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Congressional Record

PROCEEDINGS AND DEBATES OF THE 92d CONGRESS, FIRST SESSION

SENATE—*Wednesday, December 8, 1971*

The Senate met at 9 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:

Thanks be to Thee, O God, for the need to work, for the will to work, for work to do and strength with which to do it. Give added energy to those who overwork, and respite to those so hard-driven that their work is unrewarding. Have compassion on those who seek work and find it not.

Send Thy grace in full measure on all who work in this place that they may have joy in work well done. And finally when our work is done, gather us like the magi and shepherds at the manger-crib, to share the blessedness of Thy great gift.

We pray in the name of the "Man for Others." Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, December 7, 1971, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

A LETTER FROM VIETNAM

Mr. MANSFIELD. Mr. President, I am in receipt of "Season's Greetings from South Vietnam." I will not divulge the name of the individual who sent me this Christmas greeting, but he says; "We are still here. What are you doing about it?"

Mr. President, I have in my hand a copy of a letter from a group of U.S. medical officers in Vietnam. It is addressed to "Senators of the United States." It is signed by some 50 commissioned members in the Medical Corps.

It is a straightforward and vivid statement of the predicament in which the policy of protracted withdrawal from Vietnam has placed these men and the soldiers of the armed services whom they are trying to help with their healing skills.

The situation which is described in the letter is, and I choose my words very advisedly, most shocking. It may be that this Government is now beyond shock insofar as Vietnam is concerned. This Senator is not and, I repeat, I am shocked by what I have read. In the evacuation hospital at which these U.S. medical officers are stationed, they write that most of the servicemen who they treat are no longer casualties of military engagements; the majority are no longer victims of the opposing forces.

Where do they come from then? What reduces these men to casualties? Now, Mr. President, hear this:

(1) traumatic injuries mostly due to automobile accidents, self-inflicted wounds, or wounds sustained by infighting amongst our own troops; (2) infections due to continued exposure to the hazards of jungle tropics; and (3) drug-related casualties due to the use of heroin on a scale far wider than is commonly thought because of boredom, frustration, and want of an escape.

Most Americans who are sent to this hospital, in short, are dying or getting hurt or wrecking their lives in Vietnam without help from an enemy. They are doing so in consequence of the protractions with which we are removing ourselves from a conflict that is not now and has never been associated with the interests of this Nation.

For what, Mr. President, for what? Why do we delay the disengagement? What is the justification for asking these doctors and their patients—all of them Americans—to go on in this fashion? The doctors who wrote this letter from Vietnam have some ideas on that score and what they have to say does not make very pleasant reading. On the contrary, some of it makes very ugly reading.

I trust that the Members of the Senate, nevertheless, will read and heed what they have written. Indeed, this makes even a 6-month period for bringing this war to an end by negotiation seem an unpardonable delay. Yet, that time span, as provided for in the Senate amendment to the foreign aid bill, which is now in conference, is being bitterly resisted in some quarters. It would be best, Mr. President, if some of the energy going into the resistance to the amendment on withdrawal from Vietnam were spent in devising ways to speed the withdrawal of all U.S. forces, to the end that we can get on with the proper business of this Nation.

Mr. President, I do not intend to disclose the names of the medical officers who signed this letter but so long as it is addressed to "Senators of the United States, Senate Office Building, Washington, D.C.," I am assuming that most Senators, if not all, have received a copy of this communication.

I, therefore, ask unanimous consent that the letter, without the signatures, be printed in the RECORD.

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

SENATORS OF THE UNITED STATES,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: We, the medical personnel at the 24th Evacuation Hospital in Long Binh and the Third Field Hospital in Saigon, Vietnam, wish to express our dismay and frustration over what seems to be quite an untenable situation here in Southeast Asia.

As we continue our efforts as physicians and U.S. citizens in Vietnam on a day to day basis we see little good coming from our endeavors to our servicemen, to our allies, or to the Vietnamese with whom we have contact when we look at our involvement in its entirety. The problems are multiple.

First, the majority of the medical problems are presently of three kinds: (1) traumatic mostly due to automobile accidents, self-inflicted wounds, or wounds sustained by infighting amongst our own troops; (2) infections due to continued exposure to the hazards of jungle tropics; and (3) drug related due to the use of heroin on a scale far wider than is commonly thought because of boredom, frustration, and want of an escape.

The reasons, then, for the temporary or permanent disabilities our patients sustain are not now a result of active military engagement but a result of a passive environmentally victimizing position. This we feel is an injustice to the American fighting man to be coerced into a situation that is devastating not because of military hostilities but because of the hazards his simple presence brings in this environment.

Secondly, the Vietnamese people with whom we have contact strongly feel the fighting and dying they know so well will end when the American forces leave this country and that our presence tends only to prolong their suffering. Whether this attitude be right or wrong its very existence serves to foster animosity toward us. In view of this feeling our welcome here is no longer warm.

Third, we, as the Vietnamese, have become disenchanted with American sincerity when every day large sums of money are made through black market sales on goods whose paths are controlled by both Vietnamese and Americans.

We become disenchanted to note large numbers of American civilians making handsome salaries in the business of a war that does not directly involve them. We who are here to theoretically help the South Vietnamese more, one would think, at our expense rather than our profit become disenchanted when we find our leaders involved in the profits of war. To hear that prominent

American figures have large blocks of stock in multimillion dollar construction companies that have negotiated large contracts with the military, and that others own parts of companies that supply the military when they also make decisions for the military makes us question all of the motives of our involvement here in S.V.N.

These problems are only to name a few, but because of them we, as professionals, and concerned U.S. citizens, find the medical, socioeconomic, and political aspects of our presence here to be in serious question. In view of the President's latest announcement that in no way mentions a date of total withdrawal, a plan for the P.O.W. release, a hope for a negotiated settlement, or any concrete proposal for ending or altering any of the problems specified herein, we urge that strong and positive steps be taken to end our involvement here in Indo-China. We feel that these steps should result in no residual force whose lives and futures remain at stake only for American political representatives to use as pawns in the Chess game of the Paris negotiations. We cannot accept remaining here as a residual force for our bargaining position in Paris, as was recently urged by the Secretary of Defense. This is not asking for our professional help or for the active help of the troops to remain here passively in danger so that others may use our presence as a trump card in meetings that have thus far been unrewarding.

What you do, how you do it, and when you do it will not only affect the Americans here, as well as their families and friends, but also the minds of people everywhere who look to our country for leadership in the principles which we hold so dear.

We have not been a panacea for the people of South Vietnam and have not fulfilled our goals by our presence. We feel to ask Americans to risk their lives so that this situation may continue in its present form is asking far too much.

History will judge us in the end, so let the gravity of the situation weigh heavily on your minds as it does on ours.

With utmost sincerity,

———— ————.

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of calendar Nos. 535 and 536.

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

AUTHORIZATION FOR THE CONVEYANCE OF CERTAIN LANDS TO THE UNIVERSITY OF UTAH

The Senate proceeded to consider the bill (S. 978) authorizing the conveyance of certain lands to the University of Utah, and for other purposes, which had been reported from the Committee on Interior and Insular Affairs with an amendment on page 1, line 11, after the word "sums", insert "not to exceed $6,000,000"; so as to make the bill read:

S. 978

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is authorized and directed to establish, equip, operate, and maintain a metallurgy research center on approximately 35 acres of land located on the Fort Douglas Military Reservation, Utah, which facility will serve as a replacement facility for that now located on the campus of the University of Utah, Salt Lake City, Utah.

SEC. 2. To carry out the provisions of this Act, there is authorized to be appropriated such sums not to exceed $6,000,000 as may be necessary for the engineering, design, and construction of the research facility referred to in the first section of this Act, together with such equipment and apparatus, roads, and other improvements as may be necessary.

SEC. 3. (a) Upon completion of the research facility authorized herein, the Secretary of the Interior is authorized to convey to the University of Utah the following described land situated on the campus of the University of Utah at Salt Lake City: Beginning at a point 480 feet south of the United States stone monument numbered 6 (monument numbered 6 is 876.31 feet south and 2,453.795 feet east, more or less, from the northwest corner of section numbered 4, township 1 south, range 1 east, Salt Lake meridian), running west 664.5 feet; thence north 640 feet; thence east 864.35 feet, thence south 0 degree, 00 minute, 50 seconds east 503.9 feet; thence south 55 degrees, 45 minutes, 00 second west 241.92 feet, more or less, to the point of beginning and containing 12.39 acres, more or less.

(b) The conveyance authorized by this Act shall be subject to the condition that the State of Utah pay to the United States an amount equal to the fair market value, as determined by the Secretary of the Interior, of the fixed improvements on such land to be conveyed.

The amendment was agreed to.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–555), 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 S. 978, which was cosponsored by Senators Bennett and Moss, is to authorize appropriations to the Secretary of the Interior to establish and maintain a new Bureau of Mines research center as a replacement facility for that now located and established on the campus of the University of Utah, and provides for the sale of the fixed improvements and the conveyance of certain lands to the University of Utah.

COMMITTEE AMENDMENTS

The committee amended the bill to provide that not more than $6 million be appropriated for the cost of engineering, designing and constructing the replacement facility.

The amendment is as follows:

On page 2, line 2, after the word "sums" insert the following phrase: "not to exceed six million dollars."

BACKGROUND

Since 1939 the Department of the Interior has maintained a Bureau of Mines metallurgy research center consisting of laboratory facilities, garage, shop building and warehouse on some 12.39 acres of land lying wholly within the central portion of the University of Utah campus.

The original campus for the University of Utah was authorized by the 33d Congress February 21, 1855, and pursuant to that act two townships including the lands on which the Bureau of Mines present facility was constructed, were designated as University of Utah campus.

Portions of this land were originally withdrawn as a part of the Fort Douglas Military Reservation prior to statehood. In the years since this time the Army and the U.S. Government have relinquished a major portion of this land and a great deal of it has been restored to the University of Utah.

On May 21, 1938 the University of Utah granted 5.0 acres of land, previously granted by the United States to the university, to the United States as the site for an experiment station of the Bureau of Mines. By deed of February 9, 1940, the university granted the United States a perpetual easement of ingress and egress. The 5.0 acres and the perpetual easement of ingress and egress were granted to the Bureau of Mines without compensation and these lands are included in the 12.39 acres to be conveyed to the University of Utah under the bill.

In October of 1968 when the Army declared surplus a major portion of its Fort Douglas properties, the U.S. Bureau of Mines acquired 34 acres on what is designated as the Fort Douglas Rifle Range. The new facility to be built under this bill will be constructed on these Federal lands adjacent to, but outside of the University of Utah campus.

The bill provides that upon completion of the research facility, and subject to the condition that the State of Utah pay to the United States the fair market value of the fixed improvements on the land, the Secretary of the Interior is authorized to convey the 12.39 acres of land to the State of Utah for the university.

AMENDMENTS CONSIDERED

The committee considered and adopted an amendment to place a limitation of $6 million on the sum to be appropriated for construction of the replacement facility.

COMMITTEE RECOMMENDATION

Action by the Interior and Insular Affairs Committee in ordering S. 978 favorably reported as amended, was unanimous and the committee recommends that the bill be enacted.

PROTECTING PRIVACY AND THE RIGHTS OF FEDERAL EMPLOYEES

The bill (S. 1438) to protect the civilian employees of the executive branch of the U.S. Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1438

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

SECTION 1. It shall be unlawful for any officer of any executive department or any executive agency of the United States Government, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person seeking employment in the executive branch of the United States Government, to disclose his race, religion, or national origin, or the race, religion, or national origin of any of his forebears: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit inquiry concerning the citizenship of any such employee or person if his citizenship is a statutory condition of his obtaining or retaining his employment: *Provided further,* That nothing contained in this subsection shall be construed to prohibit inquiry con-

cerning the national origin or citizenship of any such employee or person or of his forebears, when such inquiry is deemed necessary or advisable to determine suitability for assignment to activities or undertakings related to the national security within the United States or to activities or undertakings of any nature outside the United States.

(b) To state or intimate, or to attempt to state or initimate, to any civilian employee of the United States serving in the department or agency that any notice will be taken of his attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the executive branch of the United States Government, or by any person acting or purporting to act under his authority, or by any outside parties or organizations to advise, instruct, or indoctrinate any civilian employee of the United States serving in the department or agency in respect to any matter or subject other than the performance of official duties to which he is or may be assigned in the department or agency, or the development of skills, knowledge, or abilities which qualify him for the performance of such duties: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit taking notice of the participation of a civilian employee in the activities of any professional group or association.

(c) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to participate in any way in any activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

(d) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to make any report concerning any of his activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties, or unless there is reason to believe that the civilian employee is engaged in outside activities or employment in conflict with his official duties.

(e) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: *Provided, however,* That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: *Provided further, however,* That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties: *Provided further, however,* That nothing contained in this subsection shall be construed to prohibit an officer of the department or agency from advising any civilian employee or applicant of a specific charge of sexual misconduct made against that person, and according him an opportunity to refute the charge.

(f) To require or request, or attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

(g) To require or request or to attempt to require or request, any civilian employee of the United States serving in the department or agency to support by personal endeavor or contribution of money or any other thing of value the nomination or the election of any person or group of persons to public office in the Government of the United States or of any State, district, Commonwealth, territory, or possession of the United States, or to attend any meeting held to promote or support the activities or undertakings of any political party of the United States or of any State, district, Commonwealth, territory, or possession of the United States.

(h) To coerce or attempt to coerce any civilian employee of the United States serving in the department or agency to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or to make donations to any institution or cause of any kind: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, from calling meetings and taking any action appropriate to afford any civilian employee of the United States the opportunity voluntarily to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or voluntarily to make donations to any institution or cause.

(i) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family or household: *Provided, however,* That this subsection shall not apply to any civilian employee who has authority to make any final determination with respect to the tax or other liability of any person, corporation, or other legal entity to the United States, or claims which require expenditure of moneys of the United States: *Provided further, however,* That nothing contained in this subsection shall prohibit the Department of the Treasury or any other executive department or agency of the United States Government from requiring any civilian employee of the United States to make such reports as may be necessary or appropriate for the determination of his liability for taxes, tariffs, custom duties, or other obligations imposed by law.

(j) To require or request, or to attempt to require or request, any civilian employee of the United States embraced within the terms of the proviso in subsection (i) to disclose any items of his property, income or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family or household other than specific items tending to indicate a conflict of interest in respect to the performance of any of the official duties to which he is or may be assigned.

(k) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, who is under investigation for misconduct, to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice, if he so requests: *Provided, however,* That a civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency may be accompanied only by a person of his choice who serves in the agency in which the employee serves, or by counsel who has been approved by the agency for access to the information involved.

(l) To discharge, discipline, demote, deny promotion to, relocate, reassign, or otherwise discriminate in regard to any term or condition of employment of, any civilian employee of the United States serving in the department or agency or to threaten to commit any of such acts, by reason of the refusal or failure of such employee to submit to or comply with any requirement, request, or action made unlawful by this Act, or by reason of the exercise by such civilian employee of any right granted or secured by this Act.

SEC. 2. It shall be unlawful for any officer of the United States Civil Service Commission, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any executive department or any executive agency of the United States Government, or any officer or employee serving in such department or agency, to violate any of the provisions of section 1 of this Act.

(b) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any civilian employee of the United States serving in any department or agency of the United States Government, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: *Provided, however,* That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: *Provided further, however,* That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties: *Provided further, however,* That nothing contained in this subsection shall be construed to prohibit an officer of the Civil Service Commisison from advising any civilian employee or applicant on a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.

(c) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive

branch of the United States Government, or any civilian employee of the United States serving in any department or agency of the United States Government, to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

SEC. 3. It shall be unlawful for any commissioned officer, as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, to require or request, or to attempt to require or request, any civilian employee of the executive branch of the United States Government under his authority or subject to his supervision to perform any of the acts or submit to any of the requirements made unlawful by section 1 of this Act.

SEC. 4. Whenever any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, or any commissioned officer as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, violates or threatens to violate any of the provisions of section 1, 2, or 3 of this Act, any civilian employee of the United States serving in any department or agency of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, affected or aggrieved by the violation or threatened violation, may bring a civil action in his own behalf or in behalf of himself and others similarly situated, against the offending officer or person in the United States district court for the district in which the violation occurs or is threatened, or the district in which the offending officer or person is found, or in the United States District Court for the District of Columbia, to prevent the threatened violation or to obtain redress against the consequences of the violation. The Attorney General shall defend all officers or persons sued under this section who acted pursuant to an order, regulation, or directive, or who, in his opinion, did not willfully violate the provisions of this Act. Such United States district court shall have jurisdiction to try and determine such civil action irrespective of the actuality or amount of pecuniary injury done or threatened, and without regard to whether the aggrieved party shall have exhausted any administrative remedies that may be provided by law, and to issue such restraining order, interlocutory injunction, permanent injunction or mandatory injunction, or enter such other judgment or decree as may be necessary or appropriate to prevent the threatened violation, or to afford the plaintiff and others similarly situated complete relief against the consequences of the violation. With the written consent of any person affected or aggrieved by a violation or threatened violation of section 1, 2, or 3 of this Act, any employee organization may bring such action on behalf of such person, or may intervene in such action. For the purposes of this section, employee organizations shall be construed to include any brotherhood, council, federation, organization, union, or professional association made up in whole or in part of civilian employees of the United States and which has as one of its purposes dealing with departments, agencies, commissions, and independent agencies of the United States concerning the condition and terms of employment of such employees.

SEC. 5. (a) There is hereby established a Board on Employees' Rights (hereinafter referred to as the "Board"). The Board shall be composed of three members, appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member as chairman. No more than two members of the Board may be of the same political party. No member of the Board shall be an officer or employee of the United States Government.

(b) The term of office of each member of the Board shall be five years, except that (1) of those members first appointed, one shall serve for five years, one for three years, and one for one year, respectively, from the date of enactment of this Act, and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) Members of the Board shall be compensated at the rate of $75 a day for each day spent in the work of the Board, and shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from their usual places of residence, as authorized by section 5703 of title 5, United States Code.

(d) Two members shall constitute a quorum for the transaction of business.

(e) The Board may appoint and fix the compensation of such officers, attorneys, and employees, and make such expenditures as may be necessary to carry out its functions.

(f) The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

(g) The Board shall have the authority and duty to receive and investigate written complaints from or on behalf of any person claiming to be affected or aggrieved by any violation or threatened violation of this Act and to conduct a hearing on each such complaint. Within ten days after the receipt of any such complaint, the Board shall furnish notice of the time, place, and nature of the hearing thereon to all interested parties. The Board shall render its final decision with respect to any complaint within thirty days after the conclusion of its hearing thereon.

(h) Officers or representatives of any Federal employee organization in any degree concerned with employment of the category in which any alleged violation of this Act occurred or is threatened shall be given an opportunity to participate in each hearing conducted under this section, through submission of written data, views, or arguments, and in the discretion of the Board, with opportunity for oral presentation. Government employees called upon by any party or by any Federal employee organization to participate in any phase of any administrative or judicial proceeding under this section shall be free to do so without incurring travel costs or suffering loss in leave or pay; and all such employees shall be free from restraint, coercion, interference, intimidation, or reprisal in or because of their participation. Any periods of time spent by Government employees during such participation shall be held and considered to be Federal employment for all purposes.

(i) Insofar as consistent with the purposes of this section, the provisions of subchapter II of chapter 5 of title 5, United States Code, relating to the furnishing of notice and manner of conducting agency hearings, shall be applicable to hearings conducted by the Board under this section.

(j) If the Board shall determine after hearing that a violation of this Act has not occurred or is not threatened, the Board shall state its determination and notify all interested parties of such determination. Each such determination shall constitute a final decision of the Board for purposes of judicial review.

(k) If the Board shall determine that any violation of this Act has been committed or threatened by any civilian officer or employee of the United States, the Board shall immediately (1) issue and cause to be served on such officer or employee an order requiring such officer or employee to cease and desist from the unlawful act or practice which constitutes a violation, (2) endeavor to eliminate any such unlawful act or practice by informal methods of conference, conciliation, and persuasion, and (3) may—

(A) (i) in the case of the first offense by any civilian officer or employee of the United States, other than any officer appointed by the President, by and with the advice and consent of the Senate, issue an official reprimand against such officer or employee or order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed fifteen days, and (ii) in the case of a second or subsequent offense by any such officer or employee, order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed thirty days or order the removal of such officer or employee from such position or office; and

(B) in the case of any offense by any officer appointed by the President, by and with the advice and consent of the Senate, transmit a report concerning such violation to the President and the Congress.

(l) If the Board shall determine that any violation of this Act has been committed or threatened by any officer of any of the Armed Forces of the United States, or any person purporting to act under authority conferred by such officer, the Board shall (1) submit a report thereon to the President, the Congress, and the Secretary of the military department concerned, (2) endeavor to eliminate any unlawful act or practice which constitutes such a violation by informal methods of conference, conciliation, and persuasion, and (3) refer its determination and the record in the case to any person authorized to convene general courts-martial under section 822 (article 22) of title 10, United States Code. Thereupon such person shall take immediate steps to dispose of the matter under chapter 47 of title 10, United States Code (Uniform Code of Military Justice).

(m) Any party aggrieved by any final determination or order of the Board may institute, in the district court of the United States for the judicial district wherein the violation or threatened violation of this Act occurred, or in the United States District Court for the District of Columbia, a civil action for the review of such determination or order. In any such action, the court shall have jurisdiction to (1) affirm, modify, or set aside any determination or order made by the Board which is under review, or (2) require the Board to make any determination or order which it is authorized to make under subsection (k), but which it has refused to make. The reviewing court shall set aside any finding, conclusion, determination, or order of the Board as to which complaint is made which is unsupported by substantial evidence on the record considered as a whole.

(n) The Board shall submit, not later than March 31 of each year, to the Senate and House of Representatives, respectively, a report on its activities under this section during the immediately preceding calendar year, including a statement concerning the nature of all complaints filed with it, its determinations and orders resulting from hearings thereon, and the names of all officers or employees of the United States with respect to whom any penalties have been imposed under this section.

(o) There are authorized to be appropriated sums necessary, not in excess of $100,000, to carry out the provisions of this section.

SEC. 6. Nothing contained in this Act shall

be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency from requesting any civilian employee or applicant to take a polygraph test, or to take a psychological test, designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters, or to provide a personal financial statement, if the Director of the Central Intelligence Agency or his designee or the Director of the National Security Agency or his designee makes a personal finding with regard to each individual to be so tested or examined that such test or information is required to protect the national security.

SEC. 7. No civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency, and no individual or organization acting in behalf of such employee, shall be permitted to invoke the provisions of sections 4 and 5 without first submitting a written complaint to the agency concerned about the threattened or actual violation of this Act and affording such agency one hundred and twenty days from the date of such complaint to prevent the threatened violation or to redress the actual violation: *Provided however,* That nothing in this Act shall be construed to affect any existing authority of the Director of Central Intelligence under section 403(c), of title 50, United States Code. and any authorities available to the National Security Agency under section 833 of title 50, United States Code, to terminate the employment of any employee.

SEC. 8. Nothing in this Act shall be construed to affect in any way the authority of the Directors of the Central Intelligence Agency or the National Security Agency to protect or without information pursuant to statute or executive order. The personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or Executive order shall be conclusive and no such information shall be admissible in evidence in any interrogation under section 1(k) or in any civil action under section 4 or in any proceeding or civil action under section 5.

SEC. 9. This Act shall not be applicable to the Federal Bureau of Investigation.

SEC. 10. Nothing contained in sections 4 and 5 shall be construed to prevent establishment of department and agency grievance procedures to enforce this Act, but the existence of such procedures shall not preclude any applicant or employee from pursuing the remedies established by this Act or any other remedies provided by law: *Provided, however,* That if under the procedures established, the employee or applicant has obtained complete protection against threatened violations or complete redress for violations, such action may be pleaded in bar in the United States district court or in proceedings before the Board on Employee Rights: *And provided further,* That if an employee elects to seek a remedy under either section 4 or section 5, he waives his right to proceed by an independent action under the remaining section.

SEC. 11. If any provision of this Act or the application of any provision to any person or circumstance shall be held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–554), explaining the purposes of the measure.

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

PURPOSE

The purpose of the bill is to prohibit indiscriminate executive branch requirements that employees and, in certain instances, applicants for Government employment disclose their race, religion, or national origin; attend Government-sponsored meetings and lectures or participate in outside activities unrelated to their employment; report on their outside activities or undertakings unrelated to their work; submit to questioning about their religion, personal relationships or sexual attitudes through interviews, psychological tests, or polygraphs; support political candidates or attend political meetings. The bill would make it illegal to coerce an employee to buy bonds or make charitable contributions. It prohibits officials from requiring him to disclose his own personal assets, liabilities, or expenditures, or those of any member of his family unless, in the case of certain specified employees, such items would tend to show a conflict of interest. It would provide a right to have a counsel or other person present, if the employee wishes, at an interview which may lead to disciplinary proceedings. It would accord the right to a civil action in a Federal court for violation or threatened violation of the act, and it would establish a Board on Employees' Rights to receive and conduct hearings on complaints of violation of the act and to determine and administer remedies and penalties.

STATEMENT

The subcommittee has found a threefold need for this legislation. The first is the immediate need to establish a statutory basis for the preservation of certain rights and liberties of those who work for government now and those who will work for it in the future. The bill, therefore, not only remedies problems of today but looks to the future, in recognition of the almost certain enlargement of the scope of Federal activity and the continuing rise in the number of Americans employed by their Federal Government or serving it in some capacity.

Second, the bill meets the Federal Government's need to attract the best qualified employees and to retain them. As the former Chairman of the Civil Service Commission, Robert Ramspeck, testified:

"Today, the Federal Government affects the lives of every human being in the United States. Therefore, we need better people today, better qualified people, more dedicated people, in Federal service than we ever needed before. And we cannot get them if you are going to deal with them on the basis of suspicion, and delve into their private lives, because if there is anything the average American cherishes, it is his right of freedom of action, and his right to privacy. So I think this bill is hitting at an evil that has grown up, maybe not intended, but which is hurting the ability of the Federal Government to acquire the type of personnel that we must have in the career service."

Third is the growing need for the beneficial influence which such a statute would provide in view of the present impact of Federal policies, regulations and practices on those of State and local government and of private business and industry. An example of the interest demonstrated by governmental and private employers is the following comment by Allan J. Graham, secretary of the Civil Service Commission of the city of New York:

"It is my opinion, based on over 25 years of former Government service, including some years in a fairly high managerial capacity, that your bill, if enacted into law, will be a major step to stem the tide of "Big Brotherism," which constitutes a very real threat to our American way of life.

In my present position as secretary of the Civil Service Commission of the city of New York, I have taken steps to propose the inclusion of several of the concepts of your bill into the rules and regulations of the city civil service commission."

Passage of the bill will signify congressional recognition of the threats to individual privacy posed by an advanced technology and by increasingly more complex organizations. Illustrating these trends is the greatly expanded use of computers and governmental and private development of vast systems for the efficient gathering of information and for data storage and retrieval. While Government enjoys the benefit of these developments, there is at the same time an urgent need for defining the areas of individual liberty and privacy which should be exempt from the unwarranted intrusions facilitated by scientific techniques.

As Prof. Charles Reich of Yale Law School has stated, this bill "would be a significant step forward in defining the right of privacy today."

"One of the most important tasks which faces the Congress and State legislatures in the next decade is the protection of the citizen against invasion of privacy," states Prof. Stanley Anderson of the University of California, Santa Barbara. "No citizens," in his opinion, "are in more immediate danger of incursion into private affairs than Government employees. When enacted the bill will provide a bulwark of protection against such incursions."

The bill is based on several premises which the subcommittee investigation has proved valid for purposes of enacting this legislation. The first is that civil servants do not surrender the basic rights and liberties which are their due as citizens under the Constitution of the United States by their action in accepting Government employment. Chief among these constitutional protections is the first amendment, which protects the employee to privacy in his thoughts, beliefs and attitudes, to silence in his action and participation or his inaction and nonparticipation in community life and civic affairs. This principle is the essence of constitutional liberty in a free society.

The constitutional focus of the bill was emphasized by Senator Ervin in the following terms when he introduced S. 1035 on February 21, 1967:

"If this bill is to have any meaning for those it affects, or serve as a precedent for those who seek guidance in these matters, its purpose must be phrased in constitutional terms. Otherwise its goals will be lost.

"We must have as our point of reference the constitutional principles which guide every official act of our Federal Government. I believe that the Constitution, as it was drafted and as it has been implemented, embodies a view of the citizen as possessed of an inherent dignity and as enjoying certain basic liberties. Many current practices of Government affecting employees are unconstitutional; they violate not only the letter but the very spirit of the Constitution.

"I introduced this bill originally because I believe that, to the extent it has permitted or authorized unwarranted invasion of employee privacy and unreasonable restrictions on their liberty, the Federal Government has neglected its constitutional duty where its own employees are concerned, and it has failed in its role as the model employer for the Nation.

"Second, although it is a question of some dispute, I hold that Congress has a duty under the Constitution not only to consider the constitutionality of the laws it enacts, but to assure as far as possible that those in the executive branch responsible for administering the laws adhere to constitutional standards in their programs, policies, and administrative techniques."

The committee believes that it is time for Congress to forsake its reluctance to tell the executive branch how to treat its employees. When so many American citizens are subject to unfair treatment, to being unreasonably coerced or required without warrant to surrender their liberty, their privacy, or their freedom to act or not to act, to reveal or not to reveal information about themselves and their private thoughts and actions, then Congress has a duty to call a statutory halt to such practices. It has a duty to remind the executive branch that even though it might have to expend a little more time and effort to obtain some favored policy goal, the techniques and tools must be reasonable and fair.

Each section of the bill is based on evidence from many hundreds of cases and complaints showing that generally in the Federal service, as in any similar organizational situation, a request from a superior is equivalent to a command. This evidence refutes the argument that an employee's response to a superior's request for information or action is a voluntary response, and that an employee "consents" to an invasion of his privacy or the curtailment of his liberty. Where his employment opportunities are at stake, where there is present the economic coercion to submit to questionable practices which are contrary to our constitutional values, then the presence of consent or voluntarism may be open to serious doubt. For this reason the bill makes it illegal for officials to "request" as well as to "require" an employee to submit to certain inquiries or practices or to take certain actions.

Each section of the bill reflects a balancing of the interests involved: The interest of the Government in attracting the best qualified individuals to its service; and its interest in pursuing laudable goals such as protecting the national security, promoting equal employment opportunities, assuring mental health, or conducting successful bond-selling campaigns. There is, however, also the interest of the individual in protection of his rights and liberties as a private citizen. When he becomes an employee of his Government, he has a right to expect that the policies and practices applicable to him will reflect the best values of his society.

The balance of interests achieved assures him this right. While it places no absolute prohibition on Government inquiries, the bill does assure that restrictions on his rights and liberties as a Government employee are reasonable ones.

As Senator Bible stated:

"There is a line between what is Federal business and what is personal business, and Congress must draw that line. The right of privacy must be spelled out."

The weight of evidence, as Senator Fong has said: "points to the fact that the invasions of privacy under threats and coercion and economic intimidation are rampant in our Federal civil service system today. The degree of privacy in the lives of our civil servants is small enough as it is, and it is still shrinking with further advances in technical know-how. That these citizens are being forced by economic coercion to surrender this precious liberty in order to obtain and hold jobs is an invasion of privacy which should disturb every American. I, therefore, strongly believe that congressional action to protect our civil servants is long overdue."

The national president of the National Association of Internal Revenue Employees, Vincent Connery, told the subcommittee of this proposal in the 89th Congress:

"Senate bill 3779 is soundly conceived and perfectly timed. It appears on the legislative scene during a season of public employee unrest, and a period of rapidly accelerating demand among Federal employes for truly first-class citizenship. For the first time within my memory, at least, a proposed bill holds out the serious hope of attaining such a citizenship. S. 3779, therefore, amply deserves the fullest support of all employee organizations, both public and private, federal affiliated, and independent alike."

Similar statements endorsing the broad purpose of the bill were made by many others, including the following witnesses:

John F. Griner, national president, American Federation of Government Employees.

E. C. Hallback, national president, United Federation of Postal Clerks.

Jerome Keating, president, National Association of Letter Carriers.

Kenneth T. Lyons, national president, National Association of Government Employees.

John A. McCart, operations director, Government Employees Council of AFL–CIO.

Hon. Robert Ramspeck, former Chairman, eral Professional Association.

Civil Service Commission.

Vincent Jay, executive vice president, Fed-

Francis J. Speh, president, 14th District Department, American Federation of Government Employees.

Lawrence Speiser, director, Washington office, American Civil Liberties Union.

Nathan Wolkomir, national president, National Federation of Federal Employees.

LEGISLATIVE HISTORY

Following is a chronological account of Committee action on this legislation to date.

S. 1438 was preceded by S. 782 of the 91st Congress, by S. 1035 of the 90th Congress, and by S. 3079 and S. 3703 of the 89th Congress.

Violations of rights covered by the bill as well as other areas of employee rights have been the subject of intensive hearings and investigation by the subcommittee for the last five Congresses.

In addition to investigation of individual cases, the Subcommittee on Constitutional Rights has conducted annual surveys of agency policies on numerous aspects of Government personnel practices. In 1965, pursuant to Senate Resolution 43, hearings were conducted on due process and improper use of information acquired through psychological testing, psychiatric examinations, and security and personnel interviews.

In a letter to the Chief Executive on August 3, 1966, the subcommittee chairman stated:

"For some time, the Constitutional Rights Subcommittee has received disturbing reports from responsible sources concerning violations of the rights of Federal employees. I have attempted to direct the attention of appropriate officials to these matters, and although replies have been uniformly courteous, the subcommittee has received no satisfaction whatsoever, or even any indication of awareness that any problem exists. The invasions of privacy have reached such alarming proportions and are assuming such varied forms that the matter demands your immediate and personal attention.

"The misuse of privacy-invading personality tests for personnel purposes has already been the subject of hearings by the subcommittee. Other matters, such as improper and insulting questioning during background investigations and due process guarantees in denial of security clearances have also been the subject of study. Other employee complaints, fast becoming too numerous to catalog, concern such diverse matters as psychiatric interviews; lie detectors; race questionnaires; restrictions on communicating with Congress; pressure to support political parties yet restrictions on political activities; coercion to buy savings bonds; extensive limitations on outside activities yet administrative influence to participate in agency-approved functions; rules for writing, speaking and even thinking; and requirements to disclose personal information concerning finances, property and creditors of employees and members of their families."

After describing in detail the operation of two current programs to illustrate the problems, Senator Ervin commented:

"Many of the practices now in extensive use have little or nothing to do with an individual's ability or his qualification to perform a job. The Civil Service Commission has established rules and examinations to determine the qualifications of applicants. Apparently, the Civil Service Commission and the agencies are failing in their assignment to operate a merit system for our Federal civil service.

"It would seem in the interest of the administration to make an immediate review of these practices and questionnaires to determine whether the scope of the programs is not exceeding your original intent and whether the violations of employee rights are not more harmful to your long-range goals than the personnel shortcuts involved."

* * * * *

Following this letter and others addressed to the Chairman of the Civil Service Commission and the Secretaries of other departments, legislation to protect employee rights was introduced in the Senate. This proposal, S. 3703 was introduced by the chairman on August 9, 1966, and referred to the Judiciary Committee. On August 25, 1966, the chairman received unanimous consent to a request to add the names of 33 cosponsors to the bill. On August 26, 1966, he introduced a bill similar to S. 3703, containing an amendment reducing the criminal penalties provided in section 2. This bill, S. 2779, was also referred to the Judiciary Committee, and both S. 3779 were then referred to the Subcommittee on Constitutional Rights.

Comments on the bill and on problems related to it were made by the chairman in the Senate on July 18, August 9, August 25, August 26, September 29, October 17 and 18, 1966, and on February 21, 1967.[1]

Hearings on S. 3779 were conducted before the subcommittee on September 23, 29, 30, and October 3, 4, and 5, 1966. Reporting to the Senate on these hearings, the subcommittee chairman made the following statement:

"The recent hearings on S. 3779 showed that every major employee organization and union, thousands of individual employees who have written Congress, law professors, the American Civil Liberties Union, and a number of bar associations agree on the need for statutory protections such as those in this measure.

"We often find that as the saying goes "things are never as bad as we think they are," but in this case, the hearings show that privacy invasions are worse than we thought they were. Case after case of intimidation, of threats of loss of job or security clearance were brought to our attention in connection with bond sales, and Government charity drives.

"Case after case was cited of privacy invasion and denial of due process in connection with the new financial disclosure requirements. A typical case is the attorney threatened with disciplinary action or loss of his job because he is both unable and unwilling to list all gifts, including Christmas presents from his family, which he had received in the past year. He felt this had nothing to do with his job. There was the supervisory engineer who was told by the personnel officer that he would have to take disciplinary action against the 25 professional employees in his division who resented being forced to disclose the creditors and financial interests of themselves and members of their families. Yet there are no procedures for appealing the decisions of su-

[1] See also, *Cong. Rec.* Comments.

pervisors and personnel officers who are acting under the Commission's directive. These are not isolated instances; rather, they represent a pattern of privacy invasion reported from almost every State.

"The subcommittee was told that supervisors are ordered to supply names of employees who attend PTA meetings and engage in Great Books discussions. Under one department's regulations, employees are requested to participate in specific community activities promoting local and Federal antipoverty, beautification, and equal employment programs; they are told to lobby in local city councils for fair housing ordinances, to go out and make speeches on any number of subjects, to supply flower and grass seed for beautification projects, and to paint other people's houses. When those regulations were brought to the subcommittee's attention several weeks ago, we were told that they were in draft form. Yet, we then discovered they had already been implemented and employees whose official duties had nothing to do with such programs were being informed that failure to participate would indicate an uncooperative attitude and would be reflected in their efficiency records.

"The subcommittee hearings have produced ample evidence of the outright intimidation, arm twisting and more subtle forms of coercion which result when a superior is requested to obtain employee participation in a program. We have seen this in the operation of the bond sale campaign, the drives for charitable contributions, and the use of self-identification minority status questionnaires. We have seen it in the sanctioning of polygraphs, personality tests, and improper questioning of applicants for employment.

"In view of some of the current practices reported by employee organizations and unions, it seems those who endorse these techniques for mind probing and thought control of employees have sworn hostility against the idea that every man has a right to be free of every form of tyranny over his mind; they forget that to be free a man must have the right to think foolish thoughts as well as wise ones. They forget that the first amendment implies the right to remain silent as well as the right to speak freely—the right to do nothing as well as the right to help implement lofty ideals.

"It is not under this administration alone that there has been a failure to respect employee rights in a zeal to obtain certain goals. While some of the problems are new, others have been prevalent for many years with little or no administrative action taken to attempt to ameliorate them. Despite congressional concern, administrative officials have failed to discern patterns of practice in denial of rights. They seem to think that if they can belatedly remedy one case which is brought to the attention of the Congress, the public and the press, that this is enough—that the "heat" will subside. With glittering generalities, qualified until they mean nothing in substance, they have sought to throw Congress off the tracks in its pursuit of permanent corrective action. We have seen this in the case of personality testing, in the use of polygraphs, and all the practices which the bill would prohibit."

The Chairman of the Civil Service Commission informed the subcommittee that there is no need for a law to protect employee rights. He believes the answer is—

"To permit executive branch management and executive branch employes as individuals and through their unions, to work together to resolve these issues as part of their normal discourse."

It is quite clear from the fearful tenor of the letters and telephone calls received by the subcommittee and Members of Congress that there is no discourse and is not likely to be any discourse on these matters between the Commission and employees. Furthermore, there are many who do not even fall within the Commission's jurisdiction. For them, there is no appeal but to Congress.

As for the argument that the discourse between the unions and the Commission will remedy the wrongs, the testimony of the union representatives adequately demolishes that dream.

The typical attitude of those responsible for personnel management is reflected in Mr. Macy's answer that there may be instances where policy is not adhered to, but "There is always someone who doesn't get the word." Corrective administration action, he says, is fully adequate to protect employee rights.

Administrative action is not sufficient. Furthermore, in the majority of complaints, the wrong actually stems from the stated policy of the agency or the Commission. How can these people be expected to judge objectively the reasonableness and constitutionality of their own policies? This is the role of Congress, and in my opinion, Congress has waited too long as it is to provide the guidance that is desperately needed in these matters.

S. 1035, 90th Congress

On the basis of the subcommittee hearings, agency reports, and the suggestions of many experts, the bill was amended to meet legitimate objections to the scope and language raised by administrative witnesses and to clarify the intent of its cosponsors that it does not apply to the proper exercise of management authority and supervisory discretion, or to matters now governed by statute.

This amended version of S. 3779 was introduced in the Senate by the chairman on February 21, 1967, as S. 1035 with 54 cosponsors. It was considered by the Constitutional Rights Subcommittee and unanimously reported with amendments by the Judiciary Committee on August 21, 1967. [S. Rept. No. 534, 90th Cong., 1st Sess.] The proposal was considered by the Senate on September 13, 1967, and approved, with floor amendments, by a 79 to 4 vote. After absentee approvals were recorded, the record showed a total of 90 Members supported passage of the bill. The amendments adopted on the Senate floor deleted a complete exemption which the committee bill provided for the Federal Bureau of Investigation; instead, it was provided that the Federal Bureau of Investigation should be accorded the same limited exemptions provided for the Central Intelligence Agency and the National Security Agency. A provision was added to allow the three Directors to delegate the power to make certain personal findings required by section 6 of the bill.

Committee amendments to S. 1035, 90th Congress

1. Amendment to section 1(a) page 2, line 13:

"Provided further, That nothing contained in this subsection shall be construed to prohibit inquiry concerning the national origin of any such employee when such inquiry is deemed necessary or advisable to determine suitability for assignment to activities or undertakings related to the national security within the United States or to activities or undertakings of any nature outside the United States."

2. Amendment to section 1(b), page 2, line 25 strike "to" (technical amendment).

3. Delete section 1(e), page 4, lines 1–4 (prohibitions on patronizing business establishments) and renumber following sections as sections 1(e), (f), (g), (h), (i), (j), (k), and (l), respectively.

4. Delete section 4, page 10, lines 12–23 (criminal penalties), and renumber following sections as sections 4 and 5, respectively.

5. Amendment to section 1(f), page 4, line 25:

"Provided further, however, That nothing contained in this subsection shall be construed to prohibit an officer of the department or agency from advising any civilian employee or applicant of a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge."

6. Amendments to section 1(f), page 4, at lines 17 and 19, change "psychiatrist" to "physician".

7. Amendment to section 1(k), page 7, at line 10, change (j) to (i).

8. Amendment to section 2(b), page 9, at line 6 and line 9, change "psychiatrist" to "physician".

9. Amendment to section 2(b), page 9, at line 15:

"Provided further, however, That nothing contained in this subsection shall be construed to prohibit an officer of the Civil Service Commission from advising any civilian employee or applicant of a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge."

10. Amendment to section 5, page 11, line 21, insert after the word "violation." the following:

"The Attorney General shall defend all officers or persons sued under this section who acted pursuant to an order, regulation, or directive, or who, in his opinion, did not willfully violate the provisions of this Act."

11. Amendment to section 6(l), page 16, at line 24, strike "sign charges and specifications under section 830 (art. 30)" and insert in lieu thereof "convene general courts-martial under section 822 (art. 22)" (technical amendment).

12. Amendment to section 6(m), page 17, line 14, change subsection (j) to (k) (technical amendment).

13. Amendment, page 18, add new section 6:

"SEC. 6. Nothing contained in this Act shall be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency from requesting any civilian employee or applicant to take a polygraph test, or to take a psychological test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters, or to provide a personal financial statement, if the Director of the Central Intelligence Agency or the Director of the National Security Agency makes a personal finding with regard to each individual to be so tested or examined that such test or information is required to protect the national security."

14. Amendment, page 18, add new section 8, and renumber following section as section 9:

"SEC. 8. Nothing contained in sections 4 and 5 shall be construed to prevent establishment of department and agency grievance procedures to enforce this Act, but the existence of such procedures shall not preclude any applicant or employee from pursuing the remedies established by this Act or any other remedies provided by law: *Provided, however,* That if under the procedures established, the employee or applicant has obtained complete protection against threatened violations or complete redress for violations, such action may be pleaded in bar in the United States District Court or in proceedings before the Board on Employee Rights: *Provided further, however,* That if an employee elects to seek a remedy under either section 4 or section 5, he waives his right to proceed by an independent action under the remaining section."

Comparison of S. 1035, 90th Congress, as introduced, and S. 3779, 89th Congress

As introduced, the revised bill, S. 1035, differed from S. 3779 of the 89th Congress in the following respects:

1. The section banning requirements to disclose race, religion, or national origin was amended to permit inquiry on citizenship where it is a statutory condition of employment.

2. The provision against coercion of employees to buy bonds or make charitable donations was amended to make it clear that it does not prohibit calling meetings or taking any action appropriate to afford the employee the opportunity voluntarily to invest or donate.

3. A new section providing for administrative remedies and penalties establishes a Board on Employee Rights to receive and conduct hearings on complaints of violation of the act, and to determine and administer remedies and penalties. There is judicial review of the decision under the Administrative Procedure Act.

4. A specific exemption for the Federal Bureau of Investigation is included.

5. Exceptions to the prohibitions on privacy-invading questions by examination, interrogations, and psychological tests are provided upon psychiatric determination that the information is necessary in the diagnosis and treatment of mental illness in individual cases, and provided that it is not elicited pursuant to general practice or regulation governing the examination of employees or applicants on the basis of grade, job, or agency.

6. The section prohibiting requirements to disclose personal financial information contains technical amendments to assure that only persons with final authority in certain areas may be subject to disclosure requirements.

7. For those employees excluded from the ban on disclosure requirements, a new section (j), provides that they may only be required to disclose items tending to show a conflict of interest.

8. Military supervisors of civilian employees are included within the prohibitions of the bill, and violation of the act is made a punishable offense under the Uniform Code of Military Justice.

9. A new section 2 has been added to assure that the same prohibitions in section 1 on actions of department and agency officials with respect to employees in their departments and agencies apply alike to officers of the Civil Service Commission with respect to the employees and applicants with whom they deal.

10. Section (b) of S. 3779, relating to the calling or holding of meetings or lectures to indoctrinate employees, was deleted.

11. Sections (c), (d), and (e) of S. 3779—sections (b), (c), and (d) of S. 1035—containing prohibitions on requiring attendance at outside meetings, reports on personal activities and participation in outside activities, were amended to make it clear that they do not apply to the performance of official duties or to the development of skill, knowledge, and abilities which qualify the person for his duties or to participation in professional groups or associations.

12. The criminal penalties were reduced from a maximum of $500 and 6 months' imprisonment to $300 and 30 days.

13. Section (h) of S. 3779 prohibiting requirements to support candidates, programs, or policies of any political party was revised to prohibit requirements to support the nomination or election of persons or to attend meetings to promote or support activities or undertakings of any political party.

14. Other amendments of a technical nature.

S. 782, 91st Congress—Committee amendments

S. 782, as introduced by Senator Ervin with 54 cosponsors, was identical to S. 1035 of the 90th Congress as passed by the Senate. As amended in Committee, it was reported to the Senate on May 15, 1970, and passed by unanimous consent on May 19.

The Subcommittee met in executive session on July 22, 1969, to receive testimony from Richard Helms, Director of the Central Intelligence Agency and other agency representatives. On the basis of this testimony and after a number of meetings of subcommittee members with officials of the Central Intelligence Agency, the National Security Agency, and the Federal Bureau of Investigation, the language contained in the committee amendments was drafted and meets with the approval of the Directors of those agencies.

Amendments

1. Amendment to section 1(a), page 2, line 15 insert after the word "origin" the words "or citizenship" and after the word "employee", the words "or person, or of his forebears".

2. Amendment to section 1(k), page 8, line 5 after the word "requests", strike the period and insert the following:

": *Provided, however,* That a civilian employee of the United States serving in the Central Intelligence Agency, or the National Security Agency may be accompanied only by a person of his choice who serves in the agency in which the employee serves or by counsel who has been approved by the agency for access to the information involved."

