the consumer to retain his own cause of action and recover for himself—one way or the other, and either one is a bad result.

Mr. SPONG. This proposal does not preclude an individual from pursuing any tort remedy he may have. I think the Senator is rightly concerned about a double recovery, but the doctrine of unjust enrichment would apply there. I do not believe, under this proposal, that a consumer who benefits from an action brought by the Federal Trade Commmission could also benefit from an individual action brought later. On the other hand, the individual is not precluded from proceeding in a State court under a tort remedy. If that leads to a successful conclusion, the Federal Trade Commission is not going to allow double recovery or unjust enrichment.

Mr. ERVIN. It says, on page 44, that the Commission can bring this suit to—

> Redress injury to consumers caused by the acts or practices which were the subject of the cease and desist order, including but not limited to. . . .

He can sue to rescind the contract that he might want rescinded. He can sue for a return of the money or property. He can sue for damages.

It seems to me this creates legal confusion. It certainly confuses the Senator from North Carolina as to how the Federal Trade Commission could bring these suits. I think if it is brought by the Federal Trade Commission it is one class action, clearly, and it either is going to be binding on the consumer who does not come in and make himself a party, or the person who does the wrong is in danger of being amerced twice for the same wrong.

Mr. SPONG. It would be in the discretion of the judge. I think the doctrine of unjust enrichment would apply. There is a similar case where the Attorney General can bring one of these suits, but if there has been an individual suit brought and a recovery there, the individual concerned would be precluded from unjust enrichment.

Mr. ERVIN. But what about where an action brought by the Federal Trade Commission is a cause of action that belongs to the individual who is not a party to that case? Is he barred from coming into court and seeking his own remedy?

Mr. SPONG. No; he is not barred.

Mr. ERVIN. I do not see how the Federal Trade Commission could recover for him and he not be barred. I think the legal situation here would be just as confused as the Senator from North Carolina is.

Mr. COOK. Mr. President, I do not really see how, if the Federal Trade Commission is brought and a judgment is rendered in a sum of money for an individual or individuals, representing a class, how one can say that someone who does not want to be a part of the class is not going to be barred. As a matter of fact, speaking of unjust enrichment, harassment is, I think, what one ought to consider now. We are saying that the Federal Trade Commission brings an action for itself and all consumers in the class, which I assume they will allege, and if they do not, then they receive a partial recovery, and if some one is injured it will say, "I am sorry that you have not been included in the class. You will have to bring suit yourself." Or, if he brings his own suit, he will be stopped from bringing his own suit. To the contrary of what the Senator from Virginia said to the Senator from North Carolina when he talks about the doctrine of unjust enrichment applying, what happens if the Federal Trade Commission gets a judgment that in no way will satisfy the class? What situation do we have then?

Mr. SPONG. The consumer does not have to take that. He has the option of proceeding in his own right and getting the remedy he wishes.

Mr. COOK. On what theory is that?

Mr. SPONG. Under general principles of law.

Mr. COOK. We have a class action where we have a judgment for the consumers as a class. Who do we say are in that class and who do we say are not?

Mr. SPONG. It is a different cause of action under which the individual is not precluded from proceeding. He does not have to accept that if he does not want to. He can proceed individually.

Mr. COOK. Let me give the Senator a situation and ask him what the answer would be. If an action is brought by the Federal Trade Commission and there are five similar actions brought around the different parts of the country, and the defendant moves that all the other

actions in the Federal courts in the United States be merged into one, the Senator would not think it would be a good action to consolidate those cases, based on the same facts and the same motion and the same attempt to recover?

Mr. SPONG. They are not the same remedy. We are not precluding any individual remedy.

Mr. COOK. If they are subject to money damages, it would be the same action and the same remedy.

Mr. SPONG. They are different causes of action. One flows from a violation of the Fair Trade Practices Act. The other action is under a contract or a tort action which the individual retains.

Mr. COOK. Suppose the court, at the request of the Federal Trade Commission, reforms the contract. Does the court reform the contract for some and not for the others?

Mr. SPONG. I say the courts cannot reform it to the detriment of an individual right of action. He either takes it or has the right to proceed as an individual.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

Mr. COOK. Mr. President, before the yeas and nays are taken, let me make this statement——

The ACTING PRESIDENT pro tempore. The yeas and nays have been ordered.

Mr. COOK. I would hope, if this amendment is agreed to—which I hope it is not—the language just expressed by the Senator from Virginia would in fact prevail, but I would suggest to my colleagues that we are allowing the Federal Trade Commission, for and on behalf of a class called consumers, in any court, to bring a case to reform a contract, secure remedies, secure redress, secure damages, and I do not see how they can go into court on a damage basis or on a reformation basis, have a fund paid to that court, and then when that fund is paid, tell all other individuals in the country who do not want to bring an action to say, "I do not care how much the defendant has paid in to the court. I want to bring an action of my own, and I am not bound by that."

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

Mr. COOK. I yield.

Mr. ERVIN. Is it not true that under the supremacy clause of the Federal Constitution, a Federal statute, if it is valid constitutionally, supersedes the State laws that are inconsistent with it?

Mr. COOK. Yes.

Mr. ERVIN. It certainly would be inconsistent to have the Federal Trade Commission bring its action in behalf of consumers, and then allow a consumer to sue under State laws.

Mr. COTTON. Mr. President, I would like to commend the distinguished junior Senator from Kentucky (Mr. COOK) on his remarks concerning the bill, S. 986, and explaining the objective of amendment No. 478, which I have cosponsored. I wish to associate myself with the remarks of the junior Senator from Kentucky (Mr. COOK) in this regard.

Mr. President, at the outset I would like to personally commend the distinguished junior Senator from Kentucky (Mr. COOK) who has been serving in the capacity of the senior Republican member on the Consumer Subcommittee of our Committee on Commerce. His devotion to the discharge of his duties in this capacity has been exemplary. The legislation presently under consideration, S. 986, is a good case in point. Senator COOK was very much in evidence throughout all of the hearings on this measure and fully participated in those deliberations. As a matter of fact, much to his credit, upon reexamining the hearing record and considering it deficient in certain respects he, Senator COOK, came to me and counseled that we should exercise our right under section 114 of the Legislative Reorganization Act of 1970 to call witnesses selected by the minority to testify on this measure. We did so and the distinguished chairman of our full committee (Mr. MAGNUSON) graciously acceded to this request. In fact, on the second of these 2 days of requested hearings the distinguished junior Senator from Kentucky (Mr. COOK) presided. His dedication, therefore, to the proper discharge of his duties as the ranking Republican on the Consumer Subcommittee is to be highly commended.

Now, Mr. President, as has already been pointed out, if the provisions of the bill, S. 986, were limited solely to title I dealing with consumer product warranties, I, too, feel that there would be little necessity to debate this measure. Unfortunately, riding "piggyback" on these acceptable and even meritorious provisions there is a title II carrying the somewhat innocuous title of "Federal Trade Commission Improvements." But, improvements at whose expense?

Title II does provide substantial new authority for the Federal Trade Commission. Certainly, the more questionable expansion of this authority is to be found in section 203 of the bill which would permit the Commission "* * * by any of its attorneys designated by it * * *" to institute civil actions to obtain " * * * such relief as the court shall find necessary to redress injury to consumers caused by the acts or practices which were the subject of the cease-and-desist order * * *" In other words, what is being proposed is to launch the FTC into another role of consumer advocate compounding its present authority as policeman, prosecutor, and judge. Quite frankly, I and my colleagues who have joined in proposed amendment No. 478 (Senators HRUSKA and COOK) entertain grave personal reservations whether the record warrants placing this mantle of consumer advocate upon the Federal Trade Commission. As a matter of fact, I believe there is serious question whether anyone at this time has an effective solution for grievance-solving mechanisms and legal remedies for consumers, which accounts for our proposal to strike section 203 and to provide for a new title III which would be the vehicle for a study in the field of consumer remedies upon which the Congress could act with knowledge.

Mr. President, I, therefore, most strongly urge the amendment No. 478 be approved by the Senate and that amendment No. 561, to be proposed to No. 478, be defeated. Amendment No. 561 would place the cart before the horse. It would retain the proposed title III, providing for the study of consumer grievance mechanisms, and at the same time retain section 203 vesting new authority in the FTC at this time, before the work product of the proposed study is available.

Mr. President, I believe that a further word is in order concerning title II and its proposals to increase the authority of the Federal Trade Commission, especially with respect to the new rulemaking authority under section 206 and the legislative intent sought to be conferred upon certain of those provisions in the report of the Committee on Commerce accompanying S. 986—Report No. 92–269.

This provision greatly increases the delegated power of the Federal Trade Commission by authorizing it to promulgate legislative rules defining "with specificity" those acts or practices which it considers to be unfair or deceptive to consumers and in violation of section 5(a)(1) of the Federal Trade Commission Act.

Thus, it represents a significant departure from the traditional congressional delegation of legislative power to administrative agencies in which Congress itself has declared with particularity certain acts to be unlawful and has authorized administrative agencies to apply the law by determining in specific cases whether a particular act constitutes a violation. The rulemaking power of such regulatory agencies usually has been limited to those rules necessary to carry out the provisions of the act under which it operates. When so-called legislative rulemaking has been granted, the Congress has delineated with specificity the nature of the practices to be covered, witness in the case of the FTC, the Fur Products Labeling Act, the Wool Products Labeling Act, the Fair Packaging and Labeling Act, and for that matter, title I of S. 986 itself dealing with warranties.

I, for one, seriously question the wisdom of vesting the Federal Trade Commission with power to legislate under broad and somewhat vague congressional guidelines with respect to a wide range of practices effecting the entire economy. And, I would imagine that upon reflection many of my colleagues in the Senate would entertain similar reservations.

Certainly, at a minimum, any legislative rule promulgated by the Federal Trade Commission under section 206 of S. 986 should be subject to full-scale judicial scrutiny. This means that any such rule must be adopted on the basis of a record which is fully developed by thorough administrative procedures. It also means that the rule must pass judicial review both as to its conformance with the statutory standard and as to its support by substantial evidence on the administrative record as a whole.

Mr. President, S. 986 in section 206 does provide for judicial review on the basis of the substantial evidence test. This review may be obtained at either of two stages: first, immediately after the rule has become effective; and second, collaterally after an enforcement pro-

ceeding by the FTC based on the rule. In either instance, the reviewing court may set aside the rule if it is not supported by substantial evidence on the entire record. The rule also would be set aside, of course, if it purported to prohibit conduct which, as a matter of law, did not violate section 5(a)(1) of the FTC Act. It, therefore, appears that adequate and comprehensive review is provided for in S. 986.

Unfortunately, Mr. President, section 206 also provides for review of any legislative rule following its final promulgation by the Congress within a time certain. Certainly, this is appropriate in recognition of the delegation of legislative power to the FTC. The misfortune arises with respect to the issue to be raised as to the effect on the scope of judicial review caused by congressional inaction within the referral period provided for in proposed section 6(g)(2)(ii) of the FTC Act to be added by section 206. Certainly, the failure of the Congress to act affirmatively to disapprove a rule should be accorded no weight whatsoever by a reviewing court. Yet, exactly the opposite is mandated by the following language appearing in the report of the Commerce Committee accompanying S. 986:

> Of course any court reviewing such rule would take judicial notice of the act, *or lack thereof*, of Congress during its review of the rule on questions of policy. (Italics supplied) (Senate Report 92-269 at 27)

Mr. President, the Congress already is burdened with important and pressing issues commanding its attention. The failure of either the House of Representatives or the Senate of the United States to enact a resolution within the abbreviated time schedule for its review disapproving a rule of the FTC should not in any way be read as a manifestation of legislative intent. Such a procedure is far removed from affirmative approval by a vote on a disapproval resolution. For example, if certain Senators or Representatives were to decide that they had been provided with insufficient information to make a determination about the desirability of a rule proposed by the Federal Trade Commission, they probably would be precluded by lack of time from obtaining such additional information. Also, if they were to receive further information and they subsequently decided to object to the rule, it is doubtful that there would be sufficient time to inform their colleagues or to initiate the procedural machinery necessary for the passage of a resolution rejecting the rule.

Mr. President, what this report language directing a court to take jurisdictional notice of congressional inaction does is to establish legislative history adopting the dissenting opinion in the decision of the U.S. Supreme Court in the *Federal Trade Commission* v. *Dean Foods Co. et al.* (348 U.S. 597 (1966)). On the contrary, I strongly believe that such report language should be disregarded since as the majority reasoned in the aforementioned Supreme Court decision, congressional inaction has no relevance whatever in applying established principles of law.

Therefore, the language in the Commerce Committee report to the effect that a reviewing court would take judicial notice of congressional inaction during the referral period can only mean that the rule has become effective and is ripe for judicial review.

Mr. President, clarification also may be desirable with respect to the relationship between judicial review of a rule immediately after its promulgation, and judicial review of the rule after it has been applied in an enforcement proceeding. In commenting on section 206, the Commerce Committee report points out that there would be no legislative prohibition against judicial review of rules when applied in Commission enforcement proceedings. The report then explains as follows:

> Of course judicial review of rules previously reviewed may be restricted for judicial reasons—*e.g.*, by the application of the doctrine of *Stare decisis* or *res adjudicata*. (Senate Report 92-269 at 28).

The use of the term "stare decisis" in this context appears to be misleading. This term refers to the doctrine that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to future cases where the facts are substantially the same. The term is used in the context of adjudication of factual issues. But when the Federal Trade Commission promulgates a legislative rule, the rule will declare certain acts to be unlawful, and it will be based primarily on generalized comments. It will not refer to a particular set of facts which can be construed to consist of an unlawful act or practice. Thus, if a court does not set aside a legislative rule when it is challenged immediately after its promulgation, the decision would not bind a court which construes the same rule in the following enforcement proceeding involving a totally distinct set of facts.

Res judicata, on the other hand, refers to the rule that a final judgment or decree on the merits by a court is conclusive of the rights of the parties in all later suits in points and matters determined in the former suit. The question arises whether a person who challenges the rule immediately upon its promulgation would be precluded from again challenging the rule by appealing its application in an enforcement proceeding.

Although this legislation expressly prevents a legislative limitation of the scope of judicial review, in referring to the rule of res judicata, the Commerce Committee report apparently contemplates the possibility of foreclosure of the right to review the validity of the rule after it has been applied in an enforcement proceeding. The court best equipped to judge the fairness of the rule could thus be denied the opportunity to review it. It may be impossible for a court to determine initially how the rule will operate when applied prospectively to a particular set of facts as yet unknown. This information, on a case-by-case basis, would not be available for the benefit of a court reviewing the rule on an appeal taken immediately after its promulgation. Furthermore, the risk exists that the record on which the court would base its determination may be deficient.

In short, Mr. President, any application of the doctrines of res judicata and stare decisis to collateral review of a Commission rule would be strictly confined to the historic limits of those legal principles. They would seldom be applicable in the circumstances envisioned by this legislation.

In conclusion, Mr. President, I strongly support the adoption by the Senate of amendment No. 478 to S. 986 and, with equal vigor, oppose amendment No. 561 to it. I also sincerely hope that when the other body considers this measure, it will have the wisdom to either delete the rulemaking authority proposed to be vested in the Federal Trade Commission by section 206 or closely circumscribe such authority. At the very least, the legislative history accompanying any such provision should be accurate and clear so as to adequately protect the rights of all interested parties affected by it.

The ACTING PRESIDENT pro tempore (Mr. METCALF). The question is on agreeing to the amendment of the Senator from Virginia (Mr. SPONG) to the amendment offered by the Senator from Kentucky (Mr. COOK).

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

The second assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Florida (Mr. CHILES), the Senator from California (Mr. CRANSTON), the Senator from Louisiana (Mr. ELLENDER), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from Maine (Mr. MUSKIE), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

I further announce that, if present and voting, the Senator from Louisiana (Mr. ELLENDER), the Senator from Alaska (Mr. GRAVEL), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from Maine (Mr. MUSKIE), and the Senator from Connecticut (Mr. RIBICOFF) would each vote "yea."

Mr. SCOTT. I announce that the Senator from Oklahoma (Mr. BELLMON) is absent on official business.

The Senators from Tennessee (Mr. BROCK and Mr. BAKER), the Senator from Maryland (Mr. BEALL), the Senator from New York (Mr. BUCKLEY), the Senator from Kansas (Mr. DOLE), the Senator from Michigan (Mr. GRIFFIN), the Senator from Maryland (Mr. MATHIAS), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from Florida (Mr. GURNEY) is absent to attend the funeral of a friend.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Tennessee (Mr. BAKER) and the Senator from Maryland (Mr. BEALL) would each vote "nay."

The result was announced—yeas 49, nays 30, as follows:

[No. 295 Leg.]

YEAS—49

Aiken	Hughes	Pastore
Bayh	Inouye	Pearson
Bentsen	Javits	Pell
Bible	Jordan, N.C.	Percy
Brooke	Kennedy	Proxmire
Burdick	Long	Randolph
Byrd, Va.	Magnuson	Schweiker
Byrd, W. Va.	Mansfield	Smith
Cannon	McGee	Spong
Case	McGovern	Stafford
Church	McIntyre	Stevens
Eagleton	Metcalf	Stevenson
Fulbright	Mondale	Symington
Gambrell	Montoya	Tunney
Hart	Moss	Williams
Hartke	Nelson	
Hollings	Packwood	

NAYS—30

Allen	Eastland	Roth
Allott	Ervin	Saxbe
Anderson	Fannin	Scott
Bennett	Fong	Sparkman
Boggs	Hansen	Stennis
Cook	Hatfield	Taft
Cooper	Hruska	Talmadge
Cotton	Jordan, Idaho	Thurmond
Curtis	McClellan	Tower
Dominick	Miller	Young

NOT VOTING—21

Baker	Dole	Humphrey
Beall	Ellender	Jackson
Bellmon	Goldwater	Mathias
Brock	Gravel	Mundt
Buckley	Griffin	Muskie
Chiles	Gurney	Ribicoff
Cranston	Harris	Weicker

So Mr. SPONG's amendment to Mr. COOK's amendment was agreed to.

Mr. SPONG. Mr. President, I move that the vote by which the amendment was agreed to be reconsidered.

Mr. MAGNUSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MAGNUSON. Mr. President, the Senator from Virginia (Mr. SPONG) has another amendment to offer.

Mr. SPONG. Mr. President, I send to the desk an amendment and ask that it be stated.

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

The legislative clerk proceeded to read as follows:

STATUTE OF LIMITATION AMENDMENT

Page 44, line 10, after the word "damages" add the following:

"No action may be brought by the Commission under this subsection more than 2 years after an order of the Commission upon which such action is based has become final."

The ACTING PRESIDENT pro tempore. The Chair would inquire of the Senator, is this another amendment to the Cook amendment?

Mr. SPONG. This is an amendment to the bill, offered pursuant to the ruling of the Chair at the time the Cook amendment and my substitute were being debated. I believe it is offered with the concurrence of the Senator from Kentucky (Mr. COOK). It provides for a 2-year statute of limitations. I hope it will be possible for the Senator from Washington to accept.

Mr. MAGNUSON. Mr. President, the amendment is a very fine one. We know what it does. We know what its effect will be and we will be happy to take it.

The ACTING PRESIDENT pro tempore. The Chair would inform the Senator from Virginia that we have to have a vote on the Cook amendment before the Senator can have his amendment voted on.

Mr. ALLOTT. Mr. President—Mr. President——

Mr. COOK. Mr. President, reserving the right to object, was not the amendment of the Senator from Virginia an amendment in the nature of a perfecting amendment to amendment No. 478 and that amendment carried; but is not amendment No. 478 still the pending business before the Senate?

Mr. SPONG. The Senator from Kentucky is correct. We have to vote on the amendment as now perfected. I therefore move that this amendment be temporarily laid aside——

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Kentucky (Mr. COOK) as amended.

The amendment, as amended, was agreed to.

The ACTING PRESIDENT pro tempore. Now the distinguished Senator from Virginia (Mr. SPONG) is recognized for his amendment.

Mr. SPONG. Mr. President, I move adoption of the amendment which would impose a 2-year statute of limitation.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Virginia.

The amendment was agreed to.

SEVERAL SENATORS. Third reading! Third reading!

Mr. SPARKMAN. Mr. President——

Mr. COTTON. Mr. President, I have an amendment which I think will be unanimously agreed to. I shall not take too much time on it. I send it to the desk and ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER (Mr. BURDICK). Without objection, reading of the amendment will be dispensed with; and, without objection, the full text of the amendment will be printed in the RECORD.

The text of the amendment is as follows:

On page 24 strike out lines 4–6 inclusive an insert in lieu thereof the following:

"That this Act may be cited as the 'Magnuson-Moss Act'."

Mr. COTTON. Mr. President, it has been my privilege to serve on the Committee on Commerce for 15 years. For the past 9 of those 15 years I have served as its ranking minority member. During all of those 15 years, I have served under the able leadership of the distinguished Senator from Washington (Mr. MAGNUSON).

The hour is such this evening that I shall not be able to say all I would like to say. It so happens that I am fated, on any of the committees on which I serve, to serve under the Senator from Washington. I serve on the Subcommittee on Labor and Health, Education and Welfare, and related agencies. The Senator from Washington is its chairman.

During my service on the Committee on Commerce, I have come to know the Senator from Washington well. I therefore can testify that while we disagree many times in principle, as we have disagreed today, no man has ever chaired a committee, in my opinion, who has been more fair or more reasonable.