3. Amendment to section 6, page 18, lines 15 and 16 delete "or of the Federal Bureau of Investigation".

4. Amendment to section 6, page 18, line 25, and page 19, line 1 delete "or the Director of the Federal Bureau of Investigation or his designee".

5. On page 19, add a new section 7 as follows:

"SEC. 7. No civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency, and no individual or organization acting in behalf of such employee, shall be permitted to invoke the provision of sections 4 and 5 without first submitting a written complaint to the agency concerned about the threatened or actual violation of this Act and affording such agency 120 days from the date of such complaint to prevent the threatened violation or to redress the actual violation: *Provided, however* That nothing in this Act shall be construed to affect any existing authority of the Director of Central Intelligence under 50 U.S.C. 403(c), and any authorities available to the National Security Agency under 50 U.S.C. 833 to terminate the employment of any employee."

6. On page 19, add a new section 8 as follows:

"SEC. 8. Nothing in this act shall be construed to affect in any way the authority of the Directors of the Central Intelligence Agency or the National Security Agency to protect or withhold information pursuant to statute or executive order. The personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or executive order shall be conclusive and no such information shall be admissable in evidence in any interrogation under section 1(k) or in any civil action under section 4 or in any proceeding or civil action under section 5."

7. On page 19, add a new section 9 as follows:

"SEC. 9. This act shall not be applicable to the Federal Bureau of Investigation."

8. On page 19, at line 5, renumber "SEC. 7" as "SEC. 10" and at line 20, renumber "SEC. 8" as "SEC. 11".

QUESTIONS ON RACE, RELIGION, AND NATIONAL ORIGIN

Many complaints received by the subcommittee concerned official requests or requirements that employees disclose their race, religion, or ethnic or national origin. This information has been obtained from employees through the systematic use of questionnaires or oral inquiries by supervisors.

Chief concern has focused on a policy inaugurated by the Civil Service Commission in 1966, under which present employees and future employees would be asked to indicate on a questionnaire whether they were "American Indian," "oriental," "Negro," "Spanish-American" or "none of these." Approximately 1.7 million employees were told to complete the forms, while some agencies including some in the Department of Defence continued their former practice of acquiring such information through the "head count" method. Although the Civil Service Commission directive stated that disclosure of such information was voluntary, complaints show that employees and supervisors generally felt it to be mandatory. Administrative efforts to obtain compliance included in some instances harassment, threats, and intimidation. Complaints in different agencies showed that employees who did not comply received airmail letters at their homes with new forms; or their names were placed on administrative lists for "follow-up" procedures, and supervisors were advised to obtain the information from delinquent employees by a certain date.

In the view of John McCart, representing the Government Employes' Council, AFL–CIO:

"When the Civil Service Commission and the regulations note that participation by the employee will be voluntary, this removes some of the onus of the encroachment on an individual's privacy. But in an organizational operation of the size and complexity of the Federal Government, it is just impossible to guarantee that each individual's right to privacy and confidentiality will be observed.

"In addition to that, there have been a large number of complaints from all kinds of Federal employees. In the interest of maintaining the rights of individual workers against the possibility of invading those rights, it would seem to us it would be better to abandon the present approach, because there are other alternatives available for determining whether that program is being carried out."

The hearing record contains numerous examples of disruption of employee-management relations, and of employee dissatisfaction with such official inquiries. Many told the subcommittee that they refused to complete the questionnaires because the matter was none of the Government's business; others, because of their mixed parentage, felt unable to state the information.

Since 1963, the policy of the American Civil Liberties Union on the method of collecting information about race has favored the head count wherever possible. Although the policy is presently under review, the subcommittee finds merit in the statement that:

"The collection and dissemination of information about race creates a conflict among several equally important civil liberties: the right of free speech and free inquiry, on the one hand, and the rights of privacy and of equality of treatment and of opportunity, on the other. The ACLU approves them all. But at this time in human history, when the principle of equality and nondiscrimination must be vigorously defended, it is necessary that the union oppose collection and dissemination of information regarding race, except only where rigorous justification is shown for such action. Where such collection and dissemination is shown to be justified, the gathering of information should be kept to the most limited form, wherever possible by use of the head count method, and the confidential nature of original records should be protected as far as possible."

Former Civil Service Commission Chairman Robert Ramspeck told the subcommittee:

"To consider race, color, religion, and national origin in making appointments, in

promotions and retention of Federal employees is, in my opinion, contrary to the merit system. There should be no discrimination for or against minority persons in Federal Government employment."

As the hearings and complaints have demonstrated, the most telling argument against the use of such a questionnaire, other than the constitutional issue, is the fact that it does not work. This is shown by the admission by many employees that they either did not complete the forms or that they gave inaccurate data.

Mr. Macy informed the subcommittee:

"In the State of Hawaii the entire program was cut out because it had not been done there before, and it was inadvertently included in this one, and the feeling was that because of the racial composition there it would be exceedingly difficult to come up with any kind of identification along the lines of the card that we were distributing."

The Civil Service Commission on May 9 informed the subcommittee that it had "recently approved regulations which will end the use of voluntary self-identification of race as a means of obtaining minority group statistics for the Federal work force." The Commission indicated its decision was based on the failure of the program to produce meaningful statistics. In its place the Commission will rely on supervisory reports based solely on observation, which would not be prohibited by the bill.

As Senator Fong stated:

"It should be noted that the bill would not bar head counts of employee racial extraction for statistical purposes by supervisors. However, the Congress has authorized the merit system for the Federal service and the race, national origin or religion of the individual or his forebears should have nothing to do with his ability or qualifications to do a job."

Section 1(a) of the bill was included to assure that employees will not again be subjected to such unwarranted invasion of their privacy. It is designed to protect the merit system which Congress has authorized for the Federal service. Its passage will reaffirm the intent of Congress that a person's religion, race, and national or ethnic origin or that of his forebears have nothing to do with his ability or qualification to perform the requisite duties of a Federal position, or to qualify for a promotion.

By eliminating official authority to place the employee in a position in which he feels compelled to disclose this personal data, the bill will help to eliminate the basis for such complaints of invasion of privacy and discrimination as Congress has received for a number of years. It will protect Americans from the dilemma of the grandson of an American Indian who told the subcommittee that he had exercised his option and did not complete the minority status questionnaire. He did not know how to fill it out. Shortly thereafter he received a personal memorandum from his superviser "requesting" him to complete a new questionnaire and "return it immediately." He wrote: "I personally feel that if I do not comply with this request (order), my job or any promotion which comes up could be in jeopardy."

The prohibitions in section 1(a) against official inquiries about religion, and in section 1(e) concerning religious beliefs and practices together constitute a bulwark to protect the individual's right to silence concerning his religious convictions and to refrain from an indication of his religious beliefs.

Referring to these two sections, Lawrence Speiser, director of the Washington office of the American Civil Liberties Union testified:

"These provisions would help, we hope, eliminate a constantly recurring problem involving those new Government employees who prefer to affirm their allegiance rather than swearing to it. All Government employees must sign an appointment affidavit and take an oath or affirmation of office.

"A problem arises not just when new employees enter Government employment but in all situations where the Government requires on oath, and there is an attempt made on the part of those who prefer to affirm. It is amazing the intransigence that arises on the part of clerks or those who require the filling out of these forms, or the giving of the statement in permitting individuals to affirm.

"The excuses that are made vary tremendously, either that the form can only be signed and they cannot accept a form in which "so help me God" is struck out, because that is an amendment, and they are bound by their instructions which do not permit any changes to be made on the forms at all.

"Also, in connection with the giving of oaths, I have had one case in which an investigator asked a young man this question: "For the purposes of administering the oath, do you believe in God?"

"It is to be hoped that the provisions of this bill would bar practices of that kind. The law should be clear at this time. Title I, United States Code, section 1 has a number of rules of construction, one of which says that wherever the word "oath" appears, that includes "affirmation," and wherever the word "swear" appears, that includes "affirm."

"This issue comes up sometimes when clerks will ask, "Why do you want to affirm? Do you belong to a religious group that requires an affirmation rather than taking an oath?" And unless the individual gives the right answer, the clerks won't let him affirm. It is clear under the *Torcaso* case that religious belief and lack of religious beliefs are equally entitled to the protection of the first amendment."

The objection has been raised that the prohibition against inquiries into race, religion, or national origin would hinder investigation of discrimination complaints. In effect, however, it is expected to aid rather than hinder in this area of the law, by decreasing the opportunities for discrimination initially. It does not hinder acquisition of the information elsewhere; nor does it prevent a person from volunteering the information if he wishes to supply it in filing a complaint or in the course of an investigation.

CONTROL OF EMPLOYEE OPINIONS, OUTSIDE ACTIVITIES

Reports have come to the subcommittee of infringements and threatened infringements on first amendment freedoms of employees; freedom to think for themselves free of Government indoctrination; freedom to choose their outside civic, social, and political activities as citizens free of official guidance; or even freedom to refuse to participate at all with reporting to supervisors.

Illustrative of the climate of surveillance the subcommittee has found was a 13-year-old Navy Department directive, reportedly similar to those in other agencies, warning employees to guard against "indirect remarks" and to seek "wise and mature" counsel within their agencies before joining civic or political associations.

In the view of the United Federation of Postal Clerks:

"Perhaps no other right is so essential to employee morale as the right to personal freedom and the absence of interference by the Government in the private lives and activities of its employees. Attempts to place prohibitions on the private associations of employees; mandatory reporting of social contacts with Members of Congress and the press; attempts to "orient" or "indoctrinate" Federal employees on subjects outside their immediate areas of professional interest; attempts to "encourage" participation in outside activities or discourage patronage of selected business establishments and coercive campaigns for charitable donations are among the most noteworthy abuses of Federal employees' right to personal freedom."

An example of improper on-the-job indoctrination of employees about sociological and political matters was cited in his testimony by John Griner, president of the AFL–CIO affiliated American Federation of Government Employees:

One instance of disregard of individual rights of employees as well as responsibility to the taxpayers, which has come to my attention, seems to illustrate the objectives of subsections (b), (c), and (d), of section I of the Ervin bill. It happened at a large field installation under the Department of Defense.

The office chief called meetings of different groups of employees throughout the day * * * A recording was played while employees listened to about 30 minutes. It was supposedly a speech made at a university, which went deeply into the importance of integration of the races in this country. There was discussion of the United Nations—what a great thing it was—and how there never could be another world war. The person who reported this incident made this comment: "Think of the taxpayers' money used that day to hear that record." I think that speaks for itself.

Other witnesses were in agreement with Mr. Griner's view of the need for protecting employees now and in the future from any form of indoctrination on issues unrelated to their work. The issue was defined at hearings on S. 3779 in the following colloquy between the subcommittee chairman and Mr. Griner.

If they are permitted to hold such as this on Government time and at Government expense, they might then also hold sessions as to whether or not we should be involved in the Vietnam war or whether we should not be, whether we should pull out or whether we should stay, and I think it could go to any extreme under those conditions.

"Of course, we are concerned with it, yes. But that is not a matter for the daily routine of work.

"Senator ERVIN. Can you think of anything which has more direful implications for a free America than a practice by which a government would attempt to indoctrinate any man with respect to a particular view on any subject other than the proper performance of his work?

"Mr. GRINER. I think if we attempted to do that we would be violating the individual's constitutional rights.

"Senator ERVIN. Is there any reason whatever why a Federal civil service employee should not have the same right to have his freedom of thought on all things under the sun outside of the restricted sphere of the proper performance of his work that any other American enjoys?

"Mr. GRINER. No, sir."

With one complaint of attempted indoctrination of employees at a Federal installation, a civil servant enclosed a memorandum taken from a bulletin board stating the time, place, and date of a lecture by a sociology professor on the subject of the importance of racial integration. Attendance was to be voluntary but the notice stated that a record would be made of those attending or not attending.

Concerning such a practice, one witness commented: "If I had been a Federal employee and I cared anything about my job, I would have been at that lecture."

Employees of an installation in Pennsylvania complained of requirements to attend film lectures on issues of the cold war.

Witnesses agreed that taking notice of attendance at such meetings constituted a form of coercion to attend. Section 1(b) will eliminate such intimidation. It leaves

unaffected existing authority to use any appropriate means, including publicity, to provide employees information about meetings concerning matters such as charity drives and bond-selling campaigns.

Section (c) protests a basic constitutional right of the individual employee to be free of official pressure on him to engage in any civic or political activity or undertaking which might involve him as a private citizen, but which has no relation to his Federal employment. It preserves his freedom of thought and expression, including his right to keep silent, or to remain inactive.

This section will place a statutory bar against the recurrence of employee complaints such as the following received by a Member of the Senate:

"Dear Senator ———: On ———, 1966, a group of Treasury Department administrators were called to Miami for a conference led by ———, Treasury Personnel Officer, with regard to new revisions in chapter 713 of the Treasury Personnel Manual.

"Over the years the Treasury Department has placed special emphasis on the hiring of Negroes under the equal employment opportunity program, and considerable progress in that regard has been made. However, the emphasis of the present conference was that our efforts in the field of equal employment opportunity have not been sufficient. Under the leadership of President Johnson and based on his strong statement with regard to the need for direct action to cure the basic causes leading to discrimination, the Treasury Department has now issued specific instructions requiring all supervisors and line managers to become actively and aggressively involved in the total civil rights problem.

"The requirements laid down by chapter 713 and its appendix include participation in such groups as the Urban League. NAACP, et cetera (these are named specifically) and involvement in the total community action program, including open housing, integration of schools, et cetera.

"The policies laid down in this regulation, as verbally explained by the Treasury representatives at the conference, go far beyond any concept of employee personnel responsibility previously expressed. In essence, this regulation requires every Treasury manager or supervisor to become a social worker, both during his official hours and on his own time. This was only tangentially referred to in the regulation and its appendages, but was brought out forcefully in verbal statements by Mr. ——— and ———. Frankly, this is tremendously disturbing to me and to many of the other persons with whom I have discussed the matter. We do not deny the need for strong action in the field of civil rights, but we do sincerely question the authority of our Government to lay out requirements to be met on our own time which are repugnant to our own personal beliefs and desires.

"The question was asked as to what disciplinary measures would be taken against individuals declining to participate in these community action programs. The reply was given by the equal employment officer, that such refusal would constitute an undesirable work attitude bordering on insubordination and should at the very least be reflected on the annual efficiency rating of the employee.

"The principles expressed in these regulations and in this conference strike me as being of highly dangerous potential. If we, who have no connection with welfare or social programs, can be required to take time from our full-time responsibilities in our particular agencies and from the hours normally reserved for our own refreshment and recreation to work toward integration of white neighborhoods, integration of schools by artificial means, and to train Negroes who have not availed themselves of the public schooling available, then it would seem quite possible that under other leadership, we could be required to perform other actions which would actually be detrimental to the interests of our Nation."

* * * * *

Testifying on the issue of reporting outside activities, the American Civil Liberties Union representative commented:

"To the extent that individuals are apprehensive they are going to have to, at some future time, tell the Government about what organizations they have belonged to or been associated with, that is going to inhibit them in their willingness to explore all kinds of ideas, their willingness to hear speakers, their willingness to do all kinds of things. That has almost as deadening an effect on free speech in a democracy as if the opportunities were actually cut off.

"The feeling of inhibition which these kinds of questions cause is as dangerous, it seems to me, as if the Government were making actual edicts."

Witnesses gave other examples of invasion of employees' private lives which would be halted by passage of the bill.

In the southwest a division chief dispatched a buck slip to his group of supervisors demanding: "the names * * * of employees * * * who are participating in any activities including such thing as: PTA in integrated schools, sports activities which are intersocial, and such things as Great Books discussion groups which have integrated memberships."

* * * * *

In a Washington office of the Department of Defense, a branch chief by telephone asked supervisors to obtain from employees the names of any organizations they belonged to. The purpose apparently was to obtain invitations for Federal Government officials to speak before such organizations.

* * * * *

Reports have come to the subcommittee that the Federal Maritime Commission, pursuant to civil service regulations, requested employees to participate in community activities to improve the employability of minority groups, and to report to the chairman any outside activities.

* * * * *

In addition to such directives, many other instances involving this type of restriction have come to the attention of the subcommittee over a period of years. For example, some agencies have either prohibited flatly, or required employees to report, all contacts, social or otherwise, with Members of Congress or congressional staff members. In many cases reported to the subcommittee, officials have taken reprisals against employees who communicated with their Congressmen and have issued directives threatening such action.

* * * * *

The Civil Service Commission on its Form 85 for nonsensitive positions requires an individual to list: "Organizations with which affiliated (past and present) other than religious or political organizations or those with religious or political affiliations (if none, so state)."

* * * * *

PRIVACY INVASIONS IN INTERVIEWS, INTERROGATIONS, AND PERSONALITY TESTS

Although it does not outlaw all of the unwarranted personal prying to which employees and applicants are now subjected, section 1(e) of the reported bill will prohibit the more serious invasions of personal privacy reported. The subcommittee believes it will also result in limitations beyond its specific prohibitions by encouraging administrative adherance to the principles it reflects.

It will halt mass programs in which, as a general rule, agency officials conduct interviews during which they require or request applicants or employees to reveal intimate details about their habits, thoughts, and attitudes on matters unrelated to their qualifications and ability to perform a job.

It will also halt individual interrogations such as that involving an 18-year-old college sophomore applying for a summer job as a secretary at a Federal department.

In the course of an interview with a department investigator, she was asked wide-ranging personal questions. For instance, regarding a boy whom she was dating, she was asked questions which donated assumptions made by the investigator, such as:

"Did he abuse you?

"Did he do anything unnatural with you? You didn't get pregnant, did you?

"There's kissing, petting, and intercourse, and after that, did he force you to do anying to him, or did he do anything to you?"

The parent of this student wrote:

"This interview greatly transcended the bounds of normal areas and many probing personal questions were propounded. Most questions were leading and either a negative or positive answer resulted in an appearance of self-incrimination. During this experience my husband was on an unaccompanied tour of duty in Korea and I attempted alone, without success, to do battle with the Department.

"I called and was denied any opportunity to review what had been recorded in my daughter's file. Likewise my daughter was denied any review of the file in order to verify or refute any of the record made by the State Department interviewer. This entire matter was handled as if applicants for State Department employment must subject themselves to the personal and intimate questions and abdicate all claims to personal rights and privileges.

"As a result of this improper intrusion into my daughter's privacy which caused all great mental anguish, I had her application for employment withdrawn from the State Department. This loss of income made her college education that much more difficult.

"Upon my husband's return, we discussed this entire situation and felt rather than subjecting her again to the sanctioned methods of Government investigation we would have her work for private industry. This she did in the summer of 1966, with great success and without embarrassing or humiliating Gestapo-type investigation."

Upon subcommittee investigation of this case, the Department indicated that this was not a unique case, because it used a "uniform policy in handling the applications of summer employees as followed with all other applicant categories." It stated that its procedure under Executive Order 10450 is a basic one "used by the Department and other executive agencies concerning the processing of any category of applicants who will be dealing with sensitive. classified material." Its only other comment on the case was to assure that "any information developed during the course of any of our investigations that is of a medical nature, is referred to our Medical Division for proper evaluation and judgment." In response to a request for copies of departmental guidelines governing such investigations and interviews, the subcommittee was told they were classified.

Section 1(e) would protect every employee and every civilian who offers his services to his Government from indiscriminate and unauthorized requests to submit to any test designed to elicit such information as the following:

"My sex life is satisfactory.

"I have never been in trouble because of my sex behavior.

"Everything is turning out just like the prophets of the Bible said it would.

"I loved my father.

"I am very strongly attracted by members of my own sex.

"I go to church almost every week.

"I believe in the second coming of Christ.

"I believe in a life hereafter.

"I have never indulged in any unusual sex practices.

"I am worried about sex matters.

"I am very religious (more than most people).

"I loved my mother.

"I believe there is a Devil and a Hell in afterlife.

"I believe there is a God.

"Once in a while I feel hate toward members of my family whom I usually love.

"I wish I were not bothered by thoughts about sex."

The subcommittee hearings in 1965 on "Psychological tests and constitutional rights" and its subsequent investigations support the need for such statutory prohibitions on the use of tests.

In another case, the subcommittee was told, a woman was questioned for 6 hours about every aspect of her sex life—real, imagined, and gossiped—with an intensity that could only have been the product of inordinately salacious minds."

The specific limitation on the three areas of questioning proscribed in S. 1035 in no way is intended as a grant of authority to continue or initiate the official eliciting of personal data from individuals on subjects not directly proscribed. It would prohibit investigators, or personnel, security and medical specialists from indiscriminately requiring or requesting the individual to supply, orally or through tests, data on religion, family, or sex. It does not prevent a physician from doing so if he has reason to believe the employee is "suffering from mental illness" and believes the information is necessary to make a diagnosis. Such a standard is stricter than the board "fitness for duty" standard now generally applied by psychiatrists and physicians in the interviews and testing which an employee can be requested and required to undergo.

There is nothing in this section to prohibit an official from advising an individual of a specific charge of sexual misconduct and affording him an opportunity to refute the charge voluntarily.

POLYGRAPHS

Section 1(f) makes it unlawful for any officer of any executive department or agency or any person acting under his authority to require or request or attempt to require or request any civilian employee or any applicant for employment to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs, practices or concerning his attitude or conduct with respect to sexual matters. While this section does not eliminate the use of so-called lie detectors by Government, it assures that where such devices are used for these purposes it will be only in limited areas.

John McCart, representing the Government Employees Council of AFL–CIO, supported this section of the bill, citing a 1965 report by a special subcommittee of the AFL–CIO executive council that:

"The use of lie detectors violates basic considerations of human dignity in that they involve the invasion of privacy, self-incrimination, and the concept of guilt until proven innocent."

Congressional investigation[1] has shown that there is no scientific validation for the effectiveness or accuracy of lie detectors. Yet despite this and the invasion of privacy involved, lie detectors are being used or may be used in various agencies of the Federal Government for purposes of screening applicants or for pursuing investigations.

This section of the bill is based on complaints such as the following received by the subcommittee:

"When I graduated from college in 1965, I applied at NSA. I went to 2 days of testing, which apparently I passed because the interviewer seemed pleased and he told me that they could always find a place for someone with my type of degree.

"About 1 month later, I reported for a polygraph test at an office on Wisconsin Avenue in the District or just over the District line in Maryland. I talked with the polygraph operator, a young man around 25 years of age. He explained how the machine worked, etc. He ran through some of the questions before he atached the wires to me. Some of the questions I can remember are—

"When was the first time you had sexual relations with a woman?

"How many times have you had sexual intercourse?

"Have you ever engaged in homosexual activities?

"Have you ever engaged in sexual activities with an animal?

"When was the first time you had intercourse with your wife?

"Did you have intercourse with her before you were married? How many times?"

"He also asked questions about my parents, Communist activities, etc. I remember that I thought this thing was pretty outrageous, but the operator assured me that he asked everybody the same questions and he has heard all the answers before, it just didn't mean a thing to him. I wondered how he could ever get away with asking a girl those kind of questions.

"When I finished, I felt as though I had been in a 15 round championship boxing match. I felt exhausted. I made up my mind then and there that I wouldn't take the job even if they wanted me to take it. Also, I concluded that I would never again apply for a job with the Government, especially where they make you take one of these tests."

Commenting on this complaint, the subcommittee chairman observed:

"Certainly such practices should not be tolerated even by agencies charged with security missions. Surely, the financial, scientific, and investigative resources of the Federal Government are sufficient to determine whether a person is a security risk, without strapping an applicant to a machine and subjecting him to salacious questioning. The Federal Bureau of Investigation does not use personality tests or polygraphs on applicants for employment. I fail to see why the National Security Agency finds them so fascinating."

COERCION TO BUY BONDS AND CONTRIBUTE TO CAUSES

The hearing record and subcommittee complaint files amply document the need for statutory protections against all forms of coercion of employees to buy bonds and contribute to causes. Involved here is the freedom of the individual to invest and donate his money as he sees fit, without official coercion. As the subcommittee chairman explained:

"It certainly seems to me that each Federal employee, like any other citizen in the United States, is the best judge of his capacity, in the light of his financial obligations, to participate or decide whether he will participate and the extent of his participation in a bond drive. That is a basic determination which he and he alone should make.

"I think there is an interference with fundamental rights when coercion of a psychological or economic nature is brought on a Federal employee, even to make him do right. I think a man has to have a choice of acting unwisely as well as wisely, if he is going to have any freedom at all."

The subcommittee has received from employees and their organizations numerous reports of intimidation, threats of loss of job, and security clearances and of denial of promotion for employees who do not participate to the extent supervisors wish. The hearing record contains examples of documented cases of reprisals, many of which have been investigated at the subcommittee's request and confirmed by the agency involved. It is apparent that policy statements and administrative rules are not sufficient to protect individuals from such coercion.

The president of the United Federation of Postal Clerks informed the subcommittee:

"Section 1, paragraph (1) of S. 3779 is particularly important to all Federal employees and certainly to our postal clerks. The extreme arm-twisting coercion, and pressure tactics exerted by some postmasters on our members earlier this year during the savings bonds drive must not be permitted at any future time in the Government service.

"Our union received complaints from all over the country where low-paid postal clerks, most having the almost impossible problem of trying to support a family and exist on sub-standard wages, were practically being ordered to sign up for purchase of U.S. savings bonds, or else. The patriotism of our postal employees cannot be challenged. I recently was advised that almost 75 percent of postal workers are veterans of the Armed Forces and have proven their loyalty and patriotism to this great country of ours in the battlefield in many wars. Yet, some postmasters questioned this patriotism and loyalty if any employee could not afford to purchase a savings bond during the drive."

The president of the National Association of Government Employees testified:

"We are aware of instances wherein employees were told that if they failed to participate in the bond program they would be frozen in their position without promotional opportunities.

"In another agency the names of individuals who did not participate were posted for all to see. We have been made aware of this situation for some years and we know that Congress has been advised of the many instances and injustices Federal employees faced concerning their refusal or inability to purchase bonds.

"Certainly, the Government, which has thousands of public relations men in its agencies and departments, should be capable of promoting a bond program that does not include the sledge-hammer approach."

Some concern has been expressed by officials of the United Community Funds and Councils of America, the American Heart Association, Inc., and other charitable organizations, that the bill would hamper their campaigns in Federal agencies.

For this reason, the bill contains a proviso to express the intent of the sponsors that officials may still schedule meetings and take any appropriate action to publicize campaigns and to afford employees the opportunity to invest or donate their money voluntarily. It is felt that this section leaves a wide scope for reasonable action in promoting bond selling and charity drives.

The bill will prohibit such practices as were reported to the sub-committee in the following complaints:

"We have not yet sold our former home and cannot afford to buy bonds while we have both mortgage payments and rental payments to meet. Yet I have been forced to buy bonds, as I was told the policy at this base is, 'Buy bonds or by-by.'

"In short, after moving 1,700 miles for the good of the Government, I was told I would be fired if I didn't invest my money as my employer directed. I cannot afford to buy

[1] Hearings and reports on the use of polygraphs as "lie detectors," by the Federal Government before a Subcommittee of the House Committee on Government Operations, April 1964 through 1966.

bonds, but I can't afford to be fired even more."

* * * * *

"Not only were we forced to buy bonds, but our superiors stood by the time clock with the blanks for the United Givers Fund, and refused to let us leave until we signed up. I am afraid to sign my name, but I am employed at * * *."

A representative of the 14th District Department of the American Federation of Government Employees, Lodge 421, reported:

"The case of a GS–13 professional employee who has had the misfortune this past year of underwriting the expenses incurred by the last illness and death of both his mother and father just prior to this recent bond drive. This employee had been unofficially informed by his supervisor that he had been selected for a then existing GS–14 vacancy. When it became known that he was declining to increase his participation in the savings bond drive by increasing his payroll deduction for that purpose, he was informed that he might as well, in effect, kiss that grade 14 goodby."

DISCLOSURE OF ASSETS, DEBTS, AND PROPERTY

Section (i) and (j) meet a need for imposing a reasonable statutory limitations on the extent to which an employee must reveal the details of his or his family's personal finances, debts, or ownership of property.

The subcommittee believes that the conflict-of-interest statutes, and the many other laws governing conduct of employees, together with appropriate implementing regulations, are sufficient to protect the Government from dishonest employees. More zealous informational activities on the part of management were recommended by witnesses in lieu of the many questionnaires now required.

The employee criticism of such inquiries was summarized as follows:

"There are ample laws on the statute books dealing with fraudulent employment, conflict of interest, etc. The invasion of privacy of the individual employee is serious enough, but the invasion of the privacy of family, relatives and children of the employee is an outrage against a free society.

"This forced financial disclosure has caused serious moral problems and feelings by employees that the agencies distrust their integrity. We do not doubt that if every employee was required to file an absolutely honest financial disclosure, that a few, though insignificant number of conflict-of-interest cases may result. However, the discovery of the few legal infractions could in no way justify the damaging effects of forced disclosures of a private nature. Further, it is our opinion that those who are intent on engaging in activities which result in a conflict of interest would hardly supply that information on a questionnaire or financial statement. Many employees have indicated that rather than subject their families to any such unwarranted invasion of their right to privacy, that they are seriously considering other employment outside of Government."

The bill will reduce to reasonable proportions such inquiries as the following questionnaire, which many thousands of employees have periodically been required to submit.

(Questionnaire follows:)

CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS

(For use by regular government employees)

Name (last, first, initial)

Title of position

Date of appointment in present position, organization location (operating agency, Bureau Division)

Part I. Employment and financial interests

List the name of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational, or other institutions: (a) with which you are connected as an employee, officer, owner, director, member, trustee, partner, adviser, or consultant; or (b) in which you have any continuing financial interests, through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association; or (c) in which you have any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts. If none, write NONE.

Name and kind of organization (use part 1 designations where applicable)

Address

Position in organization (Use Part 1(a) designation, if applicable.)

Nature of financial interest, e.g., stocks, prior income (Use Part 1(b) and (c) designation if applicable).

Part II. Creditors

List the names of your creditors other than those to whom you may be indebted by reason of a mortgage on property which you occupy as a personal residence or to whom you may be indebted for current and ordinary household and living expenses such as household furnishings, automobile, education, vacation, and similar expenses. If none, write NONE.

Name and address of creditor

Character of indebedness, e.g., personal loan, note, security

Part III. Interests in real property

List your interest in real property or rights in lands, other than property which you occupy as a personal residence. If none, write NONE.

Nature of interest, e.g., ownership mortgage, lien, investment trust.

Type of property, e.g., residence, hotel apartment, undeveloped land.

Address (if rural, give RFD or county and State)

Part IV. Information requested of other persons

If any information is to be supplied by other persons, e.g., trustee, attorney, accountant, relative, please indicate the name and address of such person, the date upon which you requested that the information be applied, and the nature of subject matter involved. If none, write NONE.

Name and address, date of request, nature of subject matter

(This space reserved for additional instructions)

I certify that the statements I have made are true, complete, and correct to the best of my knowledge and belief.

(Date)

(Signature)

The vagueness of the standards for requiring such a broad surrender of privacy is illustrated by the Civil Service Commission's regulation applying this to any employee whose duties have an "economic impact on a non-Federal enterprise."

Also eliminated will be questionnaires asking employees to list "all assets or everything you and your immediate family own, including date acquired and cost or fair market value at acquisitions. (Cash in banks, cash anywhere else, due from others—loans, et cetera, automobiles, securities, real estate, cash surrender of life insurance; personal effects and household furnishings and other assets.)"

The view of the president of the United Federation of Postal Clerks reflected the testimony of many witnesses endorsing sections 1 (i) and (j) of the bill.

"If the conflict-of-interest questionnaire is of doubtful value in preventing conflict of interest, as we believe, we can only conclude that it does not meet the test of essentiality and that it should be proscribed as an unwarranted invasion of employee privacy. Such value as it may have in focusing employee attention upon the problem of conflict of interest and bringing to light honest oversights that may lead to conflict of interest could surely be achieved by drawing attention to the 26 or more laws pertaining to conflict of interest or by more zealous information activities on the part of management."

The complex problem of preserving the confidential nature of such reports was described by officials of the National Association of Internal Revenue Employees:

"The present abundance of financial questionnaires provides ample material for even more abusive personnel practices. It is almost inevitable that this confidential information cannot remain confidential. Typically, the financial questionnaire is filed with an employee's immediate supervisor. The net worth statements ultimately go into Inspection, but they pass through the hands of local personnel administrators. We have received a great number of disturbing reports—as have you—that this information about employees' private affairs is being used for improper purposes, such as enforced retirement and the like."

Inadequacies in agency procedures for obtaining such information from employees and for reviewing and storing it, are discussed in the Subcommittee report for the 89th Congress, 2d Session. Widely disparate attitudes and practices are also revealed in a Subcommittee study contained in the appendix of the printed hearings on S. 3779.

The bill will make such complaints as the following unnecessary in the future conduct of the Federal Government:

DEAR SENATOR ERVIN: I am writing to applaud the stand you have taken on the new requirement that Federal employees in certain grades and categories disclose their financial holdings to their immediate superior. Having been a civil service employee for 26 years, and advanced from GS–4 to GS–15, and been cleared for top secret during World War II, and because I currently hold a position that involves the disposition of hundreds of thousands of the taxpayers' money, it is my conviction that my morality and trustworthiness are already a matter of record in the files of the Federal Government.

The requirement that my husband's financial assets be reported, as well as my own assets and those we hold jointly, was particularly offensive, since my husband is the head of our household and is not employed by Government.

You might also be interested in the fact that it required 6 hours of after-hours work on our part to hunt up all the information called for and prepare the report. Since the extent of our assets is our private business, it was necessary that I type the material myself, an added chore since I am not a typist.

Our assets have been derived, in the main, from laying aside a portion of our earnings. At our ages (64 and 58) we would be far less deserving of respect had we not made the prudent provisions for our retirement which our assets and the income they earn represent. Yet this reporting requirement carries with it the implication that to have "clean hands" it would be best to have no assets or outside, unearned income when you work for the Federal Government.

For your information I am a GS–15, earning $19,415 * * *

Thank you for speaking out for the continually maligned civil servant.

Sincerely yours,

———, ———.

DEAR SENATOR ERVIN: I am a GS–12 career employee with over 15 years service.

The highest moral and ethical conduct has been my goal in each of my positions of employment and I have found this to be true

of a vast majority of my fellow workers. It may be true a few people do put material gain ahead of their ethics but generally these people are in the higher echelons of office where their influence is much greater.

Our office has recently directed each employee from file clerk to the heads of sections to file a "Statement of Financial Interest." As our office has no programs individuals could have a financial interest in and especially no connections with FHA I feel it is no one's business but my own what real estate I own. I do not have a FHA mortgage or any other real property and have no outside employment, hence have nothing to hide by filing a blank form. Few Government workers can afford much real property. The principle of reporting to "Big Brother" in every phase of your private life to me is very degrading, highly unethical and very unquestionable as to its effectiveness. If I could and did use my position in some way to make a profit I would be stupid to report it on an agency inquiry form. What makes officials think reporting will do away with graft?

When the directive came out many manhours of productive work were lost in discussions and griping. Daily since that date at some time during the day someone brings up the subject. The supervisors filed their reports as "good" examples but even they objected to this inquiry.

No single thing was ever asked of Government employees that caused such a decline in their morale. We desperately need a "bill of rights" to protect ourselves from any further invasion of our private lives.

Fifteen years ago I committed myself to Government service because: (a) I felt an obligation to the Government due to my education under the GI bill, (b) I could obtain freedom from pressures of unions, (c) I could obtain freedom from invasion of my private life, and (d) I would be given the opportunity to advance based solely on my professional ability and not on personal politics. At this point I certainly regret my decision to make the Government my career.

Sincerely,

———, ———.

DEAR SENATOR: I write to beg your support of a "bill of rights" to protect Federal employees from official snooping which was introduced by Senator Ervin of North Carolina.

I am a veteran of two wars and have orders to a third war as a ready reservist. And I know why I serve in these wars: that is to prevent the forces of tyranny from invading America.

Now, as a Federal employee I must fill out a questionnaire giving details of my financial status. This is required if I am to continue working. I know that this information can be made available to every official in Washington, including those who want to regulate specific details of my life.

Now I am no longer a free American. For example, I can no longer buy stock of a foreign company because that country may be in disfavor with officials of the right or left. And I cannot "own part of America" by buying common stocks until an "approved list" is published by my superiors.

I can never borrow money because an agent may decide that debt makes me susceptible to bribery by agents of an enemy power. Nor do I dare own property lest some official may decide I should sell or rent to a person or group not of my choosing.

In short, I am no longer free to plan my own financial program for the future security of my family. In 1 day I was robbed of the freedom for which I fought two wars. This is a sickening feeling, you may be sure.

It seems plain that a deep, moral issue is involved here that concerns every citizen. If this thing is allowed to continue, tomorrow or next year every citizen may come under the inquisition. The dossier on every citizen will be on file for the use of any person or group having enough overt or covert power to gain access to them.

Sincerely,

———, ———.

In August 1966, Federal employees who were retired from the armed services were told to complete and return within 7 days, with their social security numbers, a 15-page questionnaire, asking, among other things:

"How much did you earn in 1965 in wages, salary, commissions, or tips from all jobs?

"How much did you earn in 1965 in profits or fees from working in your own business, professional practice, partnership, or farm?

"How much did you receive in 1965 from social security, pensions (nonmilitary) rent (minus expenses), interests or dividends, unemployment insurance, welfare payments, or from any other source not already entered?

"How much did other members of your family earn in 1965 in wages, salary, commissions or tips? (Before any deductions.) (For this question, a family consists of two or more persons in the same household who are related to each other by blood, marriage, or adoption.) If the exact amount is not known, give your best estimate.

"How much did other members of your family earn in 1965 in profits or fees from working in their own business, professional practices, partnership, or farm?

"How much did any other member of your family receive in 1965 from social security, pensions, rent (minus expenses), interest or dividends, unemployment insurance, welfare payments; or from any other source not already entered?"

RIGHT TO COUNSEL

Section 1(k) of the bill guarantees to Federal workers the opportunity of asking the presence of legal counsel, of a friend or other person when undergoing an official interrogation or investigation that could lead to the loss of their jobs or to disciplinary action.

The merits of this clause are manifold; not least of which is that uniformity and order it will bring to the present crazy quilt practices of the various agencies concerning the right to counsel for employees facing disciplinary investigations or possible loss of security clearances tantamount to loss of employment. The Civil Service Commission regulations are silent on this critical issue. In the absence of any Commission initiative or standard, therefore, the employing agencies are pursuing widely disparate practices. To judge from the questionnaires and other evidence before the subcommittee, a few agencies appear to afford a legitimate right to counsel, probably many more do not, and still others prescribe a "right" on paper but hedge it in such a fashion as to discourage its exercise. Some apparently do not set any regulatory standard, but handle the problem on an ad hoc basis.

On a matter as critical as this, such a pointless diversity of practice is poor policy. So far as job-protection rights are concerned, all Federal employees should be equal.

A second anomaly in the present state of affairs derives from recent developments in the law of the sixth amendment by the Supreme Court. In view of the decisions of *Miranda* v. *Arizona*, 384 U.S. 436 and *Escobedo* v. *Illinois*, 378 U.S. 478, it is clear that any person (including Federal employees) who is suspected of a crime is absolutely entitled to counsel before being subjected to custodial interrogation. Accordingly, some agencies, such as the Internal Revenue Service, acknowledge an unqualified right to counsel for an employee suspected of crime but decline to do the same for coworkers threatened with the loss of their livelihoods for noncriminal reasons. In the subcommittee's view, this discrimination in favor of the criminal suspect is both bad personnel policy as well as bad law. It would be corrected by this section of the bill.

The ultimate justification for the "right-to-counsel" clause, however, is the Constitution itself. There is no longer any serious doubt that Federal employees are entitled to due process of law as an incident of their employment relation. Once, of course, the courts felt otherwise, holding that absent explicit statutory limitation, the power of the executive to deal with employes was virtually unfettered.

The doctrinal underpinning of this rule was the 19th-century notion that the employment relation is not tangible "property." Both the rule and its underpinning have now been reexamined. The Supreme Court in recent years has emphasized the necessity of providing procedural due process where a man is deprived of his job or livelihood by governmental action.

While the courts have as yet had no occasion to articulate a specific right to counsel in the employment relationship, there can obviously be no doubt that the right to counsel is of such a fundamental character that it is among the essential ingredients of due process. What is at stake for an employee in a discharge proceeding—often including personal humiliation, obloquy and penury—is just as serious as that involved in a criminal trial. This is not to suggest that all the incidents of our civilized standard of a fair trial can or should be imported into Federal discharge proceedings. But if we are to have fair play for Federal employees, the right of counsel is a sine qua non. It is of a piece with the highest traditions, the fairest laws, and the soundest policy that this country has produced. And, in the judgment of this subcommittee, the clear affirmation of this basic right is very long overdue.

The need for such protection was confirmed at the hearings by all representatives of Government employee organizations and unions.

The president of the National Association of Letter Carriers testified:

"It is a practice in the postal inspection service, when an employee is called in for questioning by the inspectors on a strictly postal matter that does not involve a felony, to deny the right of counsel. The inspectors interrogate the employee at length and, at the completion of the interrogation, one of the inspectors writes out a statement and pressures the employee to sign it before he leaves the room. We have frequently asked the postal inspection service to permit these employees to have counsel present at the time of the interrogation. The right for such counsel has been denied in all except a few cases. If the employee is charged with a felony, then, of course, the law takes over and the right for counsel is clearly established but in other investigations and interrogations no counsel is permitted."

Several agencies contend that right to counsel is now granted in formal adverse action proceedings and that appeals procedures make this section unnecessary for informal questioning. Testimony and complaints from employees indicate that this machinery does not effectively secure the opportunity of the employee to defend himself early enough in the investigation to allow a meaningful defense.

The predicament of postal employees as described at the hearings reflects the situation in other agencies as reported in many individual cases sent to the subcommittee. While it is undoubtedly true that in some simple questioning, counsel may not be necessary, in many matters where interrogation will result in disciplinary action, failure to have counsel at the first level reacts against the employee all the way up through the appeal and review. In the case of a postal employee, the subcommittee was told—

"The first level is at the working foreman's level. He is the author of the charges; then the case proceeds to the postmaster,

who appointed the foreman and, if the individual is found guilty of the charge at the first level, it is almost inevitable that this position will be supported on the second level. The third level is the regional level, and the policy there is usually that of supporting the local postmaster. A disinterested party is never reached. The fourth level is the Appeals Board, composed of officials appointed by the Postmaster General. In some cases, the region will overrule the postmaster, but certainly the individual does not have what one could style an impartial appeals procedure."

Employees charged with no crime have been subjected to intensive interrogations by Defense Department investigators who ask intimate questions, make sweeping allegations, and threaten dire consequences unless consent is given to polygraph tests. Employees have been ordered to confess orally or to write and sign statements. Such interviews have been conducted after denial of the employee's request for presence of supervisor, counsel, or friend, and in several instances the interrogations have resulted in revocation of a security clearance, or denial of access to classified information by transfer or reassignment, with the resulting loss of promotion opportunities.

Witnesses testified that employees have no recourse against the consequences of formal charges based on information and statements acquired during a preliminary investigation. This renders meaningless the distinction urged by the Civil Service Commission between formal and informal proceedings.

EXCEPTIONS

The act, under section 9, does not apply to the Federal Bureau of Investigation. Furthermore, section 6 provides that nothing in the act will prohibit an official of the Central Intelligence Agency and the National Security Agency from requesting any employee or applicant to take a polygraph test or a psychological test, or to provide a personal financial statement designed to elicit the personal information protected under subsections 1 (e), (f), (i), and (j). In such cases, the Director of the agency or his designee must make a personal finding with regard to each individual to be tested or examined that such test or information is required to protect the national security.

An exception to the right-to-counsel section has been provided to limit this right for employees in the Central Intelligence Agency and the National Security Agency to a person who serves in the same agency or a counsel cleared by the agency for access to the information involved. Obviously, it is expected that the employee's right to be accompanied by the person of his choice will not be denied unless that person's access to the information for the purpose of the case is clearly inconsistent with the national security. Other language recognizes problems unique to these two agencies. For instance, section 7 requires exhaustion of remedies by employees of the Central Intelligence Agency and the National Security Agency and states that the act does not affect whatever existing statutory authority these agencies now possess to terminate employment. Section 8 is designed to assure that nothing in the act is construed to affect negatively any existing statutory or executive authority of the Directors of the Central Intelligence Agency and National Security Agency to protect their information in cases involving their employees. Consequently, procedures commended to the subcommittee by the Director of the Central Intelligence Agency are spelled out for asserting that authority in certain proceedings arising under the act. Other committee amendments to S. 1035, as detailed earlier, were adopted to meet administrative requirements of the Federal security program and the intelligence community as well as the management needs of the executive branch.

ENFORCEMENT

Enforcement of the rights guaranteed in sections 1 and 2 of the bill is lodged in the administrative and civil remedies and sanctions of sections 3, 4, and 5. Crucial to enforcement of the act is the creation of an independent Board on Employees Rights to determine the need for disciplinary action against civilian and military offenders under the act and to provide relief from violations.

Testimony at the hearings as well as investigation of complaints have demonstrated that in the area of employee rights, a right is only as secure as its enforcement. There is overwhelming evidence that employees have heretofore frequently lacked appropriate remedies either in the courts or the Civil Service Commission for pursuing rights which belong to them as citzens.

Under the remedies afforded by sections 3, 4, and 5 of the bill, an employee who believes his rights are violated under the act has several courses of action:

(1) He may pursue a remedy through the agency procedures established to enforce the act, but the fact that he does not choose to avail himself of these does not preclude exercise of his right to seek other remedies.

(2) He may register his complaint with the Board on Employee Rights and obtain a hearing. If he loses there, he may appeal to the district court, which has the power to examine the record as a whole and to affirm, modify, or set aside any determination or order, or to require the Board to take any action it was authorized to take under the act.

(3) He may, instead of going directly to the Board, institute a civil action in Federal district court to prevent the threatened violation, or obtain complete redress against the consequences of the violation.

He does not need to exhaust any administrative remedies but if he elects to pursue his civil remedies in the court under section 4, he may not seek redress through the Board. Similarly, if he initiates action before the Board under section 5, he may not also seek relief from the court under section 4.

The bill does not affect any authority, right or privilege accorded under Executive Order 11491 governing employee-management cooperation in the Federal service. To the extent that there is any overlapping of subject matter, the bill simply provides an additional remedy.

THE BOARD ON EMPLOYEE RIGHTS

As a result of hearings on S. 3779, the section creating a Board on Employee Rights was added to the bill for introduction as S. 1035.

Employees have complained that administrative grievance procedures have often proved ineffective because they are cumbersome, time-consuming, and weighted on the side of management. Not only do those who break the rules go unpunished many times, but the fearful tenor of letters and telephone calls from throughout the country indicate that employees fear reprisals for noncompliance with improper requests or for filing of complaints and grievances. Oral and written directives of warning to this effect have been verified by the subcommittee. Section 1(e) of the bill, therefore, prevents reprisals for exercise of rights granted under the act and in such event accords the individual cause for complaint before the Board or the court.

Concerning the original bill in the 89th Congress, which did not provide for a board, representatives of the 14th department of the American Federation of Government Employees commented that the remedies are the most important aspects of such a bill because "unless due process procedures are explicitly provided, the remaining provisions of the bill may be easily ignored or circumvented by Federal personnel management. As a matter of fact, we believe, the reason employees' rights have been eroded so rapidly and so devastatingly in the last few years is the absence of efficient, expeditious, uniform, and legislatively well defined procedures of due process in the executive departments of the Federal Government."

An independent and nonpartisan Board is assured by congressional participation in its selection and by the fact that no member is to be a government employee. Provision is made for congressional monitoring through detailed reports.