The PRESIDING OFFICER (Mr. BURDICK). The Senator's amendment amends a section already amended, and therefore the Senator will need unanimous consent to consider his amendment.

Mr. COTTON. Mr. President, it amends the short title of the bill. I ask unanimous consent that I may offer the amendment.

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

Mr. COTTON. Mr. President, the purpose of my amendment is to have this bill referred to by the short title of the "Magnuson-Moss Act."

Mr. President, never, in my opinion, could there be a chairman of a committee more fair, more reasonable, or more considerate of all members of a committee on both sides than the distinguished Senator from Washington (Mr. MAGNUSON).

I believe that probably only the distinguished Senator from Rhode Island (Mr. PASTORE) has served on the Committee on Commerce longer than I. It came to my attention, not long ago, by a chance remark made by a member of the committee staff who said, "You know, Senator Magnuson has been here so many years and he has been chairman of this committee for so many years, yet no piece of consumer legislation bears his name."

Mr. President, the Senator from Washington, as chairman of the Committee on Commerce, has worked long and hard, particularly over the past several years on consumer legislation.

Even though personally I cannot go along with certain parts of this particular bill, S. 986, I believe I voice the feelings of every member of the committee when I say that we greatly admire and respect our distinguished chairman for his outstanding work on behalf of the consumers of America.

Therefore, I have taken the liberty, inspired by the chance remark I have previously referred to, to offer this amendment which merely provides that the short title of the bill shall be referred to as the "Magnuson-Moss Act."

Now, Mr. President, a New England Yankee always has an ace in the hole. Congressman Moss was the man who introduced the bill in the House. I understand that he is a distant relative of our esteemed colleague from Utah in the Senate (Mr. Moss), who is chairman of the Consumer Subcommittee. So, anyone who reads the title "Magnuson-Moss Act" may make up his own mind whether it refers to the distinguished Senator from Utah (Mr. Moss) or to Representative JOHN E. Moss of California in the House, who authorized the companion bill in that body.

But, there is one thing they will have no doubt about, and that is that this amendment is being offered by me on behalf of both sides of the Committee on Commerce as a mark of respect and ap-

preciation to a man who has led us so ably and well throughout the years.

Mr. MAGNUSON. Mr. President, may I be permitted to vote present on this vote?

Mr. ERVIN. Mr. President, I would agree to thanking the Senator from Utah and the Senator from Washington. However, I do submit that it is without precedent to name a bill after Senators, no matter how much they have labored in the vineyard of the Lord. I think it would be a very bad precedent to establish. We would have to name a bill after everyone before we got through.

I would suggest to the able Senator from New Hampshire that he has made a very eloquent speech and has paid great tribute to two Members of the Senate. However, I do not think the Senate ought to adopt the practice on any occasion of having a bill named after Senators. I, for one, am opposed to the amendment offered by the distinguished Senator from New Hampshire.

Mr. COTTON. Mr. President, I have great respect for the Senator from North Carolina. I also have great respect for his position for the reasons he has given. Now, I am told that North Carolina has a law which perhaps it would be a good thing for every State of the Union to have. North Carolina has a law that no highway, no river, no mountain, and no public facility in the State can be named after an individual until that individual has been dead 25 years. I think perhaps that would be a good test, because sometimes we hurriedly honor someone. Such, however, is not the case with respect to the amendment, which I have offered to honor our chairman.

Now, the Senator from North Carolina is always consistent and always factual. But, with all due respect for his views, if we name a bill after a man who has served as chairman of the Committee on Commerce for as many years as has the Senator from Washington, dealing with a subject that he has labored over untiringly on behalf of the American consumer, then I do not believe the country would fall to pieces.

Mr. SPARKMAN. Mr. President, will the Senator yield briefly?

Mr. COTTON. I yield.

Mr. SPARKMAN. Mr. President, I hesitate to challenge the distinguished Senator from North Carolina. If I remember correctly, the first year that the chairman of the committee and I were in Congress, in 1937, there was a Wage and Hour Act passed that was named the Black-Connery Act. I believe the Hospital Construction Act was named the Hill-Burton Act. I may be in error, but I believe there have been quite a number of other bills named after Members of the Congress. There was the Taft-Hartley Act, and the Wagner Act. There are many others.

Mr. COTTON. Mr. President, no doubt many of those names were applied to the bills by the press and by the public. I would not assert that all of these were officially named. However, I still see no great harm in it.

Mr. SPARKMAN. I am quite sure it was written into the bill I referred to as the Black-Connery Act.

Mr. COTTON. Mr. President, if a stand-pat conservative, hide-bound, moss-back Republican wants to honor a fine liberal Democrat who loves the people as the Senator from Washington does, who in the Senate is going to stop him?

Mr. ERVIN. Mr. President, I hesitate to say it, but I think the Senator from Alabama is very much in error. I looked at the Wagner Act the other day. It does not say anything in it about Wagner. If one looks at the law books, he finds it has a special classification giving the popular names the people named them rather than the names that Congress gives them.

I think the North Carolina practice that the distinguished Senator from New Hampshire mentions is a very good practice to follow.

I hope that the distinguished Senator from Washington will be here for far more than 25 years. In fact, I hope he lives to be at least 200 years old and attains his 200th year anniversary, and I hope that the Senator from New Hampshire and I are active pallbearers at his funeral.

Mr. MANSFIELD. Is there a motion before the Senate?

The PRESIDING OFFICER (Mr. ALLEN). The question is on agreeing to the amendment of the Senator from New Hampshire.

The amendment was agreed to.

Mr. HRUSKA. Mr. President, I call up my amendment No. 605 and ask that it be stated.

Mr. MAGNUSON. Mr. President, would the Senator from Nebraska yield? The Senator from Alabama has an amendment which the committee is willing to accept.

Mr. HRUSKA. I would be happy to yield for that purpose. I do not propose to ask for a rollcall vote, but only a voice vote after not less than 2½ minutes and not more than 4 minutes of explanation.

Mr. MANSFIELD. Mr. President, would it meet with the approval of the Senate if the rollcall vote on final passage began at the hour of 7:30 and was extended beyond the usual 20 minutes in order to allow our colleagues who have attended the funeral of our late and beloved colleague, former Senator Holland of Florida, to be present in time to vote.

Mr. HRUSKA. It is agreeable with me.

Mr. MANSFIELD. Mr. President, I make that unanimous consent request.

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

Mr. PASTORE. That is on final passage.

Mr. MANSFIELD. The Senator is correct. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. SPARKMAN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 51 following line 21, add new section 211 and renumber subsequent section:

"SEC. 211. Nothing in this title shall be construed to give the Commission authority over the Federal National Mortgage Association, the National Corporation for Housing Partnerships or any financial institution which is subject to regulation by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration or the Federal Home Loan Bank Board against acts or practices unfair or deceptive to consumers."

Mr. SPARKMAN. Mr. President, our amendment to S. 986, to provide minimum disclosure standards for a written consumer product warranties against defect or malfunction; to define minimum Federal contents standards for such warranties; to amend the Federal Trade Commission Act in order to provide its consumer protection activities; and for other purposes would accomplish one desirable objective without interfering with the basic purposes of the legislation.

Our amendment would make it clear that federally insured and regulated financial institutions as well as Government-chartered corporations would not be included in the new authorities given by this legislation to the Federal Trade Commission.

Mr. President, on June 25, 1971, Senator BENNETT and I wrote to our distinguished colleague, the chairman of the Committee on Commerce, Senator MAGNUSON, in which we expressed concern to certain provisions of certain bills under the jurisdiction of his committee over certain persons, partnerships, or corporations that were already under federally regulated agencies.

On June 25, 1971, our distinguished colleague, Senator MAGNUSON, replied to us and I quote:

As for the bill S. 986, concerning warranties and amendments to the Federal Trade Commission Act, this measure was ordered reported June 15, 1971 by our Full Committee with amendments. A copy of Committee Print No. 6 of this bill is enclosed for your information. We do not feel that this bill as reported by our Committee raises any of the issues which are of concern to you, since it does not disturb the present exception for banks pursuant to section 5(a)(6) of the Federal Trade Commission Act.

However, in order to insure that this is the case, we have discussed the matter and instructed the staff of the Committee to include in the report appropriate language to the effect that this bill does not seek to increase the authority of the Federal Trade Commission under Section 5 of the Federal Trade Commission Act so as to empower the Federal Trade Commission to regulate activities not already authorized by it under this section of the Act.

Mr. President, Senator BENNETT and I are not sure that the language of the legislation or the language of the committee report, that is, report No. 92–269, is precisely clear on this point.

I have discussed this amendment with my colleague from Washington and he has indicated his willingness to accept the amendment.

Mr. MAGNUSON. Mr. President, the committee has looked the amendment over. I think it perfects the bill. The Senator is correct. The committee staff worked on it today. We are doing now what we intended to do.

Mr. SPARKMAN. The Senator is correct.

Mr. MAGNUSON. Mr. President, I am willing to accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alabama.

The amendment was agreed to.

Mr. BURDICK. Mr. President, as the Senator knows, I represent a rural State with many small merchants. And they will not have a battery of lawyers to read the Federal Register every day. I am concerned as to whether or not one of these merchants might not, even though acting in good faith, suddenly be subjected to a civil penalty for the violation of some relatively obscure FTC rule. Is this kind of unfair surprise likely to arise under section 202 of the bill?

Can the distinguished Senator give me some assurances on the meaning of "actual knowledge or knowledge fairly implied on the basis of objective circumstances"?

Mr. MAGNUSON. Mr. President, in answer to your question let me first refer you to the report on S. 986. At page 24 the report says:

A violation of the Commission rule would in most cases constitute a violation with "knowledge fairly implied from objective circumstances."

But the report goes on to say that if a person against whom the action was brought can show why he should not have been expected to have knowledge of a particular rule, then that would constitute a defense to a civil fine. It is my understanding that if a person in a rural area could show that he had no reason to know that his actions were in violation of a trade commission rule, then he could defend against a civil action by the Commission for violation of that rule. I hope this is responsive to your question.

Mr. HRUSKA. Mr. President, during the course of debate on S. 986, references have been made to the Statement Supplement of Mr. Gilbert H. Weil on the legislative History of FTC's Lack of Authority To Issue Binding Trade Regulation Rules.

I ask unanimous consent that the statement be printed at this point in the RECORD.

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

THE FEDERAL TRADE COMMISSION LACKS THE AUTHORITY TO ISSUE BINDING TRADE REGULATION RULES

(By Gilbert H. Weil)

Section 105 of the bill reported as the "Consumer Protection Act of 1970" by the Senate Commerce Committee on August 14, 1970, would amend section 6(g) of the Federal Trade Commission Act to authorize the Commission to "promulgate trade regulation rules defining unfair or deceptive acts or practices . . ." Section 105 goes on to provide that:

"When any such trade regulation rule is promulgated and becomes final, a subsequent violation thereof shall constitute an unfair or deceptive act or practice in violation of section 5(a)(1) of this Act."

In addition, under Section 201 of the bill, violation of a trade regulation rule would constitute an "unfair consumer practice," the commission of which is declared unlawful in Section 202 and for which penalties are specified in Section 203 of the bill.

There can be no doubt, in other words, that the bill would grant the Commission the power to issue substantive or legislative-type rules—rules that will be binding in a subsequent adjudicative proceding, whether judicial or administrative. As stated in the Report of the Senate Commerce Committee (S. Rep. No. 91–1124, 91st Cong., 2d Sess. 10 (1970)):

"Violations of any such [trade regulation] rule is made a *per se* violation of Section 5 of the FTC Act."

Various supporters of the bill have argued that the grant of authority to the Commission to issue binding rules would not constitute a major or novel change in the Commission's power because, it has been contended, the Commission already has substantive or legislative-type rulemaking power. Accordingly, the argument continues, Section 105 would merely confirm preexisting authority and there is no basis for the concern that has been expressed as to the unprecedented and far-reaching nature of Section 105. For example, the importance of Section 105 was minimized by the Senate Commerce Committe as merely making "explicit the implicit authority of the Commission to promulgate substantive Trade Regulation Rules defining unfair or deceptive acts or practices." (S. Rep. 91–1124, *supra*, at 10.)

This Memorandum will show, however, that the Federal Trade Commission has neither explicit nor implicit power to issue binding Trade Regulation Rules and that, accordingly, Section 105 would constitute a major innovation whose importance must be recognized. As will be shown in detail below, the conclusion that the Commission lacks the power that Section 105 of the bill would grant is based on the following four considerations:

A. *The Commission's Past Interpretation*—For the first half-century of its existence, the Commission consistently and repeatedly acknowledged that it lacked the power to issue legislative-type rules. The Congress has accepted the Commission's disclaimer of authority, made as recently as 1966, in enacting statutes such as the Wool Products Labeling Act of 1940 and the Fair Packaging and Labeling Act of 1966 which grant such authority to the Commission in very limited areas.

B. *Statutory Language*—The provisions of the Federal Trade Commission Act cannot be read as conferring substantive or legislative-type rulemaking authority upon the Commission. Other statutes administered by the Commission demonstrate that where Congress has intended to grant such authority to the Commission, it has done so in specific and unmistakable terms, in wording which differs sharply from that contained in the Federal Trade Commission Act.

C. Legislative History.—The legislative history of the Federal Trade Commission Act shows clearly and convincingly that Congress had no intention of granting legislative rulemaking authority to the Commission. Congress repeatedly rejected proposals that would have given the Commission this power. In addition, the legislative history demonstrates that the rulemaking power given the Commission in Section 6(g) of the Act is limited to the promulgation of rules in connection with the Commission's power to classify corporations and is in no sense a broad grant of power to issue legislative-type rules.

D. Other Legal Authorities.—It has been the conclusion of disinterested students of administrative law that the Commission lacks the type of rulemaking authority that Section 105 would grant it. The cases, involving other agencies, on which reliance has been placed do not support the claim that the Commission has substantive rulemaking authority. These cases involve comprehensively regulated and licensed industries and rulemaking directly related to the grant or denial of licenses.

Each of these factors will be considered in turn.

A. The Commission's Past Interpretation.—For the first half-century of the Commission's existence, it conceded that it had no power to issue substantive or legislative-type rules. This concession is independently persuasive evidence that the current assertion of expansive Commission authority is unfounded.

One of the earliest recognitions by the Commission of its lack of substantive or legislative-type rulemaking power was its use of Trade Practice Submittals, a device that later gave way to the Trade Practice Conference Procedure. By 1919, the Commission had received numerous complaints of allegedly unfair practices occurring on an industry-wide basis. It said that to proceed against all members of the industry would be expensive and time consuming and to proceed against only a few would be unjust.

"It soon became, therefore, a matter of anxious consideration by the commission what means it could employ within the scope of its powers to aid in bringing about the abandonment of any unfair practices before it had made an investigation or determined whether in the interest of the public a complaint should issue. . . . The Commission's organic act made no provision for such contingencies, and it was apparent that whatever procedure was devised would have to conform to the limitations imposed by that act and be enforceable by the procedure there laid down." Federal Trade Commission, Trade Practice Submittals 1 (1925).

Under the procedure devised, the Trade Practice Submittal, members of an industry met under the guidance of the Commission and decided what they considered to be unfair methods of competition. The decisions of the industry were then submitted to the Commission. If the Commission approved, they were issued as rules with which the individual members could agree to comply. The effect of such rules was uncertain during the first few years. The report of one of the earliest of these conferences stated that—

"It was understood that the judgment of the industry, as expressed, should be for the guidance of the commission and should be regarded as, prima facie, law merchant for the industry." *Id.* at 7.

The report also stated that—

"Until testimony to the contrary is produced, however, the commission will regard as conclusive the judgment of the trade in declaring such practices to be in fact unfair." *Id.* at 9.

Ultimately, however, the Commission apparently determined that it did not have the power to declare such expressions of the industry as even "prima facie law merchant"—much less as a body of rules whose violation would constitute per se violations of the Act. The report of a later conference stated that—

"The expression of the industry as here given is advisory to the commission with respect to the issuance of a complaint, but upon a trial of the complaint the respondent will come in entirely without prejudice on the part of the commission and any practice which is challenged will be examined from the beginning." Trade Practice Submittals, p. 22 (1925).

When the Commission could not accept an industry determination that a certain practice was "fair," it would issue a statement that it disapproved of that particular practice and then "proceed in individual cases as they come before it on this basis, with due regard to the merits of any particular case." *Id.* at 37.

Not only does the general theory of the Trade Practice Conference procedure negate the notion that the Commission possesses substantive or legislative-type rulemaking power, but also individual Commissioners and members of the Commission staff, over the years, have recognized the lack of such power in public statements.

The report of the conference on Sheffield Silver-Plated Hollow Ware, held in 1922, contains a specific denial.

"It was explained to those who desired the commission to state and enforce a standard definition or meaning that the commission

was without power to do this; that it could only look to see whether the terms actually in use were deceptive to the purchasing public." *Id.* at 36–37.

Similarly, the Commission in its annual report to Congress for 1922 denied it had power to issue substantive or legislative-type rules:

"One of the most common mistakes is to suppose that the commission can issue orders, rulings or regulations unconnected with any proceeding before it. . . . [T]he commission can not and will not function by any method not authorized in its organic act. . . ." 1922 FTC Ann. Rep. 36.

In 1928, in a statement before a conference of publishers of periodicals, Commission Chairman William E. Humphrey explained the powers of the Commission and the function of the conference in light of those powers as follows:

The commission receives its powers as to the suppression of unfair methods of competition from section 5 of the Federal Trade Commission act. That statute fixes what practices are lawful or unlawful. The commission has power to do neither. The authority of the commission is now just what Congress gave it, and it will remain exactly the same as it is until Congress changes it. . . .

"The purpose of this conference is not in any degree to establish a censorship over the press. It is not intended to place any additional burden whatever upon the publisher. It is not intended to tell the publisher what he shall or shall not publish. The law as it is now written tells him that. It is not intended to enlarge the jurisdiction of the commission. The commission does not desire in any way to increase its power. It could not do so even if such was its wish. The commission's sole desire is to stop practices that are now prohibited by law.

"Any plan adopted by this conference will be an expression only of the judgment conscience, and the purpose of those who adopt it. It can not make any practice lawful and it can not make any practice unlawful." Federal Trade Commission, Trade Practice Conferences 170–71 (1929).

Ten years later at the Trade Practice Conference for the Wool Industry, Mr. Henry Miller, then Assistant Director of Trade Practice Conferences for the Federal Trade Commission, repeated Mr. Humphrey's theme.

"[T]he Commission is not a law-making body, and in trade practice conferences we do not presume to make law. In the Group I rules we do undertake to catalogue what we consider to be legal requirements.

"Now, the retailer's responsibility is entirely one of law. We cannot make him more responsible than the law makes him, nor can we give him any dispensation or exemption from what the law requires." *Proceedings of the Trade Practice Conference for the Wool Industry,* 308 (March 16, 1938).[1]

In 1942, Mr. Henry Ward Beer, then Special Trial Counsel to the Commission, wrote in his book, *Federal Trade Law and Practice:*

"The only way that the lawfulness of a practice may be settled is by a formal proceeding and subsequent review by a Circuit Court of Appeals and perhaps by the Supreme Court." Beer, *Federal Trade Law and Practice* § 225 (1942).

The position of the Commission that it lacks substantive or legislative-type rulemaking power, consistently held until at least 1961 or 1962, also appears in the legislative histories of those statutes enacted after the Federal Trade Commission Act that do confer on the Commission, in limited areas, substantive or legislative type rulemaking power.

The Wool Products Labeling Act was passed in 1940 with the active support of the Commission. The Commission's support was an important factor in passage of the law, and this fact was used to refute the argument by the bill's opponents that the Commission could handle the problem with its existing powers. As stated by Congressman Case—

"The second argument . . . is that the evils of false labeling are being curbed and gradually cured by the Federal Trade Commission. If that were so the Federal Trade Commission itself would not be on record in favor of the passage of the bill and the Federal Trade Commission did testify in favor of the bill. It testified that something like this was needed to put teeth into their recommendations to the trade." 86 Con. Rec. 11320 (1940).

In 1951 Congress passed the Fur Products Labeling Act and in 1958 the Textile Fiber Products Identification Act. Both of these enactments were likewise supported by the Federal Trade Commission. One reason the Commission desired these two laws was to provide it with jurisdiction over deceptive labeling and advertising at the local level, but equally important was that the Commission did not believe that it had the power affirmatively to require members of an industry to adopt practices not otherwise required by Section 5. Henry Miller, Assistant General Counsel for the Commission, testified in favor of the Fur Products Labeling Act as follows:

"[O]ur trade practice rules do not require mandatory labeling because we have felt that we have not the power to require it." *Hearings on H.R. 2321 Before the House Committee on Interstate and Foreign Commerce,* 82d Cong., 1st Sess. 160 (1951).

Continuing, Mr. Miller testified:

"Under the trade practice rules Mr. Gold [a pervious witness] said he is very much in favor of our making those rules do what is intended in this bill. That is all well and good, but if there is no legal authority to do it, neither Mr. Gold nor his clients can do it, nor can we." *Id.* at 161.