Senator Ervin explained the function of the Board established by section 5 as follows:

"The bill sets up a new independent Federal agency with authority to receive complaints and make rulings on complaints—complaints of individual employees or unions representing employees. This independent agency, which would not be subject in any way to the executive branch of the Government, would be authorized to make rulings on these matters in the first instance. It would make a ruling on action in a particular agency or department that is an alleged violation of the provisions of the bill, with authority either on the part of the agency or the part of the individual or on the part of the union to take an appeal from the ruling of this independent agency to the Federal court for judicial review."

Throughout its study the subcommittee found that a major area of concern is the tendency in the review process in the courts or agencies to do no more than examine the lawfulness of the action or decision about which the employee has complained. For purposes of enforcing the act, sections 3, 4 and 5 assure adequate machinery for processing complaints and for prompt and impartial determination of the fairness and constitutionality of general policies and practices initiated at the highest agency levels or by the Civil Service Commission or by Executive order.

Finding no effective recourse against administrative actions and policies which they believed unfair or in violation of their rights, individual employees and their families turned to Congress for redress. Opening the hearings on invasions of privacy, Senator Ervin stated:

"Never in the history of the Subcommittee on Constitutional Rights have we been so overwhelmed with personal complaints, phone calls, letters, telegrams, and office visits. In all of our investigations I have never seen anything to equal the outrage and indignation from Government employees, their families, and their friends. It is obvious that appropriate remedies are not to be found in the executive branch.

"The complaints of privacy invasions have multiplied so rapidly of late that it is beyond the resources of Congress and its staff to repel effectively each individual official encroachment. Each new program brings a new wave of protest."

Prof. Alan Westin, director of the Science and Law Committee of the Bar Association of the city of New York, testified that these complaints "have been triggered by the fact that we do not yet have the kind of executive branch mechanism by which employees can lodge their sense of discomfort with personnel practices in the Federal Government and feel that they will get a fair hearing, that they will secure what could be called 'employment due process.' "

To meet this problem, Professor Westin proposed an independent board subject to judicial review, and with enforcement power over a broad statutory standard governing all invasion of privacy. Although it is continuing to study this proposal, the subcommittee has temporarily rejected this approach in the interest of achieving immediate enforcement of the act and providing administrative remedies for its violation. For this reason it supports the creation of a limited Board on Employee Rights.

Perhaps one of the most important sections of the bill, if not the most important section, according to the United Federation

of Postal Clerks, is the provision establishing the Board. The subcommittee was told—

"It would appear absolutely essential that any final legislation enacted into law must necessarily include such a provision. We can offer no suggestions for improvement of this section. As presently constituted the section is easily understood; and the most excellent and inclusive definition of the proposed "Board on Employees' Rights" which could possibly be enacted into law. It defines the right of employees to challenge violations of the proposed act; defines the procedures involved, as well as the authority of the Board, penalties for violation of the act, as well as establishing the right of judicial review for an aggrieved party, and finally provides for congressional review, and in effect, an annual audit by the Congress of all complaints, decisions, orders, and other related information resulting from activities and operations of the proposed act."

Sanctions

The need for sanctions against offending officials has been evident throughout the subcommittee's investigation of flagrant disregard of basic rights and unpunished flaunting of administrative guidelines and prohibitions. It was for this reason that S. 3779 of the 89th Congress and S. 1035, as introduced, contained criminal penalties for offenders and afforded broad civil remedies and penalties.

Reporting on the experiences of the American Civil Liberties Union in such employee cases, Lawrence Speiser testified:

"In filing complaints with agencies including the Civil Service Commission, the Army and the Navy, as I have during the period of time I have worked here in Washington, I have never been informed of any disciplinary action taken against any investigator for asking improper questions, for engaging in improper investigative techniques, for barring counsel when a person had a right to have counsel, or for a violation of any number of things that you have in this bill. Maybe some was taken, but I certainly couldn't get that information out of the agencies, after making the complaints. I would suggest that the bill also encompass provision for disciplinary action that would be taken against Federal employees who violate any of these rights that you have set out in the bill."

Other witnesses also pointed to the need for the disciplinary measures afforded by the powers of an independent Board to determine the need for corrective action and punishment, and felt they would be more effective than criminal penalties.

In view of the difficulty of filing criminal charges and obtaining prosecution and conviction of executive branch officials which might render the criminal enforcement provision meaningless for employees, the criminal penalties were deleted and a Board on Employee Rights incorporated into the scheme of remedies and sanctions in the bill.[1]

Although the Civil Service Commission and the executive agencies have advocated placing such administrative remedies within the civil service grievance and appeals system, the subcommittee believes that the key to effective enforcement of the unique rights recognized by this act lies in the employee's recourse to an independent body.

"The theory of our Government," Professor Westin testified, "is that there should be somewhere within the executive branch where this kind of malpractice is corrected and that good administration ought to provide for control of supervision or other practices that are not proper. But the sheer size of the Federal Establishment, the ambiguity of the relationship of the Civil Service Commission to employees, and the many different interests that the Civil Service Commission has to bear in its role in the Federal Government, suggest that it is not an effective instrument for this kind of complaint procedure."

[1] In the 89th Congress, S. 1035.

SECTION-BY-SECTION ANALYSIS

SECTION 1

Section 1(a)

Section 1(a) makes it unlawful for a Federal official of any department or agency to require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency or any person seeking employment to disclose his race, religion, or national origin, or the race, religion, or national origin of any of his forebears.

This section does not prohibit inquiry concerning citizenship of such individual if his citizenship is a statutory condition of his obtaining or retaining his employment. Nor does it preclude inquiry of the individual concerning his national origin or citizenship or that of his forebears when such inquiry is thought necessary or advisable in order to determine suitability for assignment to activities or undertakings related to national security within the United States or to activities or undertakings of any nature outside the United States.

This provision is directed at any practice which places the employee or applicant under compulsion to reveal such information as a condition of the employment relation. It is intended to implement the concept underlying the Federal merit system by which a person's race, religion, or national origin have no bearing on his right to be considered for Federal employment or on his right to retain a Federal position. This prohibition does not limit the existing authority or the executive branch to acquire such information by means other than self-disclosure.

Section 1(b)

Section 1(b) makes it unlawful for any officer of any executive department or executive agency of the U.S. Government, or for any person acting or purporting to act under this authority, to state, intimate, or to attempt to state or intimate, to any civilian employee of the United States serving in the department or agency that any notice will be taken of his attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the executive branch of the U.S. Government, or by any person acting or purporting to act under his authority, or by any outside parties or organizations to advise, instruct, or indoctrinate any civilian employee of the United States serving in the department or agency in respect to any matter or subject other than (1) the performance of official duties to which he is or may be assigned in the department or agency, or (2) the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

Nothing contained in this section is to be construed to prohibit taking notice of the participation of a civilian employee in the activities of any professional group or association.

This provision is designed to protect any employee from compulsion to attend meetings, discussions, and lectures on political, social, and economic subjects unrelated to his duties. It prevents Government officials from using the employment relationship to attempt to influence employee thoughts, attitudes, and actions on subjects which may be of concern to them as private citizens. In particular, this language is directed at practices and policies which in effect require attendance at such functions, including official lists of those attending or not attending; its purpose is to prohibit threats, direct or implied, written or oral, or official retaliation for nonattendance.

This section does not affect existing authority for providing information designed to promote the health and safety of employees. Nor does it affect existing authority to call meetings for the purpose of publicizing and giving notice to activities or service, sponsored by the department or agency, or campaigns such as charitable fund campaigns and savings bond drives.

Section 1(c)

Section 1(c) makes it unlawful for any officer of any executive department or agency, or for any person acting or purporting to act under his authority, to require or request or to attempt to require or request any civilian employee serving in the department or agency to participate in any way in any activities or undertakings unless they are related to the performance of official duties to which he is or may be assigned in the department or agency or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

This section is directed against official practices, requests, or orders that an employee take part in any civic function, political program, or community endeavor or other activity which he might enjoy as a private citizen, but which is unrelated to his employment It does not affect any existing authority to use appropriate techniques for publicizing existence authority to use appropriate techniques for publicizing existence of community programs such as blood-donation drives, or agency programs, benefits or services, and for affording opportunity for employee participation if he desires.

Section 1(d)

Section 1(d) makes it unlawful for any officer of any executive department or agency, or for any person acting under his authority to require or request or attempt to require or request, any civilian employee serving in the department or agency to make any report of his activities or undertakings unless they are related to the performance of official duties or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties, or (2) unless there is reason to believe that the employee is engaged in outside activities or employment in conflict with his official duties.

This section is a minimum guarantee of the freedom of an employee to participate or not to participate in any endeavor or activity in his private life as a citizen, free of compulsion to report to supervisors his action or his inaction, his involvement or his noninvolvement. This section is to assure that in his private thoughts, actions, and activities he is free of intimidation or inhibition as a result of the employment relation.

The exceptions to the prohibition are not legislative mandates to require such information in those circumstances, but merely provide an area of executive discretion for reasonable management purposes and for observance and enforcement of existing laws governing employee conduct and conflicts of interest.

Section 1(e)

Section 1(e) makes it unlawful for any officer of any executive department or agency, or any person acting under his authority, to require or request any civilian employee serving in the department or agency, or any person applying for employment as a civilian employee to submit to any interrogation or examination or to take any psychological test designed to elicit from him any information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

In accordance with an amendment made after hearings on S. 3779, a proviso is in-

cluded to assure that nothing contained in this section shall be construed to prevent a physician from eliciting such information or authorizing such test in the diagnosis or treatment of any civilian employee or applicant where he feels the information is necessary to enable him to determine whether or not the individual is suffering from mental illness. The bill as introduced limited this inquiry to psychiatrists, but an amendment extended it to physicians, since the subcommittee was told that when no psychiatrist is available, it may be necessary for a general physician to obtain this information in determining the presence of mental illness and the need for further treatment.

This medical determination is to be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties.

Under an amendment to the bill, this language is not to be construed to prohibit an official from advising an employee or applicant of a specific charge of sexual misconduct made against that person and affording him an opportunity to refute the charge. While providing no authority to request or demand such information, the section does not prevent an official who has received charges of misconduct which might have a detrimental effect on the person's employment from obtaining a clarification of the matter if the employee wishes to provide it.

This section would not prohibit all personality tests but merely those questions on the tests which inquire into the three areas in which citizens have a right to keep their thoughts to themselves.

It raises the criterion for requiring such personal information from the general "fitness for duty" test to the need for diagnosing or treating mental illness. The second proviso is designed to prohibit mass-testing programs. The language of this section provides guidelines for the various personnel and medical specialists whose practices and determinations may invade employee's personal privacy and thereby affect the individual's employment prospects or opportunities for advancement.

An amendment in section 6 provided an exception to this prohibition in the case of the use of such psychological tests by the Central Intelligence Agency and the National Security Agency, only if the Director of the agency or his designee makes a personal finding that the information is necessary to protect the national security.

Section 1(f)

Section 1(f) makes it unlawful for any officer of any executive department or agency or any person acting under his authority, to require or request or attempt to require or request any civilian employee or any applicant for employment to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices or concerning his attitude or conduct with respect to sexual matters. While this section does not eliminate entirely the use of so-called lie detectors in Government, it assures that where such devices are used, officials may not inquire into matters which are of a personal nature.

As with psychological testing, the Central Intelligence Agency and the National Security Agency, under section 6, are not prohibited from acquiring such information by polygraph, provided certain conditions are met.

Section 1(g)

Section 1(g) makes it illegal for an official to require or request an employee under his management to support the nomination or election of anyone to public office through personal endeavor, financial contribution, or any other thing of value. An employee may not be required or requested to attend any meeting held to promote or support the activities or undertakings of any political party in the United States.

The purpose of this section is to assure that the employee is free from any job-related pressures to conform his thoughts and attitudes and actions in political matters unrelated to his job to those of his supervisors. With respect to his superiors, it protects him in the privacy of his contribution or lack of contribution to the civic affairs and political life of his community, State and Nation. In particular, it protects him from commands or requests of his employers to buy tickets to fundraising functions, or to attend such functions, to compile position papers or research material for political purposes, or make any other contribution which constitutes a political act or which places him in the position of publicly expressing his support or nonsupport of a party or candidate. This section also assures that, although there is no evidence of such activities at present, no Federal agency may in the future improperly involve itself in the undertakings of any political party in the United States, its territories, or possessions.

Section 1(h)

Section 1(h) makes it illegal for an official to coerce or attempt to coerce any civilian employee in the department or agency to invest his earnings in bonds or other Government obligations or securities, or to make donations to any institution or cause. This section does not prohibit officials from calling meetings or taking any other appropriate action to afford employees the opportunity voluntarily to invest his earnings in bonds or other obligations or voluntarily to make donations to any institution or cause. Appropriate action, in the committee's view, might include publicity and other forms of persuasion short of job-related pressures, threats, intimidation, reprisals of various types, and "blacklists" circulated through the employee's office or agency to publicize his noncompliance.

Section 1(i)

Section 1(i) makes it illegal for an official to require or request any civilian employee in the department or agency to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family. Exempted from coverage under this provision is any civilian employee who has authority to make any final determination with respect to the tax or other liability to the United States of any person, corporation, or other legal entity, or with respect to claims which require expenditure of Federal moneys. Section 6 provides certain exemptions for two security agencies.

Neither the Department of the Treasury nor any other executive department or agency is prohibited under this section from requiring any civilian employee to make such reports as may be necessary or appropriate for the determination of his liability for taxes, tariffs, custom duties, or other obligations imposed by law. This proviso is to assure that Federal employees may be subject to any reporting or disclosure requirements demanded by any law applicable to all persons in certain circumstances.

Section 1(j)

Section 1(j) makes it illegal to require or request any civilian employee exempted from application of section 3(i) under the first proviso of that section, to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditure or those of any member of his family or household other than specific items tending to indicate a conflict of interest in respect to the performance of any of the official duties to which he is or may be assigned.

This section is designed to abolish and prohibit broad general inquiries which employees have likened to "fishing expeditions" and to confine any disclosure requirements imposed on an employee to reasonable inquiries about job-related financial interests. This does not preclude, therefore, questioning in individual cases where there is reason to believe the employee has a conflict of interest with his official duties.

Section 1(k)

Section 1(k) makes it unlawful for a Federal official of any department or agency to require or request, or attempt to require or request, a civilian employee who is under investigation for misconduct, to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice, if he wishes.

This section is intended to rectify a long-standing denial of due process by which agency investigators and other officials prohibit or discourage presence of counsel or a friend. This provision is directed at any interrogation which could lead to loss of job, pay, security clearance, or denial of promotion rights.

This right insures to the employee at the inception of the investigation, and the section, and the section does not require that the employee be accused formally of any wrongdoing before he may request presence of counsel or friend. The section does not require the agency or department to furnish counsel.

A committee amendment to S. 782 adds a proviso that a civilian employee serving in the Central Intelligence Agency or the National Security Agency may be accompanied only by a person of his choice who serves in the agency in which the employee serves, or by counsel who has been approved by the agency for access to the information involved.

Section 1(l)

Section 1 (l) makes it unlawful for a Federal official of any department or agency to discharge, discipline, demote, deny promotion, relocate, reassign, or otherwise impair existing terms or conditions of employment of any employee, or threaten to commit any such acts, because the employee has refused or failed to comply with any action made unlawful by this act or exercised any right granted by the act.

This section prohibits discrimination against any employee because he refuses to comply with an illegal order as defined by this act or takes advantage of a legal right embodied in the act.

SECTION 2

Section 2(a) makes it unlawful for any officer of the U.S. Civil Service Commission or any person acting or purporting to act under his authority to require or request, or attempt to require or request, any executive department or any executive agency of the U.S. Government, or any officer or employee serving in such department or agency, to violate any of the provisions of section 1 of this act.

Specifically, this section is intended to ensure that the Civil Service Commission, acting as the coordinating policymaking body in the area of Federal civilian employment shall be subject to the same strictures as the individual departments or agencies.

Section 2(b) makes it unlawful for any officer of the U.S. Civil Service Commission, or any person acting or purporting to act under his authority, to require or request, or attempt to require or request, any person seeking to establish civil service status or eligibility for civilian employment, or any person applying for employment. or any civilian employee of the United States serving in any department or agency, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected

with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

This section is intended to assure that the Civil Service Commission shall be subject to the same prohibitions to which departments and agencies are subject in sections 1 (e) and (f). The provisos contained in section 1(e) are restated here to assure that nothing in this section is to be construed to prohibit a physician from acquiring such data to determine mental illness, or an official from informing an individual of a specific charge of sexual misconduct and affording him an opportunity to refute the charge.

Section 2(c) makes it unlawful for any officer of the U.S. Civil Service Commission to require or request any person seeking to establish civil service status or eligibility for employment, or any person applying for employment in the executive branch of the U.S. Government, or any civilian employee serving in any department or agency to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

This section applies the provisions of section 1(f) to the Civil Service Commission in instances where it has authority over agency personnel practices or in cases in which its officials request information from the applicant or employee.

SECTION 3

This section applies the act to military supervisors by making violations of the act also violations of the Uniform Code of Military Justice.

SECTION 4

Section 4 provides civil remedies for violation of the act by granting an applicant or employee the right to bring a civil action in the Federal district court for a court order to halt the violation, or to obtain complete redress against the consequences of the violation. The action may be brought in his own behalf or in behalf of himself and others similarly situated, and the action may be filed against the offending officer or person in the Federal district court for the district in which the violation occurs or is threatened, or in the district in which the offending officer or person is found, or in the District Court for the District of Columbia.

The court hearing the case shall have jurisdiction to adjudicate the civil action without regard to the actuality or amount of pecuniary injury done or threatened. Moreover, the suit may be maintained without regard to whether or not the aggrieved party has exhausted available administrative remedies. If the individual complainant has pursued his relief through administrative remedies established for enforcement of the act and has obtained complete protection against threatened violations or complete redress for violations, this relief may be pleaded in bar of the suit. The court is empowered to provide whatever broad equitable and legal relief it may deem necessary to afford full protection to the aggrieved party; such relief may include restraining orders, interlocutory injunctions, permanent injunctions, mandatory injunctions, or such other judgments or decrees as may be necessary under the circumstances.

Another provision of section 4 would permit an aggrieved person to give written consent to any employee organization to bring a civil action on his behalf, or to intervene in such action. "Employee organizations" as used in this section includes any brotherhood, council, federation, organization, union, or professional association made up in whole or in part of Federal civilian employees, and which deals with departments, agencies, commissions, and independent agencies regarding employee matters.

A committee amendment provides that the Attorney General shall defend officers or persons who acted pursuant to an order, regulation, or directive, or who, in his opinion, did not willfully violate the provisions of the act.

SECTION 5

Section 5 establishes an independent Board on Employees' Rights, to provide employees with an alternative means of obtaining administrative relief from violations of the act, short of recourse to the judicial system.

Section 5(a) provides for a Board composed of three members, appointed by the President with the consent of the Senate. No member shall be an employee of the U.S. Government and no more than two members may be of the same political party. The President shall designate one member as Chairman.

Section 5(b) defines the term of office for members of the Board, providing that one member of the initial Board shall serve for 5 years, one for 3 years, and one for 1 year from the date of enactment; any member appointed to fill a vacancy in one of these terms shall be appointed for the remainder of the term. Thereafter, each member shall be appointed for 5 years.

Section 5(c) establishes the compensation for Board members at $75 for each day spent working in the work of the Board, plus actual travel expenses and per diem in lieu of subsistence expenses when away from their usual places of residence.

Section 5(d) provides that two members of the Board shall constitute a quorum for the transaction of business.

Section 5(e) provides that the Board may appoint and fix the compensation of necessary employees, and make such expenditures necessary to carry out the functions of the Board.

Section 5(f) authorizes the Board to make necessary rules and regulations to carry out its functions.

Section 5(g) provides that the Board shall have the authority and duty to receive and investigate written complaints from or on behalf of any person claiming to be affected or aggrieved by any violation or threatened violation of this act, and to conduct a hearing on each such complaint. Moreover, within 10 days after the receipt of such a complaint, the Board must furnish notice of time, place, and nature of the hearing to all interested parties, and within 30 days after concluding the hearing, it must render its final decision regarding any complaint.

Section 5(h) provides that officers or representatives of any employee organization in any degree concerned with employment of the category in which the violation or threat occurs, shall be given an opportunity to participate in the hearing through submission of written data, views, or arguments. In the discretion of the Board they are to be afforded an opportunity for oral presentation. This section further provides that Government employees called upon by any party or by any Federal employee organization to participate in any phase of any administrative or judicial proceeding under this section shall be free to do so without incurring travel cost or loss in leave or pay. They shall be free from restraint, coercion, interference, intimidation, or reprisal in or because of their participation. Any periods of time spent by Government employees during such proceedings shall be held to be Federal employment for all purposes.

Section 5(i) applies to the Board hearings the provisions of the Administrative Procedure Act relating to notice and conduct of hearings insofar as consistent with the purpose of this section.

Section 5(j) requires the Board, if it determines after a hearing that this act has not been violated, to state such determination and notify all interested parties of the findings. This determination shall constitute a final decision of the Board for purposes of judicial review.

Section 5(k) specifies the action to be taken by the Board if, after a hearing, it determines that any violation of this act has been committed or threatened. In such case, the Board shall immediately issue and cause to be served on the offending officer or employee an order requiring him to cease and desist from the unlawful practice or act. The Board is to endeavor to eliminate the unlawful act or practice by informal methods of conference, conciliation, and persuasion.

Within its discretion, the Board may, in the case of a first offense, issue an official reprimand against the offending officer or employee, or order the employee suspended from his position without pay for a period not exceeding 15 days. In the case of a second or subsequent offense, the Board may order the offending officer or employee suspended without pay for a period not exceeding 30 days, or may order his removal from office.

Officers appointed by the President, by and with the advice and consent of the Senate, are specifically excluded from the application of these disciplinary measures; but the section provides that, in the case of a violation of this act by such individuals, the Board may transmit a report concerning such violation to the President and the Congress.

Section 5(l) provides for Board action when any officer of the Armed Forces of the United States or any person acting under his authority violates the act. In such event, the Board shall (1) submit a report to the President, the Congress, and to the Secretary of the military department concerned, (2) endeavor to eliminate any unlawful act or practice through informal methods of conference, conciliation, and persuasion, and (3) refer its determination and the record in the case to any person authorized to convene general courts-martial under section 822 (article 22) of title 10, United States Code. When this determination and report is received, the person designated shall immediately dispose of the matter under the provisions of chapter 47 of title 10 of the United States Code.

Section 5(m) provides that when any party disagrees with an order or final determination of the Board, he may institute a civil action for judicial review in the Federal district court for the district wherein the violation or threatened violation occurred, or in the District Court for the District of Columbia.

The court has jurisdiction to (1) affirm, modify, or set aside any determination or order made by the Board, or (2) require the Board to make any determination or order which it is authorized to make under section 5(k) but which it has refused to make. In considering the record as a whole, the court is to set aside any finding, conclusion, determination, or order of the Board unsupported by substantial evidence.

The type of review envisioned here is similar to that obtained under the Administrative Procedure Act in such cases but this section affords a somewhat enlarged scope for consideration of the case than is now generally accorded on appeal of employee cases. The court here has more discretion for action on its own initiative. To the extent that they are consistent with this section, the provisions for judicial review in title 5 of the United States Code would apply.

Section 5(n) provides for congressional review by directing the Board to submit to the Senate and to the House of Representatives an annual report which must include a statement concerning the nature of all complaints filed with it, the determinations and orders resulting from hearings, and the names of all officers or employees against whom any penalties have been imposed under this section.

Section 5(o) provides an appropriation of $100,000 for the Board on Employee Rights.

SECTION 6

Section 6 provides that nothing in the act shall be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency, under specific conditions, from requesting an applicant or employee to submit a personal financial statement of the type defined in subsection 1 (i) and (j) or to take any polygraph or psychological test designed to elicit the personal information protected under subsection 1(e) or 1(f).

In these agencies, such information may be acquired from the employee or applicant by such methods only if the Director of the agency or his designee makes a personal finding with regard to each individual that such test or information is required to protect the national security.

SECTION 7

Section 7 requires, in effect, that employees of the Central Intelligence Agency and the National Security Agency exhaust their administrative remedies before invoking the provisions of section 4 (the Board on Employee Rights) or section 5 (the Federal court action). An employee, his representative, or any organization acting in his behalf, must first submit a written complaint to the agency and afford it 120 days to prevent the threatened violation or to redress the actual violation. A proviso states that nothing in the act affects any existing legal authority of the Central Intelligence Agency under 50 U.S.C. 403(c) or of the National Security Agency under 50 U.S.C. 833 to terminate employment.

SECTION 8

Section 8 provides that nothing in the act shall be construed to affect in any way authority of the directors of the Central Intelligence Agency or the National Security Agency to protect or withhold information pursuant to statute or Executive order. In cases involving his employees, the personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or Executive order is to be conclusive and no such information shall be admissible in evidence in any civil action under section 4 or in any proceeding or civil action under section 5. Nor may such information be receivable in the record of any interrogation of an employee under section 1(k).

SECTION 9

Section 9 provides that the Federal Bureau of Investigation shall be excluded from the provisions of this act.

SECTION 10

Section 10 provides that nothing contained in sections 4 or 5 shall be construed to prevent the establishment of department and agency grievance procedures to enforce this act. The section makes it clear that the existence of such procedures are not to preclude any applicant or employee from pursuing any other available remedies. However, if under the procedures established by an agency, the complainant has obtained complete protection against threatened violations, or complete redress for violations, such relief may be pleaded in bar in the U.S. district court or in proceedings before the Board on Employee Rights.

Furthermore, an employee may not seek his remedy through both the Board and the court. If he elects to pursue his remedies through the Board under section 5, for instance, he waives his right under section 4 to take his case directly to the district court.

SECTION 11

Section 11 is the standard severability clause.

ORDER OF BUSINESS

Mr. SCOTT. Mr. President, I yield back my time.

The PRESIDENT pro tempore. Under the previous order the distinguished Senator from Wisconsin (Mr. PROXMIRE) is scheduled to be recognized.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that that particular order be vacated.

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

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business, not to extend beyond 9:30 a.m. today, with statements therein limited to 3 minutes.

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

Is there morning business?

QUORUM CALL

Mr. MANSFIELD. 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. MANSFIELD. 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.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States, submitting a nomination, was communicated to the Senate by Mr. Leonard, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session, the President pro tempore laid before the Senate a message from the President of the United States submitting the nomination of William Terrell Hodges, of Florida, to be a U.S. District Judge for the Middle District of Florida, which was referred to the Committee on the Judiciary.

NATIONAL SICKLE CELL ANEMIA

Mr. MANSFIELD. Mr. President, I ask unanimous consent that under the agreement previously entered into, Calendar No. 537, S. 2676 be laid before the Senate and made the pending business.

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

The bill was read by title, as follows:

A bill (S. 2676) to provide for the prevention of sickle cell anemia.

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

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

SHORT TITLE

SECTION 1. This Act shall be cited as the "National Sickle Cell Anemia Control Act".

FINDINGS AND DECLARATION OF PURPOSE

SEC. 2. (a) The Congress hereby finds and declares—

(1) that sickle cell anemia is a debilitating, inheritable disease that afflicts approximately two million American citizens and has been largely neglected;

(2) that the disease is a deadly and tragic burden which is likely to strike one-fourth of the children born to parents, both of whom bear the sickle cell trait;

(3) that efforts to control sickle cell anemia must be directed toward increased research in the cause and treatment of the disease, and the education, screening, and counseling of carriers of the sickle cell trait;

(4) that simple and inexpensive screening tests have been devised which will identify those who have the disease or carry the trait;

(5) that programs to control sickle cell anemia must be based entirely upon the voluntary cooperation of the individuals involved;

(6) that the attainment of better methods of control, diagnosis, and treatment of sickle cell anemia deserves the highest priority.

(b) In order to preserve and protect the health and welfare of all citizens, it is the purpose of this Act to establish a national program for the control, research, and treatment of sickle cell anemia.

AMENDMENTS TO PUBLIC HEALTH SERVICE ACT

SEC. 3. (a) Section 1 of the Public Health Service Act is amended by striking out "titles I to X" and inserting in lieu thereof "titles I to XI".

(b) The Act of July 1, 1944 (58 Stat. 682), as amended, is amended by renumbering title XI (as in effect prior to the enactment of this Act) as title XII, and by renumbering sections 1101 through 1114 (as in effect prior to the enactment of this Act), and references thereto, as sections 1201 through 1214, respectively.

(c) The Public Health Service Act is further amended by adding after title X the following new title:

"TITLE XI—SICKLE CELL ANEMIA PROGRAM

"GRANTS FOR SICKLE CELL SCREENING AND COUNSELING PROGRAMS

"SEC. 1101. (a) The Secretary is authorized to make grants to and enter into contracts with public and nonprofit private agencies, organizations, or institutions to assist in the establishment and operation of voluntary sickle cell anemia screening and counseling programs and to assist in developing and making available information and educational materials relating to sickle cell anemia to all persons requesting such information or materials, and to inform the public generally about the nature of sickle cell anemia and the sickle cell trait.

"(b) In making grants and contracts under this section the Secretary shall give priority to areas within States having the highest percentage of population in need of sickle cell anemia screening and counseling programs; with a further priority to community-based organizations in such areas.

"(c) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated $25,000,000 for the fiscal year ending June 30, 1973; $35,000,000 for the fiscal year ending June 30, 1974; and $40,000,000 for the fiscal year ending June 30, 1975.

"RESEARCH AND RESEARCH TRAINING GRANTS

"SEC. 1102. (a) In order to promote research and research training in the diagnosis, treatment, and control of sickle cell anemia, development of programs to educate the public regarding the nature and inheritance of the sickle cell trait and sickle cell anemia,

and the development of centers for research, testing, counseling, control or treatment of sickle cell anemia, the Secretary is authorized to make grants to public or nonprofit private agencies, organizations or institutions and to enter into contracts with public or private agencies, organizations or institutions and individuals for projects for research and research training in such fields.

"(b) For the purpose of making payments pursuant to grants and contracts under this section there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1973; $10,000,000 for the fiscal year ending June 30, 1974; and $15,000,000 for the fiscal year ending June 30, 1975.

"VOLUNTARY PARTICIPATION

"SEC. 1103. The participation by any individual in any program or portion thereof under this title (whether by grant or contract) shall be wholly voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from or to participation in, any other program.

"APPLICATIONS

"SEC. 1104. A grant under this title may be made upon application to the Secretary at such time, in such manner, containing, and accompanied by such information as the Secretary deems necessary. Each application shall—

"(1) provide that the programs and activities for which assistance under this title is sought will be administered by or under the supervision of the applicant;

"(2) provide for strict confidentiality of all test results, medical records, and other information regarding screening, counseling, or treatment of any person treated, except for (A) such information as the patient (or his guardian) consents to be released; or (B) statistical data compiled without reference to the identity of any such patient;

"(3) provide for appropriate community representation in the development and operation of any program funded under this title; and

"(4) set forth such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this title.

"PUBLIC HEALTH SERVICE FACILITIES

"SEC. 1105. The Secretary shall establish a program within the Public Health Service to provide for voluntary sickle cell anemia screening, counseling, and treatment. Such program shall be made available through facilities of the Public Health Service to any eligible person requesting screening, counseling, or treatment, and shall include notification of all eligible persons of the availability and voluntary nature of such programs.

"REPORTS

"SEC. 1106. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress on or before April 1 of each year a comprehensive report on the administration of this title.

"(b) The report required by this section shall contain such recommendations for additional legislation as the Secretary deems necessary."

PROTECTION OF ARMED FORCES PERSONNEL

SEC. 4. (a) The Secretary of Defense is authorized and directed to promulgate rules and regulations to provide for screening and counseling of members of the Armed Forces (including their dependents), civilian employees of the Department of Defense, and persons examined at Armed Forces examining and entrance stations, for the sickle cell trait and sickle cell anemia.

(b) Such rules and regulations shall provide for—

(1) voluntary screening for the sickle cell trait for persons described in subsection (a) who request such a test, at no cost to such person;

(2) communication to such person described in subsection (a) of the results of such test;

(3) voluntary referral of individuals determined to possess a positive trait to an appropriate military or civilian counseling or treatment agency;

(4) notification to persons described in subsection (a) of the cost-free and voluntary nature of the screening and referral programs implemented pursuant to this section;

(5) education of persons described in subsection (a) regarding the nature and inheritance of the sickle cell trait and sickle cell anemia; and

(6) assurance that all information obtained on specimens submitted voluntarily under this Act shall be held confidential except for (A) such information as the patient (or his guardian) consents to be released or (B) statistical data compiled without reference to the identity of such patient.

(c) The Secretary of Defense shall provide for voluntary counseling or treatment of such persons described in subsection (a) found to have the sickle cell trait or sickle cell anemia at an appropriate military or civilian facility as the case may be.

(d) (1) The Secretary of Defense shall prepare and submit to the President for transmittal to Congress on or before April 1 of each year a comprehensive report on the administration of this section.

(2) The report required by this subsection shall contain such recommendations for additional legislation as the Secretary of Defense deems necessary.

(e) The participation by any individual in any program or portion thereof under this section shall be wholly voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, any other program.

PROTECTION OF VETERANS

SEC. 5. (a) Chapter 17 of title 38, United States Code, is amended by adding at the end thereof the following new subchapter:

"Subchapter VI—Sickle Cell Anemia

"§ 651. Screening, counseling, and medical treatment

"(a) The Administrator is authorized to offer to any veteran who is receiving hospital or domiciliary care or medical services under this chapter or is receiving an examination to determine eligibility for benefits under this title, a screening examination for sickle cell trait or sickle cell anemia, including providing to such veteran full information regarding the nature and inheritance of sickle cell trait and sickle cell anemia and regarding the availability to such veteran of a screening examination under this subchapter, and to provide such a screening examination upon such veteran's request.

"(b) Upon a finding that such veteran has the sickle cell trait or sickle cell anemia, the Administrator is authorized to offer, and, if such veteran requests, provide for counseling (which shall include such a screening examination and counseling for the veteran's spouse, when requested, and a complete explanation of the veteran's eligibility for hospital care and medical services under this chapter) and/or necessary hospital care and medical services for a disability arising from such trait or anemia.

"(c) The Administrator shall ensure that eash veteran receiving benefits under laws administered by the Veterans' Administration receives, as soon as practicable after enactment of this subchapter, full information regarding the nature and inheritance of sickle cell trait and sickle cell anemia and the availability of screening examinations and treatment for such trait and anemia.

"§ 652. Research

"The Administrator shall carry out research and research training in the diagnosis, treatment, and control of sickle cell anemia based upon the screening examinations and treatment provided under this subchapter, subject to the provisions governing voluntary participation and confidentiality in section 653 of this title. For the purpose of carrying out such research, there are authorized to be appropriated $3,000,000 for the fiscal year ending June 30, 1973; $4,000,000 for the fiscal year ending June 30, 1974; and $5,000,000 for the fiscal year ending June 30, 1975.

"§ 653. Voluntary participation; confidentiality

"(a) The participation by any person in any program or portion thereof under this subchapter shall be wholly voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, any other program under this title.

"(b) The Administrator shall promulgate rules and regulations to ensure that all information and patient records prepared or obtained under this subchapter shall be held confidential except for (1) such information as the patient (or his guardian) requests in writing to be released or (2) statistical data compiled without reference to patient names or other identifying characteristics.

"§654. Reports

"(a) The Admiinstrator shall prepare and submit to the President for transmittal to the Congress on or before April 1 of each year a comprehensive report on the administration of this subchapter.

"(b) The report required by this section shall contain such recommendations for additional legislation as the Administrator deems necessary."

(b) The analysis at the beginning of such chapter is amended by adding at the end thereof:

"SUBCHAPTER VI—SICKLE CELL ANEMIA

"651. Screening, counseling, and medical treatment.

"652. Research.

"653. Voluntary participation; confidentiality.

"654. Reports."

Mr. MANSFIELD. Mr. President, I yield to the distinguished Senator from Massachusetts the 15 minutes allotted to the majority.

The PRESIDENT pro tempore. The Chair understands there is a 30-minute time limitation on this matter.

Mr. KENNEDY. Mr. President, I yield myself 7 minutes.

The PRESIDENT pro tempore. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I am delighted to have this opportunity to bring S. 2676, the National Sickle Cell Anemia Act, before the Senate. This bill establishes for the first time, substantial efforts by the Federal Government, to combat the debilitating effects of sickle cell anemia. The bill has the strong bipartisan support of 45 Senators who joined in cosponsoring this legislation. Approval of this bill underscores the Senate's very meaningful response to the needs of those who are affected by sickle cell anemia.

At least 50,000 Americans are believed to suffer from the painful crises that are characteristic of this disease. Another 2.5 million Americans are believed to have the sickle cell trait that may be passed on to their children. Since its origin centuries ago in certain areas of Africa, the disease and its complications have been observed in many areas of the world. In this country, sickle cell anemia has been diagnosed mainly in

black people. It has also been observed in countries of southern Europe and in India.

Last July, I offered an amendment to the supplemental appropriations bill for the Department of Health, Education, and Welfare that was approved by the Senate. That amendment added $6 million for sickle cell anemia treatment programs and the bill passed the Senate with a total of $12 million for the Department of Health, Education, and Welfare to develop these programs. Unfortunately, the conference committee rejected the $12 million appropriated by the Senate and approved a total of only $6 million.

Since then, the health subcommittee has conducted extensive hearings on S. 2676, as introduced by the distinguished junior Senator from California (Mr. TUNNEY). The members of the committee were impressed with testimony from the many witnesses, who supported the need for a strong effort to combat this crippling killer. Victims of the disease are stricken with bouts of excruciating pain. Sicklers suffer from heart attacks, strokes, kidney failure, and other debilitating effects that seriously shorten their lives. Most patients fail to live beyond age 20. And in the first years of life many victims are hospitalized up to 10 times a year.

Each member of the subcommittee deserves credit for his work on and concern with this vital issue. I feel it is important to also extend appreciation to all members of the full Committee on Labor and Public Welfare for the careful attention displayed for the needs of those who are affected with sickle cell anemia and in moving so swiftly to complete committee action on this legislation. This bill was introduced on October 8, 1971. Hearings were conducted by the health subcommittee on November 11 and 12, 1971, and the Committee on Labor and Public Welfare reported the bill on November 16. Today, exactly 2 months after the bill was introduced we are preparing to complete final action on this measure. This efficiently swift action could not have occurred without the cooperation of the several able and concerned members of the committee.

Throughout its 60-year history in this country, sickle cell anemia has plagued thousands of victims. But the most tragic aspect of the problems attendant to this disease is the neglect of our national medical resources regarding this awful malady.

When compared with other diseases that primarily strike white families, it is clear that sickle cell anemia has been considered of little concern, like most other things that only affect black Americans. Resources to support research efforts to combat other diseases, however, have been astronomical compared to the amount provided for the fight against sickle cell anemia. In any effort to control sickling, those who suffer with this disease must get attention and relief and those with the trait must receive counseling and guidance. It is my hope that the National Sickle Cell Anemia Act will inaugurate a nationwide commitment. I am convinced that this country has both the ability and the concern to mount an effective attack on sickle cell anemia. The provisions authorized by the Sickle Cell Anemia Act will introduce a well deserved and long overdue response to this critical health problem.

This bill authorizes a total of $142 million over 3 years. The authorization includes: $25 million for fiscal year 1973, $35 million for fiscal year 1974, and $40 million for fiscal year 1975, for the Department of Health, Education, and Welfare to conduct screening, testing, and counseling programs. For each of those fiscal years the Department of Health, Education, and Welfare is also authorized $5 million, $10 million, and $15 million, respectively, for research programs concerning this disease. In addition, the Veterans' Administration is authorized $3 million for fiscal year 1973, $4 million for fiscal year 1974, and $5 million for fiscal year 1975, to conduct research projects on the effects of sickle cell anemia.

And finally the bill authorizes the Department of Defense to include sickle cell anemia testing in its ongoing health care programs for civilian and active duty military personnel.

As chairman of the Health Subcommittee, I received consistent testimony from witnesses who reported that effective control of this disease will be accomplished with extensive participation by organizations and research teams that include black professionals and technicians. I was particularly impressed with the accomplishments of the Black Athletes' Foundation—BAF. Organized less than a year ago, a group of professional black athletes, headed by Muhammed Ali, developed a sickle cell testing program in Pittsburgh and Allegheny County, Pa. So far, with only volunteer help, over 5,000 citizens have passed through that program. Already the BAF is planning for similar projects in Atlanta, Chicago, St. Louis, and other cities.

In addition to the concerns expressed by such volunteer groups, it is important to note that for more than 20 years substantial work has been done on this disease by Dr. Roland Scott of Howard University.

Dr. Scott has labored quietly and effectively but with essentially no money—in 20 years he received less than $70,000 in Federal funds for the university's sickle cell clinic and for its research program.

Researchers from Rockefeller University, Meharry Medical College, and the University of Illinois College of Medicine told the committee of possible results that may be developed from current research efforts. Their work and the hope of those who suffer from this disease will be bolstered with the enactment of this legislation.

I believe that this bill can and will stimulate a Nationwide program to resolve the problems of sickle cell anemia. Already hearings on similar legislation have been conducted by Congressman PAUL ROGERS' Health Subcommittee in the House, and I share the interest of those members who look for favorable action by the House of Representatives on this measure.

Mr. President, I urge the Senate to accept S. 2676 because it offers to begin providing well deserved assistance for a very critical affliction. Strong approval by the Senate for sickle cell anemia legislation will lead the way for a national program that can clearly and emphatically meet the demands of this vital health problem.

The fact remains that half of those with sickle cell anemia die by the time they are 20 years of age. Rarely is there a record of someone with the disease living beyond the age of 40. The statistics that are included in these remarks and the dollar amounts that have been indicated in the bill fail to convey the very deep sense of human suffering and loss that are experienced by those who are affected by the disease. In our hearings on this bill one witness who appeared before us was a woman, 27 years of age, who suffers from the disease, she knows very well, the agony, and distress that accompany the painful bouts that force the sickle cell victims to be hospitalized. She knows that a person with sickle cell anemia lives a life spotted with mounting medical costs. She is the mother of a young daughter. And every day when she wakes up she knows there may be 1 day less in her life, unless we reach some miraculous discoveries, through research on sickle cell anemia.

The work in this field has been going on in many communities around the country. I mentioned in my remarks two distinguished schools that have been engaged in this work, Howard University and Rockefeller University. Voluntary programs have been going on in many other parts of the country. We in Congress authorize and appropriate vast sums of money, but in this particular area, where we can have a direct impact in insuring that people in this country are relieved from this disease through screening and by counseling programs, we have not done nearly enough. It is vital, therefore, that we pass S. 2676 to begin providing the well-deserved Federal assistance to control this disease. Federal programs can caution individuals about the possibility of inflicting sickle cell anemia upon children. I feel we can really help a very significant part of our population.

I am hopeful that the legislation will be adopted.

Mr. President, considerable concern about the need for sickle cell anemia programs has appeared in recent months in publications by medical experts. But there has also been considerable coverage in the lay press about the mounting public demand for substantial Federal assistance to control this disease.

I wish to direct the Senate's attention to two articles that were recently published in the Washington Post and in the National Observer about sickle cell anemia. I therefore request unanimous consent to enter in the RECORD: A news item from the December 7 issue of the Washington Post concerning a Baltimore, Md., sickle cell anemia testing program; and a feature article from the December 11 issue of the National Observer by Patrick Young, entitled "A Disease Draws the Color Line."

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

[From the Washington Post, Dec. 7, 1971]

BALTIMORE WILL TEST TO FIND SICKLE CELL ANEMIA CARRIERS

(By Jim Mann)

Baltimore Mayor-elect William D. Schaefer has announced plans to screen about 50,000 black junior and senior high school students to find carriers of the genetic trait that can cause sickle cell anemia.

Under the program, announced this weekend, those who are found to be carriers of the disease will be given counseling sessions.

In such sessions, they will be advised that if they marry another person carrying the sickle cell trait, the chances are that one in four of their children will actually have the disease. (The carriers of the disease are themselves invariably free of the disease.)

The rationale for aiming the screening program at junior and senior high school students is to reach those people who will soon be having children.

Sickle cell anemia is a hereditary disease caused by abnormal hemoglobin in the blood. The disease originated in Africa, Asia and parts of the Mediterranean as a natural body defense against malaria, according to Dr. Roland Scott, a leading researcher in the field. In the United States, almost all victims are blacks.

The victims suffer excruciatingly painful attacks, and sometimes blindness or paralysis. Rarely do victims live past the age of 40.

Although the disease affects about one in 500 American blacks, slightly fewer than one in 10 carry the recessive gene that can cause the disease.

According to Robert E. Farber, Baltimore health commissioner, the program was made possible by a "windfall" of $110,000 for new health programs, which Baltimore is eligible to receive as part of the proceeds of a successful antitrust action against pharmaceutical companies.

The screening itself is expected to cost $65,000 to $85,000 over a two-year period. Farber said the program would probably begin some time next year.

The District of Columbia does not yet have a screening program for the sickle cell anemia trait in its public schools, although it, like Baltimore, has recently begun conducting such tests in some maternity and neighborhood clinics.

However, the D.C. City Council has under consideration a proposal to conduct sickle cell screening among all kindergarten and first grade students.

Earlier this year, Congress allocated $6 million for research and community programs relating to sickle cell anemia, a fivefold increase, after President Nixon in February asked for "concentrated research" on the disease.

[From the National Observer, Dec. 11, 1971]

A DISEASE DRAWS THE COLOR LINE—RESEARCHERS AROUSE PUBLIC TO SICKLE-CELL THREAT

(By Patrick Young)

Nellie Kendrick recalls a white friend who recently asked her if it were true that sickle-cell anemia—a painful and usually fatal blood disease—is found almost exclusively among blacks. Mrs. Kendrick, a black volunteer in the Milwaukee Community Sickle Cell Disease Project, assured her it was. "I thought it was just a lie spread to show that blacks were inferior to whites," the friend said.

Misconceptions abound about sickle-cell anemia, among blacks and whites, among physicians and laymen. The disease afflicts perhaps 45,000 black Americans. Nearly half of its victims die before age 5, and about 80 per cent by age 30. It occurs once in every 400 to 500 black births, a frequency 6 times greater than cystic fibrosis, and 20 times higher than phenylketonuria (PKU), both almost exclusively white diseases.

Yet for years medical researchers called sickle-cell anemia "the forgotten disease." One year ago, an editorial in the Journal of the American Medical Association complained that "the level of general ignorance concerning the nature of sickle-cell anemia remains depressingly high."

Now that ignorance is under attack. More money than ever is going into sickle-cell research. New diagnostic and treatment procedures are being developed. Large-scale testings are under way in several cities, including Milwaukee, to find blacks unknowingly suffering from the disease, and to determine who are carriers capable of passing on sickle-cell anemia to their children.

And blacks across the country are working to raise funds and to acquaint all Americans with the disease. As one example, more than 200 professional black athletes—including Willie Stargell and Dock Ellis of the Pittsburgh Pirates and boxer Muhammad Ali—have set up the Black Athletes Foundation for Research in Sickle Cell Disease.

BRINGING BLACKS TOGETHER

"This has brought black people together, from the Black Panthers to the Urban League," says Richard Campbell, director of the Foundation for Research and Education in Sickle Cell Disease in New York City.

Sickle-cell anemia, an inherited disease, is the most common long-term illness among black children (about 1 per cent of its victims in the United States are white). It is incurable, and despite considerable knowledge of the disease's mechanism, treatment methods remain poor.

The disease is caused by a defect in the hemoglobin molecules within red blood cells, which carry oxygen throughout the body. Each hemoglobin molecule contains 574 amino acids. In sickle-cell hemoglobin, two of these amino acids are replaced by two others.

"At the basic level, the change is so minuscule, so tiny," says Dr. Makio Murayama, a biochemist at the National Institute of Arthritis and Metabolic Diseases. "Yet for the individual, it is a matter of life and death."

When sickle-cell hemoglobin is deprived of oxygen, the red blood cells lose their round, doughnutlike shape and take on a sickle or quarter-moon appearance.