At hearings on the proposed Fair Packaging and Labeling Act the Chairman of the Commission, as recently as 1966, candidly acknowledged the difference between the type of power that that bill would confer and the power of the Commission possessed under the Federal Trade Commission Act. At one point, testifying before the House Interstate and Foreign Commerce Committee, he stated:

"So it [the procedure prescribed under the packaging and labeling bill] would be quite a different procedure. Here it is very clearly rulemaking authority if these limited fields are granted. We have no ultimate rulemaking authority across the board on deceptive practices as such." *Hearings on H.R. 15440 before the House Interstate and Foreign Commerce Committee,* 89th Cong., 2d Sess. 990 (1966).

The Chairman also explained how the rulemaking power under the Fair Packaging and Labeling Act would operate. Once a regulation was promulgated, he said, a violation "would be a per se violation of section 5 [of the Federal Trade Commission Act] and all we would do is say, 'You violated the regulation which was duly promulgated under this legislation.' " *Id.* at 991. See also *id.* at 69–70, 184, 202, and *Hearings on S. 985 Before the Senate Commerce Committee,* 89th Cong., 1st Sess. 81, 84, 88–89 (1965).

The Chairman, in pleading the Commission's lack of substantive or legislative-type rulemaking power, was merely reflecting a position he had taken three years earlier in supporting the proposed fair packaging legislation (then S. 387). He testified on that occasion as follows:

"[W]hat is encompassed in S. 387 was basically in the four consumer acts that I referred to. This was a legislative grant by Congress, certainly in the four acts I referred to, to the Federal Trade Commission, operating under the mandate of the law and in accordance with the limits that are set there, to in effect promulate [sic] rules which have the effect of law. That is writing substantive law once it is done.

* * * * *

"Now, I do not think we have the power to write substantive law down there unless you give us the power.

* * * * *

"I don't ever want to be dragged up here and be told that I am down there writing laws. I just don't think that it would be a very good operation, myself.

* * * * *

"Without S. 387 the answer is, I believe, we have no authority. I still read the Constitution now and then.

* * * * *

"Senator, it has been argued that in section 6(g) of the Federal Trade Commission Act, the language appears that there—6(g) reads as follows:

" 'From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.'

"Some have read that with the belief that perhaps we could do this. But I think—we never did at the Federal Trade Commission undertake this and I think the Congress obviously must have recognized it in 1940 when they passed the Wool Act, because if we could have done that, you did not have to pass the Wool Act.

"Now, frankly I just—we are called and we do have many—we are called quasi-legislative. Now, this would be a true example of quasi-legislative function if the Congress delegates under certain restrictions the right to promulgate regulations that have the substantive effect of law, that is, a bit of legislation, but I have never read that section within the meaning that they could do what Congress [sic] had to do. I think that it is the job of Congress; not ours.

* * * * *

"I didn't say nor did I infer to anybody, I hope, that we have the right to pass laws down at the Federal Trade Commission. I think that is the responsibility of the Congress, not the Federal Trade Commission." *Hearings on S. 387 Before Senate Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary,* 88th Cong., 1st Sess. 281–82 (1963).

The Commission's representations, in the context of requests for new legislation, that it lacks the power to issue substantive or legislative-type rule except pursuant to specific statutory grant of such power have been consistently accepted by Congress. For example, the foreword to the Committee Report on the bill (H.R. 944) that later became the Textile Fiber Products Identification Act states:

"As to textile fiber products other than wool products there is no requirement in the Federal law for affirmative disclosure of the fiber content of such products in labeling and advertising . . ." H.R. Rep. No. 986, 85th Cong., 1st Sess. 2 (1957)

The Report adds:

"The Federal Trade Commission, through its trade practice conference procedure has promulgated rules with respect to the labeling and advertising . . . . These rules, as such, do not have the force and effect of law but are rather advisory interpretation. . . ." *Id.* at n. 1

A more recent indication of Congressional acceptance of the view that the Commission lacks substantive or legislative-type rulemaking power, and one of obviously special relevance here, can be found in the House Report on H.R. 15440, the fair packaging and labeling legislation. In a section comparing the provisions of the Federal Trade Commission Act with that provision of H.R. 15440 which would grant the Commission substantive or legislative-type rulemaking power

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with respect to the subject matter of that bill, the Committee stated:

"(Under sec. 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45) unfair methods of competition and unfair acts or practices in commerce are declared unlawful.)

"The Federal Trade Commission Act does not grant the Commission specific authority to issue such a regulation [prescribing standards for package labeling].

"Under the aforequoted sec. 5(a)(1) of the Federal Trade Commission Act, the Commission in a case-by-case proceeding against individual manufacturers may, where it has jurisdiction, require the disclosure of the information specified in this subsection, if the Commission finds that the failure to disclose affirmatively such information is deceptive or likely to be deceptive.

"The authority of the Commission to issue trade regulation rules, as the Commission did with reference to cigarette labeling and advertising, has never been passed on in the courts." H.R. Rep. No. 2076, 89th Cong., 2d Sess. 22 (1966). See also Truth In Packaging, Report of the Subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee, 88th Cong., 2d Sess. 11–12 (1964).

B. STATUTORY LANGUAGE

Two provisions of the Federal Trade Commission Act, Section 5(a)(6) and Section 6(g), are sometimes cited by those urging that the Commission has the authority to issue substantive rules.

Section 5(a)(6) provides:

"The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended, except as provided in section 406(b) of said Act, from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce."

This section cannot be read as more than a general description of Congress' purpose in establishing the Federal Trade Commission and a definition of its powers in terms of the industries subject to its jurisdiction. The section in no way implies the appropriateness of a Trade Regulation Rule proceeding, and there is no authority for finding in Section 5(a)(6) the expansive implication for the Commission's power that has been asserted.

When Congress means to grant substantive or legislative-type rulemaking power it does so in explicit terms,[2] and it has not done so in the Federal Trade Commission Act.

It certainly has not done so in Section 6(g), the other statutory provision upon which reliance has been placed. Section 6(g) empowers the Commission—

"From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act."

Section 6 of the Federal Trade Commisison Act relates to the Commission's investigatory and information-gathering functions, not its enforcement functions. It is wholly unreasonable to read the phrase "rules and regulations" in a subsection dealing with a specific aspect of the Commission's investigatory powers—the classification of corporations for reporting purposes—as authorizing the promulgation of general substantive or legislative-type rules.

That neither Section 5(a)(6) nor Section 6(g), nor the two sections in combination, can be read as conferring substantive or legislative-type rulemaking power on the Commission is clear from contrasting those sections and the basic operative provision of the Act—Section 5(a)(1)—with the relevant provisions of other statutes administered by the Commission that clearly do confer substantive or legislative-type rulemaking power.

As already noted, no provision of the Federal Trade Commission Act makes any reference to the issuance of rules or regulations, except Section 6(g), which relates to the narrow and specific subject of classifying corporations for reporting purposes. In addition, while Section 5(a) of the Federal Trade Commission Act makes unlawful "unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce" it does *not* declare practices or conduct contrary to rules or regulations issued by the Commission unlawful.

In contrast, Section 6(a) of the Wool Products Labeling Act of 1939, 15 U.S.C. § 68d(a), specifically authorizes the Commission to make rules and regulations governing the manner and form of disclosing information required by the Act and for other purposes, and Section 3, 15 U.S.C. § 68a, specifically makes unlawful the sale of wool products that are labeled in violation of the substantive provisions of the Act *or the rules and regulations promulgated thereunder.*

Similarly, Section 8(b) of the Fur Products Labeling Act, enacted in 1951, U.S.C. § 69f(b), gives the Commission authority to issue rules with respect to the subject matter of that Act, and Section 3, 15 U.S.C. § 69a, makes unlawful the sale of products whose labeling does not conform to the requirements of the statute *or the rules and regulations prescribed under the statute.*

The provisions of Section 7(c) and Section 3 of the Textile Fiber Products Identification Act, enacted in 1958, 15 U.S.C. §§ 70e(c), 70a, follow the same form, as do the provisions of Section 5 and Section 3 of the Fair Packaging and Labeling Act, which became law in November 1966.

Section 5 of that Act, 15 U.S.C. § 1454, authorizes the Commission, within the field of its jurisdiction under the Act, to promulgate regulations when it determines, under the standards of the Act, that a need therefor exists. Section 3, 15 U.S.C. § 1452, makes it unlawful for any person to distribute or cause to be distributed in commerce any commodity whose packaging and labeling does not conform to the provisions of the Act *or the regulations promulgated under the Act.*

The Fair Packaging and Labeling Act is particularly relevant because it illustrates that, even today, when Congress intends to confer substantive or legislative-type rulemaking power on the Commission it makes its intention unmistakably clear. As we shall see in a subsequent section, the Fair Packaging and Labeling Act is also significant because its legislative history includes contemporary admissions by members of the Commission that it lacks general substantive or legislative-type rulemaking power. Earlier statements to this effect are found in the legislative histories of the other statutes discussed.[3]

In sum, there can be no doubt that the provisions of the Federal Trade Commission Act, read in their entirety, do not confer upon the Commission substantive or legislative-type rulemaking power. That conclusion is confirmed if the provisions of the Federal Trade Commission Act are read together with contrasting provisions of other statutes the Commission administers. The conclusion is further confirmed when one examines the legislative history of the Federal Trade Commission Act.[4]

C. THE LEGISLATIVE HISTORY OF THE FEDERAL TRADE COMMISSION ACT

The statute that created the Commission and that remains its basic charter was no run-of-the-mill act of Congress. It was a significant, innovative piece of legislation. Its precise terms were carefully considered and thoroughly debated. The history is therefore full enough to shed light on what Congress meant by what it finally enacted.

Insofar as the history of the Federal Trade Commission Act bears on the Commission's power to promulgate a substantive or legislative-type rule, its import is unmistakable. Congress repeatedly rejected proposals to supply what is lacking in the Act—a provision conferring substantive or legislative-type rule-making authority on the Commission. The rejection was deliberate. Faithfulness to the Congressional design demands that the agency not assume the power that was thus specifically withheld from it.

The first rule-making amendment was offered by Congressman Lafferty, a member of the House Interstate and Foreign Commerce Committee, which had reported a bill similar to the one that later passed the House That bill created a Commission only to investigate and gather information. See Federal Trade Commission bill, Comparative Print, S. Doc. No. 573, 63rd Cong., 2nd Sess. (1914). Congressman Lafferty filed a minority report in which he proposed to give the Commission enforcement powers as well. See H.R. No. 533, Part 3, 63rd Cong., 2nd Sess. 19–22 (1914).

The specific provisions he proposed included:

"Sec. 19. That unfair or oppressive competition and unfair trade practices in commerce among the several States and with foreign nations as hereinafter defined are hereby declared unlawful.

"Sec. 20. That the Commission is hereby empowered and directed to prevent all corporations or associations subject to the jurisdiction of said Commission from engaging in such unfair or oppressive competition or unfair trade practices.

"Sec. 21. That unfair or oppressive competition and unfair trade practices as used in this Act are hereby defined to include the following:

* * * * *

(j) Any other methods involving unfair or oppressive competition or unfair trade practices, contrary to the provisions of this Act, or contrary to the provisions of any of the antitrust Acts now existing or which may hereinafter be enacted.

"Sec. 22. *That the Commission is empowered to make,* alter, or repeal *regulations further defining more particularly unfair trade practices* or unfair or oppressive competition made unlawful by this or any other Act." (Emphasis supplied.)

Sections 23 and 24 of the Lafferty amendment went on to provide that the Commission could find a corporation to be engaged in unfair competition and issue an order restraining the unfair competition which it could if necessary petition a United States district court to enforce.

The Lafferty amendment would also have left intact the provision in Section 8 of the original House bill that empowered the Commission to "from time to time makes rules and regulations and classifications of corporations for the purpose of carrying out the provisions of this Act." See H.R. Rep. No. 533, Part 3, 63rd Cong., 2nd Sess. 12 (1914).

The Lafferty amendment thus contained the basic statutory provisions that were eventually enacted, as well as a specific provision authorizing general substantive or legislative-type rule-making by the Commission. It included in Section 19 (taken together with Section 21(j)) the equivalent of what is now codified in Section 5(a)(1).

Section 20 was a close equivalent to the present Section 5(a)(6) and Sections 23 and 24 were the equivalent of the present Section 5(b). Section 8 of the original House bill as retained in the Lafferty amendment is the forerunner of the present Section 6(g). Included also in the Lafferty amendment was Section 22, a specific authorization to the Commission "to make, alter, or repeal regulations further defining more

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particularly unfair trade practices or unfair or oppressive competition."

This piece of history alone makes untenable any reliance on Sections 5(a)(6) and 6(g) as authority for the Commission's rule-making power. For when the predecessors to these provisions first appeared it was thought necessary that they should be accompanied by an explicit provision granting to the Commission rule-making authority. The House committee rejected Congressman Lafferty's proposal and reported the original bill granting only investigatory powers to the Commission.

Thus, the subsequent appearance of provisions similar to present Sections 5(a)(6) and 6(g) without the accompanying section explicitly granting to the Commission substantive or legislative-type rule-making power demonstrates both that Congress rejected the proposal that the Commission should be granted the power here asserted and that these other provisions cannot be interpreted to grant that authority.

When the House bill reached the floor (without the Lafferty amendments described above) there were a number of additional explicit indications that any grant of substantive or legislative-type rule-making authority to the Commission was unacceptable to Congress. During the debate on May 19, 1914, reference was made to another House bill, H.R. 1890, which would have provided:

"The Commission is hereby authorized and empowered to make and establish rules and regulations not in conflict with the Constitution and laws of the United States to aid in the administration and enforcement of the provisions of this act, and may, by such rules and regulations, prohibit any particular or specific act or acts, practice, method, system, policy, device, scheme, or contrivance that is contrary to any of the provisions of this act." 51 Cong. Rec. 8856 (1914).

No such provision became part of the Act.

Later in the debates Representative Morgan sought to replace Section 8 of the House bill with a provision that—

"The Commission is hereby authorized and empowered to make and establish rules and regulations not in conflict with the Constitution and laws of the United States to aid in the administration and enforcement of the provisions of this act, and may by such rules and regulations prohibit corporations subject to the provisions of section 9 of this act in conducting their business from engaging in any practice or from using any method or system, or from pursuing any policy or from resorting to any device, scheme, or contrivance that constitutes unfair competition or unjust discrimination as between competitors, individuals, or communities." 51 Cong. Rec. 9047 (1914).

The proposed amendment was then explained by its sponsor as follows:

"Mr. Chairman, under section 8, which says that the commission, from time to time, may make rules and regulations and classifications of corporations for the purpose of carrying out the provisions of this act—under that section the commission has very limited power to make rules and regulations, because under the provisions of the act the commission virtually has no power to enforce laws or to regulate the practices of corporations subject to the provisions of the bill. Now, the amendment which I have offered gives to the commission the power to make rules and regulations that would prohibit specifically the particular practices which constitute unfair competition or unfair discrimination. The amendment is drawn on the idea that some place along the line Congress will prohibit in general terms unfair competition and unfair discrimination. Then, of course, unfair competition or unjust discrimination would be unlawful. Then we give the commission power to make rules and regulations that would prohibit a specific practice that constitutes unfair competition. Now, then, gentlemen, we never will control the corporations of this country properly by simply prohibiting certain acts. I believe it is well enough where there is some conspicuous practice that is well known to be obnoxious and dangerous to the people to prohibit that, and perhaps at this session of Congress in all of our antitrust legislation we may prohibit one or two or three or four things; but then Congress adjourns. Business will comply with these prohibitions, will abstain from the few things we prohibit; but the next day, the next month, or the next year business concerns will invent other practices which are unfair and destructive of competition, which are dangerous to the people, and which enable the big corporations to go on in the same course as before.

"Therefore, the proper thing to do is to legislate in general terms, to comprehend and include all kinds of acts and practices which are objectionable. Then give this great commission, to be composed of men of the highest grade and character, the authority to make rules and regulations that will prohibit specific acts and practices coming within the general classes prohibited by the general terms of the act. I have had considerable experience in the administration of the public-land laws. The statute gives to the Secretary of the Interior the power to make rules and regulations to govern the disposition of the public lands, and the Supreme Court of the United States has held that the rules and regulations made by Secretary of the Interior, an executive officer, have the force and effect of law." 51 Cong. Rec. 9049–50 (1914).

Representative Morgan's amendment was rejected by a division vote. 51 Cong. Rec. 9050 (1914).

Yet another unsuccessful substantive or legislative-type rule-making proposal was put forward by Representative Dillon. He would have left Section 8 of the House bill intact but added to another section a provision that—

"[T]he commission is hereby empowered to make all necessary rules, regulations, orders, and decrees for the enforcement of the powers herein granted, and the rules, regulations, orders, and decrees of such commission in any such matters shall be binding and conclusive against all persons, firms, and corporations." 51 Cong. Rec. 9056 (1914).

Representative Dillon defended his proposal as follows:

"Give the commission power to enforce its rules, its regulations, and its decrees and the trade commission will be able to restore competition . . . The commission should be given the right to give standards of conduct in corporate affairs and to prepare a moral code in the conduct of corporate affairs . . . Congress has the power to enact rules for the regulation of future conduct, future rights, and future controversies. Give the trade commission the full power to make rules, regulations, and decrees and full power to enforce its mandates . . ." 51 Cong. Rec. 9057 (1914).

Once again, however, this time by voice vote, the amendment was rejected. *Ibid.*

The record thus shows clearly and unmistakably that the House was determined not to grant substantive or legislative-type rule-making authority to the commission. The Senate did not disturb this determination. The Senate added to the House bill provisions similar to those parts of the Lafferty amendment which are the forerunners of present Sections 5(a)(1), 5(a)(6), 5(b), and 6(g); it did not add, as the Lafferty amendment would have, any provision authorizing rule-making by the Commission.

The Senate bill provided:

"Sec. 5. That unfair competition in commerce is hereby declared unlawful.

"The commission shall have authority to prevent such unfair competition in commerce in the manner following, to wit:

"Whenever it shall have reason to believe that any person, partnership, or corporation is violating the provisions of this section it shall issue and serve upon the defendant a complaint stating its charges in that behalf and at the same time a notice of hearing upon a day and at a place therein fixed.

"The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint." See Federal Trade Commission Bill, Comparative Print, S. Doc. No. 573, 63rd Cong., 2nd Sess. (1914).

It will be noted that this provision explicitly restricted the Commission, in carrying out its mandate, to the complaint and cease and desist order procedure. It is clear, moreover, that the Senate Commerce Committee meant that the complaint and cease and desist order procedure should be exclusive. Its report states:

"One of the most important provisions of the bill is that which declares unfair competition in commerce to be unlawful, and empowers the commission to prevent corporations from using unfair methods of competition in commerce by orders issued after hearing, restraining, and prohibiting unfair methods of competition, which orders are enforceable in the courts."

S. Rep. No. 597, 63rd Cong., 2nd Sess. 13 (1914).

Similarly, Senator Newlands, when introducing the bill in the Senate, stated:

"We have added several provisions to the Senate bill which will enlarge the sphere of the trade commission's power and usefulness, among them the power after hearing, to prevent unfair competition by order enforceable in the courts, also to investigate and report upon foreign trade practices which interfere with the fair marketing of American products, and also to investigate and report upon combinations between foreign and American producers for the control of prices. These powers, in addition to those previously provided for in the Senate bill, covering investigation and report from such corporations as the trade commission may designate, publicity, aid to the courts and to the Attorney General in framing and enforcing decrees dissolving corporations, if wisely exercised, will make the trade commission as useful and effective in building up a system of administrative law regarding trade as the Interstate Commerce Commission has been in matters of transportation." 51 Cong. Rec. 10376 (1914).

Later Senator Newlands, during an extensive description of the bill, stated:

"One of the most important provisions of this bill, Mr. President, is that which relates to unfair competition. Unfair competition is made unlawful, and the commission is authorized, when any case of unfair practice or unfair method is brought to its attention, to summon the party charged and to have a hearing, and if it decides that the practice or method is unfair, to issue an order compelling its discontinuance, and if that order is not obeyed it can carry the matter into court and secure a judgment of the court compelling obedience to the commission's order." 51 Cong. Rec. 11084 (1914).

Thus, the Senate, while adding to the legislation under consideration provisions making the Commission an agency with enforcement powers and adding the forerunner of Section 5(a)(6), withheld substantive or legislative-type rule-making power from the Commission.

In conference the form of Section 5 was changed from the form in the Senate bill to read:

"Sec. 5. That unfair methods of competition in commerce are hereby declared unlawful.

"The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Act to re-

gulate commerce, from using unfair methods of competition in commerce.

"Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint." See Federal Trade Commission Bill, Comparative Print, S. Doc. No. 573, 63rd Cong., 2nd Sess. (1914).

The later renumbering of Section 5 made by the conferees was an incidental result of the redrafting necessary to add the bank and common carrier exemption and the limitation upon the power of Commission to proceed to those cases where it appeared that a proceeding would be "to the interest of the public." See pp. 32–33, 35, *infra*.

There is no discussion in either the Conference report, or in the debates, of the significance of this change. The House, both in committee and on the floor, had rejected provisions authorizing substantive or legislative-type rule-making. Before the Senate passed the bill, it had been assured that the Commission would not have that power. In these circumstances if it had been intended by the elimination of the words "in the manner following, it wit:" in Section 5 to broaden the Commission's powers to include such rule-making, such an intention would not have gone unmentioned.

Even with the changes made by the conferees Section 5 remained a single unitary provision without separate, designated subsections. This is in contrast to Section 6, where the intention was to make a series of separate grants of power, and the form employed was that of lettered subsections.

Although Section 5 today also contains separately lettered paragraphs that development came about some 38 years after the original passage of the statute and for reasons wholly unrealated to the question under consideration.[5] Thus the fact that the declaration of the unlawfulness of unfair competition and unfair and deceptive acts and practices and the provision for adjudicatory enforcement now appear in separately numbered paragraphs of Section 5 in no way supports an argument that Section 5(b) is merely one of alternative methods open to the Commission of implementing Section 5(a)(6).

In addition to the conferees' silence concerning the change in the form of Section 5, there is a passage in the House Conference Report that is consistent only with the proposition that the Commission's enforcement procedure was to be that prescribed in the Senate bill. Section 5 is summarized in the report as follows:

"Section 5 declares unfair methods of competition to be unlawful and empowers the commission, after hearing, to order the discontinuance of the use of such methods." H.R. Rept. No. 1142, 63rd Cong., 2nd Sess. 18 (1914).

This summary shows that the House conferees conceived of Section 5 as a self-contained unit, embodying both a grant of power and an exclusive procedure for exercising that power.

When the Conference bill reached the House floor, it was explained by Congressman Covington, a member of the Conference Committee, who was called "the author of the bill." 51 Cong. Rec. 14925 (1914). Congressman Covington dealt expressly with the nature of the powers that the bill granted the Commission:

"The Federal trade commission will have no power to prescribe the methods of competition to be used in future. In issuing its orders it will not be exercising power of a legislative nature. . . .

"The function of the Federal trade commission will be to determine whether an existing method of competition is unfair, and, if it finds it to be unfair, to order the discontinuance of its use. In doing this it will exercise power of a judicial nature . . .

"For the reason stated, there is no analogy between the power of the Interstate Commerce Commission under the Hepburn Act and the power of the Federal trade commission in regard to unfair competition. There is, however, a perfect analogy between the former power of the Interstate Commerce Commission under the Cullom Act and the power of the Federal trade commission. Under the Cullom Act the Interstate Commerce Commission had the power only to determine whether an existing rate was unreasonable, and, if it is so found, to order the railroad to cease and desist from charging that rate. The Federal trade commission will have precisely similar power in regard to an existing method of competition," 51 Cong. Rec. 14932 (1914).

The same point was repeated by Congressman Stevens, also a member of the Conference Committee:

"Mr. SHERLEY. If the gentlemen will permit, the Federal trade commission differs from the Interstate Commerce Commission in that it has no affirmative power to say what shall be done in the future?

"Mr. STEVENS of Minnesota. Certainly.

"Mr. SHERLEY. In other words, it exercises in no sense a legislative function such as is exercised by the Interstate Commerce Commission?

"Mr. STEVENS of Minnesota. Yes. The gentleman is entirely right. We desired clearly to exclude that authority from the power of the Commission. We did not know as we could grant it anyway. But the time has not arrived to consider or discuss such a question." 51 Cong. Rec. 14938 (1914).

Congressman Covington also explained the provision, introduced by the conferees, whereby the Commission was to institute a proceeding only where it found that such a proceeding "would be to the interest of the public." He said:

"As the bill passed the Senate there was not, however, any limitation in section 5, relating to unfair competition, directing the trade commission to deal with cases only where a public interest is involved, so the conferees agreed to insert a provision that the commission shall act—'if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public.'

"That prevents the Commission from becoming a clearing house to settle the everyday quarrels of competitors, free from detriment to the public, which should be adjusted through the ordinary processes of the courts." 51 Cong. Rec. 14930 (1914).

This limiting language is so placed that, if the Commission indeed has authority to proceed against unfair methods of competition other than by an adjudicatory hearing looking to a cease and desist order, the limitation would not apply to its proceeding. It is clear from Congressman Covington's remarks that the Commission was not meant to have available to it modes of enforcement free from the "public interest" limitation.

Such were the provisions of the bill and such had been the explanation of them when the two houses adopted the Conference report and sent the bill to the President for his signature. See 51 Cong. Rec. 15190 (1914). Nothing in this history supports the view that Congress meant the Commission to have substantive or legislative-type rule-making power. Every relevant feature of the history is to the contrary.

There is one aspect of the legislative history that is touched upon in the foregoing chronology but warrants fuller development. That is the evolution of what is now Section 6(g) of the Act, one of the two sections which has been relied upon as conferring authority to the Commission to make binding rules.

The original House bill, as we have said, would have created an agency possessing solely investigatory and information-gathering powers. See Federal Trade Commission Bill, Comparative Print, S. Doc. No. 573, 63rd Cong., 2nd Sess. (1914). To this end, Section 3 of the House bill would have transferred to the Commission the "powers, authority, and duties of the Bureau of Corporations and of the Commissioner of Corporations." *Id.* at 5. What led to the proposal was the belief that these powers should be exercised by an independent commission, and that "the investigations conducted and the information acquired by the commission under the authority heretofore exercised by the Bureau of Corporations or the Commissioner of Corporations" should be "remove[d] entirely from the control of the President and the Secretary of Commerce. . . ." H.R. Rep. No. 533, 63rd Cong., 2nd Sess. 3 (1914).

Because there was thought to be a "serious question . . . whether regular annual reports from corporations engaged in interstate commerce could be required under the powers of the Bureau of Corporations," H.R. Rep. No. 533, *supra* at 3, Section 9 of the House bill was inserted specifically to deal with this question. Section 9 would have required "every corporation . . . which . . . has a capital of not less than $5,000,000" to furnish annual reports to the Commission. See Federal Trade Commission Bill, Comparative Print, S. Doc. No. 573, 63rd Cong., 2nd Sess. 14 (1914). The House recognized, however, that a smaller corporation could also have "an organization or financial condition or a system of practices that requires publicity to bring about lawful methods in its business" and, therefore, should also file annual reports.

At the same time, the requirement of submitting annual reports was also recognized to be a significant burden for smaller corporations. H.R. Rep. No. 533, *supra*, at 3–4. The solution was to require, in Section 9 of the House bill, annual reports not only from corporations with a capital in excess of $5,000,000, but also from "every corporation . . . having a less capital [which] belongs to a class of corporations which the commission may designate . . ." Comparative Print, *supra* p. 14. The specific power of the Commission to classify corporations was contained in Section 8 of the House bill, which provided:

"That the Commission may from time to time make rules and regulations and classifications of corporations for the purpose of carrying out the provisions of this Act." Comparative Print, *supra*, p. 15.

Section 6(g) of this statute ultimately enacted is worded almost identically:

"That the Commission shall . . . have power—. . . from time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act." Comparative Print, *supra*, p. 10, 12.

The origin of Section 6(g) indicates that such rulemaking authority as is conferred by that section is limited to the promulgation of rules concerning corporate classifications for the purpose of requiring the submission of reports to the Commission. This limitation is confirmed by statements made on the floor of the House during the debate on the House bill. Congressman Covington summed up a discussion of the reporting requirements and the Commission's power, in Section 8, to "make rules and regulations and classifications of corporations," by saying:

"The Congress has itself fixed two broad classes [of corporations], those with more

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than $5,000,000 capital, which are arbitrarily required to file reports, and those with less than $5,000,000, which, under rules and regulations of the commission, may or may not report." 51 Cong. Rec. 8845 (1914).

He then referred to "the regulation classifying certain corporations from which reports must be filed . . ." *Ibid.*

The limited nature of the regulation power conferred by Section 8 of the House bill—now Section 6(g)—is unmistakably apparent from the debate on an amendment offered by Congressman Towner to authorize the Commission to require a uniform system of accounts by reporting corporations. 51 Cong. Rec. 9047 (1914). Congressman Stephens asked Congressman Towner—

"If he does not think that section 8 [now Section 6(g)] is sufficiently strong to permit the commission to make rules and regulations as to the manner in which the accounts shall be kept?" 51 Cong. Rec. 9048 (1914).

Representative Towner replied:

"No, I do not. I have examined section 8 carefully, and it is not within the power of the commission under the language of that section to make rules and regulations for the commission. That is not what is intended. It is only with regard to the classification of corporations for the purpose of carrying out provisions of the act. *The rules and regulations which the commission may make are limited to the classification.* The gentleman can at once see that that language could not possibly authorize an accounting necessary upon which to report the business. The rules and regulations are only with regard to the classification of corporations and can have no reference whatever to the requirements for reports.". *Ibid.* (Emphasis added.)

D. OTHER LEGAL AUTHORITIES

On the basis of the foregoing material, it has been the conclusion of law review commentators that the Commission lacks the authority to issue binding regulations. A 1964 Comment in the University of Pennsylvania Law Review aptly summarizes the issue:

"The Commission claims a clear mandate to issue the present order in the exercise of the power granted it by the Federal Trade Commission Act over trade practices, a term which by judicial definition encompasses advertising. But both the words and the history of the statute belie the Commission's contention." 113 U. Pa. L. Rev. 303, 304–05 (1964).

Two excerpts from an analysis in the Harvard Law Review are likewise of compelling relevance:

"In several crucial areas of administration, no grant of authority to issue prescriptive regulations in the sense used here is to be found. Two noteworthy examples relate to the powers of the NLRB and FTC: with a few exceptions relating to particular subjects [citing the Wool Products Labeling Act], neither agency has express authority to give content to the general statutory prohibitions by promulgating regulations requiring certain acts to be performed or declaring specific acts or practices to be unlawful." Shapiro, *The Choice of Rulemaking or Adjudication in the Development of Administrative Policy*, 78 Harv. L. Rev. 921, 960 (1965).

In his penetrating analysis of the Commission's lack of authority to issue substantive or legislative-type rules, Professor Shapiro continues:

"At least in the case of the FTC, the omission was not inadvertent. A proposal to give the FTC authority to issue regulations 'defining more particularly unfair trade practices or unfair or oppressive competition' was not adopted by the committee that recommended enactment of the Federal Trade Commission Act in 1914; similar proposals were rejected on the floor; and it was stressed during the debates that the Commission would 'not be exercising power of a legislative nature.'" *Ibid.*

To be sure, the Commission has had its defenders. A Department of Justice attorney, writing in the Cornell Law Quarterly, argues that the FTC has the power to issue substantive or legislative-type rules—rules, in his words, that "carry the force of law." Wegman, *Cigarettes and Health: A Legal Analysis*, 51 Cornell L.Q. 678, 741 (1966). This author reaches his conclusion, however, despite his own observation that "on its face" the legislative history makes clear that Congress intended the Commission to have no such powers.[6] *Id.* at 743.

Another law review article that, not surprisingly, takes the position that the Commission has the authority to issue trade regulation rules is Commissioner Elman's article in the Harvard Law Review urging the use of the Commission's trade regulation rule procedures in establishing industry-by-industry standards for anti-merger enforcement, Elman, *Rulemaking Procedures in the FTC's Enforcement of the Merger Law*, 78 Harv. L. Rev. 385 (1964). But in this article Commissioner Elman appears to view the trade regulation rule procedures, at least in the context of merger law, primarily as a fact-finding mechanism, and it is this conception that appears to be the basis for the dictum in Mr. Justice Goldberg's dissenting opinion in *Atlantic Refining Co.* v. *FTC*, 381 U.S. 357, 390–391 (1965), that the Commission in certain areas can proceed either through rule-making or adjudication.[7]

The cases on which primary reliance has been placed in support of the Commission's asserted rule-making authority are *National Broadcasting Co.* v. *United States*, 319 U.S. 190 (1943); *United States* v. *Storer Broadcasting Co.*, 351 U.S. 192 (1956); and *FPC* v. *Texaco, Inc.*, 377 U.S. 33 (1964).

Each of these decisions, however, involved regulated industries in which licenses were required to operate and statutes under which substantive or legislative-type rule-making was plainly authorized.

The *NBC* case involved the validity of regulations promulgated by the FCC defining certain prohibited arrangements between radio stations, or applicants for radio station licenses, and radio networks. The right of the Commission to issue rules was not challenged. Under Section 303(i) of the Communications Act of 1934, 47 U.S.C. § 303(i), the Commission had "authority to make special regulations applicable to radio stations engaged in chain broadcasting." Under Section 303(r) of the Act, 47 U.S.C. § 303(r), the Commission was authorized to "make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act."

The only question was whether the Commission's rule-making authority went to the communications policy issues that the regulations dealt with as well as technical and engineering aspects of radio licensing. The Court, relying on Section 303(g) of the Act, 47 U.S.C. § 303(g), which provided that the Commission should "generally encourage the larger and more effective use of radio in the public interest," determined that the Commission's substantive or legislative-type rule-making power did, under adequate Congressional standards, extend to the subject matter of the challenged regulations. As already suggested, however, there was no issue in the case as to whether rule-making power of the nature exercised had been conferred on the Commission. That it had been conferred was recognized by all parties.

The Storer case involved an asserted conflict between the provisions of the Communications Act requiring an evidentiary hearing prior to the denial of a license application and the exercise by the Commission of its recognized rule-making authority. The Commission had promulgated a regulation providing that it would not grant licenses to persons already owning a specified number of stations. The Court upheld the rule as a valid exercise of rule-making power. But the case does not stand for the proposition that the Commission had rule-making power—no one argued that it did not. The case merely furnishes an illustration of the circumstances in which an agency that has rule-making power can use that authority in the course of exercising licensing powers to decide an issue that, in the absence of the rule, might otherwise find its first articulation following a hearing on an individual application for license.

Both the facts and the Supreme Court's reasoning in the Texaco case are similar to Storer, though involving a different regulatory agency, the Federal Power Commission. The Commission had promulgated a rule, after notice and a hearing, that all applications for certificates of public convenience and necessity under Section 7 of the Natural Gas Act, 15 U.S.C. § 717f, should be rejected if they were supported by contracts containing certain price changing provisions. Thereafter, the Commission, despite the provisions of Section 7 that it should set applications "for hearing," denied certain applications without a hearing other than that granted in the rule-making proceeding because the contracts in question contained clauses prohibited by the rule. The Court upheld issuance of the rule as a valid exercise of rule-making power in this regulated industry subject to prior licensing. In the words of the Commission, the challenged exercise of the power was "rationally related" to the specific "regulatory objectives" of the Act. 377 U.S. at 42–43, n. 12.

Taken together, NBC, Storer and Texaco may all be said to stand for the proposition that rule-making has a special, judicially-recognized role in comprehensively regulated and licensed industries, in connection with the establishment of conditions or qualifications relating to the granting of licenses. But this principle clearly has no application to the present controversy. The Federal Trade Commission is not a regulatory and licensing agency, and manufacturers are not required to have licenses before selling or advertising their products in interstate commerce.

It is perhaps to be expected that Government lawyers and Federal Trade Commissioners, whether writing in the Federal Register or university law reviews, would generally align themselves with the Commission's new, expansive view of its authority. Again, however, it is relevant to remember that the Commission's current view represents a complete reversal of the position its members and representatves took during its first half century.

The views consistently taken by the Federal Trade Commission until 1961 or 1962 on the question of its power to issue substantive or legislative-type rules were wholly consistent with the views of students of administrative law outside the Commission. The House Select Committee on Small Business in its study "Antitrust Law Enforcement by the Federal Trade Commission and the Antitrust Division, Department of Justice—A Preliminary Report," while it apparently believed that it would be desirable to give the Federal Trade Commission rule-making power, made absolutely clear its understanding that the Commission did not in fact have such power. The consequence, in the words of the Committee, is that the Commission "is forced to clean up an industry-wide practice by a separate action against each individual violator." H.R. Rep. No. 3236, 81st Cong., 2d Sess, 29 (1951).

At another point in its report the Committee stated that the Commission's rule-making powers are "narrowly limited." *Id.* at 31. And after noting the specific and narrow grants of rule-making power in Section 2(a) of the Clayton Act, Section 6(g) of the Federal Trade Commission Act and the Wool Products Labeling Act, the report stated tht "none of these laws seems to confer a gen-

Footnotes at end of article.

eral and coercive rule making power." *Id.* at 31.

The Committee then added:

"Certainly the Commission has never attempted to claim any general substantive rule-making power, and in respect to its trade practice rules is emphatic in its assertion that they do not have the force of law. They are interpretive and advisory, rather than coercive. No action is taken against a violator because he refuses to comply with the rule but solely because he violates the law." *Ibid.*

The House Select Committee's analysis of the Commission's power is identical to that advanced ten years earlier by the Attorney General's Committee on Administrative Procedure. The Attorney General's Committee stated:

". . . the Federal Trade Commission has power to lay down binding regulations only with respect to quantity discounts in the pricing of goods in a limited class of industries under the Robinson-Patman Act—a power which it has not yet exercised." Final Report of the Attorney General's Committee on Administrative Procedure 98, n. 18 (1941).[5]

Another student of the Federal Trade Commission who also concluded that the Commission lacked substantive or legislative-type rule-making power stated flatly that "the Federal Trade Commission has no rule-making power," Hart, "The Exercise of Rule-making Power," in Report of the President's Committee on Administrative Management 308, 332(1937).

Amplifying this conclusion, Hart states that the Commission "operates not by rulemaking but solely by a quasi-judicial procedure which applies to a legislative abstraction in the issuance of cease-and-desist orders." *Ibid.*

FOOTNOTES

[1] Over the years there have been proposals to give Trade Practice Rules the force of law, see *e.g.*, Senator Nye's proposal, S. 2626, 72d Cong., 1st Sess. (1932), but of course no such proposal ever became law.

[2] For example, Section 3 of the Wool products Labeling Act, 15 U.S.C. § 68a, provides:

"The introduction . . . into commerce . . . of any wool product which is misbranded within the meaning of sections 68–68j of this title *or the rules and regulations hereunder*, is unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act. . . ."

[3] See pages 10 *et. seq., supra.*

[4] It might be observed, in passing, that in National Broadcasting Co. v. United States, 319 U.S. 190 (1943), one of the decisions which is relied upon in support of the Commission's authority, there were at least two statutory provisions specifically authorizing substantive regulations. In measuring what those specific grants of authority meant, Mr. Justice Frankfurter readily resorted to legislative history. 319 U.S. at 220–21.

[5] This separate numbering did not come into the Act until the 1952 McGuire amendments, 38 years after the Act's original passage, and appeared for reasons wholly unrelated to the question under discussion. The 1952 amendments embodied extensive additions to Section 5 and the addition of lettering no doubt was made simply for purposes of clarity because of the substantial physical expansion of the terms of the section.

[6] Having first concealed that the legislative history of the Act fails to support his ultimate conclusion on the power issue, Mr. Wegman then suggests that perhaps the legislative history is not so clear after all. His primary support of this latter suggestion, however, is the assertion that the rule-making provisions of what is now § 6(g) of the Act appeared late in the legislative history and not as part of the original provision relating to classification of corporations. As shown at pages 36–39, *supra*, however, this assertion is incorrect.

[7] The question before the Court in *Atlantic Refining Co.* v. *FTC* was the propriety of an order enjoining the use of certain selling arrangements by a major distributor of gasoline products on the eastern seaboard and one of the country's largest tire manufacturers. The Commission's order had been upheld by the Court of Appeals and the Supreme Court affirmed. Mr. Justice Goldberg dissented on the ground that the Commission had not set forth an adequate basis for its broad orders with sufficient clarity to permit appropriate review. No issue of administrative rule-making was involved in the case. and none was briefed.

[8] The Committee's Final Report was transmitted to Congress on January 24, 1941. At that time the Commission also had limited substantive or legislative-type rule-making power under the Wool Products Labeling Act, which was enacted in October 1940. Presumably the Final Report was actually completed well before the effective date of the Wool Labeling Act.

AMENDMENT NO. 605

Mr. HRUSKA. Mr. President, I call up my amendment No. 605 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 46, line 18, strike out the following words: "at which the Commission may permit cross-examination (limited as to scope or subject matter) by one or more parties as representatives of all parties having similar interests".

Mr. HRUSKA. Mr. President, I rise to propose an amendment No. 605 to S. 986 that will require, in any rulemaking proceeding, the right to cross-examine commission witnesses to be mandatory. S. 986, as reported by the Senate Commerce Committee, does not follow the action taken in the previous Congress on S. 3201, a predecessor bill to S. 986.

To enunciate this point, Mr. President, I wish to refer to the hearings held before the Senate Commerce Committee on S. 986 where a colloquy took place between Senator FRANK E. MOSS, Senator MARLOW W. COOK, and the witness, Edward Dunkelberger. At page 105 of the printed hearings we find the following:

Senator Cook, I am very interested in your reference to Professor Handler's testimony before the Judiciary Committee. One of the points he made was that provisions for hearings are woefully inadequate. And yet, in S. 3201, when we got it to Judiciary, we had finally won the authority to put into the bill the item:

Commissioners shall permit cross-examination, limited as to scope or subject matter, by one or more parties as representative of all parties having similar interests where it determines that the granting of such cross-examination is not inappropriate.

In responding that procedures were woefully inadequate to develop a true record on its rulemaking authority, Mr. Dunkelberger said:

Yes, sir. This is an interesting point because much has been made of the fact that there were 8 days of hearings before the judiciary Committee last session on the rulemaking authority. I guess that is why Congress usually decides it is going to proceed on a committee basis and let each committee makes its own record on S. 3201, because after the Judiciary Committee made this record on S. 3201, we end up with a bill that is not improved in this regard, but is cut back in this regard. So that record has been totally ignored. As a matter of fact, you have gotten a reversal of the positions advocated by virtually every witness before the Judiciary Committee.