When this happens, the red blood cells are unable to pass through the body's microscopic capillaries. The cells jam up like driftwood clogging a drainpipe. As a result tissue is deprived of the oxygen it needs, and dies. This painful event is called a "crisis."

In crisis, a person suddenly develops intense pain, usually in the abdomen, back, chest, hips, arms, or legs. The heart may be partly or fatally damaged or a stroke may result. Sickle-cell sufferers are extremely vulnerable to infection, particularly pneumonia, and many develop skin ulcers at the ankle.

"Sickling can occur in any organ system and so it can mimic any disease state," says Dr. Edwin Bemis, a pathologist working with the newly established Southeastern Wisconsin Sickle Cell Center at Deaconess Hospital here. This causes diagnostic difficulties for doctors unfamiliar with sickle cell, and sometimes results in unnecessary surgery.

The disease results from a gene mutation that occurred centuries ago in Africa, and which became common because it offered a protection against malaria. For some unknown reason, malaria parasites cannot survive in sickled red blood cells.

Each person inherits two sets of genes, one from each parent. A person with sickle-cell anemia has inherited a sickle-cell gene from each parent. A person who inherits a sickle-cell gene from only one parent is called a "trait." (Far less common than sickle-cell anemia are "variants," forms of the disease less severe than the anemia, but more troublesome than the trait.) Estimates place the number of blacks carrying the trait at between 8 and 13 per cent.

It requires two traits to produce a child with sickle-cell anemia, and the odds are one in four for such a birth. The chances of producing another trait are one in two. These odds of genetic roulette are for each birth. A Racine, Wis., couple produced three children, all with sickle-cell anemia.

The only guarantee that two traits will avoid a child with sickle-cell anemia is if they have no children. Currently several research teams are trying to develop prenatal tests for the disease. If they succeed, parents will know in advance if their child will be born with sickle-cell anemia, and will have the option for abortion.

TRAIT IS NOT A DISEASE

Most sickle-cell traits live normal lives and never experience a crisis. "Overall, we try to stress that sickle-cell trait is not a disease," says Dr. Robert B. Scott of the Medical College of Virginia in Richmond.

Nevertheless, cautions Dr. Robert M. Nalbandian of Blodgett Memorial Hospital in Grand Rapids, "the trait under certain physiological-stress conditions can be hazardous, and has been."

Traits may crisis while flying at high altitudes in unpressurized aircraft, under general anesthesia during surgery, or sometimes during great physical exertion.

Last year a team of Army doctors blamed sickle-cell trait for the deaths of four black recruits—over an 11-month period—during basic training at Fort Bliss, Texas. Their conclusion, however, has been challenged by other researchers, who contend the doctors did not rule out sufficiently other possible factors in the deaths.

Women with sickle-cell trait have a higher incidence of urinary infection during pregnancy, and traits sometimes pass blood in their urine. Pittsburgh pitcher Dock Ellis, a trait, says he occasionally passes clots. "I've gone to the team physicians and they say there's nothing they can do about it," he says.

The public awakening to sickle-cell anemia is a recent thing, among blacks and whites. A 1968 survey in Richmond found that only 30 per cent of the blacks questioned had heard of the disease. Today blacks are more willing to accept the disease and no longer regard it as a racial slur.

"Part of the new pride among blacks is enabling us to look at ourselves, and to look with more objectivity," says Hazel Maxwell, chairman of the Milwaukee Community Sickle Cell Disease Project's advisory committee.

Sickle-cell fighters say the message of concern is finally getting across. Congress, at President Nixon's request, increased the National Institutes of Health's sickle-cell research budget from $1,000,000 to $6,000,000 this year. A bill to provide $142,000,000 in sickle-cell funds over three years is pending in the Senate. The National Foundation and its local March of Dimes chapters are providing increasing funds for research.

"I think we're getting over our benign neglect," says Dr. Bemis. "We're waking up to the fact that there is a black portion of our population. Whites, too, are demanding that blacks be treated on an equal medical basis."

The new awareness of sickle-cell anemia has led to greater efforts to identify people with the trait. Here in Milwaukee, Deaconess Hospital's sickle-cell center plans to test 118,000 blacks in seven counties. Three screenings have tested 2,232 blacks since Sept. 18, in addition to over 5,000 patients routinely tested upon admission to the hospital since 1969.

It is a community effort, utilizing more than 250 black and white volunteers and Boy Scout Troop 200, a ghetto unit, to spread the testing message. The center will provide

genetic counseling and a registry of persons with sickle-cell trait.

AN EFFORT IN PITTSBURGH

The Black Athletes Foundation and six other groups are sponsoring a similar effort in an attempt to test 250,000 blacks in the Pittsburgh area. Smaller screening programs have taken place among school children in Grand Rapids and Hartford.

Testings to date have been voluntary. But New York State recently passed a law providing sickle-cell tests for youngsters entering public schools. And laws requiring testing of school children or marriage license applicants before marriage are pending in several states, including California and Illinois.

Such laws delight some blacks, but not all. "If testing is compulsory, children identified as carriers could be stigmatized as less desirable parents or as weak individuals," says Dr. Robert Murray of Howard University in Washington, D.C.

The Milwaukee program and several others use a test developed by Dr. Nalbandian and Dr. Paul Wolf of Stanford University. Its advantage over previous tests lies in cost. The chemicals needed for the test, which can be run automatically at the rate of 120 an hour, cost only pennies a sample.

The test is a preliminary screening. A positive indicates sickling, but not necessarily sickle-cell disease. A second test—electrophoresis, which measures the distinctive electrical charges of various types of hemoglobin—can determine if the patient has sickle-cell anemia or the trait.

Treating sickle-cell anemia is more complex. Efforts to reverse sickling crises in patients, says Dr. Scott, "have not been terribly effective."

Dr. Nalbandian and his research colleagues are experimenting with urea, a natural chemical waste occurring in the body, in a sugar solution to treat patients in crisis. This "molecular surgery," says Dr. Nalbandian, breaks apart sickle-cell hemoglobin molecules that have locked together and reverses the crisis.

"We have been able to abort sickle-cell crises in over 20 patients, without using narcotics, and without medical misadventures. therapeutic failure, or death," he says.

The technique is extremely complicated. Unless extreme care is taken, the urea can cause dehydration, which itself can bring on a crisis by reducing oxygen.

Last month Dr. Paul McCurdy and Dr. Laviza Mahmood of Georgetown University medical school in Washington, D.C., reported treating 24 crises in 14 patients with urea. Seventeen crises were successfully treated, though the researchers noted dehydration as a major side effect.

"These results suggest that urea therapy has a beneficial effect on the painful crises of sickle-cell disease, but the method is still experimental," they wrote in the New England Journal of Medicine.

Currently the National Heart and Lung Institute is supporting six studies comparing three sickle-cell therapies, including urea. A second corrects dehydration, and the third reduces blood acidity, another cause of sickling, by lowering body oxygen.

A PROMISING TREATMENT

Other researchers are trying to find other chemicals that will reverse sickling without urea's handicaps. Dr. Anthony Cerami and Dr. James Manning of Rockefeller University in New York City recently reported excellent test-tube results in preventing sickling in human blood with potassium cyanate. They expect to begin human tests within a year.

Dr. Nalbandian says urea, taken four times daily mixed with soda pop to hide its bitter taste, can safely and effectively prevent sickle-cell crises. But he acknowledges difficulties in getting patients to down their preventive doses regularly.

"Frequently they take it when they feel pain," he says. "They head off a crisis and then they ignore their urea. There has to be a better way of delivering it."

SECRET LAY IN THE STRUCTURE

Although there is no cure for sickle-cell anemia, and as yet no generally accepted treatment, the basic mechanism of "sickling" is no mystery.

Sickle-cell anemia was first described in 1910 by Dr. James Herrick of Chicago. In 1949, Nobel Laureate Linus Pauling and Dr. Harvey Itano showed that the disease resulted from an inherited defect in the hemoglobin molecules within red blood cells. Nine years later, Dr. Vernon Ingram and John Hunt, working at England's Cambridge University, identified that defect.

Hemoglobin molecules, which transport oxygen throughout the body, contain a total of 574 amino acids, arranged in four chains. The four chains are actually two pairs of identical chains, called alpha and beta.

The English researchers found that at two points in the beta chain of sickle-cell hemoglobin an amino acid called valine exists where glutamic acid, another amino acid, exists in normal hemoglobin.

It remained for Dr. Makio Murayama, a biochemist at the National Institute of Arthritis and Metabolic Diseases, to explain in 1966 how this minute difference in amino acids causes sickling. Considering the Cambridge research, he says, "it occurred to me that maybe the secret lay in the structure."

Normal hemoglobin molecules, about 300,000,000 per red blood cell, move at random within their cells. But Dr. Murayama found that substituting valine for glutamic acid allows sickle-cell hemoglobins to lock together when oxygen is reduced. They form chains up to 6,000,000 molecules long. These chains twist into six-strand cables, and these cables, in turn, bunch together to form rigid lines.

"The end effect is that the cell wall, which is like a balloon, complies with the shape of these long fibers within," Dr. Murayama says.

Last year Dr. Murayama photographed these microcables for the first time. Using a stream of argon ions—a technique he learned about from scientists shaving microcopic layers from moon rocks—he stripped away part of the wall from a sickled cell. With a scanning electron microscope, he photographed clumps of sickled hemoglobin.

This year Dr. Murayama proposed a theory to explain why sickle-cell anemia is more severe in some patients than in others. He suggests that an organic molecule, which he calls the "hemoglobin S cofactor," plays a role in sickling. Its severity depends on the amount of this molecule present.

Dr. Murayama has yet to identify the molecule. "When and if it is identified," he says, "I think we will be able to revolutionize the mode of control and treatment of the disease."

Mr. TUNNEY. Mr. President, there is a blood disease in this country that kills half of its victims before the age of 20. Few survive beyond the age of 40 and most are crippled long before death.

It was found to be a deadly killer more than 60 years ago. It is called sickle cell anemia and it strikes approximately one of every 500 black persons in this country. Medical researchers estimate that over 2 million Americans carry the so-called sickle cell trait. And yet the vast majority of Americans have no idea what sickle cell anemia is; they have never heard of it.

The people who suffer most from this disease do not live in the suburbs; they do not belong to country clubs; they do not go to private schools; many of them do not have family doctors; many of them never receive any adequate health care. They are black and they are being ignored.

If this country can vaccinate millions of schoolchildren against the threat of polio; if we have the facilities to perform the major medical miracles that we have all witnessed within the last 15 years, then I say that there is absolutely no excuse why the talent and research facilities of the Federal Government and the commitment and the dollars of the U.S. Congress should not be expended toward eliminating the threat of sickle cell anemia from every black home in America. To do any less is unacceptable.

I think it is time that we as a nation make a commitment to end this tragedy. For this reason, I authored the legislation we have before the Senate today. S. 2676, the National Sickle Cell Anemia Prevention Act, creates a national program for the prevention of sickle cell anemia. Regrettably, there is no cure for this disease and none on the horizon. But we can begin to offer the opportunity to learn the nature and risks of the disease. And we can persist in and strengthen research to combat the disease. I am honored that Senators KENNEDY, BROOKE, and WILLIAMS joined me as the prime sponsors of this bill. And I think the fact that 42 other Senators have joined as cosponsors is an indication of the depth of commitment in the Senate to act against this disease.

I am also honored to have had the advice and cooperation of District of Columbia Delegate WALTER FAUNTROY who led a group of 11 members of the black caucus in introducing identical legislation in the House of Representatives.

Mr. President, before discussing the basic provisions of S. 2676, I would like to discuss three major points which I think the Senate should keep before it in considering this bill.

As chairman of the Subcommittee on Public Health for the District of Columbia, I held hearings here in Washington on sickle cell anemia. Those hearings, to the best of my knowledge, were the first hearings ever held by any committee of the Congress on this tragic disease. I point this out, Mr. President, to indicate the fact that this has been a terribly and tragically neglected area. And the full measure of that neglect is the fact that sickle cell anemia has received the barest imaginable Federal research support. To put it bluntly, the Federal Government just has not cared enough. I think it is fair to say—and research figures prove the fact—that if sickle cell anemia afflicted primarily white people instead of black, we would have made the commitment long ago to end this disease.

Take just one example—phenylketonuria—so called PKU disease—is a disease that afflicts primarily white persons, and occurs with a frequency of less than 1 in 10,000 births. For years hospitals have routinely tested white children for this disease. Sickle cell anemia occurs with a frequency of 1 in 500, 20 times more frequently than PKU—and yet we still do not have any major programs to test for this disease.

Mr. President, the one thing that came through loud and clear in my recent hearings was that whatever progress has

been made thus far has come from dedicated researchers, such as Dr. Roland Scott at Howard University, who have worked almost entirely without Federal money.

Last year, we are told, $2 million of Federal money went to sickle cell anemia research. Just where that money went, I am not sure. But one thing we did learn in our hearings was that not much of it went to researchers like Dr. Scott. In fact, as he testified before me, Howard University received only $2,000.

The present administration makes much of the fact that it has earmarked $6 million in the 1972 NIH budget for sickle cell anemia—of which I might add was new money. Yet where is that money going—if it is being spent at all? The Director of the District of Columbia Health Services Administration testified that the District could not even get $15,000 from NIH to piggyback a sickle cell test on an existing testing program of lead paint poisoning tests. I would like to insert his testimony in the RECORD at this point:

Dr. STANDARD. I would like to state that six months ago we were searching for $15,000 to add on piggy-back for a lead poisoning program we were conducting throughout the District of Columbia.

It was funded through model cities, it is a good program, and with people knocking on doors, bringing children into the program.

We felt this was a good opportunity for us to piggyback on top of this existing fairly well-financed program an additional testing for sickle cell.

When we did our costs analysis, we found out it would cost approximately $15,000.

We searched, but to date we have not been able to come up with the additional funding.

We have, however, done some testing, using other monies from our programs.

Senator TUNNEY. Let me stop you there. You say that you could not get the $15,000. Where did you search?

Dr. SHUFFORD. We have in many instances, Mr. Chairman, attempted to get monies from NIH. We have gone to such places as HSMHA, which is responsible for the family planning section.

We talked with a Mr. Namkins there, and we have been unable to come up with any funds.

Senator TUNNEY. You could not even get the $15,000 from NIH?

Doctor SHUFFORD. We have not even been able to get $15,000.

Senator TUNNEY. What about the $6,000,000 that have already been earmarked?

Doctor SHUFFORD. What was told us, concerning the $6,000,000, that had been earmarked by the President, that it went to NIH to be used mainly for hardcore research, which takes it out of the realm of what we wanted to do.

Mr. President, in the face of that record, I think the mandate upon the Congress is clear.

A second point concerns the announcement by Health, Education, and Welfare Secretary Richardson, on Nov. 10, 1971, of the recommendations of the Health, Education and Welfare Sickle Cell Disease Advisory Board. Mr. President, I welcome the administration's interest in this area. I wish it had existed long ago, and I wish it were stronger.

I am gratified, however, that at the very least, the announcement demonstrates that the administration has read our bill. Each provision of S. 2676, which we introduced on October 8, 1971, after 6 months of extensive research and consultation with physicians, researchers and other members of the black community, has been included in the Advisory Committee's recommendations to Secretary Richardson.

Mr. President, I think that fact confirms the merits of this bill.

I would add however, that the announcement also reveals the need for action on this bill, because the administration's proposals are most inadequate in terms of funding. The Advisory Committee's recommendations call for no new funds—they simply allocate existing inadequate funds in an inadequate manner for a program which is itself inadequate.

The true measure of the inadequacy of those recommendations was demonstrated in our hearings. Four separate witnesses, including Dr. Scott, the Black Athletes Foundation and representatives of the District of Columbia Government told us that it would take $4 to $5 million to run a comprehensive program in the District alone. Yet that is more than the amount which the administration is prepared to spend nationwide.

Let me point out another thing—I think we ought to be told just what is happening with that $6 million which was earmarked in the 1972 budget. First we were told that it was going for increased research. But, as Dr. Scott pointed out so eloquently, if it is going for research it is not going to those who have been doing the research.

Now we are told that it is not for research after all but would be used to fund this new proposal. If it is used for that purpose, I wonder if any of the centers it would fund would include the center at Howard University or Meharry Medical School. That, Mr. President, is my third point—money for any program against sickle cell anemia should begin with those institutions which are treating black people—institutions like Howard and Meharry.

Dr. Emerson Walden, the current president of the National Medical Association stated that most eloquently in the hearings which I held last month, and I include this portion of his testimony in the RECORD at this point:

Dr. EMERSON WALDEN. We urge that funds for research, treatment, and so forth, of the disease be funneled directly to the two medical schools which have traditionally worked with this problem.

Howard University, College of Medicine which is located here in the District and Meharry Medical College in Nashville, Tennessee.

It is a sad story of history that funds controlled by NIH seems to be funneled to universities like Johns Hopkins, Harvard, Yale, Georgetown and Columbia.

THE NATIONAL SICKLE CELL ANEMIA PREVENTION ACT

The National Sickle Cell Anemia Prevention Act has four basic provisions:

First, a 3-year coordinated Federal grant program beginning with $25 million in the first year, increasing to $35 million and $40 million in the second and third years for research, voluntary screening, and counseling and public education; second, a demonstration grant program for 3 years beginning at $5 million in the first year and increasing to $15 million in the third for the development of centers for research and research training in sickle cell anemia; third, a requirement that the Department of Defense implement a policy to provide voluntary screening, counseling, treatment, and education concerning the disease for servicemen, civilian employees, and inductees; and fourth, similar programs by other Federal agencies which provide direct health care for persons eligible in such agencies, namely the Veterans' Administration and the Public Health Service.

It is the purpose of this bill to provide a coordinated effort against sickle cell disease as a major public health problem and provide the means to combat it. Thus, a primary purpose of the bill in addition to research, is to provide funds for the creation of community screening and counseling programs.

VOLUNTARY SCREENING

A simple and inexpensive test to detect the sickle cell trait has been available for many years. Only rarely, however, have individuals had the opportunity to know in advance of marriage or in advance of childbearing that they were trait carriers. Hence, parents usually learn they carry the trait only after they find to their sorrow that a child is born with the disease.

In order to screen, on a voluntary basis as many people as possible, this bill would provide funds, for example, for school districts to screen their students. Such screening could supplement other school health service programs such as physical examinations, eye testing programs, and immunizations. Neighborhood health centers, clinics, hospitals, and mobile health units would be able regularly to include the sickle cell test.

Using such screening, Dr. Joseph Bellizzi, supervising physician for the Hartford, Conn., school system, recently directed a major program which offered screening to 3,456 black children of high school age, finding 301 carriers of the trait and four cases of sickle cell anemia. Screening programs such as this can offer the first opportunity for persons to learn whether they carry the trait and what the risks and dangers are for their children. Similarly, parents who learn that one of their children has the trait would be able to seek similar tests for themselves and their other children.

VOLUNTARY COUNSELING

For persons who learn through screening that they possess the trait, the bill provides funding for voluntary counseling services to gain information on the disease and the risks involved. Thus, possibly for the first time, a person with the trait can learn beforehand the chances that his children might have the disease and what it will mean for their lives.

PUBLIC EDUCATION

Finally, the bill provides funds for programs to educate the public about the nature of sickle cell anemia and the inheritance of the sickle cell trait. As Dr. Scott has pointed out, few people

know what the disease is or how to learn whether they have the trait.

Fortunately, a number of public-spirited organizations including radio and TV stations, are beginning such education programs. Thus, for example, in Hartford, Conn., station WTIC began a drive to do something about sickle cell disease. They ran a public education type program on sickle cell anemia and then began a campaign to raise money for research at the Sickle Cell Anemia Center at Howard. As a result of the station's efforts, $34,000 was raised for the center.

Similarly, here in Washington, TV station WRC conducted a five-part series on sickle cell anemia, a major and most impressive commitment of time and effort by that station. The importance of such programs and the importance of screening programs was given most dramatic emphasis when the station's reporter took the test for sickle cell for the first time and learned that she had the trait.

This bill will provide funds to conduct similar public education programs toward the goal that all people may be informed about the disease and its risks and have the opportuntiy to seek the sickle cell test.

DEMONSTRATION FUNDS

A second major thrust of the bill is demonstration funds for the development of centers for research, screening, counseling, or treatment. Funds would be available to public and nonprofit private institutions such as medical schools, hospitals, and foundations. A principal focus of this provision is to provide funds for centers such as the very fine one at Howard University founded by Dr. Roland Scott. Funds under this provision are intended in particular to provide the opportunity for institutions such as Howard and hospitals which serve large black communities to establish major programs against sickle cell disease.

PROGRAMS IN THE MILITARY

In addition to grant programs, however, the bill also focuses heavily on the need and opportunity in the Armed Forces and other Federal agencies which provide health care, to offer screening, counseling and, where appropriate, treatment for sickle cell anemia. It requires the Secretary of Defense to implement a policy to offer servicemen—and their dependents—civilian employees of the Department, and persons examined at induction centers the opportunity to learn if they carry the trait by screening tests at no cost to the individual. It provides that such a program should include the opportunity for voluntary counseling for persons who have the trait and education of personnel regarding the availability and cost-free nature of such services.

Programs such as those provided in the bill are particularly important in the military establishment because of the opportunity to reach large numbers of young people. In addition, it is particularly important for those who may have the trait to learn that fact in order to avoid certain high-stress duties, such as high altitude flying, which may be dangerous to those with the trait.

Using one screening method, the director of the Blood Transfusion Division of the Army Research Institute at Fort Knox, Ky., has screened over 5,000 recruits in the past 18 months. Approximately 200 persons learned they had the trait. If such screening were widely available, events such as the tragic deaths of four recruits with the trait at Fort Bliss, Tex., last year might have been avoided.

Although persons with the trait are generally not in danger, in some instances of high-stress activity some such persons can develop severe complications.

Thus, the programs required by the bill would allow anyone connected with the military to have the opportunity to learn if he or she has the trait.

Other sections of the bill provide the same opportunity for screening, counseling and treatment in the Veterans' Administration and the Public Health Service.

VOLUNTARY PARTICIPATION AND CONFIDENTIALITY

Finally, the bill contains strict requirements to assure the voluntary nature of all programs funded or conducted pursuant to the National Sickle Cell Anemia Prevention Act and provides for protection of individual privacy by strict requirements of confidentiality. Thus, participation in screening or counseling programs carried out under the act would be entirely voluntary. In addition, test results would be held confidential. Both of these provisions are particularly important, I believe, in order to avoid any misinterpretation of the basic purpose of programs under this bill. It would be indeed tragic if any person should gain the impression of racial prejudice or discrimination as a result of these programs. Lest there be any doubt on that score, we have included the very strict provisions I have just described. This bill would coerce no one. Instead, it would affirm the dignity of individuals by providing the facts needed for free and informed choices.

It is my belief that this bill will make a major contribution to the prevention and treatment of sickle cell disease and I urge the Senate to pass this legislation today.

The PRESIDING OFFICER (Mr. CHILES). Who yields time?

Mr. JAVITS. Mr. President, is there controlled time?

Mr. KENNEDY. Fifteen minutes have been allotted to the majority and 15 minutes to the minority.

Mr. SCHWEIKER. Mr. President, I yield 5 minutes to the Senator from New York.

Mr. JAVITS. Mr. President, I am a cosponsor of the National Sickle Cell Anemia Act, S. 2676. I am very deeply interested in it and hope very much that the Senate will act on it today, decisively and affirmatively.

I shall not repeat the very fine statement made by the chairman of the subcommittee, Mr. President, but I do wish to read the message of the President of the United States who, in his 1971 health message focused national attention on this tragic disease. He said especially about this particular disease:

A second targeted disease for concentrated research should be sickle cell anemia—a most serious childhood disease which almost always occurs in the black population. It is estimated that 1 out of every 500 black babies actually develops sickle cell disease.

It is a sad and shameful fact that the causes of this disease have been largely neglected throughout our history. We cannot rewrite this record of neglect, but we can reverse it. To this end, this administration is increasing its budget for research and treatment of sickle cell disease fivefold, to a new total of $6 million.

Mr. President, under the circumstances, why this bill? The reason for it is shown by the President's own finding that research and treatment have to be increased fivefold—showing the neglect which this particular disease has suffered in all these years. We in our committee believe that a fivefold increase is quite inadequate to the need. It is estimated that 50,000 black people have sickle cell disease and, what is critically important, that over 2 million—a staggering figure—are carriers of the sickle cell trait and that at least 5,000 require hospitalization each year. In spite of these staggering figures, there is as yet no national program to prevent the 2 million carriers of the sickle cell trait from passing it from one generation to another.

Under those circumstances, the two major provisions of the bill, aside from its methodology—to wit, providing much greater authorization, as the Senator from Massachusetts has explained, and tying in the programs of the Department of Health, Education, and Welfare with those of the Department of Defense and the Veterans' Administration as provided by this bill—are critically important.

As so often happens in matters of this kind, it is only with the backing of legislation—a legislative program concentrating upon this particular disease—that adequate resources, both of a material kind, in money, and of a professional kind, will be available.

Perhaps even more importantly, there is no national program to educate these carriers as to the risks involved in having children and most shocking is that despite these tragic statistics, there has been no all-out program to inform the black communities of the significant proportions of this disease and its immediate threat to their own lives.

I believe the President is determined to do everything he can to cope with the many and varied problems of sickle cell disease, and I know that in accordance with the President's direction a sickle cell disease program has been initiated within HEW, but as is traditional in so many matters, to have an effective national commitment the Congress must act, and for that reason, Mr. President, I think this legislation is extremely desirable.

That is the strong view of the minority of the Committee on Labor and Public Welfare, of which I am ranking minority member and I believe that the bill should be passed this morning by the Senate.

In essence, the bill provides:

First, it would establish a sickle cell anemia prevention program consisting of two major parts:

a. Authority for grants and contracts to assist in the establishment and operation of voluntary sickle cell anemia screening and counseling programs and

to assist in developing and making available to the public information and educational materials relating to sickle cell anemia.

2. Authority for grants and contracts for research training in the diagnosis, treatment, and prevention of sickle cell anemia; development of programs to educate the public regarding the nature and inheritance of the sickle cell trait and sickle cell anemia; and the development of centers for research, testing, counseling, prevention, or treatment of this disease.

Second, other provisions of the bill call for a program to be established for eligible persons treated by the Public Health Service; annual reports by the Secretary, HEW, on the administration of the sickle cell anemia program; authorization for the Secretary of Defense to provide for screening and counseling of members of the Armed Forces and their dependents, civilian employees of DOD, and all persons examined by the Armed Forces, for the sickle cell trait and sickle cell anemia; and requiring notification and an expanded screening, counseling, and treatment program to be set up by the Veterans' Administration including a comprehensive research and training program.

The bill does not specify which agency or bureau of the Department of HEW it expects to operate the program initiated by the legislation, nor how the activities of the three Government agencies involved would coordinate their varied roles. The Labor and Public Welfare Committee, of which I am ranking Republican member, did not wish to "tie the hands" of either Health, Education, and Welfare; the Department of Defense; or the Veterans' Administration. However, the committee report states:

> The Committee intends that the programs authorized by the bill and involving the Department of Health, Education, and Welfare; the Department of Defense; and the Veterans' Administration shall be planned and implemented in a co-ordinated fashion. The Committee expects that there shall be frequent consultation among the relevant agencies and individuals involved in these programs and that no substantially new organizational structures shall be required for the carrying out of the authorities contained in the committee's bill.

The National Sickle Cell Anemia Act will enable this administration, which I am confident is determined to do everything possible to cope with the many and varied problems of sickle cell disease, to launch the needed national commitment adequate to combat this disease—a commitment that should have begun many years ago.

Mr. President, I thank my colleague for yielding, as he has taken such a very fine, great, initiatory position as chairman of the Subcommittee on Health.

I yield back the remainder of my time.

Mr. KENNEDY. Mr. President, I thank the distinguished Senator from New York for his comments and the work that he has done, and wish to note the very effective work that was done by the ranking minority member of the Senate Health Committee (Mr. SCHWEIKER), who presented one of the most effective and interesting groups of witnesses that we had in the course of our hearings, the Black Athletes' Foundation, who come from Allegheny County in Pennsylvania. I think members of the Black Athletes' Foundation are not only distinguished Americans on athletic fields in this country, but they also have distinguished themselves in using their tremendous national respect and standing as expressed by the affection and admiration from thousands of fans, to help alleviate the suffering caused by sickle cell anemia. So I extend a warm word of appreciation to Senator SCHWEIKER.

It is also important to note the efficiency of the Senate, and particularly that of the members of the Labor and Public Welfare Committee in completing action on this bill.

This bill, S. 2676, was introduced on October 8, and now we are acting on it on December 8. We are really getting expeditious action by the Senate, on a matter that is of great importance to millions of Americans. I believe that to a great extent it is a result of the work of the ranking Republican member of the subcommittee (Mr. SCHWEIKER), that this action has been completed in such a swift and effective way.

I ask unanimous consent that the name of the Senator from Florida (Mr. CHILES) be added as a cosponsor.

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

Mr. KENNEDY. I reserve the remainder of my time.

Mr. SCHWEIKER. Mr. President, I yield myself such time as I may require.

Mr. President, the Senate's action today in considering S. 2676, the National Sickle Cell Anemia Act is historic. Less than 60 days ago, on October 8 to be exact, the pending bill was introduced with 36 cosponsors. It now has 45 cosponsors. Within 60 days, hearings were held, the Health Subcommittee of the Senate Committee on Labor and Public Welfare as well as the full committee deliberated on the measure, and the Senate is launching a major effort against this disease.

Nearly a year ago the President of the United States drew the Federal Government's attention to sickle cell anemia and he admitted the neglect that this health problem has suffered. Such will no longer be the case as the Senate acts in response to his initiative.

Also, it is appropriate that the chairman of the Health Subcommittee, the distinguished Senator from Massachusetts (Mr. KENNEDY), be commended for his leadership in scheduling hearings, marking up, and reporting this bill. The bill, as the Senator mentioned a moment ago, probably sets a record for a major health effort of this kind to be launched in such a short space of time. I also want to commend the Senator from New York (Mr. JAVITS), the ranking member and leader on the Republican side of the Senate Committee on Labor and Public Welfare, for his interest, drive, and help in getting this measure passed. Senator KENNEDY is keenly aware of the need for this legislation since the attention given this dread disease in the past has been woefully inadequate. The prompt action by the subcommittee was certainly a necessary beginning to a change in this situation. I look forward to the Senate acting affirmatively to begin an enlarged effort by the Federal Government to deal with the problem of sickle cell anemia.

The bill authorizes grants for screening and counseling programs, distribution of information and educational materials about the disease to any person requesting them, and research for the prevention, treatment, and cure of sickle cell anemia. The bill also authorizes establishment of similar programs within existing Federal health activities, such as the Public Health Service, the Department of Defense, and its Armed Forces Examining and Entrance Stations, and the Veterans' Administration. In this connection, I feel that all the agencies and departments in the Federal Government should be involved in this fight. Certainly, each agency and department should, at the very least, be screening its employees and counseling those who are found to have either the trait of sickling or the disease. Since last May a program of this kind has been underway at the National Institutes of Health and approximately 10 percent of the employees tested have shown the trait. This is something that should be done throughout the entire Federal establishment—the testing of incoming and present employees.

Participation by any person in this new sickle cell anemia program under the act will be completely voluntary, and the bill requires strict medical confidentiality regarding any individual who chooses to participate. This inherited deadly disease is found in approximately one out of every 500 black persons, and results in an early death for nearly half the persons who contract it, so I hope that this Federal effort can result in immediate medical progress in controlling it.

I personally witnessed the tragic effects of sickle cell anemia when one of my Senate staff assistants, James H. Newman, died of the disease in November 1969, at the age of 29.

What will the ultimate enactment of this bill mean? It will mean that community organizations around the country which have been in the lonely forefront of the fight against sickle cell anemia will be joined by the Federal Government. Although it will remain fundamentally their effort, these groups will have more and better means to reach into their communities to inform and alert the far too many Americans who either carry the trait, or unfortunately, the disease who are unaware of it. The important thing is that these groups will no longer be working alone. The money this bill authorizes will insure that significantly larger numbers of people will be screened and counseled regarding sickle cell anemia.

I wish to draw the attention of the Senate to the comments in the committee report on S. 2676 referring to the community based effort so fundamental to a successful attack on sickle cell anemia:

> By using local community based organizations to inform people of the problems associated with sickle cell anemia. . . . the pub-

lic can be properly informed about the disease . . . the use of neighborhood clinics, mobile units, civic and volunteer organizations operated and staffed with black professionals and paramedics is the most effective way to accomplish the goal of education and awareness, without developing unfounded fears about sickle cell anemia and its problems. The committee is strongly persuaded that the planning and implementation of the programs authorized by the bill need to maximize the involvement and expertise of those individuals and groups most affected by the disease, if these efforts are to be fully successful.

Examples of the kinds of community projects which this legislation will help found in my own State of Pennsylvania include the Western Pennsylvania Sickle Cell Center formed and operated by a coalition of community and health organizations under the auspices of the Black Athletes Foundation. The officers of the foundation include Muhammad Ali, chairman; Wilver Stargell of the Pittsburgh Pirates, president; basketball star Connie Hawkins, vice president; Hank Aaron of the Atlanta Braves, Dock Ellis, and former Steelers football star John Henry Johnson. The committee noted in its report that:

The activities of the Black Athletes' Foundation exemplify the kind of community based effort that the committee believes essential in the effective implementation of this bill.

In Philadelphia a program of education, early detection, and treatment of sickle cell anemia is being sponsored by Volunteers in Aid of Sickle Cell Anemia, Inc. And, more recently, the Yank Durham, Jr., Foundation, named after the son of heavyweight champion Joe Frazier's manager, Yank Durham, was formally organized to begin a fundraising program with an initial objective of obtaining sufficient resources to fulfill one of the provisions of the legislation "in developing and making available information and educational material relating to sickle cell anemia to all persons requesting such information or materials, and to inform the public generally about the nature of sickle cell anemia and the sickle cell trait." This group includes Joe Frazier and also Trudy Haynes, a Philadelphia news broadcast personality.

There are community groups and agencies as well as medical institutions in New York, California, Tennessee, Georgia, Illinois, and Michigan, to name but a few that are awaiting the enactment of this act.

Mr. President, in the 1940's and the 1950's this Nation was galvanized in the battle against polio. Yesterday House and Senate conferees agreed on the provisions of a bill designed to direct a national attack on cancer. We must now go about the business of researching, treating, preventing, and eventually curing sickle cell anemia.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Massachusetts has 6 minutes remaining.

Mr. KENNEDY. Mr. President, I thought I would just review some of the crucial statistics of this disease.

In the course of the testimony that we took in our Senate Health Committee, we learned that medical experts place estimates ranging from 50,000 to 80,000 people who suffer from the disease, sickle cell anemia. Even using the low figure, 50,000 people who have this disease, it must be emphasized how many families are burdened with the complications of sickle cell disease. Patients require up to 10 visits a year in a hospital before they reach the age of 6. Those visits, we have been able to find out, cost at least $1,000 each time the patient is hospitalized. Usually victims are required to stay there for a 10-day period, at least it has averaged out about 10 days. That, as I say, is for the small children. After the age of approximately 10 years, it is necessary that they visit a minimum of 4 times a year. It is also required that they visit a doctor once every 4 months, and sickle cell victims constantly receive medication for their affliction. This disease forces patients to require constant medical care throughout their lives. I need not elaborate on the high cost of medical attention in these times. But everyone here knows that this represents an extraordinary kind of financial burden on any family or any individual. We have seen in the course of our hearings that individuals that were affected with the sickle cell trait have been excluded and denied insurance policies. Knowing how the insurance industry functions, that may be expected. The health insurance industry uses an experience rating when deciding on who may receive benefits. Once they find that an individual has sickle cell anemia, they are the first ones that are dropped. These victims who so desperately require costly medical care are excluded from participation in any kind of health insurance program; they are really sort of cast out of the health insurance system.

One of the very bright spots during our hearings was the account of the Kiwanis Club of Magnolia, Ark., voluntarily assuming medical expenses for a local sickle cell patient 25 years ago. According to Mrs. Dorothy Boyd, who with her husband and young family were living in Magnolia in 1946, the Kiwanis Club recognized the family's burden caused by sickle cell anemia in their 2-year old daughter. Without being asked, the Kiwanis Club undertook to absorb the medical expenses for the young Boyd child. Without that kind of help, that person—now Mrs. Karen Boyd Winston—would not have developed to be a successful medical technician and to appear before our Senate Health Committee. Today, Mrs. Winston is 27 years of age, she has 1 child, and she was an extremely effective and impressive witness.

Mr. President, it costs $1 for a screening test. In our hearings it was reported that on that basis $25 million would be required to screen every black person in this country. If the test proves positive, it costs $10 for additional testing to be able to find out the exact dimensions of the disease in an individual. Then, of course, it takes a very significant kind of counseling to help those people with the trait to be able to receive a job or to find a job, and to give them some counseling and judgment as to what their family responsibilities are, or what the dangers of this disease might be in terms of family responsibilities.

We are authorizing money that can have a very important impact on this disease for the entire Nation.

So I feel that individuals who are affected with sickle cell anemia, through no fault of their own, are bearing an extraordinary kind of financial burden. It is not necessary that they do so. It can be avoided with this kind of program of screening and testing. The extraordinary suffering that they experience can be avoided as well. It can be avoided by the enactment of this bill and by the follow-up of this bill.

As Senator SCHWEIKER has pointed out, not only do we have resources in here in terms of testing and counseling, but we also have resources in here in terms of research which, hopefully, can ultimately provide the key to unlocking this dreaded disease.

We also recognize the role that the Department of Defense can play as they provide these screening programs in terms of drug addiction, for example, in men coming back from Vietnam. There is no reason at all why they cannot provide a testing program for this kind of trait, as they test all young people who are inducted into the Army. We would encourage them to do so. If they need additional resources with which to do it, we would hope that they would come back to us. They have given us assurance that with this kind of authorization they can go ahead and do it.

I am extremely hopeful, Mr. President, that we can make a very serious impact in terms of this dread disease. I think it is important that we do it. I think we have the capacity to do so, and I urge the Senate to take that action.

Finally, Mr. President, I ask unanimous consent that the name of the Senator from West Virginia (Mr. BYRD) be added as a cosponsor.

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

Mr. MATHIAS. Mr. President, I appreciate the Senator from Pennsylvania yielding to me this time, simply to recognize the work that he and the distinguished Senator from Massachusetts have done in bringing this bill to the floor. It is a problem which is receiving belated attention at both the national and local levels.

I am very pleased, therefore, that we in the State of Maryland have already begun to take action on this most serious problem. Only yesterday, there was an article in the Washington Post outlining the newly announced program to soon begin in Baltimore at the request of Mayor William D. Schaefer, whereby several thousand black junior and senior high school students will be screened to find carriers of the genetic trait that can cause the sickle cell anemia trait. This program, which will be under the leadership of Dr. Robert F. Farber, Baltimore city health commissioner, I think will be able to take full advantage of the provisions of this bill.

I am grateful to both the Senator from Pennsylvania and the Senator from Massachusetts for the leadership they have

shown in bringing us to the point where something can and will be done. Also, Mr. President, I wish to commend President Nixon for his leadership in asking earlier this year for increased research and funds for efforts to prevent this dreaded disease.

At this point, Mr. President, I ask unanimous consent that the Washington Post article to which I referred to above, be inserted in the RECORD.

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

[From the Washington Post, Dec. 7, 1971]

BALTIMORE WILL TEST TO FIND SICKLE CELL ANEMIA CARRIERS

(By Jim Mann)

Baltimore Mayor-elect William D. Schaefer has announced plans to screen about 50,000 black junior and senior high school students to find carriers of the genetic trait that can cause sickle cell anemia.

Under the program, announced this weekend, those who are found to be carriers of the disease will be given counseling sessions.

In such sessions, they will be advised that if they marry another person carrying the sickle cell trait, the chances are that one in four of their children will actually have the disease. (The carriers of the disease are themselves invariably free of the disease.)

The rationale for aiming the screening program at junior and senior high school students is to reach those people who will soon be having children.

Sickle cell anemia is a hereditary disease caused by abnormal hemoglobin in the blood. The disease originated in Africa, Asia and parts of the Mediterranean as a natural body defense against malaria, according to Dr. Roland Scott, a leading researcher in the field. In the United States, almost all victims are blacks.

The victims suffer excruciatingly painful attacks, and sometimes blindness or paralysis. Rarely do victims live past the age of 40.

Although the disease affects about one in 500 American blacks, slightly fewer than one in 10 carry the recessive gene that can cause the disease.

According to Robert E. Farber, Baltimore health commissioner, the program was made possible by a "windfall" of $110,000 for new health programs, which Baltimore is eligible to receive as part of the proceeds of a successful anti-trust action against pharmaceutical companies.

The sceening itself is expected to cost $65,000 to $85,000 over a two-year period. Farber said the program would probably begin some time next year.

The District of Columbia does not yet have a screening program for the sickle cell anemia trait in its public schools, although it, like Baltimore, has recently begun conducting such tests in some maternity and neighborhood clinics.

However, the D.C. City Council has under consideration a proposal to conduct sickle cell screening among all kindergarten and first grade students.

Earlier this year, Congress allocated $6 million for research and community programs relating to sickle cell anemia, a fivefold increase after President Nixon in February asked for "concentrated research" on the disease.

Mr. COOK. Mr. President, I ask unanimous consent to have three articles pertaining to sickle cell anemia printed in the RECORD prior to the rollcall vote just taken.

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

[From the National Observer, Dec. 11, 1971]

A DISEASE DRAWS THE COLOR LINE—RESEARCHERS AROUSE PUBLIC TO SICKLE-CELL THREAT

(By Patrick Young)

Nellie Kendrick recalls a white friend who recently asked her if it were true that sickle-cell anemia—a painful and usually fatal blood disease—is found almost exclusively among blacks. Mrs. Kendrick, a black volunteer in the Milwaukee Community Sickle Cell Disease Project, assured her it was. "I thought it was just a lie spread to show that blacks were inferior to whites," the friend said.

Misconceptions abound about sickle-cell anemia, among blacks and whites, among physicians and laymen. The disease afflicts perhaps 45,000 black Americans. Nearly half of its victims die before age 5, and about 80 per cent by age 30. It occurs once in every 400 to 500 black births, a frequency 6 times greater than cystic fibrosis, and 20 times higher than phenylketonuria (PKU), both almost exclusively white diseases.

Yet for years medical researchers called sickle-cell anemia "the forgotten disease." One year ago, an editorial in the Journal of the American Medical Association complained that "the level of general ignorance concerning the nature of sickle-cell anemia remains depressingly high."

Now that ignorance is under attack. More money than ever is going into sickle-cell research. New diagnostic and treatment procedures are being developed. Large-scale testings are under way in several cities, including Milwaukee, to find blacks unknowingly suffering from the disease, and to determine who are carriers capable of passing on sickle-cell anemia to their children.

And blacks across the country are working to raise funds and to acquaint all Americans with the disease. As one example, more than 200 professional black athletes—including Willie Stargell and Dock Ellis of the Pittsburgh Pirates and boxer Muhammad Ali—have set up the Black Athletes Foundation for Research in Sickle Cell Disease.

BRINGING BLACKS TOGETHER

"This has brought black people together, from the Black Panthers to the Urban League," says Richard Campbell, director of the Foundation for Research and Education in Sickle Cell Disease in New York City.

Sickle-cell anemia, an inherited disease, is the most common long-term illness among black children (about 1 per cent of its victims in the United States are white). It is incurable, and despite considerable knowledge of the disease's mechanism, treatment methods remain poor.

The disease is caused by a defect in the hemoglobin molecules within red blood cells, which carry oxygen throughout the body. Each hemoglobin molecule contains 574 amino acids. In sickle-cell hemoglobin, two of these amino acids are replaced by two others.

"At the basic level, the change is so minuscule, so tiny," says Dr. Makio Murayama, a biochemist at the National Institute of Arthritis and Metabolic Diseases. "Yet for the individual, it is a matter of life and death."

When sickle-cell hemoglobin is deprived of oxygen, the red blood cells lose their round, doughnutlike shape and take on a sickle or quarter-moon appearance.

When this happens, the red blood cells are unable to pass through the body's microscopic capillaries. The cells jam up like driftwood clogging a drainpipe. As a result tissue is deprived of the oxygen it needs, and dies. This painful event is called a "crisis."

In crisis, a person suddenly develops intense pain, usually in the abdomen, back, chest, hips, arms, or legs. The heart may be partly or fatally damaged, or a stroke may result. Sickle-cell sufferers are extremely vulnerable to infection, particularly pneumonia, and many develop skin ulcers at the ankle.

"Sickling can occur in any organ system and so it can mimic any disease state," says Dr. Edwin Bemis, a pathologist working with the newly established Southeastern Wisconsin Sickle Cell Center at Deaconess Hospital here. This causes diagnostic difficulties for doctors unfamiliar with sickle cell, and sometimes results in unnecessary surgery.

The disease results from a gene mutation that occurred centuries ago in Africa, and which became common because it offered a protection against malaria. For some unknown reason, malarial parasites cannot survive in sickle red blood cells.

Each person inherits two sets of genes, one from each parent. A person with sickle-cell anemia has inherited a sickle-cell gene from each parent. A person who inherits a sickle-cell gene from only one parent is called a "trait." (Far less common than sickle-cell anemia are "variants," forms of the disease less severe than the anemia, but more troublesome than the trait.) Estimates place the number of blacks carrying the trait at between 8 and 13 per cent.

It requires two traits to produce a child with sickle-cell anemia, and the odds are one in four for such a birth. The chances of producing another trait are one in two. These odds of genetic roulette are for each birth. A Racine, Wis., couple produced three children, all with sickle-cell anemia.

The only guarantee that two traits will avoid a child with sickle-cell anemia is if they have no children. Currently several research teams are trying to develop prenatal tests for the disease. If they succeed, parents will know in advance if their child will be born with sickle-cell anemia, and will have the option for abortion.

TRAIT IS NOT A DISEASE

Most sickle-cell traits live normal lives and never experience a crisis. "Overall we try to stress that sickle-cell trait is not a disease," says Dr. Robert B. Scott of the Medical College of Virginia in Richmond.

Nevertheless, cautions Dr. Robert M. Nalbandian of Blodgett Memorial Hospital in Grand Rapids, "the trait under certain physiological-stress conditions can be hazardous, and has been."

Traits may crisis while flying at high altitudes in unpressurized aircraft, under general anesthesia during surgery, or sometimes during great physical exertion.

Last year a team of Army doctors blamed sickle-cell trait for the deaths of four black recruits—over an 11-month period—during basic training at Fort Bliss, Texas. Their conclusion, however, has been challenged by other researchers, who contend the doctors did not rule out sufficiently other possible factors in the deaths.

Women with sickle-cell trait have a higher incidence of urinary infection during pregnancy and traits sometimes pass blood in their urine. Pittsburgh pitcher Dock Ellis, a trait, says he occasionally passes clots. "I've gone to the team physicians and they say there's nothing they can do about it," he says.

The public awakening to sickle-cell anemia is a recent thing, among blacks and whites. A 1968 survey in Richmond found that only 30 per cent of the blacks questioned had heard of the disease. Today blacks are more willing to accept the disease and no longer regard it as a racial slur.

"Part of the new pride among blacks is enabling us to look at ourselves, and to look with more objectivity," says Hazel Maxwell, chairman of the Milwaukee Community Sickle Cell Disease Project's advisory committee.

Sickle-cell fighters say the message of concern is finally getting across. Congress, at President Nixon's request, increased the National Institutes of Health's sickle-cell re-

search budget from $1,000,000 to $6,000,000 this year. A bill to provide $142,000,000 in sickle-cell funds over three years is pending in the Senate. The National Foundation and its local March of Dimes chapters are providing increasing funds for research.

"I think we're getting over our benign neglect," says Dr. Bemis. "We're waking up to the fact that there is a black portion of our population. Whites, too, are demanding that blacks be treated on an equal medical basis."