Mr. President, at a time when the Congress is considering bills to curtail the power of several Federal agencies; and at a time when the Congress is zealously protecting its delegation of legislative power in granting rulemaking authority to the Federal Trade Commission with the proviso that even greater precision be used in the procedures by which the FTC can conclude that fairness, procedural safeguards, and regulation in the best interest of the public be insured; we must be most careful in legislating in this area of rulemaking so that we will not be taking 10 steps backward. My amendment will assure that we will not be moving backwards if we provide mandatory right to cross-examination of commission witnesses, and hence, a record with complete facts upon which to found a regulation.

Mr. President, there are other key issues involved such as the unconstitutional delegation of legislative authority the possibility of ineffective Congressional and judicial review due to a record of incomplete facts, and the longtime point of view that Congress should reserve to itself the legislative rulemaking.

Let us keep in mind that delegation of our legislative power to a Federal agency or executive department is never given in one full swoop but it is given in small grains at a time. Mr. President, constant chipping away at a mighty oak tree, bit by bit will someday fell that mighty tree. We must assure ourselves that we do not permit this chipping away at our powers to legislate. Mr. Justice Cardozo said in the famous Schechter—NRA Blue Eagle case, in the 1930's,

This is legislative delegation in its most obnoxious form.

Let us not have history repeat itself in the form of S. 986 as now reported.

Mr. President, the amendment pertains to a situation where the Federal Trade Commission under its newly found legislative rulemaking power, which is equivalent to the Federal Trade Commission legislating instead of the Congress legislating, will reach a point where it will propose a rule.

Then, when there comes a time it is announced to the public and various interests are invited to express views, and it appears there is a disparity of facts on which the proposed rule is based, there is a provision here for an agency hearing in accordance with sections 556 and 557 of title V of the code. That provision is simply this: That the administrative procedure act will at that time take hold and will afford that degree of explanation of views for and against the bill in public hearings. They may be heard at that time.

But apparently the authors of the bill have so little confidence in the ability of the Federal Trade Commission to carry the day on that kind of basis; namely, a fair hearing, that these objectionable words were inserted. I shall read the words. The purpose of my amendment is to strike them. The language is:

If * * * there is a disparity of views concerning material facts upon which the proposed rule is based the Commission shall provide for agency hearings in accordance with sections 556 and 557 of title V of the Code.

Then, these words are put in:

at which the Commission may permit cross examination (limited as to scope or subject matter) by one or more parties as representatives of all parties having similar interests.

If a rule is proposed and 50 people come in or 12 people come in and they say they want to oppose it, the committee will say, "We will not let you cross-examine and we will call on one of your group to speak on behalf of all of you, and that is that."

We talk about due process a lot both in civil and criminal matters and we talk about fairness and the idea of having some day in court, but the language conveys an entire lack of confidence in the Federal Trade Commission being able to carry the day on the merits.

My only purpose in getting this stricken is to test the good faith of the Senate as to whether there is a minority right to due process which vests in those who have the right to speak up and be heard. It will be an indication by the Senate as to whether there will be that minimum right of due process.

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

Mr. HRUSKA. I yield.

Mr. COOK. Is it not true that with this language out and the fact that due process can prevail before the Commission that then, at least, if an order is issued and it has full force and effect of an issue that can be brought before the Federal courts, at least there can be a good basis for the record other than as the case would be with the language in there? The Commission has the right to limit witnesses, cross-examination, and to limit the number of people who can testify, and as a result of this limitation when they issue an order that order becomes a cause of action for which action can be brought in the Federal courts, not only civil action but also criminal action, for which a penalty of not to exceed $10,000 could be imposed.

Mr. HRUSKA. The Senator is correct. Not only limit the number of witnesses but the witnesses could be allowed to testify. They can limit the scope and the subject matter they will allow the witnesses to testify upon.

Mr. President, I am ready to vote.

Mr. MAGNUSON. Mr. President, I oppose the amendment.

The bill does not deny the right of cross-examination. It provides that when cross-examination is appropriate, the commission may limit that cross-examination to material facts in dispute. This is done to prevent abuse of cross-examination in rule-making proceedings.

The bill provides a further procedural safeguard. On judicial review the court can order the commission to take further testimony if the court feels that the record before it is insufficient.

Therefore, I oppose the amendment of the Senator from Nebraska and ask this body to support the committee.

Mr. President, I ask unanimous consent to have printed in the RECORD a paper entitled "Objection to Trial Methods for Resolving Nonfactual Issues."

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

OBJECTION TO TRIAL METHODS FOR RESOLVING NONFACTUAL ISSUES

"The outstanding example is a provision of the Food, Drug and Cosmetic Act of 1938, concerning the specification of standards of identity and related functions. The unfortunate result is that the Food and Drug Administration takes "evidence" from "witnesses" who "testify" on such questions as whether "golden" should be permitted as a synonym for "yellow" in the labelling of canned corn, whether "Evaporated Milk" and "Concentrated Milk" should be used as synonyms, ... At the hearings involving questions like these, any interested person may cross-examine any witness. Yet an observer has declared that the primary value of the hearing is that it gives the Administrator "the benefit of criticisms and suggestions from representatives of the industries which will be affected, and from spokesmen for the consuming public." The problems lend themselves far better to written and oral argument than to testimony, cross-examination, and a decision on a formal record. The hearings now held are "unwieldy and sometimes almost chaotic" and consume weeks and even months. Probably better results would be obtained, with less expense, through public meetings rather than trials. Unlimited cross-examination by adversaries seems as inappropriate in these cases as in an argument before an appellate court. . . ." (DAVIS S. 6.06)

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

Mr. HRUSKA. I yield.

Mr. COOPER. This is a very complicated bill, and I have tried to follow the debate closely.

I think all of us are concerned with granting these large powers to a commission, legislative powers that can really cause difficult problems. I agree wholly with the Senator from Nebraska that we are not going to let an aggrieved party be deprived of his right to due process.

I think the amendment should be accepted.

Mr. HRUSKA. That is my belief.

One of the arguments advanced against elimination of this language is that we must prevent interminable delay.

Imagine legislating in a body of five men where as few as two of those men can legislate on behalf of Congress and then not give the people of this country a right to be heard except on a limited basis.

I say for shame that such a matter would be entertained and approved by this body.

Mr. COOK. Mr. President, I just heard an expression on the floor that there was objection to it for practical reasons. Would the Senator feel there is no practical reason to deny anybody due process?

Mr. HRUSKA. I know of no practical reason. It is followed in every other instance where in the procedures of Congress we have occasion to call upon the Administrative Procedure Act. Why should this be an exception? Is it because there is that lack of faith in the merits of the proposal to be proposed by the Federal Trade Commission? If so, here is a good chance to prove it.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the RECORD show that rule XII was waived with respect to the time on which the Senate will vote on final passage of the bill.

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

The question is on agreeing to the amendment offered by the Senator from Nebraska. All those in favor will signify by saying "aye." Those opposed will say "no."

It appears to the Chair that the ayes have it.

Mr. MOSS. Mr. President, I ask for a division.

The PRESIDING OFFICER. A division is called for. All in favor of the amendment will please stand. The clerk will please count Senators standing.

Senators opposed will stand and be counted.

The amendment is agreed to.

Mr. ALLOTT and Mr. MAGNUSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLOTT. I move to reconsider the vote by which the amendment was agreed to.

Mr. HRUSKA. I move to lay that motion on the table.

Mr. MAGNUSON. Did the Chair not recognize me?

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. ALLOTT. Mr. President——

Mr. MAGNUSON. Mr. President——

Mr. ALLOTT. Mr. President, a parliamentary inquiry. Mr. President.

Mr. MAGNUSON. I have the floor.

Mr. ALLOTT. Mr. President, Mr. President.

The PRESIDING OFFICER. The Chair recognized the Senator from Washington.

Mr. ALLOTT. The Senator from Colorado was recognized by the Chair. The Senator from Colorado was recognized. If there is any question I ask that the reporter's notes be read back to the Senate.

Mr. HRUSKA. The result was announced.

The PRESIDING OFFICER. The Chair had stated that the amendment was agreed to.

Mr. BYRD of West Virginia. Mr. President, the Senator from Washington was on his feet when the Chair stated the result.

Mr. ALLOTT. Also the Senator from Colorado was on his feet and was recognized.

The PRESIDING OFFICER. The Senator from Colorado is correct.

Mr. MAGNUSON. The Chair said he recognized the Senator from Washington.

The PRESIDING OFFICER. The Senator Colorado obtained recognition and made the motion to reconsider the vote.

Mr. BYRD of West Virginia. Mr. President——

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

Mr. MOSS. Mr. President, I ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER. On the motion to table the motion to reconsider.

Mr. MANSFIELD. On the motion to reconsider.

Mr. HRUSKA. Mr. President, a motion was made to table.

The PRESIDING OFFICER. The question is on the motion to lay on the table the motion to reconsider.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second on the request for the yeas and nays on the motion to table?

There is a sufficient second.

The yeas and nays were ordered.

The clerk will call the roll.

Mr. COOK. Mr. President, is the motion debatable?

Mr. ALLOTT. Mr. President, I have the floor. I was displaced once today. I am not going to be displaced twice.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senate will be in order.

The rollcall was resumed and concluded.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Florida (Mr. CHILES), the Senator from California (Mr. CRANSTON), the Senator from Louisiana (Mr. ELLENDER), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Michigan (Mr. HART), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Maine (Mr. MUSKIE), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent. I further announce that, if present and voting the Senator from Washington (Mr. JACKSON) and the Senator from Minnesota (Mr. HUMPHREY) would each vote "nay."

Mr. SCOTT. I announce that the Senator from Oklahoma (Mr. BELLMON) is absent on official business.

The Senators from Tennessee (Mr. BROCK and Mr. BAKER), the Senator from Maryland (Mr. BEALL), the Senator from New York (Mr. BUCKLEY), the Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from Maryland (Mr. MATHIAS), the Senator from Ohio (Mr. SAXBE), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from Florida (Mr. GURNEY) is absent to attend the funeral of a friend.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The result was announced—yeas 36, nays 38, as follows:

[No. 296 Leg.]

YEAS—36

Allen	Cotton	Fulbright
Allott	Curtis	Gambrell
Bennett	Dominick	Hansen
Boggs	Eastland	Hatfield
Byrd, Va.	Ervin	Hruska
Cook	Fannin	Jordan, N.C.
Cooper	Fong	Jordan, Idaho
McClellan	Schweiker	Taft
Miller	Scott	Talmadge
Packwood	Smith	Thurmond
Pearson	Stennis	Tower
Roth	Stevens	Young

NAYS—38

Aiken	Hughes	Pastore
Bayh	Inouye	Pell
Bentsen	Javits	Percy
Bible	Kennedy	Proxmire
Brooke	Long	Randolph
Burdick	Magnuson	Sparkman
Byrd, W. Va.	Mansfield	Spong
Cannon	McGee	Stafford
Case	McGovern	Stevenson
Church	Metcalf	Symington
Eagleton	Mondale	Tunney
Hartke	Moss	Williams
Hollings	Nelson	

NOT VOTING—26

Anderson	Ellender	Mathias
Baker	Goldwater	McIntyre
Beall	Gravel	Montoya
Bellmon	Griffin	Mundt
Brock	Gurney	Muskie
Buckley	Harris	Ribicoff
Chiles	Hart	Saxbe
Cranston	Humphrey	Weicker
Dole	Jackson	

So the motion to lay on the table the motion to reconsider was rejected.

The PRESIDING OFFICER. The question recurs on the motion of the Senator from Colorado to reconsider the vote by which the amendment of the Senator from Nebraska was agreed to.

Mr. MANSFIELD. I ask for the yeas and nays.

SEVERAL SENATORS. No! No!

Mr. ALLOTT. Let us have the yeas and nays, Mr. President.

The yeas and nays were not ordered.

Mr. ALLOTT. Mr. President——

The PRESIDING OFFICER. No petition to debate is permitted at this time.

Mr. ALLOTT. Mr. President, will the Presiding Officer recite to me the rule which provides that a motion to reconsider cannot be debated?

The PRESIDING OFFICER. Unanimous consent has been given that a vote will take place on the bill at 7:30. By precedent and custom in the Senate where a time has been set for final vote and amendments and other motions are offered with respect to the bill, they will not be debatable, in order that the vote can take place as near to the agreed time as possible.

So the question is on agreeing to the motion of the Senator from Colorado to reconsider the vote by which the Hruska amendment was agreed to.

Mr. ALLOTT. Mr. President——

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLOTT. Mr. President, I rise for a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ALLOTT. Is it not true that although we have an agreement to vote at 7:30 on the final passage of this bill, two motions were pending at that time? One was a motion to reconsider and one was a motion to table the motion to reconsider. The motion to table the motion to reconsider is not debatable. The motion to reconsider is always debatable, and it cannot be thwarted by this——

The PRESIDING OFFICER. It was debatable up until 7:30, the Chair advises the Senator. Under the unanimous consent agreement, the vote was to take place at 7:30.

Mr. ALLOTT. Despite the ruling of the Chair, I appeal the ruling of the Chair to the Senate, and I ask for a rollcall vote.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Mr. ALLOTT. Mr. President——

The PRESIDING OFFICER. All those in favor of sustaining the ruling of the Chair will say "aye." All those opposed will say "no."

The ruling of the Chair is sustained.

Mr. ALLOTT. Mr. President——

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLOTT. I rise for the purpose of asking for a rollcall vote. This is the first time I can remember in the history——

The PRESIDING OFFICER. The question has already been decided.

Mr. ALLOTT (continuing). Of the Senate that a Member of the Senate has been denied a rollcall. Now let us have it. I ask for a rollcall.

The PRESIDING OFFICER. The appeal has already been voted on.

Mr. HRUSKA. But no enunciation of the decision has been made.

The PRESIDING OFFICER. The Chair has announced the decision that the ruling of the Chair is sustained.

Mr. COOPER. Mr. President, a parliamentary inquiry.

Mr. MANSFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MANSFIELD. Would it be in order at this time to accommodate the Senator by asking for the yeas and nays on the motion to reconsider?

Mr. ALLOTT. Yes. That is what I asked for.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on the motion to reconsider.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The clerk will call the roll.

Mr. COOK. Mr. President, a parliamentary inquiry.

Mr. COOPER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Kentucky (Mr. COOPER) is recognized.

Mr. COOPER. Is it not true that upon the question that has been raised by the Senator from Colorado there could be some limited discussion of the matter?

The PRESIDING OFFICER. Only by unanimous consent. Under the unanimous-consent agreement, there was to be a vote at 7:30, and we are getting farther afield as to that time.

Mr. COOPER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. COOPER. The question is raised as to whether we had to vote at 7:30, and the Chair ruled that because the questions were before the Senate, they had to be disposed of. Is it correct that, having ruled in that manner, under the usual rules of attendance to a motion to reconsider, some limited debate should occur?

The PRESIDING OFFICER. The Chair

ruled that the motions before the Senate were debatable up until 7:30. No further debate and only votes were permitted after that time.

Mr. COOPER. I wish it were possible to discuss the substance of this amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Colorado to reconsider the vote by which the Hruska amendment was agreed to.

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

Mr. ALLOTT. Mr. President——

The PRESIDING OFFICER. The clerk will call the roll.

Mr. ALLOTT. Mr. President——

The PRESIDING OFFICER. The clerk will please call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. AIKEN (when his name was called). No.

Mr. ALLOTT. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. ALLOTT. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The rollcall is in progress. The Senator is out of order. The clerk will continue the rollcall.

Mr. ALLOTT. Mr. President, there has been no enunciated answer to a rollcall. I ask for a parliamentary inquiry.

The PRESIDING OFFICER. The Chair advises the Senator from Colorado that the Senator from Vermont has responded to his name.

The assistant legislative clerk resumed the call of the roll.

Mr. AIKEN. Mr. President, I voted nay, but a little more of this and I will change my vote.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from California (Mr. CRANSTON), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Michigan (Mr. HART), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Maine (Mr. MUSKIE), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

I further announce that, if present and voting, the Senator from Washington (Mr. JACKSON) and the Senator from Minnesota (Mr. HUMPHREY) would each vote "yea."

Mr. SCOTT. I announce that the Senator from Oklahoma (Mr. BELLMON) is absent on official business.

The Senators from Tennessee (Mr. BROCK and Mr BAKER), the Senator from Maryland (Mr. BEALL), the Senator from New York (Mr. BUCKLEY), the Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from Maryland (Mr. MATHIAS), the Senator from Ohio (Mr. SAXBE), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The result was announced—yeas 35, nays 43, as follows:

[No. 297 Leg.]

YEAS—35

Bayh	Hollings	Nelson
Bentsen	Hughes	Pastore
Bible	Inouye	Pell
Brooke	Javits	Percy
Burdick	Kennedy	Proxmire
Byrd, W. Va.	Magnuson	Randolph
Cannon	Mansfield	Spong
Case	McGee	Stevenson
Chiles	McGovern	Symington
Church	Mondale	Tunney
Eagleton	Montoya	Williams
Hartke	Moss	

NAYS—43

Aiken	Fong	Roth
Allen	Fulbright	Schweiker
Allott	Gambrell	Scott
Bennett	Gurney	Smith
Boggs	Hansen	Sparkman
Byrd, Va.	Hatfield	Stafford
Cook	Hruska	Stennis
Cooper	Jordan, N.C.	Stevens
Cotton	Jordan, Idaho	Taft
Curtis	Long	Talmadge
Dominick	McClellan	Thurmond
Eastland	Metcalf	Tower
Ellender	Miller	Young
Ervin	Packwood	
Fannin	Pearson	

NOT VOTING—22

Anderson	Goldwater	McIntyre
Baker	Gravel	Mundt
Beall	Griffin	Muskie
Bellmon	Harris	Ribicoff
Brock	Hart	Saxbe
Buckley	Humphrey	Weicker
Cranston	Jackson	
Dole	Mathias	

So the motion to reconsider the vote on amendment No. 605 was rejected.

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 the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass? On this question the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from California (Mr. CRANSTON), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Michigan (Mr. HART), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Maine (Mr. MUSKIE), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from Maine (Mr. MUSKIE), and the Senator from Connecticut (Mr. RIBICOFF) would each vote "yea."

Mr. SCOTT. I announce that the Senator from Oklahoma (Mr. BELLMON) is absent on official business.

The Senators from Tennessee (Mr. BROCK and Mr. BAKER), the Senator from Maryland (Mr. BEALL), the Senator from New York (Mr. BUCKLEY), the Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from Maryland (Mr. MATHIAS), the Senator from Ohio (Mr. SAXBE), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Tennessee (Mr. BAKER), and the Senator from Maryland (Mr. BEALL) would each vote "yea."

The result was announced—yeas 76, nays 2, as follows:

[No. 298 Leg.]

YEAS—76

Aiken	Fulbright	Pastore
Allen	Gambrell	Pearson
Allott	Gurney	Pell
Bayh	Hansen	Percy
Bennett	Hartke	Proxmire
Bentsen	Hatfield	Randolph
Bible	Hollings	Roth
Boggs	Hughes	Schweiker
Brooke	Inouye	Scott
Burdick	Javits	Smith
Byrd, Va.	Jordan, N.C.	Sparkman
Byrd, W. Va.	Jordan, Idaho	Spong
Cannon	Kennedy	Stafford
Case	Long	Stennis
Chiles	Magnuson	Stevens
Church	Mansfield	Stevenson
Cook	McClellan	Symington
Cooper	McGee	Taft
Cotton	McGovern	Talmadge
Curtis	Metcalf	Thurmond
Dominick	Miller	Tower
Eagleton	Mondale	Tunney
Eastland	Montoya	Williams
Ellender	Moss	Young
Fannin	Nelson	
Fong	Packwood	

NAYS—2

Ervin	Hruska

NOT VOTING—22

Anderson	Goldwater	McIntyre
Baker	Gravel	Mundt
Beall	Griffin	Muskie
Bellmon	Harris	Ribicoff
Brock	Hart	Saxbe
Buckley	Humphrey	Weicker
Cranston	Jackson	
Dole	Mathias	

So the bill (S. 986) was passed, as follows:

S. 986

An act to provide disclosure standards for written consumer product warranties against defect or malfunction; to define Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Magnuson-Moss Act".

TITLE I—CONSUMER PRODUCT WARRANTIES

DEFINITIONS

SEC. 101.—

(1) "Commission" means the Federal Trade Commission.

(2) The term "consumer product" means any tangible personal property, normally used for personal, family, or household purposes, including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed. However, the provisions affecting consumer products in sections 102 and 103 of this title shall apply only to

consumer products actually costing the purchaser more than $5 each.

(3) "Purchaser" or "consumer" means any person who is entitled by any warranty in writing or service contract in writing which is offered or given to enforce against the supplier the obligations of the warranty or service contract.

(4) "Reasonable and necessary maintenance" consists of those operations which the purchaser reasonably can be expected to perform or have performed to keep a consumer product operating in a predetermined manner and performing its intended function.

(5) The term "repair" may at the option of the warrantor include replacement with a new, identical or equivalent consumer product or component(s) thereof.

(6) The term "replacement" as used in section 104 of this title, in addition to furnishing a new, identical or equivalent consumer product (or component(s) thereof), shall include the refunding of the actual purchase price of the consumer product (1) if repair is not commercially practicable or (2) if the purchaser is willing to accept such refund in lieu of repair or replacement. In the event there is replacement of a consumer product, the replaced consumer product (free and clear of liens and encumbrances) shall be made available to the supplier.

(7) "Supplier" means any person (including any partnership corporation, or association) engaged in the business of making a consumer product or service contract available to consumers, either directly or indirectly. Occasional sales of consumer products by persons not regularly engaged in the business of making such products available shall not make such persons "suppliers" within the meaning of this title.

(8) "Warrantor" means any supplier or other party who gives a warranty in writing.

(9) The term "warranty" includes guaranty, and to warrant is to guarantee.

(10) "Warranty in writing" or "written warranty" means a warranty in writing aganist defect or malfunction of a consumer product.

(a) "Full warranty" means a warranty in writing against defect or malfunction of a consumer product which incorporates the Federal standards for warranty set forth in section 104 of this title.

(b) "Limited warranty" means any warranty in writing against defect or malfunction of a consumer product subject to the provisions of this title which does not incorporate the Federal standards for warranty set forth in section 104 of this title.

(11) A "warranty in writing against defect or malfunction of a consumer product" means:

(i) any written affirmation of fact or written promise made at the time of sale by a supplier to a purchaser which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect-free or will meet a specified level of performance over a specified period of time, or

(ii) any undertaking in writing to refund, repair, replace, or take other remedial action with respect to the sale of a consumer product in the event that the product fails to meet the specifications set forth in the undertaking,

which written affirmation, promise, or undertaking becomes part of the basis of the bargain between the supplier and the purchaser.

(12) the term "without charge" means that the warrantor(s) cannot assess the purchaser for any costs the warantor or his representatives incur in connection with the required repair or replacement of a consumer product warranted in writing. The term does not mean that the warrantor must necessarily compensate the purchaser for incidental expenses. However, if any incidental expenses are incurred because the repair or replacement is not made within a reasonable time or because the warrantor imposed an unreasonable duty upon the purchaser as a condition of security repair or replacement, then the purchaser shall be entitled to recover such reasonable incidental expenses in any action against the warrantor for breach of warranty under section 110(b) of this title.

DISCLOSURE REQUIREMENTS

SEC. 102. (a) In order to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products, any supplier warranting in writing a consumer product shall fully and conspicuously disclose in simple and readily understood language the terms and conditions of said warranty pursuant to any regulations issued by the Commission under procedures specified in section 109 of this title. Such regulations may require inclusion in the written warranty of information with respect to any of the following items among others:

(1) The clear identification of the name and address of the warrantor.

(2) Identity of the class or classes of persons to whom the warranty is extended.

(3) The products or parts covered.

(4) A statement of what the warrantor will do in the event of a defect or malfunction—at whose expense—and for what period of time.

(5) A statement of what the purchaser must do and expenses he must bear.

(6) Exceptions and exclusions from the terms of the warranty.

(7) The step-by-step procedure which the purchaser should take in order to obtain performance of any obligation under the warranty, including the identification of any class of persons authorized to perform the obligations set forth in the warranty.

(8) On what days and during what hours the warrantor will perform his obligations.

(9) The period of time within which, after notice of malfunction or defect, the warrantor will under normal circumstances repair, replace, or otherwise perform any obligations under the warranty.

(10) The availability of any informal dispute settlement procedure offered by the warrantor and a recital that the purchaser must resort to such procedure before pursuing any legal remedies in the courts.

(11) A recital that any purchaser who successfully pursues his legal remedies in court may recover the reasonable costs incurred, including reasonable attorneys' fees.

(b) The Commission is authorized to determine in accordance with section 109 of this title the manner and form in which information with respect to any written warranty shall be clearly and conspicuously presented or displayed when such information is contained in advertising, labeling, point-of-sale material, or other representations in writing. Nothing in this title shall be deemed to authorize the Commission to prescribe the duration of warranties given or to require that a product or any of its components be warranted, except that the Commission may prescribe rules pursuant to section 553 of title 5. United States Code, that the term of a warranty or service contract shall be extended to correspond with any period in excess of a reasonable period (not less than ten days) during which the purchaser is deprived of the use of a product by reason of a defect or malfunction. Further, except as provided in section 104, nothing in this title shall be deemed to authorize the Commission to prescribe the scope or substance of written warranties.

DESIGNATION OF WARRANTIES

SEC. 103. (a) Any supplier warranting in writing a consumer product shall clearly and conspicuously designate such warranty as provided herein unless exempted from doing so by the Commission pursuant to section 109 of this title:

(1) If the written warranty incorporates the Federal standards for warranty set forth in section 104 of this title, then it shall be conspicuously designated as "full (statement of duration)" warranty, guaranty, or word of similar meaning. A warrantor issuing a written warranty in compliance with Federal standards shall also attempt in good faith to cause the disclosure of the duration of the warranty period measured either by time or by some relevant measure of usage such as mileage to the purchaser prior to the time of purchase through advertising, by providing point-of-sale materials, or by other reasonable means.

(2) If the written warranty does not incorporate the Federal standards for warranty set forth in section 104 of this title, then it shall be designated in such manner so as to indicate clearly and conspicuously the limited scope of the coverage afforded.

(b) Written statements or representations such as expressions of general policy concerning customer satisfaction which are not subject to any specific limitations shall not be deemed to be warranties in writing for purposes of section 102, 103, and 104 of this title but shall remain subject to the provisions of the Federal Trade Commission Act and section 110 of this title.

FEDERAL STANDARDS FOR WARRANTY

SEC. 104. (a) Any supplier warranting in writing a consumer product must undertake at a minimum the following duties in order to be deemed to have incorporated the Federal standards for warranty:

(1) to repair or replace any malfunctioning or defective warranted consumer product;

(2) within a reasonable time; and

(3) without charge.

In fulfilling the above duties the warrantor shall not impose any duty other than notification upon any purchaser as a condition of securing repair or replacement of any malfunctioning or defective consumer product unless the warrantor can demonstrate that such a duty is reasonable. In a determination by a court or the Commission of whether or not any such additional duty or duties are reasonable, the magnitude of the economic burden necessarily imposed upon the warrantor (including costs passed on to the purchaser) shall be weighed against the magnitude of the burdens of inconvenience and expense necessarily imposed upon the purchaser.

(b) The above duties extend from the warrantor to the purchaser.

(c) The performance of the duties enumerated in subsection (a) of this section shall not be required of the warrantor if he can show that damage while in the possession of the purchaser or unreasonable use (including failure to provide reasonable and necessary maintenance) caused any warranted consumer product to malfunction or become defective.

FULL AND LIMITED WARRANTING OF A CONSUMER PRODUCT

SEC. 105. Nothing in this title shall prohibit the selling of a consumer product which has both full and limited warranties if such warranties are clearly and conspicuously differentiated.

SERVICE CONTRACTS

SEC. 106. Nothing in this title shall be construed to prevent a supplier from selling a service contract to the purchaser in addition to or in lieu of a warranty in writing if such contract fully and conspicuously discloses in simple and readily understood language the terms and conditions. The Commission is authorized to determine in accordance with section 109 of this title the manner and form in which the terms and conditions of service

contracts shall be clearly and conspicuously disclosed.

DESIGNATION OF REPRESENTATIVES

SEC. 107. Nothing in this title shall be construed to prevent any warrantor from making any reasonable and equitable arrangements for representatives to perform duties under a written warranty: *Provided*, That no such arrangements shall relieve the warrantor of his direct responsibilities to the purchaser or necessarily make the representative a cowarrantor.

LIMITATION ON DISCLAIMER OF IMPLIED WARRANTIES

SEC. 108. (a) There shall be no express disclaimer of implied warranties to a purchaser if any warranty in writing or service contract in writing of a consumer product is made by a supplier to a purchaser.

(b) For purposes of this title, implied warranties may be limited only as to duration and only to the duration of a warranty in writing of reasonable duration, if such limitation is conscionable and is set forth in clear and unmistakable language and prominently displayed on the face of the warranty.

FEDERAL TRADE COMMISSION

SEC. 109. In addition to the authority given in sections 102 and 106 of this title pertaining to disclosure, the Commission is authorized to establish rules pursuant to section 553, title 5, United States Code, upon a public record after an opportunity for an agency hearing structured so as to proceed as expeditiously as practicable, to determine when a warranty in writing does not have to be designated in accordance with section 103 of this title; to define in detail the disclosure requirements in paragraph (2) of subsection (a) of section 103; and to define in detail the duties set forth in subsection (a) of section 104 of this title and their applicability to warrantors of different categories of consumer products with "full" warranties.

PRIVATE REMEDIES

SEC. 110. (a) Congress hereby declares it to be its policy to encourage suppliers to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms. Such informal dispute settlement procedures should be created by suppliers in cooperation with independent and governmental entities pursuant to guidelines established by the Commission. If a supplier incorporates any such informal dispute settlement procedure in any written warranty or service contract, such dispute procedure shall initially be used by any consumer to resolve any complaint arising under such warranty or service contract. The bona fide operation of any such dispute procedure shall be subject to review by the Commission on its own initiative or upon written complaint filed by any injured party.

(b) Any purchaser damaged by the failure of a supplier to comply with any obligations assumed under a written warranty or service contract in writing subject to this title may bring suit for breach of such warranty or service contract in an appropriate district court of the United States subject to the jurisdictional requirements of section 1331, title 28, United States Code, and any purchaser damaged by the failure of a supplier to comply with any obligations assumed under an express or implied warranty or service contract subject to this title may bring suit in any State or District of Columbia court of competent jurisdiction: *Provided*, That prior to commencing any legal proceeding for breach of warranty or service contract, any purchaser must have afforded the supplier a reasonable opportunity to cure the breach including the utilization of any informal dispute settlement mechanisms established pursuant to subsection (a) of this section. Nothing in this subsection shall be construed to change in any way the jurisdictional prerequisites or venue requirements of any State.

(c) Any purchaser who shall finally prevail in any suit or proceeding for breach of an express or implied warranty or service contract obligation brought under section (b) of this section shall be allowed by the court of competent jurisdiction to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended) determined by the court to have been reasonably incurred by such purchaser for or in connection with the institution and prosecution of such suit or proceeding unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

(d) (1) For the purposes of this section, an "express warranty" is created as follows:

(A) Any affirmation of fact or promise made by a supplier to the purchaser which relates to a consumer product or service and becomes part of the basis of the bargain creates an express warranty that the consumer product or service shall conform to the affirmation or promise.

(B) Any description of a consumer product which is made part of the bargain creates an express warranty that the consumer product shall conform to the description.

(C) Any sample or model which is made part of the basis of the bargain creates an express warranty that the consumer product shall conform to the sample or model.

It is not necessary to the creation of an express warranty that the supplier use formal words such as "warranty" or "guaranty" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the consumer product or service or a statement purporting to be merely the supplier's opinion or commendation of the consumer product or service does not create a warranty.

(2) Only the supplier actually making an affirmation of fact or promise, a description, or providing a sample or model shall be deemed to have created an express warranty under this section and any rights arising thereunder may only be enforced against such supplier and no other supplier.

GOVERNMENT ENFORCEMENT

SEC. 111. (a) It shall be unlawful and a violation of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 56(a)(1)) for any person (including any partnership, corporation, or association) subject to the provisions of this title to fail to comply with any requirement imposed on such person by or pursuant to this title or to violate any prohibition contained in this title.

(b) (1) The district courts of the United States shall have jurisdiction to restrain violations of this title in an action by the Attorney General or by the Commission by any of its attorneys designated by it for such purpose. Upon a proper showing, and after notice to the defendant, a temporary restraining order or preliminary injunction may be granted without bond under the same conditions and principles as injunctive relief against conduct or threatened conduct that will cause loss or damage is granted by courts of equity: *Provided, however*, That if a complaint is not filed within such period as may be specified by the court after the issuance of the restraining order or preliminary injunction, the order or injunction may, upon motion, be dissolved. Whenever it appears to the court that the ends of justice require that other persons should be parties in the action, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and to that end process may be served in any district.

(2) Civil Investigative Demands.

(i) Whenever the Attorney General has reason to believe that any person under investigation may be in possession, custody, or control of any documentary material, relevant to any violation of this title, he may, prior to the institution of a proceeding under this section cause to be served upon such person, a civil investigative demand requiring such person to produce the documentary material for examination.

(ii) Each such demand shall—

(1) state the nature of the conduct alleged to constitute the violation of this title which is under investigation;

(2) describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4) identify the custodian to whom such material shall be furnished.

(iii) No demand shall—

(1) contain any requirement which would be held unreasonable if contained in a subpena duces tecum issued by a court of the United States in a proceeding brought under this section; or

(2) require the production of any documentary evidence, which would be privileged from disclosure if demanded by a subpena duces tecum issued by a court of the United States in any proceeding under this section.

(iv) Any such demand may be served at any place within the territorial jurisdiction of any court of the United States.

(v) Service of any such demand or of any petition filed under subparagraph (vii) of this section may be made upon a person, partnership, corporation, association, or other legal entity by—

(1) delivering a duly executed copy thereof to such person or to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, partnership, corporation, association, or entity;

(2) delivering a duly executed copy thereof to the principal office or place of business of the person, partnership, corporation, association or entity to be served; or

(3) depositing such copy in the United States mails, by registered or certified mail duly addressed to such person, partnership, corporation, association, or entity at its principal office or place of business.

(vi) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(vii) The provisions of sections 4 and 5 of the Antitrust Civil Process Act (15 U.S.C. 1313, 1314) shall apply to custodians of material produced pursuant to any demand and to judicial proceedings for the enforcement of any such demand made pursuant to this section: *Provided, however*, That documents and other information obtained pursuant to any civil investigative demand issued hereunder and in the possession of the Department of Justice may be made available to duly authorized representatives of the Commission for the purpose of investigations and proceedings under this title and under the Federal Trade Commission Act subject to the limitations upon use and disclosure contained in section 4 of the Antitrust Civil Process Act (15 U.S.C. 1313).

SAVING PROVISION

SEC. 112. Nothing contained in this title shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or any statute defined therein as an Antitrust Act.

SCOPE

SEC. 113. (a) The provisions of this title and the powers granted hereunder to the Commission and Attorney General shall extend to all sales of consumer products and service contracts affecting interstate commerce.

(b) Labeling, disclosure, or other requirements of a State with respect to written warranties and performance thereunder, inconsistent with those set forth in sections 102 103, or 104 of this title or with rules and regulations of the Commission issued in accordance with the procedures set forth in section 109 of this title, or with guidelines of the Commission shall not be applicable to warranties complying therewith. However, if, upon application of an appropriate State agency, the Commission determines (pursuant to rules issued in accordance with the Federal Trade Commission Act, as amended) that any requirement of such State (other than a labeling or disclosure requirement) covering any transaction to which this title applies (1) affords protection to consumers greater than the requirements of this title and (2) does not unduly burden interstate commerce, then transactions complying with any such State requirement shall be exempt from the provisions of this title to the extent specified in such determination for as long as the State continues to administer and enforce effectively any such greater requirement.

(c) Nothing in this title shall be construed to supersede any provision of State law regarding consequential damages for injury to the person.

EFFECTIVE DATE

SEC. 114. (a) Except for the limitations in subsection (b) of this section, this title shall take effect six months after the date of its enactment but shall not apply to consumer products manufactured prior to such effective date.

(b) Those requirements in this title which cannot be reasonably met without the promulgation of rules by the Commission shall take effect six months after the final publication of such rules: *Provided*, That the Commission, for good cause shown, may provide designated classes of suppliers up to an additional six months to bring their written warranties into compliance with rules promulgated pursuant to this title.

(c) The Commission shall promulgate initial rules for initial implementation of this title including guidelines for establishment of informal dispute settlement procedures pursuant to section 110(a) as soon as possible after enactment but in no event later than one year after the date of enactment.

TITLE II—FEDERAL TRADE COMMISSION IMPROVEMENTS

SEC. 201. Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is amended by striking out the words "in commerce" wherever they appear and inserting in lieu thereof "affecting commerce".

SEC. 202. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by inserting after paragraph (6) thereof the following new paragraph:

"(7) The Commission may initiate civil actions in the district courts of the United States against persons, partnerships, or corporations engaged in any act or practice which is unfair or deceptive to a consumer and is prohibited by subsection (a)(1) of this section with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair and deceptive and is prohibited by subsection (a)(1) of this section, to obtain a civil penalty of not more than $10,000 for each violation. The Commission may compromise, mitigate, or settle any action for a civil penalty if such settlement is accompanied by a public statement of its reasons and approved by the court.

SEC. 203. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by inserting after paragraph (7) as added by section 202 of this Act the following new paragraph:

"(8) After an order of the Commission to cease and desist from engaging in acts or practices which are unfair or deceptive to consumers and proscribed by section 5(a)(1) of this Act has become final as provided in subsection (g) of this section, the Commission, by any of its attorneys designated by it for such purpose, may institute civil actions in the district courts of the United States to obtain such relief as the court shall find necessary to redress injury to consumers caused by the acts or practices which were the subject of the cease and desist order, including but not limited to, recision or reformation of contracts, the refund of money or return of property, public notification of the violation, and the payment of damages. No action may be brought by the Commission under this subsection more than two years after an order of the Commission upon which such action is based has become final."

SEC. 204. Section 5(l) of the Federal Trade Commission Act (15 U.S.C. 4(l)) is amended by striking subsection (l) and inserting in lieu thereof the following new paragraph:

"(l) Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States or the Commission in its own name by any of its attorneys designated by it for such purpose. Each separate violation of such an order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the Commission each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission."

SEC. 205. Section 6 of the Federal Trade Commission Act (15 U.S.C. 46) is amended by striking out the words "in commerce" wherever they appear and inserting in lieu thereof "in or whose business affects commerce".

SEC. 206. Section 6(g) of the Federal Trade Commission Act (15 U.S.C. 46(g)) is amended by striking subsection (g) and inserting in lieu thereof the following:

"(g) From time to time to classify corporations and to make rules and regulations for the purposes of carrying out the provisions of this Act. Such rules and regulations as are specifically provided for hereinafter shall be promulgated in the following manner and shall have the stated substantive force and effect:

"(1) The Commission is authorized to issue procedural rules to carry out the provisions of this Act. Any such rule shall be promulgated in accordance with section 553 of title 5 of the United States Code and without regard to the exemption in subsection (b) thereof for rules of agency procedure or practice.

"(2) The Commission is hereby authorized to issue legislative rules defining with specificity acts or practices which are unfair or deceptive to consumers and which section 5(a)(1) of this Act proscribes.

"(i) When issuing legislative rules the Commission shall (a) issue an order of proposed rulemaking stating with particularity the reason for the rule; (b) allow interested persons at least thirty days to comment on the proposed rule in writing or at an agency hearing and make all such comments publicly available; (c) provide the Commission staff and other persons an opportunity to respond within a designated period of time to comments initially received and make such responses publicly available; (d) if on the basis of the record compiled in accordance with subparagraphs (a), (b), and (c) there is a disparity of views concerning material facts upon which the proposed rule is based, provide for an agency hearing in accordance with sections 556 and 557 of title 5 of the United States Code; (e) promulagte a final rule based on the record compiled in accordance with subparagraphs (b), (c), and, if applicable, subparagraph (d) of this paragraph.

"(ii) Following the final promulgation by the Commission of any legislative rule that rule and a brief in its support based upon the Commission proceedings shall be referred to the House of Representatives and the Senate. If within sixty calendar days (which sixty days, however, shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than thirty calendar days to a day certain) from the date of referral the Senate or the House of Representatives by resolution do not disapprove the rule, it shall become effective.

"(iii) Following the final promulgation by the Commission of any legislative rule, any interested person may, at any time prior to the tenth day after the expiration of the period for review as provided in subparagraph (ii) of this paragraph, file a petition for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Chairman of the Commission or the officer designated by him for that purpose. The Commission shall file in the court the record of the proceedings on which the Commission based its rule as provided in section 2112 of title 28 of the United States Code.

"(iv) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there was no opportunity to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Commission in a hearing or in such other manner, and upon such terms and conditions, as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file any such modified or new findings, and its recommendation, if any, for the modification or setting aside of its original determination, with the return of such additional evidence. Upon the filing of the petition the court shall have jurisdiction to review the determination of the Commission in accordance with chapter 7 of title 5 of the United States Code, including that provision requiring the rule to be supported by substantial evidence on the basis of the entire record before the court (including any additional evidence adduced).

"(v) Any legislative rule which has become final shall have prospective application only.

"(vi) Nothing in this Act shall be deemed to foreclose judicial review of a legislative rule when the Commission issues a final order based upon such rule.

"(3) Any person seeking judicial review of a rule may obtain such review in the United States Court of Appeals for the District of Columbia Circuit, or any circuit where such person resides or has his principal place of business."

SEC. 207. Section 9 of the Federal Trade Commission Act (15 U.S.C. 49) is amended by—

(a) deleting the word "corporation" in the first sentence of the first unnumbered paragraph and inserting in lieu thereof the word "party".

(b) inserting after the word "Commission" in the second sentence of the second unnumbered paragraph the phrase "acting through any of its attorneys designated by it for such purpose";

(c) deleting the fourth unnumbered paragraph and inserting in lieu thereof the following:

"Upon application of the Attorney General of the United States or the Commission, acting through any of its attorneys designated by it for such purpose, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the Commission made in pursuance thereof."