The new awareness of sickle-cell anemia has led to greater efforts to identify people with the trait. Here in Milwaukee, Deaconess Hospital's sickle-cell center plans to test 118,000 blacks in seven counties. Three screenings have tested 2,232 blacks since Sept. 18, in addition to over 5,000 patients routinely tested upon admission to the hospital since 1969.

It is a community effort, utilizing more than 250 black and white volunteers and Boy Scout Troop 200, a ghetto unit, to spread the testing message. The center will provide genetic counseling and a registry of persons with sickle-cell trait.

AN EFFORT IN PITTSBURGH

The Black Athletes Foundation and six other groups are sponsoring a similar effort in an attempt to test 250,000 blacks in the Pittsburgh area. Smaller screening programs have taken place among school children in Grand Rapids and Hartford.

Testings to date have been voluntary. But New York State recently passed a law providing sickle-cell tests for youngsters entering public schools. And laws requiring testing of school children or marriage-license applicants before marriage are pending in several states, including California and Illinois.

Such laws delight some blacks, but not all. "If testing is compulsory, children identified as carriers could be stigmatized as less desirable parents or as weak individuals," says Dr. Robert Murray of Howard University in Washington, D.C.

The Milwaukee program and several others use a test developed by Dr. Nalbandian and Dr. Paul Wolf of Stanford University. Its advantage over previous tests lies in cost. The chemicals needed for the test, which can be run automatically at the rate of 120 an hour, cost only pennies a sample.

The test is a preliminary screening. A positive indicates sickling, but not necessarily sickle-cell disease. A second test—electrophoresis, which measures the distinctive electrical charges of various types of hemoglobin—can determine if the patient has sickle-cell anemia or the trait.

Treating sickle-cell anemia is more complex. Efforts to reverse sickling crises in patients, says Dr. Scott, "have not been terribly effective."

Dr. Nalbandian and his research colleagues are experimenting with urea, a natural chemical waste occurring in the body, in a sugar solution to treat patients in crisis. This "molecular surgery," says Dr. Nalbandian, breaks apart sickle-cell hemoglobin molecules that have locked together and reverses the crisis.

"We have been able to abort sickle-cell crises in over 20 patients, without using narcotics, and without medical misadventure, therapeutic failure, or death," he says.

The technique is extremely complicated. Unless extreme care is taken, the urea can cause dehydration, which itself can bring on a crisis by reducing oxygen.

Last month Dr. Paul McCurdy and Dr. Laviza Mahmood of Georgetown University medical school in Washington, D.C., reported treating 24 crises in 14 patients with urea. Seventeen crises were successfully treated, though the researchers noted dehydration as a major side effect.

"These results suggest that urea therapy has a beneficial effect on the painful crises of sickle-cell disease, but the method is still experimental," they wrote in the New England Journal of Medicine.

Currently the National Heart and Lung Institute is supporting six studies comparing three sickle-cell therapies, including urea. A second corrects dehydration, and the third reduces blood acidity, another cause of sickling, by lowering body oxygen.

A PROMISING TREATMENT

Other researchers are trying to find other chemicals that will reverse sickling without urea's handicaps. Dr. Anthony Cerami and Dr. James Manning of Rockefeller University in New York City recently reported excellent test-tube results in preventing sickling in human blood with potassium cyanate. They expect to begin human tests within a year.

Dr. Nalbandian says urea, taken four times daily mixed in soda pop to hide its bitter taste, can safely and effectively prevent sickle-cell crises. But he acknowledges difficulties in getting patients to down their preventive doses regularly.

"Frequently they take it when they feel pain," he says. "They head off a crisis and then they ignore their urea. There has to be a better way of delivering it."

SECRET LAY IN THE STRUCTURE

Although there is no cure for sickle-cell anemia, and as yet no generally accepted treatment, the basic mechanism of "sickling" is no mystery.

Sickle-cell anemia was first described in 1910 by Dr. James Herrick of Chicago. In 1949, Nobel laureate Linus Pauling and Dr. Harvey Itano showed that the disease resulted from an inherited defect in the hemoglobin molecules within red blood cells. Nine years later, Dr. Vernon Ingram and John Hunt, working at England's Cambridge University, identified that defect.

Hemoglobin molecules, which transport oxygen throughout the body, contain a total of 574 amino acids, arranged in four chains. The four chains are actually two pairs of identical chains, called alpha and beta.

The English researchers found that at two points in the beta chain of sickle-cell hemoglobin an amino acid called valine exists where glutamic acid, another amino acid, exists in normal hemoglobin.

It remained for Dr. Makio Murayama, a biochemist at the National Institute of Arthritis and Metabolic Diseases, to explain in 1966 how this minute difference in amino acids causes sickling. Considering the Cambridge research, he says, "it occurred to me that maybe the secret lay in the structure."

Normal hemoglobin molecules, about 300,000,000 per red blood cell, move at random within their cells. But Dr. Murayama found that substituting valine for glutamic acid allows sickle-cell hemoglobins to lock together when oxygen is reduced. They form chains up to 6,000,000 molecules long. These chains twist into six-strand cables, and these cables, in turn, bunch together to form rigid lines.

"The end effect is that the cell wall, which is like a balloon, complies with the shape of these long fibers within," Dr. Murayama says.

Last year Dr. Murayama photographed these microcables for the first time. Using a stream of argon ions—a technique he learned about from scientists shaving microscopic layers from moon rocks—he stripped away part of the wall from a sickled cell. With a scanning electron microscope, he photographed clumps of sickled hemoglobin.

This year Dr. Murayama proposed a theory to explain why sickle-cell anemia is more severe in some patients than in others. He suggests that an organic molecule, which he calls the "hemoglobin S cofactor," plays a role in sickling. Its severity depends on the amount of this molecule present.

Dr. Murayama has yet to identify the molecule. "When and if it is identified," he says, "I think we will be able to revolutionize the mode of control and treatment of the disease."

"REFORM" PAINFUL IN ARKANSAS—PRISON HARASSMENT PRECEDES DEATH OF 17-YEAR-OLD FIRST OFFENDER

(By Tucker Steinmetz)

Recently I reported that reform in Arkansas prisons has been slow and painful—but that some progress was being made [The National Observer, Oct. 23, 1971]. As it turns out, what has been passing for "reform" in recent months has been especially painful for some inmates.

Consider the ordeal of Willie Stewart, 17, black, a first-offender. He died one night last week after serving a one-day sentence for burglary at Cummins Prison Farm.

Such one-day terms, first tried in Arkansas by two circuit judges in 1969, have since been adopted more widely in the state. The idea, one prosecutor explains, is to suspend all but one day of sentences given first offenders and at the prisons give them the "worst treatment" by prison personnel "with the hope that the shock treatment will discourage them" from committing further crimes.

TO "SCARE HIM A BIT"

Willie Stewart, according to testimony in a Federal court here, was forced to stand and submerge his head briefly in the cold water of a stock pond at the prison farm on Nov. 29. It was a windy, chilly day.

A tower guard, Joe Lewis, 26, said that acting under orders "to scare [Willie] a bit" he shot his rifle at Stewart's feet as the youth was being forced to run ahead of a car driven by guard Reggie Fletcher into the prison compound.

Lewis said that when fired at, Willie Stewart cringed against the fence, "He would've gone through it if he could've."

Willie Stewart also was forced to do push-ups. When his pushups were deemed unsatisfactory, an inmate would yank his feet and cause him to fall on his stomach. Guard Fletcher stood nearby.

A white Baptist minister, the Rev. Elton E. Ballentine, special-services co-ordinator at Cummins, said he saw two guards drag Willie into a prison office and drop him to the floor. A prison medical officer told Ballentine that the youth was faking unconsciousness.

Ballentine testified also that inmates had told him Willie had been forced to run up and down cotton rows that day, that shots had been fired over his head, and that he had been chased and bumped to the ground by a guard on horseback.

The Arkansas prisons' boss, Terrell Don Hutto, said he saw Stewart walk to the infirmary and that a few minutes later he received a call telling him that the youth was "bad sick." Willie, a gaunt 112 pounds stretched over a 5-foot, 10-inch frame, was put in an ambulance. He died on the way to a hospital 30 miles away.

At first, some prison officials said Willie went through a normal work day and wasn't abused. State police investigators said they couldn't find any evidence of mistreatment. The state medical examiner said he had found two slight bruises on Willie's chest and a small cut on the underside of his upper lip, but that physical violence couldn't possibly have caused his death.

Later, he had to revise his remarks when blood-test results were obtained. The medical examiner, Dr. Rodney Carlton, testified that Willie died of a condition known as hemoglobin S–C, which he described as "the first cousin to sickle-cell disease." He said Willie's blood had abnormal "S and C hemoglobins" in it, a condition that "has been known to cause sudden and precipitous death." Dr. Carlton said that extreme exertion and fear could have aggravated the condition enough to have caused death. The

precise mechanism causing such deaths isn't clearly understood.

Willie died while Federal Judge J. Smith Henley was holding hearings about alleged abuse of inmates in state prisons.

EXAMINATIONS PROPOSED

And so news of Willie's death and all the details surrounding it found a ready-made forum in Judge Henley's courtroom. Testimony about the episode was continuing at week's end.

Gov. Dale Bumpers said in a press conference that he would be "very upset" if he learned that a guard had been ordered to shoot at Stewart. The governor said he thought physical examinations should be given the first-offenders before sending them to prison for one day.

The court hearings being held began Nov. 16 and are reporting sessions for Judge Henley, who ruled in February 1970 that the Arkansas prisons violated the Constitutional rights of inmates on 78 counts. Much of his criticism focused on the inadequate facilities and lack of personnel.

Earlier testimony by inmates, though less spectacular than that about Willie Stewart's death, concerned the punitive methods introduced in Arkansas by former officials of the Texas prison system hired since Bumpers took office.

INTRODUCING "TEXAS TV"

The inmates complained of excessive confinement—often for seemingly minor infractions—in cold, barren "quiet cells" in the new $550,000 maximum-security unit at Cummins Prison Farm.

The other imported Texas disciplinary measure cited in court was what Arkansas inmates have dubbed "Texas TV." It consists of standing with the forehead against the wall.

Dr. George Beto, head of the Texas prison system, testified that the quiet cells in Texas had "salutary effects" and condoned Texas TV.

THE STARTLING TESTIMONY

In recent weeks, inmate complaints began filtering to the outside. Stories leaked to the press told of inmates being whipped with blackjacks, black inmates being ordered to face the wall because white women visitors did not want the blacks looking at them, officials addressing blacks as "nigger," an enraged prison employe attacking an inmate, and field crews being herded to their work by prison officials driving cars and trucks at their heels.

Daniel Montgomery, Jr., said he was kept in a quiet cell for 28 days for refusing to work in the fields. He said he was stripped naked before being placed in the clean but barren cell, where he slept on the bare floor. The cell was cold. The cell light was out. Montgomery testified that he was not allowed to shave or shower for 28 days and was denied permission to write to the Federal judge or anyone else. He said he lost 30 pounds on the diet of bread, water, and a baked concoction of bread, beans, and other foodstuffs.

Johnny Orr testified that his head was shaved and that he was forced to keep his forehead on the wall from 6:15 a.m. to 3:15 p.m. one day because he was 12 minutes late for work.

Charles Richard Roth told the judge that he had been placed in a quiet cell for six days after he "threw the peace sign" to three inmates who had been captured in an escape attempt.

Tommy Ray Oliver, 15, serving a three-year sentence for car theft, testified that for allegedly soldiering on the job, Supt. Robert G. Britton beat and kicked him while a guard held him to the ground.

Floyd Summerville, 20, a black inmate, testified that a few days before the Arkansas-Texas football game, Britton overheard an inmate work detail give the Arkansas Razorback yell, "Sooie Pig!", and because of the yell forced the inmates to run the length of a sewage-filled ditch.

The Eighth Court of Appeals in St. Louis has banned corporal punishment in the Arkansas prisons. Apparently, it will be up to Judge Henley to decide whether the use of the quiet rooms and Texas TV amounts to corporal punishment.

Last week, Hutto, testified that he has decided to abolish Texas TV because some employes were "overly enthusiastic" in its application. "Certainly this has got out of hand, he said. He also vowed that the quiet cells would be used for no more than 24 hours at a time.

And a long-time friend of Governor Bumpers, Dr. William E. Amos of College Park, Md., a member of the U.S. Board of Parole, said he had inspected the state prisons and found "marked improvement" over conditions a year earlier. He said Arkansas prisons rank about midway among American prisons.

Mr. CASE. Mr. President, as a cosponsor of this important legislation for sickle cell anemia, I hope we will have an affirmative vote today. Sickle cell anemia is a disease that mainly affects black Americans, especially children. I am told that the disease damages the tissues of the body, and, as a result, the life expectancy of those afflicted with the disease is lowered to 20 years of age.

One out of every 500 black children have sickle cell anemia and one out of every 12 blacks carry the sickle cell trait, according to recent statistics. I understand that there is no known cure for this disease.

The major goal of the legislation before us today is to create a voluntary program for identifying and counseling for sickle cell anemia and to sponsor ways to prevent the worst effects of the disease. Very often families do not even know that they have the disease, especially when it is in its early stages. And there are ways to ease the pain of the affliction.

The bill also provides research funds so that a cure can be sought for sickle cell anemia. There have been some encouraging research developments and it would be most unfortunate if these research initiatives cannot be followed through for lack of funds. The children of our Nation need this care and the benefits of this research.

Mr. MUSKIE. Mr. President, today the Senate will consider S. 2676, the National Sickle Cell Anemia Act which I have cosponsored.

The prevalence of sickle cell anemia in the United States is great. One in every 500 black children has this disease. A total of almost 50,000 children are born in this country every year with this disease. The effect of this disease is catastrophic. Those with the disease will suffer week-long episodes of painful sickle cell crisis on the average of four times per year. Fifty percent of those affected will die before their 20th year, and virtually all will die before their 40th year.

But what is sickle cell anemia? What can we do to alleviate its effect on our children?

Sickle cell anemia is a genetic disease. An individual has two genes which determine the structure of his hemoglobin. If an individual has one gene for hemoglobin S and one normal gene, he is said to have the sickle cell trait and will be normal except for occasional periods of discomfort. However, if an individual has two genes for hemoglobin S, he will have sickle cell anemia. An individual with both genes for hemoglobin S will occur one time in four if both parents have the sickle cell trait. If an individual has sickle cell anemia, that is, all his hemoglobin is hemoglobin S, his red blood cells will, in times of stress, lose their normal spherical shape and assume a sickle-like form. These abnormally shaped cells will, in turn, mass together, clogging the small blood vessels, inhibiting the flow of normal oxygen-carrying red cells. Thus, the tissues become ischemic—a painful condition caused by a shortage of the oxygen necessary to support the cells' metabolism—and die.

Sickle cell anemia occurs almost exclusively among blacks and other people originating in tropical climates. This is true because the sickle cell trait—the presence of only one hemoglobin S gene—provides protection against malaria. Thus, in a malaria epidemic, those with the sickle cell trait often lived to produce children, while those without the sickle cell trait often died. In turn, we have the survival of the fittest—those with the trait were more fit.

But in the United States today, malaria has been eradicated, so the sickle cell trait serves no useful purpose, while the full anemia causes terrible disability and death.

I would like to commend Senator TUNNEY for introducing and providing the leadership for the desperately needed Sickle Cell Anemia Act. This bill has four central provisions: First, a coordinated Federal grant program of $100 million over 3 years for research, voluntary screening and counseling, and public education; second, a demonstration grant program of $30 million over a 3-year period for the development of centers for research and research training in sickle cell anemia; third, a requirement that the Department of Defense implement a policy to provide voluntary screening, counseling, treatment, and education concerning the disease for servicemen, civilian employees, and inductees; and fourth, similar programs by other Federal agencies which provide direct health care for persons eligible in such agencies.

The purpose of this bill is to provide a coordinated and overall effort against sickle cell disease. In addition to research, it provides funds for the creation of community screening and counseling programs. Another provision provides funds for programs to educate the public about the nature of sickle cell anemia and sickle cell trait. This is particularly important in achieving maximization of the counseling and screening services to be offered.

Also the bill provides demonstration funds for the development of centers for research, screening, counseling, or treatment. Funds would be available to public and nonprofit private institutions such as medical schools, hospitals, and foundations.

The bill enables the Armed Forces and other Federal agencies to offer screening, counseling, and treatment. This voluntary program is especially important because it is here that large numbers of

young people can be reached and treated. Since there are conditions under which persons with the trait can be adversely affected, screening would enable these persons to be identified, enabling them to receive treatment and consideration for certain duties which would be more amenable to this health problem.

Finally, other available programs which now exist in the Public Health Service are authorized to screen and counsel for sickle cell anemia. Hopefully, this will permit the many other persons who are not otherwise directly covered to obtain a determination of possession of the trait and such treatment or counseling as is desirable.

Sickle cell anemia annually affects thousands of black children. The tragic consequences of this disease have been neglected too long. I am pleased, therefore, to join Senator TUNNEY and others in support of the Sickle Cell Act.

Mr. BROOKE. Mr. President, I am pleased to have the opportunity to urge my colleagues to support S. 2676, the National Sickle Cell Anemia Act.

As a cosponsor of this measure, I am heartened by the prompt consideration which it received in the Senate Health Subcommittee and full Labor and Public Welfare Committee. I commend the subcommittee and the full committee for the excellent refinements made to this important measure.

I was privileged to have the opportunity to testify before the subcommittee in favor of the measure, and I feel it appropriate to now repeat part of my urgings:

> Sickle Cell Anemia has, for too long, been the forgotten disease. Most Americans do not know that in this country today over two million people—10 percent of the black population—are carriers of a disease called Sickle Cell Anemia.

Each year over 1,500 new cases are discovered, and more than 5,000 victims require hospitalization.

The facts are grim. The prognosis is uncertain. But today we have a new commitment and I am encouraged that with our concern, energies, and resources we can begin to relieve the suffering of so many. Simply put, Mr. President, too many have suffered too long. Let us get on with the task that has been too long ignored.

Mr. ROTH. Mr. President, I am one of the cosponsors of S. 2676, a bill to provide for the prevention of sickle cell anemia. This disease, an inherited disease restricted in its occurrence almost entirely to members of the black race, is still incurable whenever it occurs. Although sickle cell anemia is an important metabolic disease, research on this disease has not benefited from as high a priority as other less frequently encountered diseases of this type. There are a number of reasons which have been offered in explanation and criticism of the relative neglect of research on this disease. One criticism offered is that since the disease is suffered only by blacks our society has not been as concerned about the disease as we might have been if the disease occurred in all races. Whether this criticism is accurate is not important at this moment. What we must recognize is that we have waited too long already. We should exploit to a maximum our current knowledge of the disease and accelerate our efforts to gain control of sickle cell anemia.

Any attempt to discuss briefly the public health aspects of an inherited disease is certain to result in the neglect of some significant aspect of the problem. Despite the complexities of evaluating genetically induced diseases, however, there are certain fundamental medical programs which have evolved and which should benefit from increased attention. The attack on sickle cell anemia can utilize many of these programs.

One program deals with the detection and treatment of the disease as soon after birth as possible. S. 2676 acknowledges that simple and inexpensive screening tests have been devised which will identify those who have the disease as well as those who may be carriers of the disease. This bill will provide for grants to assist in the establishment and operation of voluntary sickle cell anemia screening programs. While we have learned from other statements made in support of S. 2676 that new and promising approaches to the treatment of sickle cell anemia are being tested, a satisfactory treatment is not yet available. S. 2676 would also authorize the Secretary of Health, Education, and Welfare to promote research in the diagnosis, treatment, and prevention of sickle cell anemia.

Another important aspect of a coordinated attack on sickle cell anemia deals with the reduction in incidence of defects through genetic counseling. Experience thus far indicates that the success of genetic counseling is limited for a number of reasons. The usual requests for genetic counseling seem to come from: First, individuals who already suffer from a genetic disorder and who fear they may pass the disorder on to their children; second, couples who already have a child with a genetic defect; and third, in normal individuals who have knowledge of a defect in the family history and who are concerned about the possibility of their children inheriting a defect.

The political aspects of genetics counseling, particularly the ugly image of early eugenics and genocide as practiced in the past by certain nations of the world, must be given serious consideration whenever this concept is proposed. Recognition of these problems is provided within S. 2676 which provides for the education, screening and counseling of carriers of sickle cell trait.

In this regard, the bill emphasizes that programs to prevent sickle cell anemia must be based entirely upon voluntary cooperation of the individuals involved and participation shall not be a prerequisite to eligibility for or receipt of any other service or assistance from other programs to control sickle cell anemia. As pointed out by the World Health Organization:

> Genetic counseling is the most immediate and practical service that genetics can render in medicine and surgery.

To this end, authority is included in S. 2676 to provide for assistance in developing and making available information and educational materials relating to sickle cell anemia to all persons requesting such information or materials, and to inform the public generally about the nature of sickle cell anemia and the sickle cell trait.

In summary, S. 2676 proposes Federal support of a long overdue effort to preserve and protect the health of those members of our population who suffer from sickle cell anemia. The bill proposes an expansion of available services, on a voluntary basis, including grants for sickle cell screening and counseling programs and support for research, diagnosis, prevention and treatment. It is time that more attention be devoted to delivery to the public of the benefits which are now available for the treatment of sickle cell anemia. I support this bill and its objectives and also urge you to extend your support.

Mr. JACKSON. Mr. President, I am proud to be a cosponsor of S. 2676, to create a national program for the prevention and treatment of sickle cell anemia.

I want to commend the Committee on Labor and Public Welfare for acting promptly on this important legislation. But prompt action was called for. For many long years, we have done little or nothing to deal with the pain and suffering caused by this disease.

Until very recently, sickle cell anemia has been one of the most neglected of all deadly diseases. It is estimated that over 2 million Americans carry the sickle cell trait. Although data is incomplete, the disease appears to have been concentrated primarily among blacks.

Approximately one out of every 500 black births produces a child affected with the disease. Of these, over half die before the age of 20. This is an incidence far greater than other severe childhood diseases, such as leukemia, cystic fibrosis, and muscular dystrophy.

There is no known cure for sickle cell anemia. And we have been making very little concerted effort to find one. Our neglect of this disease is a disgrace. Government and private expenditures have been inadequate; its victims have been neglected. This is what S. 2676 attempts to correct.

This legislation is not the final answer, but it is a first step. It is a significant first step because we finally have recognized that sickle cell anemia is a national health problem—a problem that requires a strong national commitment. I am happy to join today in this effort.

Mr. DOMINICK. Mr. President, as a cosponsor of S. 2676, the National Sickle Cell Anemia Act, I want to express my support for its passage. I believe it will serve to focus greater attention on our national commitment to bring this disease under control.

I would like, however, to make some brief comments about the background of this bill. The chairman of the Health Subcommittee stated at the outset of the hearings:

> I am convinced that if PKU, cystic fibrosis, or muscular dystrophy struck the lives of white families in the proportion that sickle cell anemia affects black Americans, our pub-

lic commitment to it would be as stubborn as was our persistence to blow up the tiny island of Amchitka.

Aside from my distaste for that kind of rhetoric, I object to the implication that this legislation is necessary because the administration has been reluctant to take action against this tragic disease.

While it is true that inadequate attention has been given to sickle cell disease since it was discovered some 61 years ago, I think Congress and the executive branch must share the blame equally. Moreover, I think fairness requires that it be pointed out that the present administration—and not the proponents of this bill—first recognized this neglect and took action to remedy it. The President, in his February 18 health message to the Congress announced new initiatives against cancer as well as sickle cell anemia. He said:

A second targeted disease for concentrated research should be sickle cell anemia—a most serious childhood disease which almost always occurs in the black population. It is estimated that one out of every 500 black babies actually develops sickle cell disease.

It is a sad and shameful fact that the causes of this disease have been largely neglected throughout our history. We cannot rewrite this record of neglect, but we can reverse it. To this end, this administration is increasing its budget for research and treatment of sickle disease fivefold, to a new total of $6 million.

The Department of Health, Education, and Welfare has carried through on this commitment by establishing a sickle cell disease program to be coordinated primarily by the National Heart and Lung Institute of the National Institutes of Health. A Sickle Cell Disease Advisory Committee was appointed to help formulate and implement a comprehensive plan. That plan is now being implemented with the additional $5 million committed by the President. The new funds will be used to establish comprehensive research and service centers, and screening and education clinics, as well as for research to develop better methods of treatment. The National Institutes of Health and the Health Services and Mental Health Administration have committed substantial additional resources to a variety of services and research projects directed specifically at sickle cell disease.

The committee felt that additional funds should be authorized, and I do not disagree. But I think it should be kept in mind that since sickle cell disease is caused by an inherited genetic characteristic, the amount of funds committed to specifically targeted programs is not necessarily an accurate measure of our effort to control it. Broad support for basic biomedical research—which will eventually make alteration of genetic characteristics possible—is just as important as applied research. Until we have that capability, as I understand it, there can be no real cure for this disease.

In any event, the important thing now is that there is a clear national commitment to move ahead against sickle cell disease, and little time should be wasted arguing about who has been responsible for taking the initiative.

Mr. HATFIELD. Mr. President, I support the pending bill, S. 2676, which would establish a program to control sickle cell anemia. In my opinion, this legislation is long overdue. I hope that measurable progress can be made in combating this disease.

I think it appropriate that the National Observer of December 11, 1971, features a major article on sickle cell anemia. In the article, Mr. Patrick Young discusses the problem in detail. 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:

A DISEASE DRAWS THE COLOR LINE—RESEARCHERS AROUSE PUBLIC TO SICKLE-CELL THREAT

(By Patrick Young)

Nellie Kendrick recalls a white friend who recently asked her if it were true that sickle-cell anemia—a painful and usually fatal blood disease—is found almost exclusively among blacks. Mrs. Kendrick, a black volunteer in the Milwaukee Community Sickle Cell Disease Project, assured her it was. "I thought it was just a lie spread to show that blacks were inferior to whites," the friend said.

Misconceptions abound about sickle-cell anemia, among blacks and whites, among physicians and laymen. The disease afflicts perhaps 45,000 black Americans. Nearly half of its victims die before age 5, and about 80 per cent by age 30. It occurs once in every 400 to 500 black births, a frequency 6 times greater than cystic fibrosis, and 20 times higher than phenylketonuria (PKU) both almost exclusively white diseases.

Yet for years medical researchers called sickle-cell anemia "the forgotten disease." One year ago, an editorial in the Journal of the American Medical Association complained that "the level of general ignorance concerning the nature of sickle-cell anemia remains depressingly high."

Now that ignorance is under attack, more money than ever is going into sickle-cell research. New diagnostic and treatment procedures are being developed. Large-scale testings are under way in several cities, including Milwaukee, to find blacks unknowingly suffering from the disease, and to determine who are carriers capable of passing on sickle-cell anemia to their children.

And blacks across the country are working to raise funds and to acquaint all Americans with the disease. As one example, more than 200 professional black athletes—including Willie Stargell and Dock Ellis of the Pittsburgh Pirates and boxer Muhammad Ali—have set up the Black Athletes Foundation for Research in Sickle Cell Disease.

BRINGING BLACKS TOGETHER

"This has brought black people together, from the Black Panthers to the Urban League," says Richard Campbell, director of the Foundation for Research and Education in Sickle Cell Disease in New York City.

Sickle-cell anemia, an inherited disease, is the most common long-term illness among black children (about 1 per cent of its victims in the United States are White). It is incurable, and despite considerable knowledge of the disease's mechanism, treatment methods remain poor.

The disease is caused by a defect in the hemoglobin molecules within red blood cells, which carry oxygen throughout the body. Each hemoglobin molecule contains 574 amino acids. In sickle-cell hemoglobin, two of these amino acids are replaced by two others.

"At the basic level, the change is so minuscule, so tiny," says Dr. Makio Murayama, a biochemist at the National Institute of Arthritis and Metabolic Diseases. "Yet for the individual, it is a matter of life and death."

When sickle-cell hemoglobin is deprived of oxygen, the red blood cells lose their round, doughnutlike shape and take on a sickle or quarter-moon appearance.

When this happens, the red blood cells are unable to pass through the body's microscopic capillaries. The cells jam up like driftwood clogging a drainpipe. As a result tissue is deprived of the oxygen it needs, and dies. This painful event is called a "crisis."

In crisis, a person suddenly develops intense pain, usually in the abdomen, back, chest, hips, arms, or legs. The heart may be partly or fatally damaged, or a stroke may result. Sickle-cell sufferers are extremely vulnerable to infection, particularly pneumonia, and many develop skin ulcers at the ankle.

"Sickling can occur in any organ system and so it can mimic any disease state," says Dr. Edwin Bemis, a pathologist working with the newly established Southeastern Wisconsin Sickle Cell Center at Deaconess Hospital here. This causes diagnostic difficulties for doctors unfamiliar with sickle cell, and sometimes results in unnecessary surgery.

The disease results from a gene mutation that occurred centuries ago in Africa, and which became common because it offered a protection against malaria. For some unknown reason, malarial parasites cannot survive in sickled red blood cells.

Each person inherits two sets of genes, one from each parent. A person with sickle-cell anemia has inherited a sickle-cell gene from each parent. A person who inherits a sickle-cell gene from only one parent is called a "trait." (Far less common than sickle-cell anemia are "variants," forms of the disease less severe than the anemia, but more troublesome than the trait.) Estimates place the number of blacks carrying the trait at between 8 and 13 per cent.

It requires two traits to produce a child with sickle-cell anemia, and the odds are one in four for such a birth. The chances of producing another trait are one in two. These odds of genetic roulette are for each birth. A Racine, Wis., couple produced three children, all with sickle-cell anemia.

The only guarantee that two traits will avoid a child with sickle-cell anemia is if they have no children. Currently several research teams are trying to develop prenatal tests for the disease. If they succeed, parents will know in advance if their child will be born with sickle-cell anemia, and will have the option for abortion.

TRAIT IS NOT A DISEASE

Most sickle-cell traits live normal lives and never experience a crisis. Overall, we try to stress that sickle-cell trait is not a disease," says Dr. Robert B. Scott of the Medical College of Virginia in Richmond.

Nevertheless, cautions Dr. Robert M. Nalbandian of Blodgett Memorial Hospital in Grand Rapids, "the trait under certain physiological-stress conditions can be hazardous, and has been."

Traits may crisis while flying at high altitudes in unpressurized aircraft, under general anesthesia during surgery, or sometimes during great physical exertion.

Last year a team of Army doctors blamed sickle-cell trait for the deaths of four black recruits—over an 11-month period—during basic training at Fort Bliss, Texas. Their conclusion, however, has been challenged by other researchers, who contend the doctors did not rule out sufficiently other possible factors in the deaths.

Women with sickle-cell trait have a higher incidence of urinary infection during pregnancy, and traits sometimes pass blood in their urine. Pittsburgh pitcher Dock Ellis, a trait, says he occasionally passes clots. "I've gone to the team physicians and they say

there's nothing they can do about it," he says.

The public awakening to sickle-cell anemia is a recent thing, among blacks and whites. A 1968 survey in Richmond found that only 30 percent of the blacks questioned had heard of the disease. Today blacks are more willing to accept the disease and no longer regard it as a racial slur.

"Part of the new pride among blacks is enabling us to look at ourselves, and to look with more objectivity," says Hazel Maxwell, chairman of the Milwaukee Community Sickle Cell Disease Project's advisory committee.

Sickle-cell fighters say the message of concern is finally getting across. Congress, at President Nixon's request, increased the National Institutes of Health's sickle-cell research budget from $1,000,000 to $6,000,000 this year. A bill to provide $142,000,000 in sickle-cell funds over three years is pending in the Senate. The National Foundation and its local March of Dimes chapters are providing increasing funds for research.

"I think we're getting over our benign neglect," says Dr. Bemis. "We're waking up to the fact that there is a black portion of our population. Whites, too, are demanding that blacks be treated on an equal medical basis."

The new awareness of sickle-cell anemia has led to greater efforts to identify people with the trait. Here in Milwaukee, Deaconess Hospital's sickle-cell center plans to test 118,000 blacks in seven counties. Three screenings have tested 2,232 blacks since Sept. 18, in addition to over 5,000 patients routinely tested upon admission to the hospital since 1969.

It is a community effort, utilizing more than 250 black and white volunteers and Boy Scout Troop 200, a ghetto unit, to spread the testing message. The center will provide genetic counseling and a registry of persons with sickle-cell trait.

AN EFFORT IN PITTSBURGH

The Black Athletes Foundation and six other groups are sponsoring a similar effort in an attempt to test 250,000 blacks in the Pittsburgh area. Smaller screening programs have taken place among school children in Grand Rapids and Hartford.

Testings to date have been voluntary. But New York State recently passed a law providing sickle-cell tests for youngsters entering public schools. And laws requiring testing of school children or marriage-license applicants before marriage are pending in several states, including California and Illinois.

Such laws delight some blacks, but not all. "If testing is compulsory, children identified as carriers could be stigmatized as less desirable parents or as weak individuals," says Dr. Robert Murray of Howard University in Washington, D.C.

The Milwaukee program and several others use a test developed by Dr. Nalbandian and Dr. Paul Wolf of Stanford University. Its advantage over previous tests lies in cost. The chemicals needed for the test, which can be run automatically at the rate of 120 an hour, cost only pennies a sample.

The test is a preliminary screening. A positive indicates sickling, but not necessarily sickle-cell disease. A second test—electrophoresis, which measures the distinctive electrical charges of various types of hemoglobin—can determine if the patient has sickle-cell anemia or the trait.

Treating sickle-cell anemia is more complex. Efforts to reverse sickling crises in patients, says Dr. Scott, "have not been terribly effective."

Dr. Nalbandian and his research colleagues are experimenting with urea, a natural chemical waste occurring in the body, in a sugar solution to treat patients in crisis. This "molecular surgery," says Dr. Nalbandian, breaks apart sickle-cell hemoglobin molecules that have locked together and reverses the crisis.

"We have been able to abort sickle-cell crises in over 20 patients, without using narcotics, and without medical misadventure, therapeutic failure, or death," he says.

The technique is extremely complicated. Unless extreme care is taken, the urea can cause dehydration, which itself can bring on a crisis by reducing oxygen.

Last month Dr. Paul McCurdy and Dr. Laviza Mahmood of Georgetown University medical school in Washington, D.C., reported treating 24 crises in 14 patients with urea. Seventeen crises were successfully treated, though the researchers noted dehydration as a major side effect.

"These results suggest that urea therapy has a beneficial effect on the painful crises of sickle-cell disease, but the method is still experimental," they wrote in the New England Journal of Medicine.

Currently the National Heart and Lung Institute is supporting six studies comparing three sickle-cell therapies, including urea. A second corrects dehydration, and the third reduces blood acidity, another cause of sickling, by lowering body oxygen.

A PROMISING TREATMENT

Other researchers are trying to find other chemicals that will reverse sickling without urea's handicaps. Dr. Anthony Cerami and Dr. James Manning of Rockefeller University in New York City recently reported excellent test-tube results in preventing sickling in human blood with potassium cyanate. They expect to begin human tests within a year.

Dr. Nalbandian says urea, taken four times daily mixed in soda pop to hide its bitter taste, can safely and effectively prevent sickle-cell crises. But he acknowledges difficulties in getting patients to down their preventive doses regularly.

"Frequently they take it when they feel pain," he says. "They head off a crisis and then they ignore their urea. There has to be a better way of delivering it."

SECRET LAY IN THE STRUCTURE

Although there is no cure for sickle-cell anemia, and as yet no generally accepted treatment, the basic mechanism of "sickling" is no mystery.

Sickle-cell anemia was first described in 1910 by Dr. James Herrick of Chicago. In 1949, Nobel laureate Linus Pauling and Dr. Harvey Itano showed that the disease resulted from an inherited defect in the hemoglobin molecules within red blood cells. Nine years later, Dr. Vernon Ingram and John Hunt, working at England's Cambridge University, identified that defect.

Hemoglobin molecules, which transport oxygen throughout the body, contain a total of 574 amino acids, arranged in four chains. The four chains are actually two pairs of identical chains, called alpha and beta.

The English researchers found that at two points in the beta chain of sickle-cell hemoglobin an amino acid called valine exists where glutamic acid, another amino acid, exists in normal hemoglobin.

It remained for Dr. Makio Murayama, a biochemist at the National Institute of Arthritis and Metabolic Diseases, to explain in 1966 how this minute difference in amino acids causes sickling. Considering the Cambridge research, he says, "it occurred to me that maybe the secret lay in the structure."

Normal hemoglobin molecules, about 300,000,000 per red blood cell, move at random within their cells. But Dr. Murayama found that substituting valine for glutamic acid allows sickle-cell hemoglobins to lock together when oxygen is reduced. They form chains up to 6,000,000 molecules long. These chains twist into six-strand cables, and these cables, in turn, bunch together to form rigid lines

"The end effect is that the cell wall, which is like a balloon, complies with the shape of these long fibers within," Dr. Murayama says.

Last year Dr. Murayama photographed these microcables for the first time. Using a stream of argon ions —a technique he learned about from scientists shaving microscopic layers from moon rocks—he stripped away part of the wall from a sickled cell. With a scanning electron microscope, he photographed clumps of sickled hemoglobin.

This year Dr. Murayama proposed a theory to explain why sickle-cell anemia is more severe in some patients than in others. He suggests that an organic molecule, which he calls the "hemoglobin S cofactor," plays a role in sickling. Its severity depends on the amount of this molecule present.

Dr. Murayama has yet to identify the molecule. "When and if it is identified," he says, "I think we will be able to revolutionize the mode of control and treatment of the disease."

PREVENTION OF SICKLE CELL ANEMIA

Mr. BYRD of West Virginia. Mr. President, scientists estimate that approximately 2.5 million of the 25 million black Americans have the trait of sickle cell anemia, an excruciatingly painful disease of which too little is known, and as many as 50,000 of our black citizens may actually suffer from the disease.

There is an obvious need for additional, intensive research into sickle cell anemia, and a need to find a cure for this disease. S. 2676, of which I am a cosponsor, will provide that additional research, and hold out the hope that a cure will eventually be found that will rid our society of this crippler.

Believed to have developed in Africa centuries ago, sickle cell anemia is an inherited blood disease—a disease in which red blood cells form a sickle shape when deprived of oxygen. These sickle-shaped cells often clog along the blood vessels inner lining, and the result is often an impediment to the flow of blood to vital organs.

The resulting symptoms include almost unbearable pain, stunted growth, and swelling of the joints, as well as subsequent failure of such organs as the heart, the spleen, and the kidneys.

Mr. President, research on this disease was first undertaken over 60 years ago; but very little progress has been made from that point through today. Much of the current medical attention is aimed at providing relief to those sickle cell victims suffering from attacks of extreme pain. Persons suffering from this disease must make frequent visits to clinics or hospitals, where their conditions can be regularly monitored. Only with adequate medical attention from trained personnel, can the victims of sickle cell anemia live a normal life.

S. 2676, the National Sickle Cell Anemia Act, would attempt to enable more sufferers of this disease to lead normal lives by providing $25 million in fiscal year 1973 for grants and contracts for sickle cell anemia screening, counseling and referral programs. These funds, which would be dispersed through the U.S. Department of Health, Education, and Welfare, would be increased to $35 million in fiscal year 1974 and to $40 million in fiscal year 1975.

Screening is essential to the control and prevention of sickle cell anemia. If a person has the trait of the disease—that is, if he or she is carrying only one sickle cell—a normal life can be expected However, when two sickle cells are pres-

ent, the tortures of the disease almost invariably follow. Early detection, through screening, can lead to genetic counseling and a better control of sickle cell anemia.

Besides the funds for screening, counseling, and referral programs, S. 2676 also provides $5 million for research programs in fiscal year 1973, with these research funds increasing to $10 million and $15 million, respectively, in the following 2 fiscal years.

This is an intensive, all-out attack on sickle cell anemia; but the threat that this disease poses to black Americans warrants no less than our exhaustive efforts to prevent, control, and eventually do away with this disease.

ALL-OUT EFFORT TO CONTROL SICKLE CELL ANEMIA

Mr. CRANSTON. Mr. President, the chairman of the Senate Committee on Labor and Public Welfare (Mr. WILLIAMS) and the chairman of the Subcommittee on Health (Mr. KENNEDY), as well as the ranking minority members, respectively (Mr. JAVITS and Mr. SCHWEIKER), are to be congratulated on the speed with which they have responded to the referral of the committee of S. 2676, the proposed "National Sickle Cell Anemia Control Act." This bill, of which I am an original cosponsor, is one that is long overdue. I believe the members of the Committee on Labor and Public Welfare by reporting this bill to the floor without delay have demonstrated their recognition that conquest of this disease merits immediate attention and priority consideration by the Nation's health system. I would also like to congratulate my colleague (Mr. TUNNEY) for his leadership role in the development of this legislation. He is the principal sponsor of this bill, as well as a similar bill pertaining to the District of Columbia (S. 2677).

Sickle cell anemia, which this bill proposes to provide a mechanism to detect, treat, and cure, has left its tragic mark on many American families. The victims of this disease are those children both of whose parents carry the sickle cell genetic trait. These children have a 1 out of 4 chance of inheriting the disease.

The sickle cell abnormality is limited almost exclusively to black people. The trait is found in approximately 10 percent of that population and the disease itself is found in about 2 million Americans. Infants born with sickle cell disease rarely survive to adulthood, and their brief lives are punctuated by painful onslaughts of sickle cell crises. These crises are brought on by the sickling of the red blood cells; they take on a crescent shape which inhibits their normal flow through the blood stream. Instead, the cells tend to pile up in a blood vessel, depriving the surrounding tissue of a normal oxygen supply and causing extreme pain in those areas. Because sickled cells are easily destroyed and cannot be quickly replaced, victims of this disease suffer from anemia which, in turn, can contribute to a susceptibility to infection, particularly pneumonia, as well as jaundice, kidney problems, and retarded growth and development.

S. 2676, as reported from the Labor and Public Welfare Committee, attacks this disease by providing for a national program for control, research, and treatment of sickle cell anemia. The program consists of grants and contracts for screening and counseling programs and for the dissemination of educational materials regarding the nature and inheritance of sickle cell anemia and the trait. Amounts authorized for appropriation for screening, counseling and educational programs are: $25 million for fiscal year 1973, $35 million for fiscal year 1974, and $40 million for fiscal year 1975.

It is noteworthy that the statutory language contains a specific direction that priority in the awarding of grants for these programs must go to areas within States having the highest percentage of population in need of sickle cell anemia screening and counseling programs, and further, that an additional priority be given to community-based organizations in these areas in order to try to gain maximum involvement of those persons themselves most likely to be afflicted by the trait.

Grants and contracts are also authorized for research in the diagnosis, treatment, and control of sickle cell anemia; for the development of educational programs to acquaint the public with the extent of the disease; and for the development of centers for research, testing, counseling, control or treatment of sickle cell anemia. Amounts authorized for appropriation for research are $5 million for fiscal year 1973, $10 million for fiscal year 1974, and $15 million for fiscal year 1975.

The bill also provides that any participation in sickle cell screening or treatment programs should be totally voluntary and that all medical records or any related information be held confidential.

The bill provides special authorities to the Secretary of Defense to provide for screening and counseling to members of the Armed Forces and their dependents and to persons examined at Armed Forces examining and entrance stations, as well as to civilian employees of the Department of Defense. These services also would be provided only under voluntary conditions and on a confidential basis.

As chairman of the Subcommittee on Health and Hospitals of the Veterans Affairs Committee, I am delighted that the bill recognizes the important role the Veterans' Administration Department of Medicine and Surgery can play in combating this disease.

The VA medical and hospital system provides an excellent opportunity to study many fundamental and practical aspects of the sickle cell disease. Approximately 16 percent of the VA hospitalized veterans are black. Some dozen Veterans' Administration hospitals already have the equipment needed to test the blood samples for sickle cell trait and disease. There are a small but significant number of cases in which the full genetic abnormality is present but not evident until well into adult life, and some cases of this type are presently being treated in VA hospitals. The Veterans' Administration presently has approximately 35 individual research projects underway to study the genetic defects and pathologic mechanisms involved in sickling.

Mr. President, because of my responsibility as chairman of the Veterans Health and Hospitals Subcommittee and thereby my familiarity with the provisions of chapter 17 of title 38, United States Code, governing the VA medical and hospital program, I offered an amendment during committee consideration of the bill to revise section 5 of the bill, which adds a new subchapter VI in chapter 17, in order to make it as effective as possible in the context of the administration of the VA health program and to expand over certain provisions in the bill as introduced.

Under the bill as my amendment revised it, provision is made to insure that any veteran undergoing VA medical treatment—including contract or fee care—or an examination to determine his eligibility for VA benefits be offered screening for the sickle cell trait and receive it if he wishes. Authorities were added, first, to provide that if the veteran is found to have the trait the VA would also provide screening for the veteran's spouse; second, to require that every veterans' benefit recipient will receive from the VA information about the trait and anemia and where screening for the trait is available; third, to provide that any veteran having sickle cell disease, or the trait, will receive the necessary outpatient as well as hospital care; and fourth, to require the VA and authorize appropriations for it to carry out a comprehensive research and research training program in sickle cell anemia based upon its screening and treatment activities under the new subchapter.

I am particularly delighted that my amendment to authorize appropriations for these research purposes—$3 million in fiscal year 1973, $4 million in fiscal year 1974 and $5 million in fiscal year 1975—was accepted so that the maximum advantage can be taken of the VA's full potential in this field. Provisions are also included in the new subchapter ensuring voluntary participation and confidentiality of material collected for treatment or research purposes.

Although this legislation did not originate in the Senate Veterans' Affairs Committee's Subcommittee on Health and Hospitals, as chairman of that subcommittee I intend to follow the implementation of these programs in the Veterans' Administration very closely. I plan for the Health and Hospitals Subcommittee to carry out an active oversight of activities undertaken as a result of these new authorities in the same way as I will for the Veterans' Administration drug addiction treatment and rehabilitation programs authorized by S. 2097 which passed the Senate last Thursday and which also was not formally referred to the Veterans' Affairs Committee.

I want to express my personal thanks to the Veterans' Administration for its technical advice in the drafting of this provision and to the Senator from Indiana (Mr. HARTKE), the chairman of the Veterans' Affairs Committee, and the Senator from South Carolina (Mr. THUR-

MOND), its ranking minority member, for their cooperation in this matter. They are also both cosponsors of this major legislation. I also want to note the enthusiastic help of the chairman of the House Veterans' Affairs Committee, OLIN E. TEAGUE, who has introduced in the other body H.R. 11971, the provisions of which regarding the Veterans' Administration are substantially similar to section 5 of S. 2676 as reported. It is my hope that by the consultation and collaboration we have undertaken, it will be possible for this bill to be approved by the other body without divisive and timeconsuming jurisdictional disputes.

Subsequent to consideration of S. 2676 by the committee and the same day the bill was reported, the Veterans' Administration transmitted its official report on the bill.

Although obviously this report did not become a part of the decisionmaking process, I feel that subchapter VI as reported reflects some of the concerns expressed in the report and is consistent with the VA's medical care capacity. I ask unanimous consent that the report of the Veterans' Administration be set forth in the RECORD at the conclusion of my remarks.

Mr. President, I believe the bill as reported will provide the long-needed mechanism to control the incidence of this disease which unfortunately has until now not enjoyed the wide public support and interest it merits.

One of the great tragedies regarding this disease is that many individuals have the trait and are completely unaware of it.

The provisions in this bill for screening and counseling programs and the emphasis placed on establishing these programs in the areas where the greatest concentration on the disease can be expected are highly laudable.

Many of the individuals affected by sickle-cell trait are those who are outside the reach of the present health care system. Only by full community participation can the programs reach those who have a susceptibility to the disease. A strong public information program, coupled with an active outreach effort, is needed for any measurable success to be achieved. The screening and counseling programs must also be taken directly to the people, through mobile units or sidewalk clinics.

The bill's provisions placing first priority in the awarding of grants on community-based programs will insure a primary orientation toward direct action efforts to screen those likely to have the trait and to counsel those found to have it, without losing any impetus by becoming ensnarled in institutional red tape or secondary organizational priorities.