SEC. 208. Section 10 of the Federal Trade Commission Act (15 U.S.C. 50) is amended by deleting the third unnumbered paragraph and inserting in lieu thereof the following:

"If any corporation required by this Act to file any annual or special report shall fail to do so within the time fixed by the Commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States and shall be recoverable in a civil suit brought by the United States or by the Commission, acting through any of its attorneys designated by it for such purpose, in the district where the corporation has its principal office or in any district in which it shall do business."

SEC. 209. Section 12 of the Federal Trade Commission Act (15 U.S.C. 52) is amended by striking out the words "in commerce" wherever they appear and inserting in lieu thereof "in or having an effect upon commerce."

SEC. 210. Section 13 of the Federal Trade Commission Act (15 U.S.C. 53) is amended by redesignating "(b)" as "(c)" and inserting the following new subsection:

"(b) Whenever the Commission has reason to believe—

"(1) that any person, partnership, or corporation is engaged in, or is about to engage in, any act or practice which is unfair or deceptive to a consumer, and is prohibited by section 5, and

"(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 5, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission made thereon has become final within the meaning of section 5, would be to the interest of the public—

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond under the same conditions and principles as injunctive relief against conduct or threatened conduct that will cause loss or damage is granted by courts of equity: *Provided, however,* That if a complaint under section 5 is not filed within such period as may be specified by the court after the issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business."

SEC. 211. Nothing in this title shall be construed to give the Commission authority over the Federal National Mortgage Association, the National Corporation for Housing Partnerships or any financial institution which is subject to regulation by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration or the Federal Home Loan Bank Board against acts or practices unfair or deceptive to consumers.

TITLE III—CONSUMER REMEDIES STUDY

SEC. 301. (a) The Director of the Office of Consumer Affairs, in consultation with and with the assistance of the Attorney General of the United States, is authorized to contract with the National Institute for Consumer Justice (hereafter referred to as the "Institute"), a nonprofit corporation of the District of Columbia, to conduct a study or studies of means for improving the grievance-solving mechanisms and legal remedies of consumers, including but not limited to the following:

(1) methods of preventing consumer grievances from arising and of improving seller-buyer and debtor-creditor relationships;

(2) existing and potential voluntary settlement procedures, including arbitration; and

(3) the desirability of establishment of a nationwide system of small claims tribunals.

(b) The Director of the Office of Consumer Affairs shall, within eighteen months of the enactment of this Act, submit a final report on such study or studies to the President and to Congress along with its recommendations, if any, for legislation.

SEC. 302. (a) The Institute and each recipient of a contract from the Institute under this title shall keep such records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Comptroller General of the United States, or any of his duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of any funds provided under this title as are pertinent to the disposition and use of such funds.

SEC. 303. There is authorized to be appropriated $500,000 to carry out the provisions of this title.

SEPARABILITY

SEC. 304. If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

The title was amended so as to read:

A bill to provide disclosure standards for written consumer product warranties against defect or malfunction; to define Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes.

Mr. MAGNUSON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD of Virginia. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. EAGLETON. Mr. President, if any common bond ties all Americans together, it is the fact that we are all consumers. While a lot of attention has been focused on the need for more consumer protection—every consumer has some legitimate complaints—little action has been taken. In the past few days, however, the Senate has shown a strong interest in consumer protection by passing two highly significant measures.

High on the list of consumer gripes has been the fragility of automobiles and the high cost of automobile repair. A 3-year study of automobile repair problems recently completed by Senator HART'S Antitrust and Monopoly Subcommittee revealed that we car owners have every reason to complain. That study indicated that Americans spend about $25 to $30 billion annually repairing their cars—$8 to $10 billion of which is charged for work that is unnecessary, improperly performed, or never done at all.

More than that, much of this expense could be eliminated if the automobile manufacturers were willing to make structural and design improvements which would allow cars to withstand minor collisions without damage.

Experience has shown, however, that they will not do so on their own initiative.

Tests show, for example, that several current model cars suffer $200 damage when driven into a solid barrier at only 5 miles per hour. Yet Members of the Senate saw a demonstration in which a current model car equipped with a special bumper suffered no damage at all in a crash at twice that speed. Clearly this is an area ripe for reform.

With this information before me, I enthusiastically supported the Motor Vehicle Information and Cost Savings Act when it passed the Senate last week. If approved by the House and signed by the President, it will save car owners literally billions of dollars in repairs each year.

The Secretary of Transportation has previously been charged with the responsibility for setting minimum safety standards for cars. This bill gives him the additional task of setting standards to insure "property loss reduction" in case of minor crashes. The result should be lower repair costs, lower insurance rates, and hopefully an awakening on the part of automobile manufacturers to their own responsibility in this area.

Significantly, this is the first bill to provide criminal penalties for automobile manufacturers who knowingly violate standards. And any car owner who suffers economic loss, because his car failed to meet these standards can sue the manufacturer to recover not only his losses, but his court costs, as well.

I am pleased that the Senate voted against an administration-supported amendment to strike this standards provision from the bill and that only four dissenting votes were cast when the bill finally passed.

No less significant is the bill we have just passed today, the Consumer Product Warranties and Federal Trade Commission Improvements Act. Here again we have undertaken to reform a particularly troublesome area for consumers, that of product warranties. Hopefully, it will pass into law and spare consumers the familiar frustration of being done in by the fine print.

The bill strikes an admirable balance between the right of business to be free of undue harassment and the right of the consumer to know precisely what the

terms of his purchase are. The supplier does not have to warrant his products—but if he chooses to, he has to make perfectly clear what the terms and conditions of that warranty are. If he wants the competitive advantage of a "full warranty" label, he must agree to repair or replace defective products within a reasonable time and without charge.

I am especially pleased that the Senate voted to close one glaring loophole for avoiding responsibility for defects. At one time or another everyone has been chagrined to find that a warranty has been issued "in lieu of any implied warranty of merchantability or fitness and of any other obligation on the part of the seller." In other words, the consumer would have been better off with no warranty at all. If this bill is signed into law, there will be no more disclaimers of this kind allowed.

We have also voted to make the Federal Trade Commission more than a hand-slapping agency. Today the FTC has nothing more than cease-and-desist authority, clearly inadequate in the face of unfair and deceptive practices by manufacturers and suppliers. Under the bill we have approved, however, the FTC is given not only the power to issue injunctions to insure that these practices are stopped immediately, but also the power to take manufacturers to court on behalf of aggrieved consumers if they choose to do so.

This bill by no means undercuts the need for either the independent consumer agency or the class action bill, both of which I support. It is an indication, however, that the Senate is willing to move toward a stronger consumer voice both in the bureaucracy and in the courts.

REVENUE ACT OF 1971—AMENDMENT

AMENDMENT NO. 628

(Ordered to be printed and to lie on the table.)

Mr. MAGNUSON. Mr. President, today, I am submitting an amendment to H.R. 10947 and ask that it lie on the table. I also ask unanimous consent for the text of the amendment to be printed in full at this point. The amendment is introduced on behalf of myself, Senator RIBICOFF, Senator JACKSON, Senator MCGOVERN, Senator KENNEDY, Senator BAYH, Senator MUSKIE, Senator WILLIAMS, Senator HUMPHREY, Senator WEICKER, Senator STEVENS, Senator METCALF, Senator GRAVEL, Senator BROOKE, Senator TUNNEY, Senator NELSON, and others. I intend to submit a complete list of cosponsors when I call up this amendment for floor action.

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

AMENDMENT NO. 628

At the end of the table of contents of the bill, insert the following:

TITLE VIII—EMERGENCY UNEMPLOYMENT COMPENSATION

Sec. 801. Short title.
Sec. 802. Federal-State agreements.
Sec. 803. Payments to States having agreements for the payment of emergency compensation.
Sec. 804. Financing provisions.
Sec. 805. Definitions.

At the end of the bill, add the following new title:

TITLE VIII—EMERGENCY UNEMPLOYMENT COMPENSATION

SHORT TITLE

Sec. 801. This title may be cited as the "Emergency Unemployment Compensation Act of 1971".

FEDERAL-STATE AGREEMENTS

SEC. 802. (a) Any State, the State unemployment compensation law of which is approved by the Secretary of Labor (hereinafter in this title referred to as the "Secretary under Section 3304 of the Internal Revenue Code of 1954, which desires to do so, may enter into and participate in an agreement with the Secretary under this title, if such State law contains (as of the date such agreement is entered into) a requirement that extended compensation be payable thereunder as provided by the Federal-State Extended Unemployment Compensation Act of 1970. Any State which is a party to an agreement under this title may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

(b) Any such agreement shall provide that the State agency of the State will make payments of emergency compensation—

(1) to individuals who—

(A) (i) have exhausted all rights to regular compensation under the State law;

(ii) have exhausted all rights to extended compensation, or are not entitled thereto, because of the ending of their eligibility period for extended compensation, in such State;

(B) have no rights to compensation (including both regular compensation and extended compensation) with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law; and

(C) are not receiving compensation with respect to such week under the unemployment compensation law of the Virgin Islands or Canada;

(2) for any week of unemployment which begins in—

(A) an emergency extended benefit period (as defined in subsection (c) (3)); and

(B) the individual's period of eligibility (as defined in section 805 (b)).

(c) (1) For purposes of subsection (b) (1) (A), an individual shall be deemed to have exhausted his rights to regular compensation under a State law when—

(A) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to him based on employment or wages during his base period; or

(B) his rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(2) For purposes of subsection (b) (1) (B), an individual shall be deemed to have exhausted his rights to extended compensation under a State law when no payments of extended compensation under a State law can be made under such law because such individual has received all the extended compensation available to him from his extended compensation account (as established under State law in accordance with section 202 (b) (1) of the Federal-State Extended Unemployment Compensation Act of 1970).

(3) (A) (i) For purposes of subsection (b) (2) (A), in the case of any State, an emergency extended benefit period—

(I) shall begin with the third week after a week for which there is a State "emergency on" indicator; and

(II) shall end with the third week after the first week for which there is a State "emergency off" indicator.

(ii) In the case of any State, no emergency extended benefit period shall last for a period of less than 26 consecutive weeks.

(iii) When a determination has been made that an emergency extended benefit period is beginning or ending with respect to any State, the Secretary shall cause notice of such determination to be published in the Federal Register.

(B) (i) For purposes of subparagraph (A), there is a State "emergency on" indicator for a week if—

"(I) the rate of unemployment (as determined under subparagraph (C)) in the State for the period consisting of such week and the immediately preceding twelve weeks equaled or exceeded 7.5 per centum; and

"(II) there (a) is a State or National "on" indicator for such week (as determined under subsections (d) and (e) of section 203 of the Federal-State Extended Unemployment Compensation Act of 1970), or (b) there is neither a State or National "on" indicator for such week (as so determined), but (1) within the 52-week period ending with such week there has been a State or National "on" indicator for a week (as so determined), and (2) there would be a State "on" indicator for such week except for the provisions of section 203 (e) (1) (A) of the Federal-State Extended Unemployment Compensation Act of 1970.

(ii) For purposes of subparagraph (A), there is a State "emergency off" indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, the rate of unemployment (as determined under subparagraph (C)) is less than 7.5 per centum.

(C) (i) For purposes of subparagraph (B), the term "rate of unemployment" means—

(I) the rate of insured employment (as determined under section 203(f) of the Federal-State Extended Unemployment Compensation Act of 1970, plus

(II) the 13-week exhaustion rate (as determined under clause (ii)).

(iii) The "13-week exhaustion rate" shall be equal to—

(I) 25 percent of the sum of the exhaustions, during the most recent 12 calendar months ending before the week with respect to which such rate is computed, of regular compensation under the State law, divided by

(II) the average monthly covered employment (as that term is used in section 203 (f) of the Federal-State Extended Unemployment Act of 1970) of the State with respect to the 13-week period referred to in subparagraph (B) (ii).

(d) For purposes of any agreement under this title—

(1) the amount of the emergency compensation which shall be payable to any individual for any week of total unemployment shall be equal to the amount of the regular compensation (including dependents' allowances) payable to him during his benefit year under the State law; and

(2) the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall (except where inconsistent with the provisions of this title or regulations of the Secretary promulgated to carry out this title) apply to claims for emergency compensation and the payment thereof.

(e) (1) Any agreement under this title with a State shall provide that the State will establish, for each eligible individual who files an application for emergency compensation, an emergency compensation account.

(2) The amount established in such account for any individual shall be equal to the lesser of—

(A) 100 per centum of the total amount of regular compensation (including dependents' allowances) payable to him with respect to the benefit year (as determined under the State law) on the basis of which he most recently received regular compensation; or

(B) twenty-six times his average weekly benefit amount (as determined for purposes of section 202 (b) (1) (C) of the Federal-State Extended Unemployment Compensation Act of 1970) for his benefit year.

(f) No emergency compensation shall be payable to any individual under an agreement entered into under this title for any week prior to the week following the week in which such agreement is entered into, or if later, the first week beginning more than 30 days after the date of enactment of this Act.

PAYMENTS TO STATES HAVING AGREEMENTS FOR THE PAYMENT OF EMERGENCY COMPENSATION

SEC. 803. (a) (1) There shall be paid to each State which has entered into an agreement under this title an amount equal to—

(A) 100 per centum of the emergency compensation paid prior to July 1, 1973, to individuals by the State pursuant to such agreement; and

(B) 80 per centum of the emergency compensation paid after June 30, 1973, to individuals by the State pursuant to such agreement.

(b) No payment shall be made to any State under this section in respect of compensation for which the State is entitled to reimbursement under the provisions of any Federal law other than this title.

(c) Sums payable to any State by reason of such State's having an agreement under this title shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

FINANCING PROVISIONS

SEC. 804. (a) (1) Funds in the extended unemployment compensation account (as established by section 905 of the Social Security Act) of the Unemployment Trust Fund shall be used for the making of payments to States having agreements entered into under this title.

(2) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this title. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payment to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as established by section 905 of the Social Security Act) to the account of such State in the Unemployment Trust Fund.

(b) Section 3301 of the Internal Revenue Code of 1954 is amended—

(1) by inserting "(except as otherwise provided in the succeeding sentence)" immediately after "equal"; and

(2) by adding at the end thereof the following new sentence: "In applying the preceding sentence for the calendar year 1972 and the calendar year 1973, the rate of tax shall, in lieu of 3.2 percent, be 3.275 percent."

(c) The first sentence of section 905(b) (1) of the Social Security Act is amended by striking out "and in the case of any month after March 1972, to one-tenth," and inserting in lieu thereof "in the case of any month after March 1972 and before April 1974, to seven twenty-thirds, and in the case of any month after March 1974, to one-tenth,".

(d) Section 901(c) (1) (B) of the Social Security Act is amended—

(1) by striking out "and" at the end of clause (iv);

(2) by striking out the period at the end of clause (v) and inserting in lieu thereof "; and "; and

(3) by inserting after clause (v) the following new clause:

"(vi) an agreement entered into under the Emergency Unemployment Compensation Act of 1971.".

DEFINITIONS

Sec. 805. For purposes of this title—

(a) the terms "compensation", "regular compensation", "extended compensation", "base period", "benefit year", "State", State agency", "State law", and "week" shall have the meanings assigned to them under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970;

(b) the term "period of eligibility" means, in the case of any individual, the weeks in his benefit year which begin in an extended benefit period or an emergency extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period or in such emergency extended benefit period; and

(c) the term "extended benefit period" shall have the meaning assigned to such term under section 203 of the Federal-State Extended Unemployment Compensation Act of 1970.

Mr. MAGNUSON. Mr. President, recently, the chairman of the Senate Finance Committee asked me to testify on the substance of S. 2321, the Emergency Unemployment Compensation Act of 1971, during the committee's deliberation on H.R. 10947. In that testimony, I informed the committee that, if action were not taken to include S. 2321 as an amendment when the committee marked up H.R. 10947, that I would be compelled to offer a floor amendment. The committee voted not to consider amendments dealing with "unemployment compensation," because of its desire to report a "clean" bill. I do not take this action as a rejection of the merits of my proposal, but I do feel compelled to offer the substance of S. 2321 as an amendment to H.R. 10947.

This amendment is quite simple; let me outline briefly its basic provisions:

All States that have enacted an extended unemployment compensation law pursuant to the Federal-State extended unemployment compensation agreement would be eligible to participate in the program. Individuals who have exhausted, under State law, both their regular and all extended Federal and State unemployment compensation benefits would be eligible;

An unemployment rate of 7.5 percent—insured employed—plus exhaustions—would trigger the emergency benefits in participating States;

The Federal Government would pay 100 percent of the emergency compensation paid by the State prior to July 1, 1973, and 80 percent of the compensation after June 30, 1973. This would allow the States a period of time to enact a matching requirement of 20 percent in order to maintain their eligibility.

In order to finance this amendment, section 3301 of the Internal Revenue Code of 1954 would be amended to increase the rate of tax from 3.2 to 3.275 percent in calendar year 1972 and 1973.

I think it is particularly fitting that we amend the Revenue Act of 1971 in order to provide emergency benefits to the workers who have suffered the most from past economic policies. It is certainly proper to give industry certain tax incentives but, in my judgment, we also have a duty to aid those who have lost their jobs and live in States where the rate of unemployment is the highest and where the prospects for finding a new job are the lowest. The Revenue Act of 1971 provides business with nearly $8 billion in tax incentives; this is proper if Congress also acts to aid individuals hurt by the recent recession. My amendment will cost only $338 million and will provide badly needed emergency relief to many workers who need and deserve assistance at this time. This is a responsible amendment in that a revenue raising provision has been added that will completely cover the cost of this proposal.

I want to thank my distinguished friend and colleague, the chairman of the Finance Committee, Senator LONG, for his assistance to me in this effort.

Mr. President, I ask unanimous consent that several documents be printed in the RECORD at this time.

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

TESTIMONY OF SENATOR WARREN G. MAGNUSON BEFORE THE SENATE FINANCE COMMITTEE

Mr. Chairman, I appreciate the opportunity to testify before the Senate Finance Committee on the need for enactment of an Emergency Unemployment Compensation Act. I realize that the Committee must act quickly on H.R. 10947, the Revenue Act of 1971, because of its enormous economic significance to the entire Nation. I will comment briefly on a further amendment to the Revenue Act, suggested by Senator Jackson and me dealing with regulated companies that generate or supply electricity. First, let me discuss the question of unemployment compensation.

Mr. Chairman, I am concerned because of the Committee's schedule that the hearings on the Revenue Act may present the only opportunity this year for the Finance Committee to consider the need for an Emergency Unemployment Compensation Act. Your distinguished Chairman has asked me this morning to present my case to the Committee so that you can consider this matter before reporting the Revenue Act to the Senate floor. Chairman Long realizes the significance of this measure to the State of Washington and knows how strongly I feel about the need for such an emergency measure.

As the Committee knows, Senator Jackson and I introduced S. 2321, the Emergency Unemployment Compensation Act of 1971, on July 21, 1971. This bill was introduced because of the critical situation facing 1,784,382 working Americans who exhausted all unemployment benefits during F.Y. 1971. Several hundred thousand more workers have exhausted all their benefits since July 1, 1971, the end of F.Y. 71. This number compares with 954,191 workers who exhausted all benefits during F.Y. 1970. Mr. Chairman, this represents an increase of almost ninety percent and comes at a time when the rate of unemployment, six percent, makes the prospect very bleak for unemployed workers to find new jobs.

In the State of Washington, now experiencing the Nation's highest rate of unemployment (except for Alaska) at 13 percent, 99,564 workers exhausted all benefits during F.Y. 71 as compared with 16,413 during F.Y. 70. That is over a 500 percent increase in one year. On October 2nd, 1971, the State of Washington's emergency extended benefits program ended because the expiration date set in the original act had been reached; another 10,000 workers were cut-off from benefits on that date.

Mr. Chairman, Washington State will exhaust its entire Unemployment Compensation Trust Fund next March unless something is done by the Federal Government;

this fund totaled 322 million dollars only two years ago. I have talked with the responsible officials in Washington State and they agree that a Federal Emergency Extended Unemployment Act like I have offered presents the best short-run solution.

Let me take this opportunity to briefly outline the major provisions of S. 2321.

All states that have enacted an extended compensation law pursuant to the Federal-State Extended Unemployment Compensation agreement are eligible for this emergency measure. Individuals are eligible who have exhausted, under State law, both their regular and all extended federal and state employment compensation benefits;

An unemployment rate of 7.5 percent (insured unemployed plus exhaustions) would trigger the emergency benefits in participating states;

The Federal Government shall pay 100 per centum of the emergency compensation paid by the State prior to July 1, 1973 and 80 per centum of the compensation after June 30, 1973. This allows the States a period of time to enact a matching requirement of 20 per centum in order to maintain their eligibility;

A tax increase of .75 percent from employers will be levied to finance the "Emergency Unemployment Compensation Act of 1971"; an increase from 3.2 per cent to 3.275 per cent.

Mr. Chairman, I must emphasize to the Committee that Washington State is suffering a regional depression. The churches in Seattle feed 8,000 hungry people a week. 12,000 hungry citizens are turned away because there simply is not enough donated food available. The Department of Agriculture will not allow surplus commodities to be distributed to these people because Washington State has an existing food stamp program. Agriculture officials callously state that these hungry people have an "income maintenance" problem that cannot be solved by giving them free food.

This policy certainly will not help those in need who have exhausted all unemployment compensation benefits and are employable; these people do not qualify for welfare benefits in Washington State.

Mr. Chairman, I urge the Senate Finance Committee to consider adding an Emergency Extended Compensation Act to the bill presently being considered. I believe that it will provide a relief measure to those hardest hit by recent economic policies. Some economists have criticized the proposed economic incentives as being too heavily weighted in favor of business. Adding an Emergency Extended Compensation Amendment would certainly help to balance these incentives and at the same time provide additional purchasing power to several hundred thousand workers. Mr. Chairman, I urge the Committee to adopt this measure which would bring immediate assistance to workers who have already exhausted all unemployment benefits, live in states with the highest rate of unemployment and face the bleakest prospects for finding a job.

ES-213 REPORT CLAIMS AND PAYMENTS ACTIVITIES—STATE UI, NUMBER OF FINAL PAYMENTS FOR ALL UNEMPLOYMENT—PERIOD ENDING JUNE 1971

	Cumulative to date			12 month cumulative		
	Calendar year			Fiscal year		
	Current 1971	Year ago 1970	Percent change, year ago	Current 1971	Year ago 1970	Percent change, year ago
Alabama	12,599	8,110	55.4	23,421	14,283	64.0
Alaska	2,595	1,457	78.1	4,063	2,258	79.9
Arizona	5,551	2,304	100.0	9,351	3,975	100.0
Arkansas	8,525	6,067	40.5	14,743	9,467	55.6
California	195,103	105,715	84.6	326,773	173,794	88.0
Colorado	2,762	1,802	53.3	4,805	2,782	72.7
Connecticut	22,639	10,750	100.0	[1] 39,622	18,614	100.0
Delaware	2,409	1,383	74.2	3,918	2,293	70.9
District of Columbia	2,801	1,663	68.4	5,061	2,991	69.2
Florida	18,774	10,107	85.8	38,670	22,925	68.7
Georgia	15,123	8,668	74.5	27,619	14,972	84.5
Hawaii	3,671	1,496	100.0	6,056	2,663	100.0
Idaho	3,564	3,193	11.6	5,575	4,457	25.1
Illinois	49,893	26,167	90.7	84,762	42,921	97.5
Indiana	29,523	17,327	70.4	48,055	25,469	88.7
Iowa	10,933	6,573	66.3	17,613	9,819	79.4
Kansas	11,093	4,974	100.0	20,367	8,162	100.0
Kentucky	9,576	7,723	24.0	16,705	12,411	34.4
Louisiana	16,635	13,853	20.1	32,059	24,284	32.0
Maine	8,763	4,713	85.9	13,479	7,393	82.3
Maryland	11,311	5,550	100.0	19,599	9,414	100.0
Massachusetts	45,781	18,352	100.0	76,173	35,094	100.0
Michigan	64,303	35,272	82.3	105,046	52,343	100.0
Minnesota	23,777	11,221	100.0	35,836	15,092	100.0
Mississippi	4,856	3,539	37.2	8,509	5,790	47.0
Missouri	20,013	11,317	76.8	33,580	17,501	91.9
Montana	3,055	2,530	20.8	5,015	3,755	33.6
Nebraska	4,418	2,435	81.4	6,991	3,617	93.3
Nevada	4,138	2,376	74.0	6,935	3,805	82.1
New Hampshire	1,162	125	100.0	1,665	158	100.0
New Jersey	23,129	32,377	−28.6	[1] 53,346	57,834	−7.8
New Mexico	2,807	1,628	72.4	5,295	2,772	91.0
New York	96,334	43,857	100.0	163,605	80,852	100.0
North Carolina	12,186	7,923	53.8	21,422	12,709	68.6
North Dakota	1,191	795	49.8	1,608	1,075	49.6
Ohio	33,248	11,788	100.0	53,231	18,094	100.0
Oklahoma	10,626	5,039	100.0	18,173	8,893	100.0
Oregon	12,167	7,114	71.0	21,866	10,703	100.0
Pennsylvania	33,135	16,426	100.0	64,316	29,449	100.0
Rhode Island	10,099	4,831	100.0	16,921	8,457	100.0
South Carolina	10,486	6,659	57.5	17,736	11,616	52.7
South Dakota	1,189	901	32.0	1,894	1,246	52.0
Tennessee	20,232	12,318	64.2	35,320	21,173	66.8
Texas	30,641	14,931	100.0	51,540	24,346	100.0
Utah	4,274	3,457	23.6	7,024	5,432	29.3
Vermont	2,217	598	100.0	3,384	1,096	100.0
Virginia	6,700	4,567	46.7	11,184	7,034	59.0
Washington	54,294	14,359	100.0	99,564	16,413	100.0
West Virginia	3,516	2,862	22.9	7,035	5,208	35.1
Wisconsin	16,638	9,008	84.7	25,444	12,876	97.9
Wyoming	648	460	40.9	916	686	33.5
Puerto Rico	20,616	21,528	−4.2	38,272	39,849	−4.0
Do	5,862	5,570	5.2	22,979	23,868	−3.7
Do	26,478	27,098	−2.3	61,251	63,717	−3.9
Virgin Islands	0	0	.0	0	0	.0
U.S. total [2]	1,026,724	560,690	83.1	[1] 1,761,353	930,323	89.3
U.S. total [3]	1,032,586	566,260	82.4	[1] 1,784,332	954,191	87.0

[1] Preliminary total 1,797,061.
[2] Payment for unemployed under regular State program excluding data for sugarcane workers.
[3] Sugarcane workers only.

ES-213 REPORT CLAIMS AND PAYMENTS ACTIVITIES STATE UI, NUMBER OF FINAL PAYMENTS FOR ALL UNEMPLOYMENT, PERIOD ENDING AUGUST 1971

State	Current period				Year ago period				Percent change from month ago	Percent change from year ago
	June 1971	July 1971	August 1971	June–August 1971	June 1970	July 1970	August 1970	June–August 1970		
Alabama	1,980	2,068	2,039	6,087	1,644	1,898	1,726	5,268	−1.4	18.1
Alaska	507	331	328	1,166	254	204	194	682	−.9	69.1
Arizona	868	725	787	2,380	477	480	515	1,472	8.6	52.8
Arkansas	1,308	1,299	1,050	3,657	1,073	1,326	868	3,267	−19.2	21.0
California	36,423	23,965	29,681	90,069	22,305	15,969	20,950	59,224	23.9	41.7
Colorado	427	466	402	1,295	288	325	343	956	−13.7	17.2
Connecticut	0	0	0	0	2,058	2,793	2,235	7,086	.0	−100.0
Delaware	448	487	407	1,342	290	168	224	682	−16.4	81.7
District of Columbia	581	535	460	1,576	332	365	328	1,025	−14.0	40.2
Florida	3,623	4,008	3,716	11,347	2,604	2,945	2,835	3,384	−7.3	31.1
Georgia	2,503	2,795	2,192	7,490	1,764	2,407	1,798	5,969	−21.6	21.9
Hawaii	661	789	816	2,266	234	373	323	930	3.4	100.0
Idaho	561	402	313	1,276	421	440	244	1,105	−22.1	28.3
Illinois	9,052	8,594	8,572	26,218	5,524	5,661	5,747	16,932	−.3	49.2
Indiana	5,641	3,347	3,183	12,171	3,495	3,822	2,747	10,064	−4.9	15.9
Iowa	1,815	1,506	1,402	4,723	1,158	1,331	979	3,468	−6.9	43.2
Kansas	1,581	2,043	1,531	5,155	1,143	1,477	1,603	4,223	−25.1	−4.5
Kentucky	1,582	1,767	1,867	5,216	1,686	1,377	1,439	4,502	5.7	29.7
Louisiana	2,695	3,006	2,625	8,326	2,277	2,822	2,740	7,839	−12.7	−4.2
Maine	1,473	1,246	1,213	3,932	718	773	678	2,169	−2.6	78.9
Maryland	1,989	2,420	2,114	6,523	1,152	1,674	1,108	3,934	−12.6	90.8
Massachusetts	10,086	7,700	8,062	25,843	3,720	4,194	4,422	12,336	4.7	82.3
Michigan	9,831	7,895	8,896	26,622	7,108	6,536	6,278	19,922	12.7	41.7
Minnesota	3,785	2,724	2,532	9,041	2,102	1,871	1,684	5,657	−7.0	50.4
Mississippi	781	793	758	2,332	772	821	697	2,290	−4.4	8.8
Missouri	3,176	3,615	2,818	9,609	2,623	2,335	2,051	7,009	−22.0	37.4
Montana	510	395	359	1,264	433	447	287	1,167	−9.1	25.1
Nebraska	606	623	508	1,737	416	496	373	1,285	−18.5	36.2
Nevada	818	753	638	2,209	410	460	439	1,309	−15.3	45.3
New Hampshire	6	0	0	6	1	2	2	5	0	−100.0
New Jersey	0	0	0	0	4,831	5,181	4,859	14,871	0	−100.0

ES-213 REPORT CLAIMS AND PAYMENTS ACTIVITIES STATE UI, NUMBER OF FINAL PAYMENTS FOR ALL UNEMPLOYMENT, PERIOD ENDING AUGUST 1971—Continued

State	Current period				Year ago period				Percent change from month ago	Percent change from year ago
	June 1971	July 1971	August 1971	June–August 1971	June 1970	July 1970	August 1970	June–August 1970		
New Mexico	444	434	449	1,327	314	401	352	1,067	3.5	27.6
New York	18,137	20,398	18,965	57,500	8,684	10,227	9,419	28,330	−7.0	100.0
North Carolina	2,463	2,457	2,139	7,059	1,766	1,828	1,636	5,230	−12.9	30.7
North Dakota	240	134	167	541	154	60	66	280	24.6	100.0
Ohio	6,800	6,247	5,584	18,631	3,071	3,293	3,161	9,525	−10.6	76.7
Oklahoma	1,970	1,815	1,650	5,435	909	1,038	1,012	2,959	−9.1	63.0
Oregon	2,003	1,306	1,597	4,906	1,467	1,728	1,442	4,637	22.3	10.7
Pennsylvania	7,712	6,962	7,761	22,435	3,246	3,602	3,884	10,732	11.5	99.8
Rhode Island	1,673	1,727	0	3,400	819	1,091	930	2,840	−100.0	−100.0
South Carolina	1,491	1,772	1,664	4,927	1,212	51	1,532	2,795	−6.1	8.6
South Dakota	94	141	95	330	108	123	101	332	−32.6	−5.9
Tennessee	3,278	2,947	2,546	8,771	2,624	2,726	2,511	7,861	−13.6	1.4
Texas	4,973	4,981	4,682	14,636	2,745	3,515	3,228	9,488	−6.0	45.0
Utah	591	556	530	1,677	517	484	405	1,406	−4.7	30.9
Vermont	521	449	399	1,369	139	178	183	500	−11.1	100.0
Virginia	1,261	1,303	990	3,554	824	1,122	892	2,838	−24.0	11.0
Washington	8,616	8,624	8,154	25,394	896	3,717	5,217	9,830	−5.4	56.3
West Virginia	572	702	632	1,906	583	746	642	1,971	−10.0	−1.6
Wisconsin	2,494	2,219	1,904	6,617	1,420	1,288	1,062	3,770	−14.2	79.3
Wyoming	93	62	53	208	65	59	24	148	−14.5	100.0
Puerto Rico	3,520	3,343	4,163	11,026	3,639	3,628	3,284	10,551	24.5	26.8
Do.	36	73	17	126	22	62	1	85	−76.7	100.0
Do.	3,556	3,416	4,180	11,152	3,661	3,690	3,285	10,636	22.4	27.2
Virgin Islands	0	0	0	0	0	0	0	0	0	0
U.S. total/2	[1] 174,263	[2] 154,876	[3] 153,393	482,532	108,515	111,878	111,699	332,092	−1.0	37.3
U.S. total/2	174,299	154,949	153,410	482,658	108,537	111,940	11,170	332,177	−1.0	37.3

[1] June excludes Connecticut and New Jersey.
[2] July excludes Connecticut, New Hampshire, and New Jersey.
[3] September excludes Connecticut, New Hampshire, New Jersey, and Rhode Island.

Note: The 1st Puerto Rico and U.S. totals include data under regular State program excluding data for sugarcane workers. 2d totals for Puerto Rico present data for sugarcane workers only. 2d U.S. totals include Puerto Rico data for both regular State and sugarcane worker programs. 3d set of data for Puerto Rico includes both regular State program and sugarcane workers.

Source: Prepared for U.I.S., division of determinations and hearings.

ADDITIONAL REPORT OF A COMMITTEE

The following additional report of a committee was submitted:

By Mr. MOSS for Mr. HART. From the Committee on Commerce.

S. 2824. An original bill to regulate interstate commerce by amending the Federal Food, Drug, and Cosmetic Act to provide for the inspection of facilities used in the harvesting and processing of fish and fishery products for commercial purposes, for the inspection of fish and fisheries products, and for cooperation with the states in the regulation of intrastate commerce with respect to State fish inspection programs, and for other purposes (S. Rep. No. 92-435) together with minority views. Placed on the calendar.

FEDERAL DEFICITS, 1963 TO 1972

Mr. BYRD of Virginia. Mr. President, during the 10-year period from fiscal year 1963 through fiscal year 1972, the Government has run a Federal funds deficit of $151 billion.

The significant part about these figures, aside from the astonishing total, is that more than one-half of this tremendous deficit has occurred in the last 3 fiscal years, including the fiscal year we are now in.

I have prepared two fiscal tables, one showing the U.S. gold holdings, total reserve assets, and liquid liabilities to foreigners, and the other showing deficits in Federal funds and interest on the national debt, 1963 to 1972, inclusive.

I ask unanimous consent that these tables be printed in the RECORD.

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

FISCAL TABLES (OCTOBER 1971)

TABLE 1.—U.S. GOLD HOLDINGS, TOTAL RESERVE ASSETS, AND LIQUID LIABILITIES TO FOREIGNERS (SELECTED PERIODS)

[In billions of dollars]

	Gold holdings	Total assets	Liquid liabilities
End of World War II	20.1	20.1	6.9
1957	22.8	24.8	15.8
1970	10.7	14.5	43.3
August 1971	10.1	12.1	[1] 46.0

[1] Estimated figure.

Source: U.S. Treasury Department.

TABLE 2.—DEFICITS IN FEDERAL FUNDS AND INTEREST ON THE NATIONAL DEBT, 1963 TO 1972 INCLUSIVE

[In billions of dollars]

	Receipts	Outlays	Deficit (−)	Debt interest
1963	83.6	90.1	−6.5	10.0
1964	87.2	95.8	−8.6	10.7
1965	90.9	94.8	−3.9	11.4
1966	101.4	106.5	−5.1	12.1
1967	111.8	126.8	−15.0	13.5
1968	114.7	143.1	−28.4	14.6
1969	143.3	148.8	−5.5	16.6
1970	143.2	156.3	−13.1	19.3
1971	133.6	163.8	−30.2	20.8
1972 [1]	143.0	178.0	−35.0	21.2
10-year total	1,152.7	1,304.0	151.3	150.2

[1] Estimated figures.

Source: Office of Management and Budget, except 1972 estimates.

EXTENSION OF TIME IN WHICH TO FILE COMMITTEE REPORTS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Committee on Commerce have until midnight tonight to file certain committee reports.

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

ORDER FOR ADJOURNMENT UNTIL 9:45 A.M.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:45 a.m. tomorrow.

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

ORDERS FOR RECOGNITION OF SENATORS, TRANSACTION OF ROUTINE BUSINESS, AND EXECUTIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that after the recognition of the two leaders tomorrow, the distinguished Senator from California (Mr. TUNNEY) be recognized for not to exceed 15 minutes, and that he be followed by the distinguished Senator from Virginia (Mr. SPONG) for not to exceed 15 minutes, at the conclusion of which time there be a period for the transaction of routine morning business for not to exceed 15 minutes; with a 3-minute limitation on statements made therein, that following which the Senate go into executive session, and that at that time the chair lay before the Senate Executive Calendar No. 11, Executive J, 92d Congress, first session.

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

ORDER FOR ADJOURNMENT FROM TOMORROW UNTIL 9 A.M. ON WEDNESDAY, NOVEMBER 10, 1971

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business tomorrow, it stand in adjournment until 9 a.m. on Wednesday.

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

ORDER FOR RECOGNITION OF SENATOR HARRIS ON WEDNESDAY

Mr. BYRD of West Virginia. I ask unanimous consent that following the recognition of the two leaders on Wednesday, the distinguished senior Senator from Oklahoma (Mr. HARRIS) be recognized for not to exceed 15 minutes.

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

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for tomorrow is as follows:

The Senate will meet at 9:45 a.m.

After the two leaders have been recognized, Senator TUNNEY and Senator SPONG will be recognized, each for not to exceed 15 minutes and in that order, following which there will be a period for the transaction of routine morning business of not to exceed 15 minutes, with a 3-minute limitation on statements, at the conclusion of which the Senate will go into executive session and the Chair will lay before the Senate Executive J, 92d Congress, first session, the so-called Okinawa Treaty.

Debate is expected to be concluded on that treaty tomorrow.

ADJOURNMENT UNTIL 9:45 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 9:45 a.m. tomorrow.

The motion was agreed to; and (at 8 o'clock and 45 minutes p.m.) the Senate adjourned until tomorrow, Tuesday, November 9, 1971, at 9:45 a.m.

NOMINATIONS

Executive nominations received by the Senate November 8,1971:

U.S. REPRESENTATIVE ON THE COUNCIL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

Mrs. Betty Crites Dillon, of Indiana, the representative of the United States of America on the Council of the International Civil Aviation Organization, to serve on the Council with the rank of Minister.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Subject to qualifications provided by law, the following for permanent appointment to the grades indicated in the National Oceanic and Atmospheric Administration:

To be lieutenants

Abram Y. Bryson, Jr.
Warren K. Taguchi

CONFIRMATIONS

Executive nominations confirmed by the Senate November 8, 1971:

IN THE COAST GUARD

The nominations beginning Herbert H. Mulvany, to be captain, and ending David C. Jeffrey, to be lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on October 28, 1971.

U.S. DISTRICT COURTS

William J. Bauer, of Illinois, to be a U.S. district judge for the northern district of Illinois.

U.S. ATTORNEYS

James R. Thompson, Jr., of Illinois, to be U.S. attorney for the northern district of Illinois for the term of 4 years.

Herbert J. Stern, of New Jersey, to be U.S. attorney for the district of New Jersey for the term of 4 years.

U.S. MARSHAL

Thomas E. Ferrandina, of New York, to be U.S. marshall for the southern district of New York for the term of 4 years.

HOUSE OF REPRESENTATIVES—*Monday, November 8, 1971*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Lord teach us to pray, and He said unto them, *When you pray, say, Our Father.*—Luke 11: 1,2.

With the coming of another week, our Father, we pause at the altar of prayer, founded by our fathers, that we may be strengthened with might by Thy spirit to face the tasks of these hours with faith and hope and love. We rejoice and our hearts take courage when we consider our faith in freedom and we pray that now and always we may have freedom to have faith and to pray as we desire.

Bless our President, our Speaker, Members of Congress, and all who labor with them. Gird them with cheerful courage and inspiring insight that they may highly resolve that this white-domed Capitol may be the symbol not only of material might but of reality in religion proclaiming to all men the moral and spiritual resources upon which our freedoms rest and without which they disintegrate and disappear.

Unite our Nation in freedom and with good will that we may open the gates to a better life for our people and for all mankind. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

PRAYER AMENDMENT

Mr. WYLIE. Mr. Speaker, pursuant to clause 4, rule XXVII, I call up motion No. 1 to discharge the Committee on the Judiciary from the further consideration of House Joint Resolution 191, a proposed amendment to the Constitution of the United States relative to the offering of prayer in public buildings.

The SPEAKER. Did the gentleman sign the motion?

Mr. WYLIE. Yes, Mr. Speaker, I signed the motion.

The SPEAKER. The gentleman from Ohio calls up a motion to discharge the Committee on the Judiciary from the further consideration of the joint resolution (H.J. Res. 191) which the Clerk will report by title.

The Clerk read the title of the joint resolution.

CALL OF THE HOUSE

Mrs. ABZUG. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. BOGGS. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 364]

Alexander	Edwards, La.	Obey
Ashley	Erlenborn	Pelly
Barrett	Foley	Pickle
Belcher	Ford, William D.	Pryor, Ark.
Bell	Grasso	Roe
Bevill	Gray	Roy
Biaggi	Green, Oreg.	Ruppe
Brasco	Green, Pa.	Scheuer
Broomfield	Gubser	Skubitz
Caffery	Gude	Stanton, J. William
Camp	Halpern	Stanton, James V.
Chappell	Harvey	Steele
Clark	Hawkins	Steiger, Wis.
Clay	Helstoski	Stephens
Cotter	Hull	Stokes
Crane	Lloyd	Stuckey
Davis, Wis.	Long, La.	Tiernan
Dent	McMillan	Vigorito
Diggs	Minshall	Wilson, Bob
Dorn	Mosher	
Dowdy	Nichols	
Dulski		

The SPEAKER. On this rollcall 365 Members have answered to their names, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amend-