While general public and institutional recognition of the need to fight sickle-cell anemia has been limited, there have been longstanding efforts to offset this on the part of many dedicated individuals in the health professions and in the community at large. In my State of California among the outstanding efforts being made is the work generated by the leadership of Dr. Elmer Anderson of Los Angeles, who for 13 years has been in the forefront of those advocating a concentrated effort to fight sickle-cell disease. Currently, he has received the support of the county board of supervisors to develop a Los Angeleswide effort to establish screening and counseling programs for the sickle-cell trait. He has had a very warm reception from health professionals who are eager to participate on a volunteer basis in conducting the screening tests. However, despite the availability of personnel, and the comparatively modest cost of the screening test, this Los Angeles program has been severely limited by lack of funds in its large ability to conduct screening and educational programs on the large scale needed. The grants authorized by S. 2676, I believe, are geared especially for this type of program, and will add the one missing essential ingredient—money—to needs of the community.

Many medical students, too, are deeply committed to combating sickle cell anemia and have gone into communities and conducted screening programs on a volunteer basis. One student's activities indicative of the desire of these young men and women to be involved in positive action programs is that of Greg Barnes, a third-year medical student at the University of California San Francisco School of Medicine. As a volunteer at a free clinic in San Francisco, this young man organized a sickle cell counseling and screening program for neighborhood residents and conducted a full weekend "health fair" in which he and other volunteers set up a screening program on a San Francisco street providing on-the-spot tests and information to anyone requesting it.

Through his work at the clinic, Mr. Barnes became aware of the need for this type of program at the Santa Rita Prison Farm, and organized a program to test the inmates there. An article describing his activities appeared recently in the campus newspaper, and I ask unanimous consent, Mr. President, that this article be inserted in the RECORD at the conclusion of my remarks.

Greg Barnes' outstanding achievements do not represent an isolated case. Similar efforts are being made in medical schools across the Nation. This motivation and dedication can be utilized to the maximum through the support provided for community programs by S. 2676 as reported.

Mr. President, I urge my colleagues to give their unanimous support to this bill and indicate this body's full commitment to eradicating this disease which adds still further to the discriminatory burdens with which black Americans have for far too long been afflicted.

"A DUTY TO MY OWN PEOPLE"—ONE STUDENT'S SERVICE TO THE BLACK COMMUNITY

(By Greg Barnes)

Greg Barnes is one of many UCSF medical students whose work in the community is as much a part of his life as three meals a day.

Greg is a volunteer at the Blackman's Free Clinic, a small building at 689 McAllister where residents of the Western Addition have had access to free health care since October, 1968. The clinic offers medical, dental and pharmaceutical services, some of which are provided by volunteer students and staff from UCSF.

Greg provides a special type of service to the clinic—he cousels and gives screening tests for sickle cell anemia, a disease to which blacks are especially susceptible. Blood samples from Greg's patients are analyzed in the laboratory of USSF professor Dr. Nicholas Petrakis.

To help familiarize the neighborhood residents, as well as outsiders, with its work, the Blackman's Free Clinic recently held a "Health Fair" at San Francisco Health Center No. 2 (on Pierce Street). Greg and other volunteers were on hand for a full weekend to provide on-the-spot services, health examinations, sickle cell anemia tests, and plenty of information to all comers. Normally, the Clinic itself is open only in the evenings.

Through working at the Clinic, Greg discovered another place where his help was needed: the Santa Rita Prison Farm. In collaboration with Bill Woods, a black nurse at the prison, Greg began something of a personal campaign to test black inmates for sickle cell anemia, a service that has never before been available at the prison. With the help of fellow medical students Beverly Corry, Arnold Savage, and Joseph Patrick, Greg has tested more than 400 black inmates at Santa Rita.

Important as the testing is, Greg draws more from the experience at Santa Rita than just the satisfaction of providing medical assistance.

"It's a very human experience," he says, smiling. "Except for Bill Woods, whose time is divided between so many inmates, there are no other blacks on the prison farm's medical staff. We students, visiting the prison regularly, can bring in something of the outside world; more important, we can exchange thoughts and feelings with the inmates—as individuals, as human beings. Prisoners are not accustomed to being treated in a personal way. It is a beautiful experience—for those on both sides.

"It may also be beautiful," continues Greg, "if the success of the testing program sets an example for other prisons. I hope this project will help focus attention on the need for more research on sickle cell anemia, particularly on treatment of the disease."

Greg is continuing his efforts to make sickle cell screening tests more widely available. At UCSF, he helped organize free testing for black students and employees during Black Culture Week, October 11–15.

Currently a third-year medical student, Greg feels that the time he spends at the Blackman's Free Clinic and the Santa Rita Prison Farm is as important as any spent in formal training at UCSF. "Although the medical school offers some good opportunities in community medicine," says Greg, "most are on the observation level. You aren't really compelled to get involved."

A native of Cincinnati, Greg is married and has two small children. He did undergraduate work at Xavier University in Cincinnati. In the future, he plans to go into family medicine "so that I can reach the most people." He wants to practice in the inner city and also hopes to start a training program in which members of the community can learn to do basic medical procedures.

Greg feels strongly about his role as a black physician: "I feel that I have a duty to my own people—that I am compelled by the facts of history to help them as best I can."

VETERANS' ADMINISTRATION,
Washington, D.C., December 6, 1971.

HON. HARRISON A. WILLIAMS, JR.,
Chairman, Committee on Labor and Public Welfare, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This will respond to your request for a report by the Veterans

Administration on S. 2676, 92nd Congress, a bill "To provide for the prevention of sickle cell anemia."

The purpose of the bill is stated in its title. It would seek to accomplish that purpose by adding programs to be carried out by the Public Health Service, the Department of Defense, and the Veterans Administration. My comments on the bill will be restricted to those provisions which would be carried out by the Veterans Administration.

Section 5 of the bill would amend chapter 17 of title 38, United States Code, by adding a new subchapter VI—Sickle Cell Anemia Prevention, under which the Administrator would be required to screen and treat all veterans eligible for VA medical care with regard to sickle cell trait and sickle cell anemia.

At the present time we are engaged in a cooperative study in about twelve VA hospitals, each with about 1500 admissions of black patients. This study will evaluate the increased risks of complicating diseases associated with sickle cell trait. Conditions being studied include pulmonary embolism, myocardial infarction, vascular complications of diabetes, pyelonephritis, and post-operative complications.

Moreover, in addition we have approximately 35 individual research projects underway to study the genetic defects and pathologic mechanisms involved in sickling. In fiscal year 1972 we have committed research funds of approximately $350,000 to individual projects, with an additional $200,000 for the cooperative study.

The new section 651, which would be added to title 38 by the bill, requires the Administrator to notify all persons eligible for care under this chapter of the availability of screening, treatment, and counseling programs with regard to sickle cell trait and sickle cell anemia. The key phrase in that provision—"persons eligible under this chapter"—is not precise and presents difficulties in implementation. Apparently, what is desired is that anyone eligible for inpatient or outpatient care be encompassed within that phrase. Under current law, VA hospital care for a non-service-connected condition can be furnished to any war veteran or a veteran of service after January 31, 1955, *if he is unable to defray the expenses of necessary hospital care,* or if he is over the age of 65 years. Therefore, since eligibility for the great number of veterans is premised on "inability to defray expenses of hospital care", it would be impossible for the Veterans Administration to identify, as a preliminary to notifying, all persons as required by this provision of the bill.

The proposed new section 652 would require the Administrator to screen any person eligible for care under chapter 17 of title 38, United States Code, who makes a request, for sickle cell trait or sickle cell anemia, and to provide treatment and counseling to those who are found to have such trait or disease. Thus, this bill would, for the first time, authorize the Veterans Administration to provide purely screening examinations for a particular disease, independent of an application for hospital admission, medical services, or for compensation, or pension benefits administered by the Veterans Administration.

Our interest in finding a solution to the problems arising from the sickle cell trait is evident from the research we are already conducting in this field as noted above. To the extent that inpatient treatment would be needed, in most cases we would require no new authority since the bill limits treatment to persons eligible for medical care under title 38.

To the extent that outpatient treatment is needed, we might point out that legislation to broaden our authority to furnish medical services on an ambulatory or outpatient basis is under consideration by the Senate Committee on Veterans' Affairs. That legislation, when enacted, would enhance our ability to identify and treat sickle cell trait and sickle cell anemia as well as the complicating diseases associated therewith.

In addition to certain technical difficulties with the language of the bill, we believe that there is a serious question as to whether the mission of the Veterans Administration should be enlarged to include screening examinations of individuals independent of any need for hospitalization or the providing of medical services. At the present time, there is insufficient medical data to define a course of suitable treatment for individuals who have been identified as having the sickle cell trait. Under these circumstances, we believe the more prudent and medically effective approach is to continue with the intensive research program outlined above, rather than divert VA physicians into an extensive screening program, as proposed in this bill. Moreover, the enactment of this provision requiring screening and examinataion for sickle cell trait and sickle cell anemia would be a precedent for requests to expand our medical services to screening for other diseases. Thus, we cannot recommend favorable consideration of this section of the bill.

It is not possible to make a precise estimate of the cost to the Veterans Administration should S. 2676 be enacted, because of our lack of experience in this area of medical care. There are approximately two million black veterans in our population, with one million of those under the age of 45 years. It is reasonable to assume that approximately one-half of those under 45 would seek the screening examination. Under the conditions prescribed by the bill, we estimate that each examination would cost approximately $17.50. Therefore, to staff and examine this number would cost a total of $10.5 million. We would expect to accomplish these examinations over a five year period, after which the costs would reduce to a routine for new veterans. A more detailed estimate for each of the first five years follows:

(*Costs in millions*)

Fiscal year:	
1973	$2.3
1974	2.3
1975	2.3
1976	2.3
1977	1.3
Total	10.5

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

DONALD E. JOHNSON,
Administrator.

The PRESIDING OFFICER. The question is on agreeing to the amendment in the nature of a substitute.

The amendment was agreed to.

The PRESIDING OFFICER. 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 it 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 Texas (Mr. BENTSEN), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Georgia (Mr. GAMBRELL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Hawaii (Mr. INOUYE), the Senator from Washington (Mr. MAGNUSON), the Senator from Utah (Mr. Moss), and the Senator from West Virginia (Mr. RANDOLPH) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. LONG), is absent on official business.

I also announce that the Senator from Idaho (Mr. CHURCH) is absent because of illness.

I further announce that, if present and voting, the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. MAGNUSON), and the Senator from West Virginia (Mr. RANDOLPH) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT) and the Senator from South Dakota (Mr. MUNDT) are absent because of illness.

The Senator from Colorado (Mr. DOMINICK), the Senator from Illinois (Mr. PERCY), the Senator from Vermont (Mr. STAFFORD), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

The Senator from Kentucky (Mr. COOPER) and the Senator from Nebraska (Mr. CURTIS) are detained on official business.

If present and voting, the Senator from Nebraska (Mr. CURTIS), the Senator from Colorado (Mr. DOMINICK), the Senator from Illinois (Mr. PERCY), and the Senator from South Carolina (Mr. THURMOND) would each vote "yea."

The result was announced—yeas 81, nays 0, as follows:

[No. 442 Leg.]

YEAS—81

Aiken	Fannin	Montoya
Allen	Fong	Muskie
Allott	Goldwater	Nelson
Anderson	Gravel	Packwood
Baker	Griffin	Pastore
Bayh	Gurney	Pearson
Beall	Hansen	Pell
Bellmon	Harris	Proxmire
Bible	Hart	Ribicoff
Boggs	Hartke	Roth
Brock	Hatfield	Saxbe
Brooke	Hruska	Schweiker
Buckley	Hughes	Scott
Burdick	Jackson	Smith
Byrd, Va.	Javits	Sparkman
Byrd, W. Va.	Jordan, N.C.	Spong
Cannon	Jordan, Idaho	Stennis
Case	Kennedy	Stevens
Chiles	Mansfield	Stevenson
Cook	Mathias	Symington
Cotton	McClellan	Taft
Cranston	McGee	Talmadge
Dole	McGovern	Tower
Eagleton	McIntyre	Tunney
Eastland	Metcalf	Weicker
Ellender	Miller	Williams
Ervin	Mondale	Young

NAYS—0

NOT VOTING—19

Bennett	Gambrell	Mundt
Bentsen	Hollings	Percy
Church	Humphrey	Randolph
Cooper	Inouye	Stafford
Curtis	Long	Thurmond
Dominick	Magnuson	
Fulbright	Moss	

So the bill (S. 2676) was passed.

The title was amended, so as to read: "A bill to provide for the control of sickle cell anemia."

Mr. SCHWEIKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. COOK. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CURTIS subsequently said: Mr. President, at 10 o'clock this morning I had an appointment at the Office of Management and Budget, where I accompanied the directors of the O'Neill-North Loup, Nebr., irrigation project for a conference. I was not present when the yeas and nays were called upon S. 2676, having had no knowledge that the vote would occur at that time, and I would like the RECORD to show that I favor the legislation.

ORDER TO PLACE H.R. 11589 ON THE SENATE CALENDAR

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that H.R. 11589 authorizing the foreign sale of certain passenger vessels be placed on the Senate calendar.

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

PHOTOGRAPH OF THE SENATE

Mr. MANSFIELD. Mr. President, after discussing the matter with the distinguished Republican leader, it has been decided—because of circumstances over which the joint leadership has little control—that the picture of the Senate to be taken tomorrow by the National Geographic will not be taken at that time. Instead, the picture will be taken at the time of the Rehnquist vote, when it occurs, because on that occasion we will be certain to have the fullest attendance possible.

I hope nobody misinterprets this statement. It is only because of a fact over which we have no control that the time has been changed from tomorrow to a day when perhaps all the seats will be filled.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. HATFIELD:

S. 2968. A bill for the relief of Leo Lucas. Referred to the Committee on the Judiciary.

By Mr. HATFIELD (for himself and Mr. PACKWOOD):

S. 2969. A bill to declare title to certain Federal lands in the State of Oregon to be in the United States in trust for the use and benefit of the Confederated Tribes of the Warm Springs Reservation of Oregon. Referred to the Committee on Interior and Insular Affairs.

By Mr. BEALL:

S. 2970. A bill to provide for the issuance of $2 bills bearing the portrait of Susan B. Anthony. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. NELSON (for himself, Mr. BOGGS, Mr. BROOKE, Mr. CASE, Mr. HARRIS, Mr. HARTKE, Mr. MCINTYRE, Mr. MONDALE, Mr. KENNEDY, Mr. MCGOVERN, Mr. ROTH, Mr. RIBICOFF, Mr. TUNNEY, and Mr. WILLIAMS):

S. 2971. A bill to authorize the President to designate marine sanctuaries in areas of the oceans, coastal, and other waters, as far seaward as the outer edge of the Continental Shelf, for the purpose of preserving or restoring the ecological, esthetics, recreation, resource and scientific values of and related to such areas. Referred, by unanimous consent, to the Committees on Commerce, Interior and Insular Affairs, and Public Works, jointly.

By Mr. HATFIELD:

S. 2972. A bill to approve an order of the Secretary of the Interior canceling irrigation charges against non-Indian-owned lands under the Modoc Point unit of the Klamath Indian irrigation project, Oregon. Referred to the Committee on Interior and Insular Affairs.

By Mr. NELSON (for himself and Mr. KENNEDY):

S. 2973. A bill to amend the Outer Continental Shelf Lands Act. Referred to the Committee on Interior and Insular Affairs.

By Mr. HARTKE:

S. 2974. A bill to provide for posting information in post offices with respect to registration, voting, and communicating with lawmakers. Referred to the Committee on Post Office and Civil Service.

By Mr. MONDALE (for himself and Mr. HUMPHREY):

S.J. Res. 182. A joint resolution authorizing the President to invite the States of the Union and foreign nations to participate in Farmfest-U.S.A. and the World Ploughing Contest in September 1972. Referred to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATFIELD (for himself and Mr. PACKWOOD):

S. 2969. A bill to declare title to certain Federal lands in the State of Oregon to be in the United States in trust for the use and benefit of the Confederated Tribes of the Warm Springs Reservation of Oregon. Referred to the Committee on Interior and Insular Affairs.

Mr. HATFIELD. Mr. President, I am today introducing a bill to correct an error and an injustice of 100 years standing in the boundary location of the Warm Springs Reservation in Oregon. The bill is cosponsored by my colleague from Oregon (Mr. PACKWOOD), and identical legislation is being introduced in the House by Congressman AL ULLMAN.

The bill provides that 61,360 acres of federally owned lands will be declared in trust status for the use and benefit of the Confederated Tribes of the Warm Springs Reservation, to be incorporated as a part of the reservation, and to be administered by the Secretary of Interior as are other Indian trust lands. The bill also contains a number of special provisions affecting the use of the lands. These were included at the request of the Confederated Tribes to minimize the effects on their neighbors of the change in status of the lands, to allow an appropriate period of transition for existing uses, and to provide in perpetuity for public access and recreational uses. Brief descriptions of these provisions will be included at the conclusion of my remarks.

The land area involved, known as the McQuinn Strip, became a matter of dispute shortly after the Confederated Tribes of Warm Springs ceded approximately 10 million acres of land in 1855 in exchange for a reservation of approximately 630,000 acres.

The first formal survey, 16 years after the signing of the treaty, resulted in the omission of 80,000 acres of land in the northern and western areas of the reservation. The Indians objected, and 6 years later, in 1877, the Government assigned Mr. John A. McQuinn to resurvey the reservation as described in the treaty of 1855. Although his results varied somewhat from the description assumed by the Indians, the McQuinn survey was accepted by the tribe, and was adopted by the Department of Interior as the correct boundary.

In 1894, however, after hearing protests from settlers north of the reservation, the Congress passed a law establishing the first survey as the legal boundary. The Warm Springs Indians continued to object to the treaty violation, and the findings of subsequent Federal commissions weighed heavily in favor of the Indians' position. In 1930, the Congress passed a jurisdictional act authorizing the U.S. Court of Claims to determine the correct boundary. The court found that the McQuinn survey, with minor variations, was, indeed, the correct boundary as intended by the signers of the 1855 treaty, and declared that the lands had been illegally appropriated. However, the court of claims was not empowered to order the return of the land to the Warm Springs Reservation, but could only determine value for the purposes of compensation.

By virtue of an archaic system of compensatory offsets then in effect, the court concluded that no compensation was due the tribe. Thus, the injustice of an earlier century was compounded.

Immediately following the finding of the Court of Claims, the late Senator Charles McNary introduced legislation to fix the boundary of the Reservation as found by the court. The Department of Interior favored the legislation, but the objections of other executive departments prevented enactment. In 1948, Senator Guy Gordon was successful in getting congressional approval of legislation recognizing the historic and legal claim of the Warm Springs Tribe and providing that all revenues from the McQuinn Strip be allocated to the tribe. The Indians accepted the benefits of that act with the full understanding that they reserved the right to request future congressional action to convey title to the land.

Mr. President, the history of this dispute leaves no other avenue of recourse than legislation such as I have introduced today. The Act of 1894 precludes

an administrative resolution. The decision of the Court of Claims, which turned out to be no victory at all, closed the door on any further judicial determination. It is now up to the Congress to resolve the issue.

Throughout the past year, the Warm Springs Tribal Council, their attorney and other spokesmen for the Indians have met with hundreds of individuals, with local, State and Federal officials, and with representatives of many organizations with interest in the future management of the McQuinn Strip. The purpose of these meetings has been twofold: first, to hear the views of interested parties and to get their suggestions for a proper resolution of the boundary issue; and second, to incorporate appropriate language in McQuinn Strip legislation to accommodate to those valid concerns expressed by others. The bill proposed today provides for those concerns.

The Warm Springs Tribe is particularly interested in maintaining satisfactory relations with their neighbors. With progressive, far-sighted leadership, they are well along in establishing the basis for vigorous economic and recreational development on the reservation, development that will benefit their neighbors and will be a model for other Indian Tribes to follow.

Given the history of the McQuinn Strip episode, it should not be necessary to justify the return of the land on the basis of the attitudes and accomplishments of the Warm Springs Tribe. But it is, nevertheless, a matter of considerable pleasure and pride to me that this tribe has been recognized widely for its wise and successful development programs. In fact, citizens from all parts of Oregon and the Pacific Northwest are beginning to realize the benefits of the extraordinary accomplishments at Warm Springs. For example, the tribe is operating one of the most popular resort areas in the State. Next spring will see the completion of a $5 million expansion at the Kah Nee Ta Resort, adding to Oregon's tourist and convention facilities, and providing new jobs and opportunities for members of the tribe.

It is appropriate to point out that the tribe will not receive any immediate financial reward from the addition of McQuinn Strip lands to the reservation. As cited earlier, revenues from timber sale and other activities in the McQuinn Strip are already paid to the tribe by act of Congress. In fact, by shifting from Forest Service to Bureau of Indian Affairs jurisdiction, the tribe will be required to pay a 10-percent fee for forest management that is not now deducted from the proceeds. It has been clear all along that the tribe is not motivated by the desire for material gain in its century-long effort to secure the return of these lands. To them it is a simple matter of right.

I agree, and I urge the support of my colleagues in the early consideration of this legislation and its approval.

At this point, Mr. President, I would like to have printed in the RECORD several excerpts from an article by Don Holm, outdoors writer for the Oregonian, a recent news story from the Oregon Journal reporting on a visit to Warm Springs by Secretary of the Interior Rogers Morton, and an editorial from the Oregon Journal on the McQuinn Strip issue.

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

EXCERPTS FROM ARTICLE IN THE SUNDAY OREGONIAN, OCTOBER 17, 1971, BY DON HOLM, "INDIANS SEEK RETURN OF STRIP"

"Over the years, the Warm Springs Confederated Tribes and their leadership have won the respect of sportsmen and conservationists, not only for their hospitality and willingness to allow the public to enjoy fishing and camping on reservation lands, but for their conservation efforts which often have proved more progressive than the state and federal fish and wildlife agencies."

"In business matters, the tribes have also proved themselves just as aggressive and far-sighted. Their wise use of timber and other natural resources is well known. The popular Kah Nee Ta resort is an example of a successful project which was built on lands once owned by the Indians and later reacquired from private ownership at exorbitant prices.

"The Warm Springs tribes have long had a reputation for cooperation with state and federal agencies, and most meetings of the Game and Fish commissions are attended by tribal representatives, who have willingly accepted the decisions of these agencies.

"Of the many Indian tribes who sold their rights to commercial fishing in the middle Columbia, under the 1957 agreement, only the Warm Springs Indians have kept their word and refrained from using the set nets.

"Ironically, if the McQuinn Strip were ceded to the Indians, they would actually receive less money than they do from the proceeds of the timber sales. At present, they receive the gross receipts from the Forest Service. On regular reservation lands, the U.S. deducts 10 per cent for administration costs.

"This indicates the depth of feeling the Indians have for the McQuinn Strip. To them, it is not just acquiring more land, it is a matter of principle and personal pride."

[From the Oregon Journal, Aug. 27, 1971]

MORTON CITES WARM SPRINGS TRIBE AS "BEST IN NATION"

(By Steve Neal)

WARM SPRINGS.—Interior Secretary Rogers Morton confirmed Thursday night what many Oregonians have maintained for years, that the Warm Springs Indian Reservation is "the best example of a tribal enterprise system in the nation."

Morton said he had heard of the unique success of the Warm Springs tribes but was elated at what he found.

Smoking a cigar and sitting at an outdoor table overlooking Kah-Nee-Ta village, Morton noted, "Their timber operation, the desert resort, their range program and desire to get a fish hatchery are certainly strong indications of their achievements."

He added, "It's a shining example of making maximum use of the talents and resources that exist. They personify the policy of self-determination."

Morton said he wanted to meet Kenneth Smith, general manager of the tribes, and Olney Patt, chairman of the tribal council.

Despite his praise of Warm Springs, he hesitated to call it a model program.

"Not everyone can use this as a blueprint. Different reservations have different lands and different people," he said. "The spirit and determination," he pointed out, "are major factors in the Warm Springs phenomenon."

Morton wants the Bureau of Indian Affairs to serve "as a resource rather than a 'school marm.'"

BIA Commissioner Louis R. Bruce, a Mohawk-Sioux, has "brought a lot more communication in a lot broader way," the secretary said.

Morton said he hopes that BIA "will rely more on expertise in the Department of the Interior."

Morton would like to see the BIA "provide greater opportunity for development of reservation lands." He listed agriculture and wildlife as two major areas where assistance could be expanded.

Such projects, he hopes, can attract young people to BIA and give the federal agency a "broader and more creative base."

Morton admitted, "you'll make a lot of mistakes trying new things, some will fail, and you've got to expect criticism."

He sees a "necessity for the BIA boarding schools." For sparsely populated areas, such as Alaska, he believes it is the only means available.

"Boarding schools are an interim in terms of one or two decades. Until then, we've got to get the best use of top superintendents and faculties."

Earlier in the day, Morton expressed concern about field burning near Madras. "It's against the law back home in Maryland," he said. "What do they think they're doing?"

Meeting with the tribal council, Morton pledged to try to give them further help in developing the reservation.

He recommended that they try to sell wild horses and "turn them into an asset."

Tribal officials told Morton that the area is ideal for horses.

Morton said he recently met with a manufacturer that reported record sales of saddles. He quipped, "They're not putting them on Chevrolets."

Patt, tribal council chairman, told Morton that "something has to be done with the many acres of unpalatable grass." He stressed, "That's where we need assistance."

Smith asserted, "We need a lot of help to get the range up to par. The horses aren't making money."

Owen Panner of Bend, tribal attorney, said the reservation always has been free range, but a recent ordinance provides for summer and winter range restrictions to limit the grazing use.

Following the meeting with the council, Morton was honored at a dinner and presented a beaded billfold and necktie.

Friday morning, he was scheduled to meet with tribal leaders before his departure for Southern Oregon.

One tribal leader observed, "He seemed to have genuine interest in our problems."

Few persons at Warm Springs seemed displeased with the results of the Morton visit.

[From the Oregon Journal, editorial, Mar. 29, 1971]

TIME TO CORRECT ANCIENT ERROR

It is characteristic of cases involving land disputes that they move with glacial speed.

This is true of the McQuinn Strip controversy in which Indians of the Warm Springs Reservation have never ceased demanding control of 78,611 acres that, due to an erroneous survey, was not made part of the reservation in 1855.

Of this total, 62,000 is in federal ownership, most of it in the Mt. Hood National Forest. The rest has been in private hands, but the tribe has been buying some of it back.

The justice of the Indians' claim has long been recognized in surveys which revealed the original error and in litigation which favored the Indians but did not achieve the transfer.

Oregon's Sen. Charles McNary and Rep. Lowell Stockman believed in the Indians' case and tried unsuccessfully in the 1930s to

persuade Congress to act. Sen. Guy Cordon took a different tack and in 1948 won approval of a compromise bill which did not give the Indians title but did award them all the revenue from timber sales and grazing fees. The Forest Service has continued to manage and has borne all the management costs.

Thus the continuing Indians' desire to gain title to the McQuinn Strip is not based on economic reasons, since they are better off financially now than under any future arrangement which would probably follow the present pattern on reservation timber of paying 10 per cent of gross receipts to the Bureau of Indian Affairs for management.

But the Indians are motivated by deep tribal feelings which have never receded. These may have gained new strength from the success of tribal enterprises, including timber operations and a huge recreational complex. Another spur may have been action of the federal government last year in turning back to the Pueblo de Taos Indians 48,000 acres of land from the Carson National Forest. The Indians had always regarded this land as sacred and as a traditional place for hunting and fishing. President Nixon called particular attention to this action, voted by Congress, as a matter of simple justice.

The Forest Service is neutral on the McQuinn Strip issue, according to Charles Connaughton, regional forester, and will be guided by the position of the Nixon administration. If the New Mexico case is an indication, the President's attitude should be favorable.

The Warm Springs Indians have declared willingness to let the white man continue some of the traditional uses in the area, such as recreation and grazing.

Sen. Mark Hatfield and Rep. Al Ullman plan to introduce legislation calling for the final settlement of this long controversy in favor of the Indians. They will have a lot of support from other white men. The time seems right for this "glacier movement" to arrive.

Mr. PACKWOOD. Mr. President, I am pleased to join with my colleague from Oregon (Mr. HATFIELD) in introducing legislation to restore lands to the Warm Springs Indian Reservation in Oregon which were unjustly eliminated by an 1894 act of Congress.

The historical and legal justification for approval of this legislation is clearly established. Since 1894, a succession of administrative actions, judicial findings and congressional enactments has steadily reinforced the claim of the Confederated Tribes of Warm Springs that the 61,360 acres of federally-owned lands in the McQuinn Strip should be incorporated into the reservation and managed in trust status for the benefit of the tribe.

In 1917, a Government commission concluded that the Indian's claim was valid under terms of their treaty. In the 1940's, the U.S. Court of Claims found that the McQuinn survey line was the proper reservation boundary.

In 1948, Congress recognized the rightful interest of the tribe by granting the Indians 100 percent of the revenues derived by the Forest Service or other Federal agencies from McQuinn Strip lands. All of these actions have led logically to the enactment of legislation rescinding the act of 1894 and placing the lands in formal trust status.

Of the total acreage in the original McQuinn Strip, approximately 17,000 have since gone into private ownership. The legislation would not affect private lands, except to provide for shared fencing costs if the owners wish to fence their acreage. There are no residences located on the inholdings, and they are primarily useful only for livestock grazing. The Confederated Tribes have already purchased 11,000 acres of the private lands involved.

Most of the approximately 61,000 acres remaining is now a part of the Mount Hood National Forest. There was originally some concern—and there may still be some concern—about the transfer of the land from Forest Service jurisdiction. For that reason, I think it is useful to review some of the proposals that have been made to assure continued recognition of the public interest in these lands. Most of these provisions have been incorporated into the legislation at the request of the Warm Springs Tribe.

Free public access will be guaranteed in perpetuity.

Existing public recreation facilities will be maintained and improved by the tribe, and will be open to public use on the same basis as comparable forest service facilities. In this regard, it is appropriate to note that the tribe has established many fine camping and picnic facilities on present reservation lands and actively encourages free public use.

The portion of the Cascade Crest Trail crossing the McQuinn Strip will be maintained at tribal expense and kept open for public use on the same basis as those segments on forest service land.

Approximately 700 acres of the McQuinn Strip are within the Mount Jefferson Wilderness Area, and that acreage has been excluded from the land description in the legislation to avoid any encroachment on existing wilderness.

Land and facilities within the McQuinn Strip needed by the forest service for administration of adjacent national forest lands will continue to be used by them as long as needed, without charge.

All lakes within the area will be open for fishing and other public recreational use.

The tribe proposes to enter into a 10–20 year cooperative agreement with the Oregon State Game Commission for the protection and management of the game resources. During the period of the cooperative agreement, the tribe will develop a comprehensive game management program for the area.

The timber resource will be managed in perpetuity on a sustained yield basis.

These and other provisions should help allay any fears that might be raised over the intention of the Warm Springs Tribe to manage McQuinn Strip lands in a responsible way. The record of the Warm Springs Tribe in the conservation and wise use of its resources is an admirable one, and could well serve as a model for others.

The emphasis that the tribe has placed on the development of quality recreation facilities on the reservation has beneficial effects far beyond the reservation boundaries. These facilities range from free picnicking and camping areas to the popular Kah-Nee-Ta Hot Springs Resort. Kah-Nee-Ta is by reputation one of the most appealing and successful Indian operated recreation enterprises in the country. To me it represents a great deal more than that. It is also a symbol of a progressive and imaginative people, building a future for themselves in a way that is compatible with wise resource management and with the requirements of their neighbors.

I have confidence in the future of the Warm Springs people, and I support their century-long ambition to regain the lands that were unjustly taken from them. I urge my colleagues' support of legislation to make the Warm Springs Reservation whole once again.

By Mr. BEALL:

S. 2970. A bill to provide for the issuance of $2 bills bearing the portrait of Susan B. Anthony. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. BEALL. Mr. President, I introduce a bill that would direct the Secretary of the Treasury to issue a $2 bill bearing the portrait of the great American social reformer, Susan B. Anthony.

A native of Massachusetts, Susan B. Anthony spent much of her life in New York where she came into contact with the leading abolitionists, temperance proponents, and social reformers of her day. Once established socially and politically in New York, Miss Anthony rose to a position of leadership in the Rochester Group, a militant feminist antislavery society. She also chaired the antislavery society of New York State and she was a driving force in organizing the first women's temperance society. During the years proceeding the American Civil War, her efforts were largely directed against the evils of slavery. This cause remained a driving force of her life until the Civil War purged from our land this institution.

Following the Civil War, Susan Anthony worked to obtain the enactment of a constitutional amendment that would enfranchise women as well as blacks. This effort was frustrated when Congress drafted the 14th amendment which failed to grant suffrage to women. In 1868, she founded and managed The Revolution a newspaper exclusively devoted to the cause of women's rights. In 1869, she helped organize the National Woman Suffrage Association and served as its honorary president as well as chairman of its executive committee.

In 1872, Miss Anthony provided a paramount test for the validity of the existing restrictive election laws. She and 50 followers forced their way into a polling place and voted in the presidential election of 1872. In a blatantly biased trial she was convicted and fined $100 which, I might add, she stubbornly refused to pay.

After this incident proved the futility of establishing women's suffrage within the framework of the 14th amendment and the existing laws, Susan Anthony directed her considerable energies to the task of changing the law. In eight separate States she organized campaigns to change the State constitutions and/or election laws so as to provide for the granting of the right to vote to women. On the national level, Miss Anthony frequently testified before the appropriate

committees of the Congress, seeking the enactment of a constitutional amendment that was to elude her throughout her lifetime.

During the final years of her life, she devoted her seemingly endless energy to writing—joint author of the four volume series entitled "The History of Women Suffrage," various magazine articles, and so forth—lecturing—both in England and throughout the United States—and otherwise promoting the cause of women's rights.

Her death in 1906, came just 14 years before the ratification of the 19th amendment which emphatically stated that:

> The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on the account of sex.

Mr. President, I introduce this bill not as a token gesture to the movement for women's rights but in the sincere hope that, by our legislative efforts we can seek to undo the historical biases that work to the detriment of a majority of our population. It is time for us to recognize that women are entitled to complete equality before the law, complete equality of opportunity, and recognition for the many and considerable accomplishments that they have rendered to the development of the American Nation. Our currency has long honored and recognized the great men who help to make our Nation what it is today and this bill can serve as the first step in the effort to grant recognition to a great American and to a great woman whose lifelong efforts expanded freedom, justice, and the cause of equality in the United States.

By Mr. NELSON (for himself, Mr. BOGGS, Mr. BROOKE, Mr. CASE, Mr. HARRIS, Mr. HARTKE, Mr. MCINTYRE, Mr. MONDALE, Mr. KENNEDY, Mr. MCGOVERN, Mr. ROTH, Mr. RIBICOFF, Mr. TUNNEY, and Mr. WILLIAMS):

S. 2971. A bill to authorize the President to designate marine sanctuaries in areas of the oceans, coastal, and other waters, as far seaward as the outer edge of the Continental Shelf, for the purpose of preserving or restoring the ecological, esthetics, recreation, resource and scientific values of and related to such areas. Referred, by unanimous consent, to the Committees on Commerce, Interior and Insular Affairs, and Public Works, jointly.

Mr. NELSON. Mr. President, I introduce a bill to authorize the President to designate marine sanctuaries in the oceans for the purpose of protecting values of the marine environment.

This bill is exactly the same as an amendment I proposed last month to the Marine Protection and Research Act.

On November 24, after a colloquy on the Senate floor with the chairmen of the committees with oceans concerns and other interested Senators, I withdrew this amendment with the understanding that there would be joint hearings later on it to resolve any concerns about jurisdictional or international aspects.

Inasmuch as the hearings would involve the interests of the Senate Commerce, Interior and Public Works Committees, as was discussed in the November 24 colloquy, I ask unanimous consent that this bill be jointly referred to those three committees.

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

Mr. NELSON. Mr. President, cosponsoring this bill with me are Senators BROOKE, BOGGS, CASE, HARRIS, HARTKE, KENNEDY, MCGOVERN, MCINTYRE, MONDALE, RIBICOFF, ROTH, TUNNEY, and WILLIAMS. Additional cosponsors are welcome.

In brief, the bill would create a program of marine sanctuaries in the ocean waters off our coasts, and would prohibit Federal leases for oil drilling in the Atlantic off the U.S. east coast for 2 years until the initial designations of sanctuaries in that area.

Mr. President, I ask unanimous consent that an explanation of this bill—formerly amendment No. 630—be printed in the RECORD at the end of these remarks, as well as the text of the bill itself and my lengthier statement on it which had been prepared for the debate last month.

(See exhibits 1, 2, and 3.)

Mr. NELSON. Mr. President, in addition, I would like to call attention to S. 275, a comprehensive oceans protection measure which I introduced earlier in this Congress and first introduced last Congress, as an appropriate proposal to consider along with the marine sanctuaries bill in the joint hearings.

S. 275 requires environmental management plans to be developed where oceans activities are posed and establishes a national marine mineral resources trust to assure environmental protection in the drilling for oil and development of other ocean minerals, and I will be happy to have added the name of any Senators wishing to cosponsor this bill.

EXHIBIT 1

EXPLANATION OF MARINE SANCTUARIES

The bill would create a program of marine sanctuaries in the ocean waters off our coasts, and would prohibit Federal leases for oil drilling in the Atlantic off the U.S. East Coast for two years until the initial designations of sanctuaries in that area.

The purpose of the sanctuaries would be to protect or restore vital ocean and coastal environment values such as ecology, esthetics, recreation and resources, and to provide special areas for scientific baseline studies.

While the sanctuaries would not necessarily exclude development and commercial activities, to the extent that such steps were permitted in these areas, they would be under tight regulations to assure protection consistent with the sanctuary's particular purposes.

The provision on East Coast oil drilling would assure that environmental values would be fully taken into account, including setting aside sea areas if necessary, before irrevocable steps are taken to exploit the huge oil deposits that are indicated in the Atlantic.

In recent public statements, the Secretary of the Interior has made it clear the Department does not intend to issue any oil leases off the East Coast for at least two years. Thus, the provision of this amendment for the two year prohibition on the East Coast oil leases would not conflict with U.S. energy development plans in any way, but would merely assure that we obtain adequate knowledge to anticipate and resolve potential conflicts between environmental and energy goals.

Because existing Federal authorities in the marine environment are divided among a number of departments, and are inadequate for comprehensive ocean environment protection even in U.S. waters, and because international matters are involved too, the President would establish the sanctuaries.

In so doing, the President would have public hearings held and assure coordination by obtaining the views of the Secretaries of Commerce, Defense, Interior, State, Transportation and the Administrator of the Environmental Protection Agency.

For any sanctuaries proposed in waters above state-controlled portions of the seabed (within the territorial sea) it would be necessary to have the approval of the Governor of the state involved.

Finally, language in the bill specifically requires that the sanctuaries be regulated in accordance with the principles of international law, including treaties, conventions, and other agreements to which the United States is signatory.

In view of the fact that the Federal government has already permitted the drilling of more than 6,600 oil wells off our coasts in the Gulf of Mexico and the Pacific, and is considering the Atlantic Ocean leasing now, it would be ludicrous to argue on international or any other grounds that we should not at this time establish sanctuaries in the same areas.

EXHIBIT 2

S. 2971

A bill to authorize the President to designate marine sanctuaries in areas of the oceans, coastal, and other waters, as far seaward as the outer edge of the Continental Shelf, for the purpose of preserving or restoring the ecological, esthetics, recreation, resource and scientific values of and related to such areas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that (a) The President, after obtaining the views of the Secretaries of Commerce, Defense, Interior, State and Transportation and the Administrator, shall designate as marine sanctuaries those areas of the oceans, coastal, and other waters, as far seaward as the outer edge of the Continental Shelf, as defined in the Convention on the Continental Shelf (15 U. S. T. 741; TIAS 5578), which he determines necessary for the purpose of preserving or restoring the ecological, esthetics, recreation, resource and scientific values of and related to such areas.

(b) Prior to designating a marine sanctuary which includes water lying within the territorial limits of any State or superjacent to the subsoil and seabed within the seaward boundary of a coastal State, as that boundary is defined in section 2 of title I of the Act of May 22, 1953 (67 Stat. 29), the President shall consult with, and give due consideration to the views of, the responsible officials of the State involved. As to such waters, a designation under this section shall become effective sixty days after it is published, unless the Governor of any State involved shall, before the expiration of the sixty-day period, certify to the President that the designation, or a specified portion thereof, is unacceptable to his State, in which case the designated sanctuary shall not include the area certified as unacceptable until such time as the Governor withdraws his certification of unacceptability.

(c) When a marine sanctuary is desig-

nated, pursuant to this section, which includes an area outside the United States territorial sea, the Secretary of State shall take action, as appropriate, to enter into agreements with other Governments, in order to protect such sanctuary and promote the purposes for which it was established.

(d) The President shall make his initial designations under this section within two years following the date of enactment of this title, and no mineral leases shall be issued for the area seaward of the territorial sea off the east coast of the United States to the outer edge of the Continental Shelf as defined in the Convention on the Continental Shelf (15 U. S. T. 741; TIAS 5578) until such designations have been made. Thereafter, he shall periodically designate such additional areas as he deems appropriate. The President shall submit a report annually to the Congress, setting forth a comprehensive review of his actions under the authority under this section, together with appropriate recommendations for legislation considered necessary for the designation and protection of marine sanctuaries.

(e) Before a marine sanctuary is designated under this section, the President shall hold public hearings in the coastal area which would be most directly affected by such designation, for the purpose of receiving and giving proper consideration to the views of any interested party. All public hearings required under this title must be announced at least thirty days before they take place, and all relevant materials, documents, and studies must be made readily available to the public for study at least thirty days in advance of the actual hearing or hearings.

(f) After a marine sanctuary has been designated under this section, the President shall issue necessary and reasonable regulations to control any activities permitted within the designated marine sanctuary, and no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the President shall certify that the permitted activity is consistent with the purposes of this title and can be carried out within the regulations promulgated under this section. Such regulations shall be applied in accordance with recognized principles of international law, including treaties, conventions, and other agreements to which the United States is signatory.

SEC. 2. (a) Whoever violates any regulation issued pursuant to this title shall be liable to a civil penalty of not more than $50,000 for each such violation, to be assessed by the President. Each day of a continuing violation shall constitute a separate violation.

(b) No penalty shall be assessed under this section until the person charged has been given notice and an opportunity to be heard. Upon failure of the offending party to pay an assessed penalty, the Attorney General, at the request of the President, shall commence action in the appropriate district court of the United States to collect the penalty and to seek such other relief as may be appropriate.

(c) A vessel used in the violation of a regulation issued pursuant to this title shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction thereof.

(d) The district courts of the United States shall have jurisdiction to restrain a viloation of the regulations issued pursuant to this title, and to grant such other relief as may be appropriate. Actions shall be brought by the Attorney General in the name of the United States, either on his own initiative or at the request of the President.

SEC. 3. There are authorized to be appropriated for the fiscal year in which this Act is enacted and for the next two fiscal years thereafter such sums as may be necessary to carry out the provisions of this title, including sums for the costs of acquisition, development, and operation of marine sanctuaries designated under this title, but the sums appropriated for any such fiscal year shall not exceed $10,0000,000.

EXHIBIT 3

STATEMENT BY SENATOR GAYLORD NELSON ON MARINE SANCTUARIES PROPOSAL

Briefly, this measure would establish a program for marine sanctuaries in the ocean waters off our coasts.

If we are to avoid making the same mess of the sea as we have of the land, such a program must be instituted immediately, while we still have the opportunity to do so.

Famed underwater explorer and scientist Jacques Cousteau bluntly cites the compelling justification for action: "The sea is threatened. We are facing the destruction of the ocean by pollution and by other causes."

Distinguished marine biologists are already predicting that at the present accelerating damage rate, significant productive life in the sea will be eliminated in 50 years or less.

The purpose of the sanctuaries this bill proposes would be to protect or restore vital ocean and coastal environment values such as ecology, esthetics, recreation and resources, and to provide special areas for scientific baseline studies.

While the sanctuaries would not necessarily exclude development and commercial activities, to the extent that such steps were permitted in these areas, they would be under tight regulations to assure protection consistent with the sanctuaries particular purposes.

In addition to the sanctuaries portion, this bill would prohibit Federal leases for oil drilling and other mineral development in the Atlantic off the U.S. East Coast for two years until the initial designations of sanctuaries in this area.

This would assure that environmental values be fully taken into account, including setting aside sea areas if necessary, before irrevocable steps are taken to exploit the huge oil deposits that are indicated in the Atlantic, steps that without proper protection would risk a Santa Barbara-scale disaster on the beaches of our populous East Coast.

In recent public statements, the Secretary of the Interior has made it clear the Department does not intend to issue any oil leases off the East Coast for at least two years. This means my bill's provision for the two year prohibition on the East Coast oil leases would not conflict with current U.S. energy development plans in any way.

This is not a question of environment versus energy, but merely one of assuring that we obtain the necessary knowledge to anticipate and resolve potential conflicts.

Because existing Federal authorities in the marine environment are divided among a number of departments, and are inadequate for comprehensive ocean environment protection even in U.S. waters, and because international matters are involved too, the President would establish the sanctuaries.

In so doing, the President would have public hearings held and assure coordination by obtaining the views of the Secretaries of Commerce, Defense, Interior, State, Transportation and the Administrator of the Environmental Protection Agency.

For any sanctuaries proposed in waters above state-controlled portions of the seabed (within the territorial sea), it would be necessary to have the approval of the Governor of the state involved.

Finally, language in the bill specifically requires that the sanctuaries be regulated in accordance with the principles of international law, including treaties, conventions, and other agreements to which the United States is signatory.

In view of the fact that the Federal government has already permitted the drilling of more than 6,600 oil wells off our coasts in the Gulf of Mexico and the Pacific, and is considering the Atlantic Ocean leasing now, it would be ludicrous to argue on international or any other grounds that we should not at this time establish sanctuaries in the same areas.

The proposal is strongly supported by the national environmental organizations, including the Sierra Club, Izaak Walton League, Friends of the Earth, Environmental Action, National Wildlife Federation, Wildlife Management Institute and the National Audubon Society.

In the House, the marine protection bill, including a marine sanctuaries title, was passed by an overwhelming 304 to 3 vote after proposals to delete the sanctuaries provision were rejected. The sanctuaries title was deleted in Senate committee.

Some questions have been raised about this measure's effect on international marine issues, I think because of the complicated situation we have today regarding control of the sea.

I believe these concerns can be laid to rest, and would comment as follows:

One, this proposal does not conflict with international law or attempt in any way to extend this country's oceans authorities beyond present limits. In fact, it contains a specific provision to avoid such a conflict: In Section 301(f) the bill says any regulations established for the marine sanctuaries "shall be applied in accordance with recognized principles of international law, including treaties, conventions, and other agreements to which the United States is signatory";

Further, in Subsection (c) of the first section, the bill provides that when any portion of a sanctuary involves ocean waters more than 3 miles from our coast, the Secretary of State must seek international agreements whereby other countries would voluntarily forego activities inconsistent with the purposes of the sanctuary.

Until such agreements were achieved, the only controls exercised in the sanctuary would be those based primarily on existing United States authority to regulate the activities of our own citizens anywhere at sea.

While this would be only partial control, it would be far better than none at all. And in part, it parallels the authority used in the Marine Protection and Research bill passed earlier to control the dumping of wastes at sea transported from ports of the United States.

And as I noted earlier, in view of the fact that we are drilling oil wells all over the U.S. continental shelf in the Gulf of Mexico and the Pacific and considering them for the Atlantic, it would seem difficult to argue against establishing protected areas in these waters as well: In effect, we would be saying that while we can exploit, we cannot protect.

Two, the bill is not in any way intended to disadvantage this country with regard to the development of its resources.

To the contrary, the leadership we would be showing by establishing sanctuaries within our existing controls would most likely encourage other countries to take similar steps within their jurisdictions and stimulate international agreements for more comprehensive sanctuaries, a conservation benefit for all mankind.

The International Convention on the Continental Shelf recognizes the sovereign right of each country to explore and develop the natural resources on its continental shelf.

As a result, as just one example, the protection established by this convention means that another country could not come in and drill the oil now being considered for leasing off our Atlantic Coast, even if we decided not to drill all or part of it.

And Subsection (a) of the first section of my proposal limits the sanctuary designations to waters inside the edge of our Con-

tinental Shelf as defined in the International Convention on the Continental Shelf.

Furthermore, the sanctuaries would not necessarily ban any given activity. The degree of control exercised over U.S. activities or, if there were international agreements, over citizens of other countries in a particular sanctuary, would depend on the purposes of the sanctuary, on the values it was designed to protect.

As pointed out earlier in this statement, the provisions of my bill prohibiting leasing for oil beyond the territorial sea off our East Coast for two years would not interfere with current energy development plans in any way.

In recent public statements, the Secretary of the Interior has made it clear the Department does not intend to issue any oil leases off the East Coast during this period.

In a November 4 department news release, the Secretary was quoted as saying "it is now quite obvious that we could not possibly take any action on exploratory drilling for a couple of years."

Thus, this measure would merely require that off the East Coast, we would use this two year period to assure that environmental values will be reviewed and protected, including actually setting aside areas where necessary, before they are lost forever in a gigantic oil rush which would not only result in a plethora of platforms around the ocean, but with the development of associated industries inshore, would pose irreversible pressure on other critical shoreline uses.

The stakes are immense. The natural resources of the East Coast provide an outdoors experience ranging from surfing to sports fishing for tens of millions of people a year.

From Florida to Maine 18 national parks, seashores and monuments are actually on or close to the coast.

Among these priceless areas are Everglades National Park in Florida, Cape Lookout and Cape Hatteras National Seashores off North Carolina, Assateague National Seashore off Maryland and Virginia, Fire Island National Seashore in New York, Cape Cod National Seashore off Massachusetts, and Acadia National Park off Maine.

The 14 states of the East Coast harbor more than 63 million people, 31.9 percent of the population of the entire country.

In addition to the recreation values, the East Coast and its offshore waters are a key national resource for fishing and shipping, and the pressures are on from the crowded metropolitan complexes to use these waters for the whole range of urban activities, from nuclear power plants to offshore jetports.

It is dramatically clear that we can no longer take a step in the ocean off the East Coast in any one of these areas without the most careful consideration of the impact on these other values.

And because of potential conflicts in use and the danger of massive environmental disasters such as we saw in Santa Barbara, we simply may have to say hands off in some of these areas to this use or that one, or tightly limit some or all uses in special areas—establishing the sanctuaries this amendment proposes.

The pressures to drill and fully exploit the East Coast oil wherever it is found regardless of whatever environmental dangers may be posed will be intense.

Just recently, a Canadian subsidiary of Mobil Oil Corp. announced the flow of oil and natural gas in a well near Sable Island in the Atlantic off Nova Scotia.

The Journal article said: "The announcement had a tremendous impact. For it marked the first time that oil and natural gas have been discovered off the East Coast of North America."

Already, oil companies have gotten licenses on more than 400 million acres off Canada's East Coast.

And earlier this month, news stories widely announced Interior Department consideration of oil drilling in vast areas off the U.S. East Coast.

According to the reports, preliminary oil explorations have indicated a potentially oil rich area off the coast from the southern part of New Jersey down through the Middle Atlantic states and Virginia perhaps as far south as Cape Hatteras, North Carolina.

Previously, the Interior Department confirmed another potentially major oil and natural gas area off New England on the Georges Bank between Cape Cod and Long Island.

Already, 34 wells have been drilled in the Atlantic off Canada as close as 40 miles offshore, and a Humble Oil Company spokesman was quoted in September as saying that "we're sure the deposits off the coast of Canada and those off the coast of the United States are comparable."

And while we have assurances from the Department of the Interior, as I have noted, that they do not expect to issue East Coast oil leases for at least two years, the department is moving at top speed to evaluate the East Coast oil deposits and their implications.

As reported in a recent issue of the Oil Daily, the daily newspaper of the pertoleum industry, an Interior Department task force was established November 4 to evaluate the East Coast oil.

According to a Bureau of Land Management memo on the task force job, "Since the environmental, economic and regional conditions in these new areas may be significantly different from those related to oil and gas developments in the Gulf of Mexico, BLM must move aggressively to obtain the information necessary to plan effectively for possible OCS developments in these areas and to evaluate impacts which will result from such developments."

Indicating the high priority of the East Coast oil task force, the memo said the task force members would be expected to work 15 consecutive days in Washington, followed by 2 to 3 weeks in their home offices, with the sequence being repeated through December 31.

In my bill, the President would establish the sanctuaries because of the numerous and overlapping Federal jurisdictions involved, as well as the international responsibilities.

To meet the key need of coordination in marine affairs, prior to designating the area, the President would have to obtain the views of the Secretaries of Commerce, Defense, Interior, State and Transportation and the Administrator of the Environmental Protection Agency.

Despite the numerous interests involved, no one department's activities are adequate to effectively establish and implement any comprehensive marine protection plan.

The fact is our coastal areas and the sea are faced with the same kind of chaotic development that has already scarred and polluted the face of the land, and we are not in a much better position to control it than we were to protect the forests and soil and waters of this nation in Frontier Days.

In place of the glut of the automobile, we find the giant oil tanker plying the seas, with the constant risk of accidents that could cause another marine ecodisaster; in place of the strip miner, we find the oil operation with the risk of massive spills that could lay siege to whole coastlines with coats of black goo; instead of junk heaps on the land and filth pouring into our air and lakes and rivers, we find sewage and waste chemical dumping grounds offshore already creating dead sea areas; instead of sprawling urbanization, we find poised an industrial seascape of floating airports, nuclear power generating plants, offshore shipping terminals, and possibly even ocean cities; in place of the destruction of our wildlife on land, we see birds of prey being wiped out all over the earth by the DDT that has moved through the food chain even at sea, the whales, one of the most remarkable creatures on earth, being pushed to extinction, once massive fishery stocks being depleted by overuse and pollution.

The conclusion is unavoidable: Without the comprehensive environmental management which this bill represents as a beginning step, we will ultimately make as much a wreckage of the oceans as we have of the land. There will be constant conflicts between users and more reckless exploitation, and once more, the environment will take second place until it is too late to reverse the tragic devastation.

Existing authorities will not do the job. Each department has a small slice of the pie, and no one agency has the jurisdiction necessary to establish overall policy and coordinate its implementation.

The Department of the Interior has authority to regulate the mineral resources of the seabed and the subsoil on our continental shelf beyond the territorial sea, and as part of this, may withhold areas of the shelf from leasing.

But the future of the marine environment hinges on many other questions than just what happens to these resources. As pointed out, all the activities, from tanker traffic to offshore jetports to fishing, will make their mark.

Furthermore, while the Department has permitted the drilling of more than six thousand six hundred oil wells on the continental shelf portions under its jurisdiction in the Gulf of Mexico and the Pacific, and is considering oil well leasing in the Atlantic, to the best of our knowledge, only two protected areas have been established to date under Interior authority in these same waters.

Thus, the authority the Department of Interior does have has barely been utilized.

And in any case, Interior's authority falls short of that necessary to review the wide range of activities and values involved in the ocean environment and established protected areas—the marine sanctuaries—with comprehensive regulations to reconcile conflicts in uses and preserve vital ocean values.

The situation of fragmented jurisdiction and limited authorities is reflected in every other department concerned with marine affairs.

The Department of Defense has authority to set aside areas of the continental shelf for security purposes.

The National Oceanographic and Atmospheric Administration in the Department of Commerce has authority over conservation of the living resources of the sea generally, within the first 12 miles of ocean waters, and the living resources on the continental shelf, and over the activities of U.S. citizens on the high seas.

The Corps of Engineers in the Department of Defense has responsibilities for the protection of navigation offshore similar to those it exercises for inland waters.

Meanwhile, the Department of Transportation and the Coast Guard are concerned with activities involved in establishing sea lanes for ship traffic to our ports.

For construction of an offshore platform—whether for oil drilling or in the future for floating airports, etc.—the Corps would issue permits that it did not interfere with navigation, but the Coast Guard would be involved too, to regulate platform safety.

The Environmental Protection Agency and the states now administer pollution controls within the territorial sea and if this and other pending legislation is passed, EPA's authority will be extended outside the territorial waters based on existing U.S. authorities.

Outside our territorial waters, activities involving foreign relations come within the interests of the Department of State, and the department has been involved in negotiating international agreements on marine matters.

In conclusion, I would just reiterate that we have the opportunity now to take sound steps to protect the marine environment. If we delay further, for instance until after the East Coast oil is drilled and another tragic offshore accident has occurred, the costs to all society will be far greater than preventive steps today.

By Mr. NELSON (for himself and Mr. KENNEDY):

S. 2973. A bill to amend the Outer Continental Shelf Lands Act. Referred to the Committee on Interior and Insular Affairs.

OCEAN OIL STUDIES BILL

Mr. NELSON. Mr. President, I introduce a bill and ask that it be appropriately referred. In brief, the bill would require a comprehensive Federal study of the environmental implications of new or additional leasing of oil or other minerals in coastal waters off the United States and in the Great Lakes.

The study would be conducted by the Council on Environmental Quality, with the participation of the Federal agencies with oceans responsibilities, including the Departments of the Interior, Commerce, Defense, State, and Transportation, the Administrator of the Environmental Protection Agency, and also, the Governors of the coastal and Great Lakes States.

Under the terms of the bill, the Council shall report the results of the study together with its recommendations to the President and the Congress in 2 years. The bill further provides that during this 2-year period, no Federal leases for oil or other mineral development would be issued for the oceans area off the U.S. east coast.

I ask unanimous consent that the text of this bill be printed at this point in the CONGRESSIONAL RECORD.

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

S. 2793

A bill to amend the Outer Continental Shelf Lands Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Outer Continental Shelf Lands Act is amended by inserting at the end thereof a new section as follows:

"SEC. 18. (a) The Council on Environmental Quality, in consultation with the Secretaries of Commerce, Defense, Interior, State, and Transportation and the Administrator of the Environmental Protection Agency and the Governors of the coastal and Great Lakes States, shall make a full and complete investigation and study of the probable effects of new or additional mineral leasing, development, and production in areas lying seaward of the baseline from which the territorial sea of the United States is measured to the outer edge of the Continental Shelf as defined in the Convention on the Continental Shelf (15 U.S.T. 741; TIAS 5578) and in the Great Lakes on ecological, esthetics, recreation, resource, and scientific values of and related to such areas. The Council shall report the results of such study and investigation, together with its recommendations, to the President and the Congress not later than two years after the date of enactment of this Act.

"(b) No mineral leases shall be issued for the area seaward of the territorial sea off the east coast of the United States prior to the submission of the Council's report pursuant to this section.

"(c) There is authorized to be appropriated such amount as may be necessary to carry out the provisions of this section."

Mr. KENNEDY. Mr. President, I join with Senator NELSON in introducing legislation which provides for a 2-year moratorium on any leases for offshore oil drilling on the Atlantic Outer Continental Shelf.

During this time, marine sanctuaries will be established along the coast to protect areas with unique research, conservation, recreation, ecological, esthetic, resource, and scientific values.

I continue to be dismayed by the failure of the Department of the Interior to place sufficient weight on the possible threats to the environment and to fishing resources from offshore oil drilling in the Atlantic.

I asked for independent studies by the National Academy of Sciences and the Environmental Protection Agency. The Department has declined to commission such studies, preferring instead to handle those studies internally.

Yet a year ago, when the Department was unable to put out an offshore oil fire in the Louisiana Gulf, they called on the Academy to establish an ad hoc group to advise them on how to extinguish the fire.

I prefer that the Academy complete its studies far in advance of the fire this time.

Therefore, I intend to introduce an amendment tomorrow to the coastal zone management bill, now on the Senate Calendar, to provide for a $500,000 study by the Academy of the environmental impact of offshore oil drilling. Congressman LESTER WOLFF, who has been a leader in seeking to assure the protection of the environment, will introduce identical legislation in the House of Representatives.

I have written to the Academy in the past and they have informed me they are able and willing to accomplish the objective of investigating all aspects relating to the offshore oil drilling in the Atlantic, including alternatives.

Today, after a briefing by the Secretary, I was informed that the Department opposition to such a study has been removed. However, the Secretary declined to commit the administration to request funding for the study. Therefore, I shall submit legislation for this purpose.

The briefing provided little assurance from the Department that eastern seaboard residents can rest easy at the current plans of the Interior Department to open the offshore area for oil drilling. Thus, there was little recognition evidenced of the potential hazards to the fishing grounds of the Georges Banks or of the recreational and environmental considerations in the Department's presentation today.

The departmental presentation was a high-powered salesmanship effort that concentrated on proving that offshore drilling was essential to meet the energy needs of the Nation. Yet, there are alternatives, including increased oil imports threaten the national security is not a universal view by any means.

In fact, the President's own Cabinet Task Force on the Oil Import Controls made the point precisely and devastatingly:

The present import control program is not adequately responsive to present and future security considerations. The fixed quota limitations that have been in effect for the past ten years, and the system of implementation that has grown up around them, bear no reasonable relation to current requirements for protection either of the national economy or of essential oil consumption. The level of restriction is arbitrary and the treatment of secure foreign sources internally inconsistent. The present system has spawned a host of special arrangements and exceptions for purposes essentially unrelated to the national security, has imposed high costs and inefficiencies on consumers and the economy, and has led to undue government intervention in the market and consequent competitive distortions.

I believe that the present oil import controls result in higher prices for New England and the east coast and higher profits for the oil companies and that is the major purpose of those controls.

An alternative to offshore drilling and the using up of our oil reserves that is reflected in the pressure of this administration for leasing the oil shales, for opening the Alaska pipeline, and for Atlantic offshore drilling might be greater imports while we develop the technology for the gassification of coal. It also would protect and conserve our oil reserves now and that would be much more in keeping with our national security needs.

I might note in closing that the measure that Senator NELSON and I are introducing today is of increasing importance because of the obvious intention of the Department to speed up its schedule for oil leasing. Therefore, the 2-year moratorium we are proposing is the minimum time period to insure that we have sufficient information to decide whether or not we can be guaranteed that offshore oil drilling will entail no danger to our environment. Until that guarantee can be given, there should be no offshore oil drilling in the Atlantic.

By Mr. HARTKE:

S. 2974. A bill to provide for posting information in post offices with respect to registration, voting, and communicating with lawmakers. Referred to the Committee on Post Office and Civil Service.

VOTERS' INFORMATION ACT

Mr. HARTKE. Mr. President, today I introduce a bill which, although simple in nature, will greatly benefit the voting public. In substance, this legislation requires the posting of basic voter information in local post offices throughout the Nation.

The names and addresses of U.S. Senators, Representatives, and elected representatives of the respective State legislatures will, under my proposal, be required to be posted, in addition to the qualifications for registering and voting, and the places, dates, and times for registration and voting at elections in the area served by each local post office. To further enhance and promote public awareness and involvement in the democratic process, the availability and cost of Western Union public opinion messages

to the President, Vice President, and Members of Congress will also be posted.

Mr. President, accountability of public officials to those we serve is a key feature of our democratic society. Each of us is aware of the fact that all too many people do not know the names of those officials who represent them. While we cannot require that people memorize the names of their representatives, we can do everything within our power to make it as simple as possible for the individual citizen to obtain the names of those officials.

In these times of big government and sprawling bureaucracy, government must be brought closer to the people. The information which would be disseminated under this act is already available from local boards of election. I do not know the number of such boards throughout the country, but I do know that there are 31,947 post offices, and that these post offices are far more accessible to most citizens than their local election boards.

Mr. President, this is a commonsense bill, and commonsense calls for its quick passage. I ask unanimous consent that the text of the Voters' Information Act be printed at the conclusion of my remarks.

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

S. 2974

A bill to provide for posting information in post offices with respect to registration, voting, and communicating with lawmakers

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 "Voters' Information *Act.*

SEC. 2. (a) There shall be posted in a prominent place in each post office, information with respect to the qualifications for registration and voting at elections in the area served by such post office.

(b) There shall likewise be posted in each post office the names and office addresses of the United States Senators from the State and the Representatives in Congress from the congressional district which such post office is situated.

(c) There shall likewise be posted in each post office the names and office addresses of the representatives to the State legislature from the area in which the post office is situated.

(d) There shall likewise be posted in each office information on the availability and cost of Western Union public opinion messages to the President, Vice President, and Members of Congress.

SEC. 3. The Postmaster General shall prescribe such regulations as may be necessary to call out the provisions of this Act.

By Mr. MONDALE (for himself and Mr. HUMPHREY):

Senate Joint Resolution 182. A joint resolution authorizing the President to invite the States of the Union and foreign nations to participate in Farmfest—U.S.A. and the World Ploughing Contest in September 1972. Referred to the Committee on Foreign Relations.

Mr. MONDALE. Mr. President, I introduce, with my colleague the Senator from Minnesota (Mr. HUMPHREY), a joint resolution identical to House Joint Resolution 892 which has been introduced by the Minnesota delegation in the House of Representatives. It authorizes the President to invite the States of the Union and foreign nations to participate in Farmfest—U.S.A. and the World Ploughing Contest in September 1972.

I am pleased to announce that the farm of Bert Hanson near Vernon Center, Minn., has been chosen to be the location of the exposition. Minnesota's leading industry is agriculture—including farming, food and fiber processing, and marketing. Therefore, it is, indeed, a fitting honor to the State to be the scene of this international event.

Farmfest—U.S.A. promises to be an exposition with broad appeal to farmers and all who are interested in agriculture. It will include several educational and commercial exhibits related to modern agriculture as well as being the scene of the 1972 World Ploughing Contest. That contest, an annual event which moves from country to country, has tremendous international appeal. Because the plow has always symbolized the farmers' closeness to the soil, this is a very appropriate type of event symbolizing the kinship of farmers all over the world.

Mr. President, I ask unanimous consent that this joint resolution be printed at this point in the RECORD.

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

S.J. RES. 182

Joint resolution authorizing the President to invite the States of the Union and foreign nations to participate in Farmfest—U.S.A. and the World Ploughing Contest in September 1972

Whereas the United States will host the Nineteenth Annual World Ploughing Contest in September 1972 in Blue Earth County, Minnesota, and

Whereas up to twenty-two nations can be expected to participate in this contest on September 15 and 16 as part of a weeklong Farmfest—U.S.A., and

Whereas the 1972 National Ploughing Contest and the 1972 Grant National Tractor-pull Contest are included in the scheduled events of Farmfest—U.S.A., and

Whereas Farmfest—U.S.A. will feature exhibitions of machinery, equipment, supplies, services, and other products used in the production and marketing of agricultural products; promote foreign and domestic trade and commerce in such products; and salute worldwide agriculture: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is authorized and requested to invite by proclamation or in such other manner as he may deem proper the States of the Union and foreign nations to participate in Farmfest—U.S.A. to be held in Blue Earth County, Minnesota, from September 11, 1972, through September 17, 1972.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 325

Mr. BEALL. Mr. President, on January 27, 1971, I introduced S. 325 which would establish a survivor annuity program for widows of military personnel.

Thirty Members of the Senate are cosponsors of this measure and I am pleased that Senators EAGLETON and TUNNEY have joined in cosponsorship. I ask unanimous consent that at the next printing of the bill their names be added.

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

S. 1297

At the request of Mr. STEVENS, the Senator from Alaska (Mr. GRAVEL) was added as a cosponsor of S. 1297, a bill to authorize the State of Alaska to operate the foreign-registered ferry *Wickersham* on a temporary basis between ports in Alaska and between Alaskan ports and ports in other States.

S. 2813

At the request of Mr. TOWER, the Senator from Texas (Mr. BENTSEN), the Senator from Missouri (Mr. EAGLETON), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Hawaii (Mr. INOUYE), and the Senator from Rhode Island (Mr. PELL) were added as cosponsors of S. 2813, a bill to amend the Vocational Rehabilitation Act to provide improved vocational rehabilitation services to individuals.

S. 2897

At the request of Mr. BYRD of West Virginia, the Senator from Utah (Mr. Moss) was added as a cosponsor of S. 2897, a bill to provide housing for persons in rural areas of the United States on an emergency basis.

S. 2944

At the request of Mr. BUCKLEY, the Senator from Georgia (Mr. TALMADGE), the Senator from Nevada (Mr. BIBLE), and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of S. 2944, a bill to amend section 112 of the Internal Revenue Code of 1954 to exclude from gross income the entire amount of the compensation of members of the Armed Forces of the United States and of civilian employees who are prisoners of war, missing in action, or in a detained status during the Vietnam conflict.

S. 2945

At the request of Mr. BUCKLEY, the Senator from Georgia (Mr. TALMADGE), the Senator from Nevada (Mr. BIBLE), and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of S. 2945, a bill to amend title 10 of the United States Code to permit the appointment by the President of certain additional persons to the service academies.

S. 2959

At the request of Mr. TAFT, the Senator from Kansas (Mr. PEARSON) was added as a cosponsor of S. 2959, a bill to amend the Labor-Management Relations Act, 1947, and the Railway Labor Act to provide for the settlement of certain emergency labor disputes.

ADDITIONAL COSPONSORS OF A CONCURRENT RESOLUTION

SENATE CONCURRENT RESOLUTION 51

At the request of Mr. BUCKLEY, the Senator from Utah (Mr. BENNETT), the Senator from Colorado (Mr. DOM-

INICK), the Senator from Wyoming (Mr. HANSEN), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Maryland (Mr. MATHIAS), the Senator from Utah (Mr. MOSS), the Senator from Oregon (Mr. PACKWOOD), the Senator from Illinois (Mr. PERCY), the Senator from Texas (Mr. TOWER), and the Senator from California (Mr. TUNNEY) were added as cosponsors of Senate Concurrent Resolution 51, a concurrent resolution expressing the sense of Congress with respect to placing before the United Nations General Assembly the issue of the dual right of all persons to emigrate from and also return to one's country.

NOTICE OF HEARINGS ON R. F. K. STADIUM

Mr. EAGLETON. Mr. President, on Wednesday, December 1, 1971, I announced that the Senate District of Columbia Committee would hold hearings dealing with the future use, financing, and operation of the R. F. K. Stadium on Monday, Tuesday, and Wednesday, December 13, 14, and 15, 1971.

On Tuesday, December 14, 1971, it was our intention to have as witnesses Hon. Bowie Kuhn, commissioner of baseball, and Mr. Joe Cronin, president of the American League.

Mr. President, yesterday I received a telephone call from Congressman MEL PRICE of the 24th District, Illinois. Congressman PRICE along with Mayor Walter Washington, Joe Danzansky, Jack Kauffmann, and other Congressmen and city representatives went to Phoenix, Ariz., to meet with the owners and leadership of professional baseball to explore the possibility of a major league franchise being allocated to Washington by the 1973 season.

A committee of baseball owners, Commissioner Kuhn, and the two league presidents, has been appointed to consider the matter and the Senate District Committee has been and will continue to be in contact with the aforesaid committee of which Congressman PRICE is a member.

Congressman PRICE asked me if I would delay the appearance of Commissioner Kuhn and Mr. Cronin until the reconvening of Congress in January 1972 so as to allow the baseball committee greater time to develop facts and explore possibilities in connection with a new Washington franchise. Congressman PRICE felt that such a delay would be more conducive to fruitful explorations. Therefore, desirous as I am that Washington have big league baseball, I will postpone the appearance of Messrs. Kuhn and Cronin until January 1972.

The other witnesses scheduled for Monday and Wednesday which will deal with the use, operation, and financing of R. F. K. Stadium will proceed as scheduled.

NOTICE OF HEARING ON NOMINATIONS

Mr. EASTLAND. Mr. President, on behalf of the Committee on the Judiciary, I desire to give notice that a public hearing has been scheduled for Friday, December 10, 1971, at 10:30 a.m., in room 2228, New Senate Office Building, on the following nominations:

Arnold Bauman, of New York, to be U.S. district judge, southern district of New York, vice a new position created by Public Law 91-272, approved June 2, 1970.

Lee P. Gagliardi, of New York, to be U.S. district judge, southern district of New York, vice a new position created by Public Law 91-272, approved June 2, 1970.

William Terrell Hodges, of Florida, to be U.S. district judge, middle district of Florida, vice Joseph P. Lieb, deceased.

Jon O. Newman, of Connecticut, to be U.S. district judge, district of Connecticut, vice William H. Timbers, elevated.

At the indicated time and place persons interested in the hearing may make such representations as may be pertinent.

The subcommittee consists of the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Nebraska (Mr. HRUSKA), and myself as chairman.

NOTICE OF INVESTIGATIVE HEARINGS ON BARBITURATE ABUSE

Mr. BAYH. Mr. President, I wish to announce that the Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary will begin investigative hearings on barbiturate abuse on December 15 and 16, 1971.

The subcommittee is continuing its study of drug abuse by our Nation's youth. As with the problem of amphetamine abuse which this subcommittee examined last summer, we intend to investigate the extent of barbiturate abuse as well as explore the legitimate uses of these dangerous drugs.

The hearings will begin at 10 a.m. in room 2228, New Senate Office Building. Any person who wishes to submit a statement should notify the subcommittee staff as soon as possible.

ADDITIONAL STATEMENTS

SOME COMMENTS UPON SENATOR ERVIN'S SERVICES

Mr. BYRD of West Virginia. Mr. President, our colleague, Senator SAM J. ERVIN, JR., of North Carolina, celebrated his 75th birthday anniversary on September 27, 1971. About that time the following articles and editorial concerning his public services appeared in the following newspapers:

First, an editorial by his longtime personal friend, W. Stanley Moore, entitled "He's Tops in Popularity," which appeared in his hometown newspaper, the Morganton News Herald, for August 23, 1971.

Second, an article by Bill Connelly entitled "Senator SAM a Busy Man at 75," which appeared in the Winston-Salem, N.C., Journal for September 26, 1971.

Third, an article by Paul Clancy entitled "When ERVIN Holds Hearings, He Also Does Some Talking," which appeared in the Charlotte, N.C., Observer for September 26, 1971.

Fourth, an article by Roy Parker, Jr., entitled "Slugger SAM Connects With the 'In' Issues," which appeared in the Raleigh, N.C., News and Observer for September 26, 1971.

Fifth, an article by James J. Kilpatrick entitled "Senator SAM Shows His Love for Constitution," which appeared in the Washington Star for November 2, 1971.

I ask unanimous consent that the editorial and articles be printed in the RECORD.

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

There being no objection, the editorial and articles were ordered printed in the RECORD as follows:

[From the News Herald, Aug. 23, 1971]

HE'S TOPS IN POPULARITY

John Kilgo, writing from Raleigh where he's feeling the political pulse, is watching for results from polls being taken by real or potential candidates for state offices and he has extracted incidental information from early reports.

From Mr. Kilgo's column on this page we quote a statement regarding the revelations of one of the polls:

"... And the most popular politician in North Carolina? Sen. Sam Ervin in a landslide. . . ."

This isn't a surprising disclosure for fellow Burke citizens who know something of Senator Ervin's popularity around the state, but it's a gratifying one.

The folksy Morganton Senator is thus acknowledged to stand at the top of the popularity poll for politicians in Tarheelia. To have attained and held that rating through the difficult years since he first entered the United States Senate in June 1954 is a remarkable political feat. That's when his Senate career began— by the route of gubernatorial appointment. It was a classic example of the job seeking the man, rather than vice versa.

But that has been substantially the pattern of Senator Ervin's career in public service, after some early terms in the General Assembly. Later it became an example of the job-seeking-the-man when he was named county judge, Superior Court judge, interim Congressman, associate justice of the North Carolina Supreme Court and then, finally, to the U.S. Senate when the late Gov. William B. Umstead tapped him as successor to Senator Clyde R. Hoey.

There was never any question of his ability to perform the duties of each of these positions in a highly creditable manner, for those who knew him were aware of his capacity. It was simply a matter of waiting to see how long it took his ever widening constituency to recognize the talent already known to his homefolks. His victory at the polls every time a senatorial term ended showed that North Carolinians warmed up to him quickly and solidly.

Now, midway in his latest six-year term, when there is no campaign activity required on his part other than that which is second nature to Senator Sam, he stands out as a "landslide" leader in a political popularity poll which shows impressively how he wears well with fellow Tar Heels.

Some time a keen student of political phenomena will adequately document and accurately appraise the statesman-politician who made such a record during a career in which he, more times than not, was drafted for higher office when the job sought the man and then proceeded to nail down that office as his permanent possession by will of the people.

SENATOR SAM A BUSY MAN AT 75

(By Bill Connelly)

WASHINGTON.—For some U.S. senators, it would have been a hellishly busy week, but

for Sam J. Ervin Jr., it could be called brisk, but rather typical. Consider what Senator Sam did in the week before his 75th birthday:

Monday: Ervin chastised the Justice Department for trying to subpoena an aide of Sen. Mike Gravel, D-Alaska, for questioning on Gravel's celebrated Pentagon Papers speech. In Ervin's view, the move was "a direct and broadscale attack . . . on the independence and freedom of the Senate."

Tuesday: Ervin held hearings on the proposed merger of the two professional basketball leagues. He argued that if Congress allows a merger, ending interleague competition in player recruitment, it will mean "the economic enslavement" of the athletes.

Wednesday: Ervin denounced the American League's transfer of the Washington Senators baseball team to Dallas-Fort Worth, then called for Congress to consider putting baseball under the antitrust laws. He also got in a few licks at pro football.

Later the same day, Ervin announced plans for major hearings next week on freedom of the press in the U.S., an inquiry that will cover the government's recent efforts to subpoena reporters and their notes, the case of the Pentagon Papers and other issues.

Also on Wednesday, he flew to New York and told a convention of the Association of American Publishers that President Nixon's effort to strengthen the Subversive Activities Control Board indicates "a lack of faith in First Amendment freedoms."

Thursday: The basketball hearings continued, with Ervin still deploring the "giant sports trusts" and the "modern peonage" of professional athletes.

Friday: Ervin flew to Kentucky for a speech at the University of Louisville. He returned to Washington to end the day at his desk.

All this does not include the time Ervin spent on the Senate floor for debates and votes, or the time he spent handling constituents' mail and requests, or the time he devoted to preparing for next week's—or even next month's activities.

Although Ervin will be 75 years old tomorrow and has been in the Senate since 1954, he seems to be just reaching the peak of his activity, prominence and influence.

He has all but shed the national image he had in the early 1960s as a single-minded opponent of civil rights bills. His views on the subject have not changed much, but the issues in Congress and the nation have changed. In today's political climate, Ervin's championing of individual rights has made him a hero to liberals as well as conservatives.

Who has done more to point up the need for laws to protect personal privacy in the coming age of computerized data banks? Who has done more to warn government crime-fighters that they violate precious rights by turning to "no knock" raids and to "preventive detention" of potential criminals?

President Nixon might well ask: Who has been a more aggressive critic of this administration? Ervin has criticized the White House for its anticrime proposals, its policy of government secrecy, its impoundment of funds appropriated by Congress, its use of the pocket veto, its tolerance of the Army's spying on civilians, and . . . on and on.

In other odd moments, Ervin is involved in efforts to protect the rights of Indians and servicemen, change the presidential election system, assure speedier trials for defendants in federal courts, regulate the nonjudicial activities of judges, protect the privacy of federal employes and maintain separation of church and state.

There are, of course, many sides to Sam Ervin that do not please compassionate liberals and civil libertarians. There is Ervin the Hawk, the armed services committee stalwart, voting a strong national defense whatever the financial cost, and backing Nixon on Vietnam.

There is Ervin the Southerner, with his traditional regional views against civil rights laws, school desegregation, equal employment programs, unions and textile imports.

But for Ervin, there is in all these activities a consistent theme: The maintenance of maximum individual freedom. A vigilance against the excesses of powerful governments and institutions.

There is plenty of room for argument about how closely some of Ervin's views follow these principles. The man will not stand still long enough to be labelled.

Few senators have such wide-ranging interest; few keep such demand schedules; and few are involved in so many timely (and yet timeless) issues. For Sam Ervin, it surely can be argued that life begins at 75.

[From the Charlotte Observer, Sept. 26, 1971]

WHEN ERVIN HOLDS HEARING, HE ALSO DOES SOME TALKING

(By Paul Clancy)

Sam Ervin will be three-quarters of a century old Monday.

The indefatigable senator from Morganton will probably celebrate by cramming his mind full of information. He will need it to launch a lengthy and controversial series of hearings Tuesday on freedom of the press and the power of government to cover things up.

Ervin will interrogate powerful men in the administration and the media to find out why relations between the two estates have continued to deteriorate.

The witness list reads like Who's Who in American Journalism, including Walter Cronkite and Dr. Frank Stanton of CBS, reporters Earl Caldwell and Fred Graham of the New York Times, Time-Life chairman Andrew Heiskell, Julian Goodman of NBC, columnist James J. Kilpatrick and Observer Editor C. A. McKnight, president of the American Society of Newspaper Editors.

Chairman Burch of the FCC will testify along with commissioner Nicholas Johnson. Someone from the Justice Department—probably not the attorney general—will be there. But no one from the White House. Communications director Herb Klein is the only one so far to turn down an invitation.

"As a member of the immediate staff of the President, I must respectfully decline the invitation to testify," Klein said in a brief note to Ervin's constitutional rights subcommittee.

Ervin is likely to have some comments about the note and one of his unfavorite subjects, executive privilege, when the hearings get underway. If Ervin is true to form—and he always is—he will surely have comments to make on a number of things.

As exhausting as those three weeks of hearings might be, they will probably seem like a vacation to Ervin.

In the past week alone, he has delivered four major speeches—one in the Senate, one in New York, one in San Diego, and one Friday night at the University of Louisville.

He presided over antitrust hearings into the proposed merger of the National and American Basketball Associations which he denounced as a scheme to economically enslave the players.

In one of his strongest blasts at the Nixon administration, he defended Sen. Mike Gravel's release of parts of the Pentagon papers as an act of "personal courage" and called the government's threat to prosecute Gravel an attempt to harass and silence him and all other critics.

Ervin told the Association of American Publishers in New York that "protest has a therapeutic value for both protesters and society. If it is justified, protest may lead to reform; if it is unjustified, protest may relieve at least temporarily the tensions of the protesters."

He was again attacking the administration, this time for expanding the powers of the subversive Activities Control Board. He said Nixon wanted to give the board "vast power to harass and stigmatize Americans."

Ervin wrote most of the speeches himself during the August recess.

The San Diego speech was the essence of Sam Ervin—a history lesson, a legal brief, good news copy and, above all, a contribution to literature.

"Ours is a time of doubt and fear," he said, sweeping back to the days of the Bastille and forward to the use of preventive detention in Washington.

"The tides of fear are rising, and the anchors of faith are dragging," he said. "It is in such a time frightened humanity needs freedom most.

"Since courage is better than fear, and faith is better than doubt, let us spurn fear, cherish faith, and dedicate ourselves to this proposition: freedom is life's supreme value and must be preserved for ourselves and our posterity, cost what it may."

[From the Raleigh News & Observer, Sept. 26, 1971]

INCLUDING BASEBALL—SLUGGER SAM CONNECTS WITH THE "IN" ISSUES

(By Roy Parker, Jr.)

WASHINGTON.—A certain soft drink may be the in-thing elsewhere, but in Washington it is the Ervin Generation.

That is U.S. Sen. Sam Ervin Jr., North Carolina's most familiar political figure.

For while other political figures busily prepare for election campaigns, Senator Ervin is happily unfettered by campaign worries and concentrating on a spate of issues which have made him, at 74, more widely admired than almost any of the oldtimers on the Washington scene.

Ervin and his issues are the in-thing. His concerns are the latest up-to-the-minute ones: baseball antitrust, invasion of privacy, freedom of the press, military justice, church-state separation, presidential war-making power, prison reform.

The senator dashes from hearing room to hearing room, orchestrating the hearings and investigations developed by his staff.

He is surrounded by a cloud of high-salaried young men, mostly in their early '30s and all lawyers, who direct the probes, gather the witnesses, follow the trails that Ervin maps out.

Yet the senator remains as he has for all his public life, a rather remote man, diffident in the presence of nearly everyone.

In a city where instant experts are legion, especially among the roster of senators, Ervin is singleminded. He does his own reading, collects his own thoughts, and takes his aim carefully.

Ervin's manner in a hearing room or in floor debate stands in contrast, however, to the inner man.

Senator Ervin does not play the public game in the cool medium. He uses hyperbole and purple prose; he badgers and quotes out of context; he can make mountains of verbal molehills.

His style is given to exaggeration. He sprinkles his remarks with phrases about "the greatest (or the worst) tyranny (or thought) ever conceived by the mind of man." He uses the necessarily supercharged language of the Scriptures, usually of the Old Testament thunder type. His by-now famous twitching eyebrows have become as familiar in Capitol Hill lore as Clyde Hoey's frock coat. He flails the air and points his finger and shouts.

The fact that he is dealing with the latest of the latest issues is somewhat new for Ervin. It has not always been so.

During the Negro civil rights revolution of the 1960s, Senator Ervin's committee on constitutional rights resembled the court of Louis 16th in the years before the Bastille. Ervin didn't exactly retire into a Petite Tranion palace of never-never issues, but his unit did spend an awful lot of time looking at Indian rights and the problems of bail.

A cloud of young investigators fanned out across the South, documenting the problems and pointing the spotlight, might have been more useful.

But for civil libertarians, Ervin has more than made up for his Dixie orthodoxy on that issue. Even Indian rights and bail reform have come full circle into relevancy as up-to-date as today's headline.

As Ervin dashed from hearing to hearing this week, frustrated American Indians attempted to dramatize their lack of political voice by a "citizens arrest" of an official of the Bureau of Indian Affairs, making the headlines and perhaps, ushering in a new interest in a field Ervin was plowing more than 10 years ago.

Bail and correctional reform, two passions of Ervin's public life since his early days as a state trial judge, are also burning brightly again in the aftermath of the Attica incident.

The cluster of civil rights questions raised by the bloody prison affair could keep Ervin and his young men busy for years. Even as the incident unfolded, Ervin was entering a phase of hearings on his "speedy trial" proposal, the cutting edge of a wide-ranging judicial reform push which he has in the works.

Just as Ervin began probing the "economic slavery" of sport athletes, the headline of the day handed him a natural—the move of the Washington Senators to Texas.

The newest headline—making issue, the looming rerun of the battle over prayer in schools, is sure to see Ervin engaged at the front line. He is the acknowledged leader of those who battle to keep the government out of the pulpit and vice versa. His office was receiving calls within minutes after a discharge petition successfully sent a prayer-in-the schools constitutional amendment to the floor of the House of Representatives.

With the retirement of Justice Hugo Black from the Supreme Court, Ervin becomes the undisputed chief champion of the sanctity of the Bill of Rights in its protection for press, for the hearthside, for all forms of expression.

His committee will usher in the senator's 75th birthday with a significant series of hearings on press freedom beginning Tuesday, with such headline-grabbing witnesses as Cronkite and Brinkley, Attorney General Mitchell, and the presidents of all the big networks.

As soon as the My Lai trials are over, Ervin hopes to lead new looks at the military justice system. In general, the trials have borne out his own views at the beginning, when his was a calm voice in the midst of furor urging patience and strict adherence to the system, rather than trial by public or administrative coverup.

For Ervin, a decorated second lieutenant from the World War One trenches, the vindication of the system is a bright spot on the Army's tarnished current image, must bring a pause of satisfaction.

That is, if he has time to muse on it, which seems unlikely right now in the Washington of the Ervin generation.

SENATOR SAM SHOWS HIS LOVE FOR CONSTITUTION

(By James J. Kilpatrick)

If Sam Ervin did not exist, as Voltaire once remarked of God, it would be necessary to invent him. In a Senate that has been briefcase gray since the death of Everett Dirksen, the canny old North Carolinian provides almost the only color. Of greater importance, he is often the only statesman in the crowd.

One thought of this a couple weeks ago, in watching Ervin pilot a bill through the Senate that no other senator would have cared enough to fight for. To be sure, he had some help from the noblest Roman of them all, Sen. Hruska of Nebraska, but the bill was stamped with Ervin's mark: It was intended to safeguard the Constitution, and it looked to the future in terms of the past.

We have had great constitutionalists on the Hill since the days of Webster, Calhoun and Clay, but we have not had many of them lately. The Constitution has fallen upon hard times. It comes and goes on Capitol Hill like some impecunious uncle-by-marriage, a visitor who has to be tolerated but not really welcomed. The Constitution is mostly in the way.

Not to Sam Ervin. He speaks of the Constitution in the same loving accents by which a man speaks of his wife, his mother, his child or, for that matter his Redeemer. We had an old scholar once at Virginia who felt the same way about Shakespeare. It is a feeling kindled out of the affection that is deeper than love—and out of a sense of the marvelous, also. Always something new! Some perfection never grasped before!

Yet not perfection. Like mother, wife and child, the Constitution has its failings. The procedures for electing a President are sorely in need of repair. The grand ambiguities of the general welfare clause provide endless trouble. There are other broken parts and patches of rust. And it is the peculiar role of Senator Sam to put things right.

Thus, he was tinkering around two weeks ago with Article V. This is the section of the Constitution that deals with amendment of the Constitution. If you care about these matters, you will know the familiar process: A resolution is introduced in Congress proposing some amendment of our basic law; if the resolution wins approval by two-thirds of both House and Senate, it goes out to the states for ratification; and if three-fourths of the states ratify, the amendment becomes part of the Constitution.

That is the familiar process. Every amendment has been adopted in this fashion. But it is one of the marvelous aspects of the Constitution, reflecting the framers' intuitive distrust of the Congress, that Article V offers an alternative route to amendment. This route never has been taken all the way. It provides that, upon the application of the legislatures of two-thirds of the states, the Congress "shall call a convention for proposing amendments."

A constitutional convention? We haven't had one since 1787. But off and on through the years, states have talked of using the by-pass route. By Ervin's count, at least 304 such "applications" have been received, dealing with 251 proposals for amendment. Over the past 20 years, in a latter-day revival of Calhounian gospel, such applications have become more numerous. Between 1957 and 1969, 33 states—just one short of the magic two-thirds—asked for a convention to propose an amendment on reapportionment.

Suppose a 34th application had been received? Article V is not self-executing: It says that "Congress shall call." Call how? Call whom? Senator Sam found the uncertainties a delightful problem. Four years ago he set upon repairs. On Oct. 19, his bill passed. When the House concurs, we will have created standby machinery for a contingency that may never arise. The bill defines state applications, provides for a convention, prevents a runaway body and carefully safeguards the process as a whole. It is a nice piece of probably useless work; and Mr. Madison, one imagines, would be pleased.

HOW TO SAVE LIVES—AND DOLLARS

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "How to Save Lives—and Dollars," written by Roscoe Drummond, and published in the Christian Science Monitor of December 7, 1971.

Mr. Drummond comments on the stupidity of war, suggests how to stop it, and tells how the governments of the world can save and put to better use the billions of dollars now consumed for military purposes.

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

HOW TO SAVE LIVES—AND DOLLARS

(By Roscoe Drummond)

WASHINGTON.—Why on earth is mankind allowing itself to be trapped into wasting precious lives and spending over $200 billion every year for military purposes?

And it's going up all the time—more money, more arms, more men under arms, big nations, little nations, poor nations, rich nations.

How much is it going up?

Ten years ago the world was spending $120 billion annually on the military.

Today the figure has risen to more than $200 billion, and at the present growth rate of arms expenditures the cost will be $300 to $350 billion yearly (at 1970 prices) by the end of the decade.

WAR IS STUPID

How can mankind be so heedless or helpless as to permit this travesty?

Haven't we at least come near to the point where we can recognize that war is not only wasteful, impractical, intolerable, but more than that—downright stupid?

It seems to me that most people and the leaders of most nations are agreed:

That the great powers cannot disarm unilaterally, that they can disarm safely only simultaneously and collectively.

That all nations must maintain that military strength sufficient for self-defense.

That pacifism is not a workable national policy until there are enough pacifists in enough countries to make it work.

That none of the great powers armed with nuclear weapons want to risk war against each other.

Isn't there in this set of premises some way to do better than we have been doing thus far? Can't we shed some of the crushing, wasteful burden of spending more on more arms every year?

STOP IT

Remember how hard it was in the fairy story for the people to bring themselves to admit that the king had no clothes until an innocent, honest young boy pointed his finger and said: "Look!"

More people must continue to blurt out the simple truth that war of aggression is stupid, outdated, and unacceptable—for everybody.

Next, in wisely avoiding the pitfall of one-sided disarmament, let's recognize the plain fact that every nation could spend half as much on arms and be equally safe and twice as well off in every other category of human living.

Relief from this crazy burden of arms expenditures will come only step by step. The first step must be to reverse the trend.

The burden is growing heavier, not lighter, and I wonder if the time is near when enough people in enough nations may not rise up in moral indignation and say: "This has gone on long enough. Stop it."

SAVE TOGETHER

In the decade of the '60's alone the governments of 130 nations took from the pockets of three and a half billion people $1,870 billion and consumed it for military purposes.

This is the latest figure from a special study by the United Nations, and the report shows that in the decade of the '70's military costs will mount to $2,620 billion.

While the world's output of goods has increased tenfold in this century, arms expenditures have increased twenty-fold.

While at the present time $4 billion is

being spent throughout the world on medical research, $25 billion is being spent on military research.

I think the people of the Soviet Union don't like this any better than the people of the United States.

We are either going to keep on wasting more together or begin to save more together—and use the vast savings for better purposes.

TERMINATION OF NASA EXECUTIVE LUNCHROOM OPERATIONS

Mrs. SMITH. Mr. President, earlier I conducted an investigation of the Executive Lunchroom of the National Aeronautics and Space Administration through the General Accounting Office. The prinicpal determination of that investigation was that NASA was serving $4.03 cost lunches for 45 cents to its executives and to some extent through illegal procurement of food from military commissaries. The end result of my investigation was termination of the NASA executive lunchroom operations.

Upon the basis of this investigation, I requested the Comptroller General to have the General Accounting Office conduct a similiar investigation of the executive lunchrooms of other Federal agencies. I did not ask for all Federal agencies because of the magnitude of the task of such an investigation. On December 7, 1971, the Comptroller General sent me a report on such investigation. On the basis of that report, I shall offer an appropriate amendment or amendments to future appropriations legislation to require all Federal agencies to submit an annual and full accounting of their executive lunchroom or mess operations.

The NASA cost-price ratio is exceeded by that of the executive lunchroom of the Department of Transportation for whereas the NASA rate was a cost of nine times the actual price charged the NASA executives, the DOT cost rate is greater than 10 times the actual price charged the DOT executives. DOT executives paid an average of only $1.51 per meal as compared to an average cost of $16.06 per meal. And that cost does not include the cost of space and utilities.

The Department of Treasury cost-price ratio is 6 to 1 as the average cost per meal is $14.31 for which Treasury Department executives pay an average of only $2.45 per meal. This does not include cost of space and utilities. In addition to this, they get free liquor on special occasions and these alcoholic beverages are obtained from confiscated stock.

The Department of Justice cost-price ratio is greater than 4 to 1 as the average cost per meal is $7.10 for which Justice Department executives pay only an average price of $1.66. This does not include cost of space and utilities.

The National Science Foundation cost-price ratio is 3 to 1 as the average cost per meal is $3.55 for which NSF executives pay only an average price of $1.26 per meal. This does not include the cost of space and utilities. In addition to this, they also serve confiscated liquor—obtained from the Bureau of Customs—on special occasions.

The Interstate Commerce Commission cost-price ratio is 2 to 1 as the average cost per meal is $3.53 for which ICC Commissioners pay only an average price of $1.94 per meal. This does not include the cost of space and utilities. In this case, it is interesting to note that one of the 12 ICC Commissioners refuses to participate in the executive lunchroom arrangement.

In contrast to these five Federal agencies, the Department of Agriculture is a paragon of virtue. Its executive lunchroom gets its food from the same cafeteria that other employees do. The only subsidy other than space and utilities for the Agriculture executives is that they pay a service charge of 25 cents a meal for waitress service that actually costs 50 cents a meal.

I do not mean to exclude the U.S. Senate from being required to make an annual and full accounting of its nonpublic senatorial food services. We should be just as accountable and I shall include the U.S. Senate in the amendment or amendments that I offer to the appropriations bills.

I ask unanimous consent to place in the RECORD the report of the Comptroller General to me on this matter.

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

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C., December 7, 1971.

Hon. MARGARET CHASE SMITH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SMITH: Your letter of June 28, 1971, requested that we make an investigation to determine whether there were other situations in the Federal Government similar to those found in the National Aeronautics and Space Administration's executive lunchroom as presented in our report to you dated November 6, 1970 (B–168033).

At a meeting in your office on July 23, 1971, it was agreed that we would investigate executive lunchroom operations at the Department of Agriculture, the Department of Justice, the Department of the Treasury, the Department of Transportation, the Interstate Commerce Commission, and the National Science Foundation. Also, we agreed to determine whether any Government employees worked in the executive lunchrooms and, if so, to relate their salaries to the number of persons served and to the prices charged for the meals; whether the employees were retired military personnel having commissary privileges; and whether liquor was being served.

Where records were not available or were not in sufficient detail to provide complete information, we relied on information furnished by responsible agency officials.

Except at the Department of Agriculture, Government employees were used full or part time to prepare and serve meals. The employees used part time were principally messengers and motor vehicle operators. We were told by agency officials that the part-time employees worked in the lunchrooms during periods when they otherwise might have been idle. One full-time employee at the Department of Justice executive lunchroom was retired from the military service. He and six Coast Guard stewards who worked full time at the Department of Transportation executive lunchroom had commissary privileges; however, we found no instances where food for the lunchrooms was being purchased from commissaries.

The cost for each meal substantially exceeded the price charged for a meal in the executive lunchrooms using full-time and/or part-time Government employees. The high cost for each meal is attributable principally to the personal service costs incurred in preparing and serving a relatively small number of meals.

The following table shows the average costs and receipts for each meal at the selected agencies, except at the Department of Agriculture which is discussed separately. The average costs and receipts are for both regular and special luncheons at the Departments of Justice and Treasury but for only regular luncheons at the Department of Transportation and the National Science Foundation because at these agencies sufficient data was not available with respect to special luncheons. At the Interstate Commerce Commission, no special luncheons are served.

AVERAGE ANNUAL COSTS AND RECEIPTS PER MEAL IN SELECTED EXECUTIVE LUNCHROOMS

	Department of Justice	Department of Transportation	Department of the Treasury	Interstate Commerce Commission	National Science Foundation
Number of meals served	3,432	[1] 2,876	1,314	[1] 1,260	5,97
Costs per meal [2]:					
Salaries	$5.51	$13.81	$11.77	$1.48	$2.24
Food [3]	1.40	1.51	2.45	1.94	1.26
Depreciation [4]	.19	.74	.09	.11	.05
Total	7.10	16.06	14.31	3.53	3.55
Less average receipts per meal	1.66	1.51	2.45	1.94	1.26
Excess of costs over receipts	5.44	14.55	11.86	1.59	2.29

[1] Annualized on the basis of the number of meals served, costs, and receipts for the last quarter of fiscal year 1971 for the Department of Transportation and for the period June 7 through Aug. 13, 1971, for the Interstate Commerce Commission.

[2] Exclusive of space and utility costs.

[3] Exclusive of the cost of alcoholic beverages.

[4] Depreciation computed using the straight-line method with no salvage values and a useful life of 10 years, a practice accepted by the Internal Revenue Service for the depreciation of restaurant-type equipment.

DEPARTMENTS OF JUSTICE AND THE TREASURY AND THE NATIONAL SCIENCE FOUNDATION

At the Departments of Justice and the Treasury and at the National Science Foundation, the executive lunchrooms, seating from 12 to 24 persons, are available to the agency heads and their top staffs for regular luncheons and special affairs at a cost for each meal established to approximate the cost of the food served. Food is purchased from commercial sources. When special luncheons are hosted by the agency heads, the costs of the food are generally paid from appropriated reception and representation funds; sometimes the Treasury paid for the cost of the food for special luncheons from the Exchange Stabilization Fund.

Two employees work full time in the Department of Justice lunchroom. We were informed that their salaries were paid from the appropriation for Salaries and Expenses, General Administration. Typical prices are $1.25 for regular luncheons and $2 for special luncheons. Alcoholic beverages are purchased from personal funds and are served only on special occasions. Administrative matters are handled by a secretary.

The lunchroom at the Department of the Treasury is operated by a full-time cook, three part-time waiters, and a part-time dishwasher. The waiters also serve as messengers and the dishwasher also serves as a custodial employee; most of their time is devoted to messenger and custodial duties. Their salaries are paid from the Exchange Stabilization Fund. Regular luncheons are priced at $2, and the price of special luncheons averaged $3.88 during fiscal year 1971. Alcoholic beverages, obtained from confiscated stock, are served only on special occasions and at no additional cost; we were informed by an official of the Department that less than 2 gallons of alcoholic beverages were consumed during fiscal year 1971. Administrative matters are handled by a secretary to the Assistant Secretary for Administration.

The executive lunchroom at the National Science Foundation is operated by a Staff Services Coordinator and three motor vehicle operators. We were informed by a Foundation official that the employees worked in the lunchroom as needed but only when they were in a standby status from their regular duties. The Foundation official estimated that about 13 man-hours a day were required to operate the lunchroom. The regular luncheons are priced at $1.25, and the food is served buffet style. In addition to regular meals being served, special affairs are held in the lunchroom; the food available varies from snacks to full meals. Alcoholic beverages, obtained from Bureau of Customs confiscated stock, are served only on special occasions and not as a part of the lunchroom operation. The Staff Services Coordinator handles the administrative duties involved in the lunchroom operation.

INTERSTATE COMMERCE COMMISSION

Of the 11 commissioners of the Interstate Commerce Commission, 10 contributed $25 each to establish an executive lunchroom fund. The other commissioner does not participate. Each of the 10 commissioners pays $25 a month into the fund and has agreed to increase the monthly payment, if necessary. The fund is used to purchase food and miscellaneous items, such as cleaning supplies, needed to operate the lunchroom. Under these arrangements the commissioners are entitled to lunch each workday. Commissioners may bring guests to the lunchroom at a cost of $1 a meal.

The lunchroom provides table service and has a seating capacity of 20. Meals are prepared and served by a file clerk who spends about 30 percent of her time on lunchroom operations. For the most part, food and miscellaneous supplies are purchased from Government Services, Inc., which operates a cafeteria located in the building. Alcoholic beverages are not served. One of the commissioners estimated that an average five meals were served each day. A commissioner handles administrative matters.

DEPARTMENT OF TRANSPORTATION

The executive lunchroom is in a leased building which was constructed for use by the Department of Transportation.

Six stewards from the U.S. Coast Guard are assigned full time to operate the lunchroom which has a seating capacity of about 38. The Coast Guard bills the Office of the Secretary monthly for pay and allowances of the stewards. The billings are paid from the Office of the Secretary's Salary and Expenses Appropriation. In addition, the military aide to the Secretary and the Secretary's receptionist work part time administering lunchroom activities.

Only the Secretary and employees who report regularly to the Secretary are authorized to use the lunchroom. In July 1971 there were 38 persons so authorized, each of whom paid a $50 membership fee which is returnable when the employee no longer reports directly to the Secretary.

Each member is billed monthly for the number of meals furnished to him. The charge for a regular luncheon is based on the average per meal food cost for the month. Food and supplies are purchased from commercial sources. Food, beverages, and supplies sometimes are purchased separately for special luncheons, and the costs are prorated among those served. When food and beverages purchased for normal dining-room operations are consumed at special luncheons, the meals are charged for at the regular rate established for members at the end of the month. Meals for official guests attending regular or special luncheons are paid from the Secretary's appropriated reception and repesentation fund.

Wine and ale are available at the regular luncheons and distilled alcoholic beverages at special luncheons. Members are charged the actual cost for alcoholic beverages served.

DEPARTMENT OF AGRICULTURE

An executive lunchroom having a seating capacity of 85 provides table service for higher grade employees in the Department of Agriculture. Adjoining are two smaller table-service lunchrooms, one for use by the Secretary and his guests and the other for use by the Under Secretary and his guests. The three lunchrooms are operated by the Department employees' Welfare and Recreation Association.

Daily meals are similar to the meals available in the Association's cafeteria across the hall from the lunchrooms, and the prices charged are the same as those for meals in the cafeteria plus an additional charge of 25 cents a meal to cover the cost of providing table service. A grilled rib-eye luncheon steak, such as is served in the lunchroom at a price of $2.25 (plus the 25-cent service charge), is not available in the cafeteria. All food served in the lunchrooms is obtained from and prepared in the cafeteria. Alcoholic beverages are not served.

Five waitresses each work an estimated 3½ hours a day at $2.10 an hour in the three lunchrooms. All five waitresses work in all three lunchrooms as though they were a single lunchroom.

During the period February through May 1971, the total number of meals served in the three lunchrooms averaged 74 a day. The 25-cent service charge would amount to $18.50 for 74 meals, whereas the cost of the waitresses to serve the meals would be $36.75. On the basis of 74 meals a day, the service charge would have to be doubled to cover the cost of providing table service.

An official of the Association informed us that special affairs were held infrequently at night. Association employees work at these affairs on an overtime basis, and prices are established so as to recover costs.

The agencies discussed herein have not been provided with copies of this report and have not been afforded an opportunity to comment on our findings. We plan to make no further distribution of this report unless copies are specifically requested, and then we shall make distribution only after your agreement has been obtained or public announcement has been made by you concerning the contents of the report.

Sincerely yours,

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

TAR HEEL TALK: SENATOR ERVIN'S RISE TO NATIONAL EMINENCE

Mr. JORDAN of North Carolina. Mr. President, the Greensboro, N.C., Daily News for November 21, 1971, contains an article by its editor, William D. Snider, entitled "Ervin's Rise to National Eminence," which pays tribute to my colleague, Senator ERVIN.

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 Greensboro (N.C.) Daily News Nov. 21, 1971]

TAR HEEL TALK: ERVIN'S RISE TO NATIONAL EMINENCE

(By William D. Snider)

During the 20th century North Carolina has not produced many U.S. Senators of the first rank.

Furnifold Simmons and Lee Overman qualified for longevity; Josiah Bailey for serious demeanor; "Our Bob" Reynolds and Clyde R. Hoey for color; and a succession of occupants—William Umstead, Melville Broughton, Frank Graham, Willis Smith and Kerr Scott—who scarcely had time to make much impact on Capitol Hill because their careers were cut short by death or defeat.

In Sam J. Ervin, however, North Carolina has found a candidate for top-drawer honors. Little by little in the sixties and seventies he has emerged as a national figure. Whether the evaluator stems from right, center or left, the senior senator from North Carolina, by general acknowledgement, ranks among a handful of distinguished men in that exclusive club.

DEEP ROOTS

Senator Ervin is the most North Carolinian of North Carolinians. That is to say his family roots run deep, stretching back to the Revolution; among them are the best we have produced. (Let it be noted here that North Carolina, as the vale of humility between two mountains of conceit, has contributed relatively few statesmen of the first water throughout her history although her best do rank with the very best.)

Senator Ervin typifies the unpretentious aristocrat of the hill country. He is a man, as the late William Polk used to say, "too proud to be proud", gracefully at home around the courthouse square, full of deep folk wisdom and not much given to high-faluting ways. "To Be Rather Than to Seem" is a motto made for him.

This kind of man seems to be an ornament of Tar Heel history. He is the prototype of small town, rural society. He is an old-timey lawyer schooled, as were many of the professional men of his day, in the liberal arts and profoundly wise about the human condition.

To sophisticated Washington, in the beginning, Senator Ervin appeared something of a country bumpkin, with his Tar Heel

drawl, his effusive charm, his store of anecdotes about people he had known in Burke County. But the Tar Heel edition of the rural lawyer differs decidedly from the stereotype found elsewhere in the South. Sam Ervin's personality hid from some for a while his penetrating intellect, his scholarly endowments.

BEYOND THE HILLS

Like Tom Wolfe, Sam Ervin emerged from the Carolina hills through Chapel Hill. After finishing there, he joined the First Division in World War I where he was twice wounded in action, twice cited for gallantry and awarded the Silver Star and the Distinguished Service Cross.

After the war he went to Harvard Law School. On returning to practice law in his home town, he served in a succession of civic and political posts, including several terms in the State Legislature, as member of the State Democratic Committee, as a local judge, moving then to the Superior Court with time between as a U.S. Congressman from the Tenth District.

Senator Ervin's career then moved, decisively it seemed, toward the judiciary. Governor Cherry appointed him to the North Carolina Supreme Court. He seemed destined to remain there or eventually move into the federal court system.

But a different assignment came. On the death of Senator Hoey in 1954, Governor Umstead appointed him to the U.S. Senate. It was his best appointment. There Ervin remained, regularly returned over 17 years in election after election by a satisfied constituency and constantly growing in stature.

Senator Ervin's career, perhaps ironically, resembles that of the late Justice Hugo Black. On his appointment to the high court by Franklin Roosevelt, Black seemed little more than a run-of-the-mill Deep South politician combining a sort of New Deal populist reputation with stains of Ku Klux Klanism. Justice Black went on to become one of the renowned scholars of the court, the greatest interpreter of the U.S. Constitution in this time.

THE RIGHT QUESTIONS

Justice Black's views of the Constitution have often differed with those of Senator Ervin. But both qualify as strict constructionists. Both have honored and revered the U.S. Constitution. Both have read it pretty literally. They have asked the right questions, even though they did not always agree on the answers.

Thus, Justice Black felt that "separate but equal" schools did violate the black man's rights while, initially at least, Senator Ervin did not. Ervin's strict construction leaned more toward the judicial restraint practiced by former Justice Harlan; but in the realm of the First Amendment he and Black came down strong on the same principles.

Senator Ervin's recent campaign in behalf of the First Amendment's guarantee of freedom of the press and individual rights has brought him notably to the fore as a public servant willing to challenge the conventional wisdom. Along with Thomas Jefferson, he strongly believes that "no government ought to be without censors and where the press is free, no one ever will."

Of course, Senator Ervin's views are still stigmatized in many parts of the country as "southern". But that prejudice against southernness is beginning to lift. Just as Justice Black drew the line in his civil liberties views when the case involved disruptive behavior, so Senator Ervin has drawn the line at a different point on civil rights.

THE BUSING ISSUE

On the busing issue, for example, Senator Ervin has consistently expressed the following opinion: "To require a school board to transport children from one school district to another solely to increase or decrease the number of children of a particular race who attend a school seems to me to violate the equal protection clause of the 14th Amendment as interpreted in the Brown case."

Senator Ervin sees busing to achieve racial balance as flawed as busing to avoid it. And as the busing issue spreads across the nation, the wisdom of that view is becoming apparent. If the Constitution remains color blind, it cannot designate race in one area and ignore it in another.

I have not always agreed with Senator Ervin's views in the past—any more than I have agreed with Justice Black's. But increasingly the consistency and profundity of the Senator's stand on constitutional issues have identified him as a mighty oak in the nation.

Looking over the scope and significance of his career, North Carolinians can be proud that a man of Senator Ervin's qualities represents them in Congress.

NORTH CAROLINA PRESENTS THE NATION'S CHRISTMAS TREES

Mr. ERVIN. Mr. President, when President Nixon lights the Nation's Christmas tree at the Pageant of Peace ceremonies on December 16, not only will this bring joy and beauty to the Capital at the start of the Christmas season, but at the same time several precedents will be established.

For the first time in the celebration's 47-year history, the South will provide the tree. Moreover, my home State of North Carolina—in another first—is supplying both the tree for the lawn and the personal, family tree for the White House.

The majestic Fraser fir now festooned with approximately 5,000 lights and a mile of electrical wiring grew in the Pisgah National Forest near the Blue Ridge Parkway in Haywood County. Interestingly enough, this 63-foot tall balsam apparently survived a disastrous fire in 1924, the year that President Calvin Coolidge initiated the custom of a national tree.

Incidentally, Fraser firs grow only in North Carolina and are known colloquially as "She-Balsams."

My friend John Parris, a western North Carolina son and longtime student and chronicler of the region and its people, has written a brief history of the Fraser fir in his "Roaming the Mountains" column, which I wish to share with Senators.

I ask unanimous consent that the article, entitled "Fraser Cataloged First She-Balsams," published in the Asheville, N.C. Citizen of November 19, 1971; and the following articles describing both trees, their selection, cutting, display and ceremonies be printed in the RECORD.

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

[From the Asheville, N.C. Citizen, Nov. 19, 1971]

ROAMING THE MOUNTAINS—FRASER CATALOGED FIRST SHE-BALSAMS

(By John Parris)

MOUNT MITCHELL.—The tree that has been designated as the 1971 National Christmas Tree and will go on the lawn of the White House is a species of fir discovered on the slopes of this towering peak more than 180 years ago.

It is the Fraser Fir, known as balsam in the Christmas tree and evergreen trade, and called she-balsam by mountaineers who once used its sweet-smelling needles to stuff pillows and mattresses.

In the history and drama of our highland stands as a reminder of the days when Europe's crowned heads struggled for supremacy in the New World.

While England and France maneuvered through intrigue and bloodshed to plant their banners forever over the land, a British king and a French monarch pitted their royal plantsmen against each other in a race to discover and catalogue the plants and trees of the wild, unexplored wilderness.

Louis XVI lost the race for the balsam as well as his head.

King George III claimed discovery of the balsam for his kingdom and then got the tar beat out of his Red Coats.

Actually, the winner was the modern-day American who has come to recognize the discovery as a boon to the Christmas trade.

The French lost the race really because the British were suspect.

It all happened here on the slopes of Mount Mitchell where the great groves of virgin balsam stand like prophets of old.

Back in the dwindling years of the 18th century, a Scottish plantsman named John Fraser was dispatched to America on a royal errand to search out rare plants for George III.

Fraser was the first plantsman to explore the high peaks when this was still wild and trackless country.

While wandering through the wilderness, he met up with Andre Michaux.

A plantsman in the employ of Louis XVI, Michaux found that Fraser seemed to be dogging his footsteps no matter which way he turned.

For days the two rival plantsmen moved through the wilderness, their eyes ever alert to the trees and plants and shrubs, their hands busily collecting and jotting down data in their journals to prove their claims to discoveries each hoped would bring royal recognition and royal honors.

Finally, one morning at the base of the mountain here, Michaux decided the time had come to slip away from Fraser.

He concluded that he must break company with the Scotsman if France was to win the race for plant discoveries.

So he told Fraser a lie, and in lying lost the race.

Michaux claimed his horses had strayed and that he would have to search for them.

"You go ahead," he told Fraser, "and I'll catch up with you."

So Fraser moved on up the slopes of Mount Mitchell and entered the dark, spicy groves of balsam.

Thus, he became the first plantsman to discover the balsam which he claimed for England and which was named in his honor—Abies Fraseri or Fraser Fir.

But aside from having the tree named for him, Fraser failed to win further royal recognition. He was not knighted, as he had hoped and dreamed, so he broke with King George and entered the service of Catherine the Great of Russia and then Czar Paul.

And, in doing so, he got royally taken. For he made four trips into the highlands for Russia, spending his own money, and the Russians refused to reimburse him.

It was then that he set up a little nursery in London and then came to America on his own to collect and carry back living specimens.

From the high, dark groves here in the highlands he carried back the first living specimens of the mountain balsam that England had seen.

In the years that followed, the Fraser Fir went unrecognized as a Christmas tree.

Eventually, lumbermen discovered it and slashed away at the great groves in Western North Carolina.

But now the days of indiscriminate cutting have faded, for most of the lands where the

balsams grow are on federal or state preserves, or on large private holdings.

Each year thousands of small balsams are auctioned off by the U.S. Forest Service on Roan Mountain, which has become known as Christmas Tree Mountain. They are carefully selected and cut under strict supervision of forest service personnel.

These trees are shipped to market as far away as New York and Washington and Baltimore where they are sold for Christmas trees.

Meanwhile, Christmas tree growers began establishing their own balsam plantations. Thousands upon thousands of balsams are now grown and harvested annually for the Christmas tree trade.

The balsam has now become the ideal Christmas tree.

It is more fragrant than any other tree. Add to this its majestic appearance—long lower branches and thin, spike-like top.

Housewives have found that the balsam is much less trouble to clean up after than either the holly, the cedar, or the spruce.

The balsam does not drop its needles, even after weeks without water, and its smooth needles make it ideal for decorating. No stabs or pricks to the hand.

And now a balsam has been selected as the 1971 National Christmas Tree.

It will come from the Pisgah National Forest over in Haywood County, a 63-foot balsam with a nearly perfect pyramid symmetry.

And shortly after dawn of this Friday, it will be cut, wrapped, then placed on a giant truck and sent on its journey to Washington where it will go on the lawn of the White House.

So, too, in the weeks to come, many another balsam will be cut and brought in for a Christmas tree.

And whether you call it Fraser Fir, or shebalsam, or just plain balsam, it is America's favorite Christmas tree.

But few folks ever heard of the man who discovered it.

And few folks know that it was discovered right here on the slopes of Mount Mitchell.

[From the Asheville (N.C.) Citizen, Nov. 13, 1971]

WNC Christmas Trees Selected For Nixon and White House Lawn

(By Connie Blackwell)

Two trees from Western North Carolina will be cut and shipped in style to Washington, D.C., during the next two weeks for the official White House Christmas trees.

This will be the first time both trees have been chosen from one state and the first time North Carolina has furnished a tree for the Pageant of Peace ceremony, in which a tree has traditionally been lighted on the White House lawn in December by the President of the United States since 1924.

The 63-foot Fraser fir, selected by a special Christmas Tree Committee appointed by Gov. Robert Scott, will be cut Nov. 19 in Pisgah National Forest in Haywood County.

Kermit Johnson of Crossnore in Avery County will cut a 20-foot Fraser fir Dec. 3 to go in the Blue Room of the White House as the First Family's personal Christmas tree.

Johnson was the first Southerner ever to win the National Christmas Tree Growing Contest in 1970. Part of his award was providing the President's tree this year.

He has been a Christmas tree grower for only 10 years and now is growing between 45,000 to 50,000 Fraser firs from N. C. Forest Service seedlings.

It takes at least eight years to grow a tree, Johnson said, and he was unable to find one on his own property large enough for the White House. But he found one on a neighbor's property which will be used.

The large tree for the White House lawn will be lighted Dec. 16. It was approved last spring by Ted Smith of the U.S. Forest Service, head of the division of special events which selects the White House trees each year.

Job Corpsmen from the Schenck Civilian Conservation Center cleared around the tree to eliminate competition from other growth, and it was sprayed last week with a chemical designed to hold the moisture in and keep the tree fresh and green during its long reign as National Christmas Tree.

Hennessee Lumber Co. of Sylva will cut the National Forest Service tree and Bob Vodak of Meade Corp. at Sylva is responsible for wrapping it for the journey north.

The huge tree is being transported to Washington free by McLeod Trucking and Rigging Co. and Moss Trucking Co. of Charlotte. Bragg McLeod, owner of the firms, expects the cutting, wrapping and loading to take about two days work at the site just off the Blue Ridge Parkway.

The tree is expected to be on display at Tunnel Road Shopping Center here Sunday, then go to Charlotte for the Christmas Parade, to Greensboro and on to Raleigh on the 28th, where it will be presented to the state by Del Thorsen of Asheville, head of the U.S. Forest Service in North Carolina.

The tree's trip to Washington will be the subject of a documentary sponsored by N. C. Savings and Loan Association for showing on television during Christmas Week.

North Carolina was originally selected to furnish the big tree in 1972, but another state was unable to fill its obligation this year so North Carolina volunteered to move its contribution up a year.

The tree chosen for the White House lawn is special in several ways, and was actually found after a two-year search by Martin Shaw of Asheville, for the N. C. Forest Service, assistant regional forester Fred E. Whitfield from N.C. State University, L. C. Hall with the U.S. Forest Service, and Eugene McCall, assistant agricultural agent of Haywood County.

The main difficulty in the search was finding a tree tall enough. Even textbooks say Fraser firs only grow to 55 feet, but, they make the most beautiful Christmas trees in the United States and are found only in North Carolina so the search went on for a Fraser fir.

In 1924, the same year President Calvin Coolidge initiated the custom of lighting a tree on the White House lawn, the tree chosen this year was one of a handful of trees that survived a large forest fire.

Escaping the fire, it lived to be 23.1 inches in diameter with about 60-feet of limbs and to weigh about 12,000 pounds.

[From the Winston-Salem (N.C.) Journal and Sentinel, Nov. 14, 1971]

North Carolina To Supply White House Trees

In 1924 flames swept through a remote forest in North Carolina's high country, completely destroying several hundred acres of virgin timber. Only a few trees survived . . . including one "middle-aged" Fraser fir.

This year that survivor, now 75 years old and still beautiful even though it is stricken with a terminal illness, will go to its death in a blaze of glory.

The honors will come during a ceremony on the lawn of the White House when President Nixon proclaims it the "Nation's Christmas Tree" and flips a switch illuminating it.

Inside the White House, in the Blue Room, will be another Fraser Fir from North Carolina. It will be the first time that one state has furnished both the official White House tree and the national tree.

The custom of having the national Christmas tree furnished by the various states was adopted by President Calvin Coolidge in 1929 as an annual event called "The Pageant of Peace." Each December thereafter, a tree some 65-feet high has been erected and surrounded by other trees 12-feet high to represent the states and the possessions and trust territories.

North Carolina was originally selected to furnish the big tree in 1972, but another state felt it could not fulfill its obligation this year and North Carolina volunteered to make its contribution a year earlier.

And as it happened, the National Christmas Tree Growers Association, the organization which selects a "Grand Champion" 18-foot tree for display in the White House, selected an entry from Kermit Johnson of Crossnore as the Blue Room tree this year.

North Carolina had some trouble locating a suitable tree for the nation. A widespread search was conducted for two years to locate a Fraser Fir 65-feet high. There were many beautiful trees located, but they were too short. The suggestion to look for another species was turned down on the grounds that Fraser Fir is the most beautiful Christmas tree in the U.S., and is found only in North Carolina. It has lush, green foliage, has excellent needle-holding ability and a pleasing fragrance. Still a tree of suitable height could not be found. Even the textbook stated they grew only to 55 feet.

But Fred Whitfield of the School of Forestry Resources persisted and in a remote area of Haywood County he and another enthusiast, Marty Shaw, found a tree that disproved the textbook. The tree is 65-feet tall, 23.1 inches in diameter and has 60-feet of limbs. It weighs approximately 12,000 pounds.

To look at it, one would not suspect it was doomed, a victim of wooly aphid. This pest seems destined to destroy all the natural stands of Fraser Fir.

The tree will be cut Friday. It will be displayed in Asheville, Charlotte, Winston-Salem and Raleigh before being sent to Washington.

[From the Greensboro (N.C.) Daily News, Nov. 15, 1971]

A White House Christmas Tree

(By Don Patterson)

Picking out a Christmas tree is often a difficult chore, even for Kermit Johnson. And he grows Christmas trees.

But Johnson, who owns a tree farm near Crossnore in Avery County, wasn't hunting just any Christmas tree.

He had to find a tree that was just the right size, shape and color to fit in a corner of the Blue Room at the White House.

Johnson's search began in August, 1970, right after he became the first southerner to win the National Christmas Tree Growing Contest. In so doing, he won the "dubious honor" of selecting President Nixon's Christmas tree.

But Johnson had been growing trees for only 10 years and didn't have any of White House caliber.

After a year's search, Johnson, aided by the N.C. Christmas Tree Association, found the tree he was looking for—a 20-foot Fraser fir—on a neighbor's farm.

"We'll cut the tree down Dec. 3," Johnson said, "and as far as I know it will go by truck directly to the White House."

Johnson will go up later for special dedication ceremonies.

But Johnson's tree isn't the only one grown in N.C. that will be displayed in Washington during the holiday season.

North Carolina will provide a 63-foot Fraser fir for the White House lawn as well.

"This is the first time that both trees for the White House have come from the same state," Johnson said.

Calvin Coolidge started the practice of a national Christmas tree in 1924. Since then a different state has provided the national tree each year. Johnson's victory in the Christmas tree contest coincided with the state's turn to provide the tree for the White House lawn.

The national tree is located in Pisgah National Forest southwest of Asheville and will be felled Nov. 19 with the help of a big crane, according to A. Daylon Rogers, president of the N.C. Christmas Tree Association.

The tree will be wrapped in burlap and hauled by truck to Asheville, Charlotte, Greensboro and on to Raleigh for a state ceremony Nov. 28.

The big tree will be on display at Friendly Shopping Center here Nov. 26 and 27, prior to shipment to Raleigh.

From Raleigh, the tree is hauled by truck to Washington.

A second big tree will be sent directly to Washington in case the main tree is damaged in transit. Limbs from the second tree will be added to the main tree as needed.

Rogers said the national tree and Johnson's tree for the Blue Room are guarded around the clock.

"If they weren't guarded," he said, "we wouldn't have a national Christmas tree."

[From the Asheville (N.C.) Citizen, Nov. 21, 1971]

WNC CHRISTMAS TREE STARTS JOURNEY

(By John Parris)

BEECH GAP.—The 1971 National Christmas Tree, a giant Fraser Fir that stood here in the mile-high wilds of Pisgah National Forest, is on its way to Washington where it will stand on the White House lawn.

Jack Hennessee, a 41-year-old lumberman who chopped down his first tree at the age of seven, severed the 63-foot balsam from its trunk at mid-morning Saturday, and by sundown it was rolling down the mountain by truck on the first leg of its journey.

With a Homelite chain-saw, manufactured in North Carolina, he took just a dozen minutes to cut through the three-and-a-half-foot thick bole, while a giant crane held the tree in a special nylon sling to prevent it from crashing to the ground.

Then, as the crane slowly swung the suspended tree up over a steep bank to the base of operations on an old railroad logging bed, Hennessee brushed away the sawdust from the stump and began counting the age rings.

When he finished, he stood up and there was a big grin on his face.

"What do you know?" he said. "Me and this tree started out life together. I count 41 rings. And that's my age, too."

Meanwhile, workmen from the McLeod Trucking and Rigging Co. of Charlotte, hooked up a second crane to the tree trunk and lifted it into the air.

Then, suspended between the two cranes, the tree was lowered so that Hennessee could take his saw and trim off a few of the skimpy limbs.

With the necessary pruning done, Bob Vodak of the Mead Corp. plant at Sylva and two of his company's veteran woodsmen—Burnsville natives Ralph Thompson and Garville Honnicutt—moved in with ropes to begin tying down the limbs to protect the tree on its journey.

They began at the tip and worked toward the trunk. Half a dozen others from the McLeod company's crew joined in the tedious work.

By mid-afternoon, the last limb had been tied down. Then the bound balsam was lowered gently to rest on special cushioned racks atop an extensible trailer with a drop deck.

There was a slight overhang, making the overall length of the truck and cargo 80 feet, and the height of the tree 13 feet six inches.

Meanwhile, Hennessee had cut a four-inch thick slab from the tree stump. Officials of the State Museum in Raleigh had requested the slice for display and a reminder to future generations that North Carolina had provided the 1971 National Christmas Tree.

The giant balsam, native only to the highland forests of Western North Carolina where it was discovered more than 180 years ago by a Scottish plantsman named John Fraser, and whose name it bears, was originally scheduled to be cut Friday.

Rain and fog delayed the operation until Saturday morning, when a cold front moved through and cleared the skies and brought out the sun.

When Hennessee, president of Hennessee Lumber Co. of Sylva, arrived to do the cutting, the temperature was in the low 20s, ice fringed the banks of the west fork of the Pigeon River which he had to ford, and the narrow dirt track leading to the tree was frozen solid.

A brisk wind was blowing across the high tops, and at times it shook the giant balsam. There was some concern that the wind might create a problem, but it died down when the operations got under way.

The wind did give a few good puffs during the cutting, but guy ropes that had been attached to the lower part of the tree kept the big evergreen steady.

"It couldn't have gone better," Hennessee said, as the big truck and its load moved out onto the paved highway. "Everything worked just perfectly. And everybody did a great job."

Even so, there was one more thing to be done to prepare the tree for its 550-mile trip to the nation's capital.

It still had to be wrapped. "They'll be doing that Sunday," Hennessee said. "They are planning to go into Asheville tonight (Saturday) and they'll do the wrapping there tomorrow."

[From the Waynesville (N.C.) Mountaineer, Nov. 22, 1971]

NATION'S TREE WILL BE DISPLAYED HERE TUESDAY

Haywood County residents who want a look at the Fraser fir they're presenting the nation as its official 1971 Christmas tree can view it Tuesday afternoon and evening at Waynesville Plaza Shopping Center.

The 63-foot, almost perfectly formed evergreen was cut Saturday morning in freezing weather on the West Fork of Pigeon River in Pisgah National Forest. It was transported by truck to Asheville Saturday evening, wrapped Sunday in burlap to protect it on its 550-mile journey to the nation's capital, and placed on display at an Asheville shopping area today.

Orville Brouer, executive secretary for the Waynesville area office of the Greater Haywood Chamber of Commerce, spent much of his time last week trying to convince people in charge of the project that since Haywood is contributing the tree it should be displayed here. Commercial interests involved were reluctant to share it. He finally succeeded, and it will be returned here Tuesday afternoon for the half-day exhibit before being moved back to Asheville for its last showing there Wednesday.

It is scheduled to be shown in Charlotte, Greensboro, and Raleigh where it will be given an official send-off to the nation's capital by Gov. Bob Scott Sunday.

Nobody yet has had anything to say about the Tar Heel Democrat governor presenting the tree to a Republican president. After all, it's the Christmas season, and campaigning won't really become serious until next year.

President Nixon will light the tree, to be erected on the White House lawn—braced in a six-foot deep hole, in traditional "Pageant of Peace" ceremonies on December 16.

The fir, 63-feet tall but much younger than foresters had estimated, is a dark green, perfectly colored example of its specie. It was fertilized twice last summer to make sure it would be. Brush and small trees around it were cut back, insurance against their being blown against the giant fir and the risk of damaging its shape.

Eugene McCall, the assistant Haywood County farm agent who found the tree growing beside Shining Rock Road on the West Fork, counted the rings on the stump after the tree was cut. It is only 41 years old. Estimates varied between 50 and 75 years of age before cutting, based on the tree's height. The specie normally averages about one foot of height per year of age.

But this fir, undoubtedly due to its location, grew almost 50 percent faster than the average. It sprang up beside a tiny brook from a mountainside spring which kept it watered continuously. Growing on the south side of the Pisgah range, it was sheltered from high winds, and the trunk showed only one wind split.

The tree's age knocked into a cocked hat the contention that the fir had somehow managed to escape the 1927 fire which destroyed virtually all vegetation in the section of forest where it grew. It did not sprout until 1930, three years after the fire and while President Nixon was still a teenager.

Mother Nature laid a fog blanket over the West Fork that was so dense crews assigned to fell the tree Friday morning postponed the job until Saturday. They could have cut it, but risk to the tree and crews would have been greater.

The major concern, however, was for posterity. Camera crews recording the event—films for school presentations, promotions for companies donating their services, and news media reports—were severely handicapped by Friday's fog and rain.

Saturday dawned clear and cold. Cameramen worried only about shutters sticking from the cold and the severe contrast between sun and shadow. Henry Hobson, McCleod Trucking Co. boss at the site, delayed cutting until light conditions were favorable for cameramen, although he was impatient to get on with the job.

"There may be some photographers wrapping this tree after dark if we don't get started," he joked.

Crews were saying Friday night that they were going to cut the tree "at first light Saturday no matter what." But that was flatlander talk from warm weather friends unfamiliar with early morning temperatures this time of year on the Pigeon. They were in no hurry at sun up.

Television and movie camera crews flown here to film the cutting also were surprised by low temperatures that left icycles hanging off rock formations at the site. Many of them came in tennis shoes. The loggers, however, knew better and tromped around in heavy boots . . . slower perhaps but warmer.

Cutting the tree took longer than anticipated, because the chain saw brought to do the job broke down a third of the way through.

Jack Hennessee, a 41-year-old lumberman, pushed the saw into the trunk about 9:10 a.m. Within an hour it had been severed and cranes had lifted the tree out of the depression where it grew to a nearby roadbed.

Cables were not allowed to contact the tree's bark. It was wrapped with quilted cloth and nylon straps to prevent scarring.

Bob Vodak, a Mead Paper Co. crew chief from Sylva, supervised tying down the branches, securing them so the tree could be hauled by flat-bed truck out of the forest. They finished about mid-afternoon.

While they worked, Hennessee sawed a four-inch slab from the stump for the N. C. State Museum. It will be displayed as a reminder to Tar Heels that they furnished the nation's Christmas tree for the White House lawn this holiday season.

County Farm Agent Virgil Holloway helped map out the tree's route to Asheville. It was complicated by paving along Interstate 40 around Canton and by heavy traffic in the downtown area. They finally decided to take the tree through the paving project, avoiding the Canton traffic, after permission had been secured from the contractor. State Highway Patrol Sgt. O. C. Brock of Hazelwood arranged a convoy.

Truck and cargo were 80 feet long and 13 feet high.

The tree will be guarded continuously until it arrives at the White House as a precaution against over-zealous souvenir hunters.

After Christmas the tree will be sawed up with the pieces to be shipped back to N. C. They will become mementoes for the people who have had a hand in the two-year long project.

SECRETARY OF AGRICULTURE BUTZ TAKES FAST ACTION OF BENEFIT TO FARMERS

Mr. TOWER. Mr. President, I wish to commend the new Secretary of Agriculture, Dr. Earl Butz, for his rapid action upon taking office in behalf of the American farmer.

His nomination was confirmed by the Senate last Thursday, and Dr. Butz was sworn into office at 5 p.m. the same day. The very next day he took two actions of benefit to farmers. If this in indicative of the kind of Secretary we have in Dr. Butz—and I hope that it is—then we indeed have not only a spokesman but an activist for the American farmer.

Last Friday, less than 24 hours after taking office, Secretary Butz announced that his Department would purchase corn on the open market. This step should help to raise the price of corn and feed grains which are left in the market. Secretary Butz also announced that the reseal of loans on stored rye will be extended beyond the April 30, 1972, loan maturity date. Both of these actions will contribute to the agricultural economy.

But most importantly, I hope that these actions may be taken as harbingers of a lasting agriculture policy designed in the best interests of the farmer and rancher.

Secretary Butz has already begun to work for the farmer. I congratulate him on his immediate attention to the needs of the American farmer, and I hope that we may take these actions as indications of this full tenure as Secretary.

DR. WERNHER VON BRAUN, AUTHORITY ON SPACE

Mr. ALLEN. Mr. President, Dr. Wernher von Braun, former Director of the Marshall Space Flight Center in Huntsville, Ala., has rightly earned a worldwide reputation as an authority on space. His name is a household word.

His enthusiasm, imagination and managerial genius were, in large part, responsible for the ability of the United States to catch up with and move ahead of the Russians in space exploration.

In Parade magazine of Sunday, December 5, 1971, Dr. von Braun has written "How the Space Program Is Helping You." There can be no question of Dr. von Braun's credentials in this subject, and I believe that reading his article will be of value to all Americans, and especially to the critics who refuse to accept the fact that the money we have spent on space has been more than repaid in usable, earthly products and services. Mr. President, I ask unanimous consent that Dr. von Braun's article be printed in the RECORD.

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

HOW THE SPACE PROGRAM IS HELPING YOU

(By Wernher von Braun)

(EDITOR'S NOTE.—Some Americans question the wisdom of our multibillion-dollar space program. They ask: What do we get out of it? Here is the opinion of NASA's associate administrator, former director of the Marshall Space Center at Huntsville, Ala.)

Space flight is expensive. Thus you may not believe me when I say that the benefits have already far exceeded the costs. And much more is yet to come. Let me give a few examples.

Until about 10 years ago, a favorite target of comedians was the weatherman. Today he is usually right. Why? Because satellites in the sky look down at the whole earth and tell him what the weather will be.

Hundreds of thousands of lives have been saved by accurate predictions of the course of hurricanes. For example, the U. S. National Oceanic and Atmospheric Administration has estimated that 50,000 people would have died when Hurricane Camille hit the Gulf Coast in 1969 if they had not been evacuated. The warning was possible because of satellite pictures. How do you put a price tag on that?

Projected experiments give promise of weather forecasts accurate for up to two weeks. A National Academy of Sciences report estimates the U. S. will benefit by billions of dollars a year in farming, construction, transportation and preventing flood and storm loss. A bit farther in the future is the exciting concept of tests in weather modification and control.

Or how about communications? Today satellites carry about half the world's international telephone, telegraph and television load. The prospects are so good that many companies and government agencies here and aboard are trying to get into the satellite communications business.

COMPUTERS BOOM

Or take computers. The demands of space flight pushed computer technology forward so fast that it is an $8-billion-a-year industry that employs more than 800,000 people.

Thousands of new products and industrial processes have been introduced as the result of the space program. They include long-wearing paints, metal alloys, electronic components and industrial tools as well as devices and techniques useful in medicine and in our daily lives. Coming into use are instruments developed for space research and adapted to combat pollution and to protect the consumer.

What is yet to come? With the help of special reflectors for laser beams placed on the moon by our astronauts, astronomers all over the world are measuring the distance to the earth to accuracies of inches. With these measurements they can detect wobbles in the earth's rotation. The knowledge of when these wobbles occur may help to predict earthquakes. Such warnings would reduce the toll in lives from earthquakes just as they have from hurricanes.

PROBLEM SOLVING

In 1969, a group of leading scientists reported to the National Academy of Sciences that there are a number of ways that space technology can contribute to human welfare and solve some of the world's problems.

Let me tell you about some of these things. One is navigation. The U.S. Navy already uses satellites to pinpoint the location of its ships and submarines. They provide a considerable improvement over the time-honored method of navigation by the stars, which cannot be followed when the sky is overcast. U.S. and European government agencies are now considering the use of navigation satellites to increase the safety of flight in the crowded air lanes over the Atlantic.

Potentially, the most useful of all the applications of space flight is to observe and measure the resources of the earth, to help manage them properly and to deal with the problems of the environment.

For example, aerial observations in New York City have shown it is possible to detect, measure, and map water pollution. An instrument developed by NASA can detect and determine the size of oil slicks at sea. And with slight modification, weather satellites can report worldwide air pollution.

Scientists at Purdue University measured from the air the widespread infestation of Midwestern crops by a rare fungus blight. Off the coast of Iceland, airborne infrared sensors found the new location of the Gulf Stream, which had meandered a considerable distance. This enabled fishermen to continue hauling good catches.

Photographs of the Saudi Arabian desert from Gemini spacecraft identified hills of the type that often indicate the presence of large reserves of oil and natural gas. Similar indications were found in pictures of Australia taken from Mercury spacecraft.

SATELLITE USES

By the end of the decade, we can expect satellite systems to:

Monitor the results of international efforts to protect the environment.

Support the planning and allocation of world food suppliers from agriculture and the oceans.

Aid the search for oil and mineral reserves.

Track glaciers and ice floes.

Keep track of the distribution of wildlife as well as human habitation.

Support disaster warning systems and search and rescue operations.

But all of the uses of space flight depend, of course, on the cost. In 1958, the first U.S. satellite, Explorer 1, cost more than $100,000 a pound to place in orbit. When we use the largest present launch vehicles, the cost now is less than $1000 a pound. But we can do much better than that.

Technology now makes it possible to return entire space vehicles from orbit and use them again. As a result, U.S. industry and government are working on a vehicle that can be flown 100 times or more before it wears out. It is called the Space Shuttle, and it should cut the cost to about $100 a pound. It will take off vertically like a rocket and land horizontally on a runway like an airplane, avoiding the cost of recovery at sea by ships, aircraft, helicopters and frogmen.

SERVICE IN SPACE

Even larger savings will result in the satellites themselves. At present, most of the expense of building satellites is for repeated tests to make sure they will work properly in space. There are no service stations up there. As a result, we pay around $20,000 a pound to manufacture and test them. Some are even more expensive. With the Space Shuttle, we will return them to earth for periodic maintenance, repair and reconditioning and eliminate most of these costs.

The Space Shuttle will have a large cargo bay that can be converted to a passenger compartment. The acceleration forces will be limited to three times earth gravity, so that passengers in ordinary good health can be carried. They will include scientists, technicians, television crews, journalists, and many other kinds of people who have business in space.

DOCTOR GOES, TOO

On the 1973 flights in the Skylab experimental space station, a medical doctor will go into space with the astronauts. He will carry out a comprehensive program of experiments. The aim will be to establish how well men live and work in weightless conditions in an

enclosed space as big as a three-bedroom house. The first flight is planned to last four weeks. Later flights will extend this to eight weeks.

As I have indicated earlier in this article, people on earth can realize many benefits from the use of space flight in the years to come. With low costs and detailed knowledge of how human beings go about their daily business in the space environment, we can achieve these benefits in a few years and make them available to people everywhere.

NURSING HOMES

Mr. MONDALE. Mr. President, on November 29 I participated with the Senator from Utah (Mr. Moss), the chairman of the Aging Committee's Subcommittee on Long-Term Care, in hearings on nursing homes in Minnesota. I am pleased to say that Minnesota appears to be doing a better job in providing nursing care than most other States. Unfortunately, however, a number of nursing homes seem to be providing care which can only be described as deplorable.

Several perceptive editorials were published in St. Paul and Minneapolis newspapers following the hearings. On December 1, the St. Paul Dispatch observed in an editorial—

If you believe half of the testimony . . . then you must feel some anger and shame.

The Minneapolis Tribune, on December 2 observed that, along with the better nursing homes—

Too many inferior ones still exist; that examples of poor patient care, poorly equipped facilities and slipshod maintenance are all too abundant.

The Tribune called for "a more effective system of public inspection and controls."

Mr. President, I ask unanimous consent that the editorials be printed in the RECORD.

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

[From the Minneapolis Star, Dec. 3, 1971]

NURSING HOME WOES

The one-day hearing conducted by two United States senators told us more than anyone wants to believe about nursing home conditions in Minnesota but not enough about what needs to be done to change them.

The nature of a one-day hearing is such that the problem can be portrayed only in the broadest way. It isn't possible to determine whether every specific allegation of malfeasance and nonfeasance can be substantiated.

Yet there can be little doubt, given the volume and nature of the testimony, that some nursing homes in Minnesota are not as good as they ought to be and that the inspection process and tools intended to assure adequate levels of care simply are not working.

Why they aren't working and whose fault it is were left largely unanswered by the hearing. And the severity of the charges warrant a more extended study by state, rather than federal, legislators.

In addition to the horror stories unfolded at the hearing, it is alleged that the legislature has not appropriated enough money for inspection personnel. There are contentions that the federal approach is hopelessly fragmented. It is charged the system has built in financial incentives for poor care. There are questions about what kinds of powers the state should use to punish improper nursing home operations. These are the kinds of issues which a legislative examination during the interim ought to be able to sort out.

Meanwhile, the burden upon the doctors and relatives of people confined to nursing homes has been enormously increased. They can and must do more to assure themselves that their nursing homes patients are not suffering the kind of abuse described in the hearing.

[From the Minneapolis Tribune, Dec. 2, 1971]

NEGLIGENCE IN NURSING HOMES

Attractive new nursing homes have been going up rapidly in Minnesota for nearly two decades. As facilities have improved, greater professionalism has developed in the nursing home business. Medicare and broader insurance plans have brought more exacting standards for the institutions. Families of the ill and elderly in need of nursing home care have become more hopeful about finding well-run establishments.

But each new expose, each event such as Sen. Moss's subcommittee hearing this week in St. Paul, reveals once more that all is not well in many Minnesota nursing homes—that along with the better ones, too many inferior ones still exist; that examples of poor patient care, poorly-equipped facilities and slipshod maintenance are all too abundant.

Why the discrepancy between progress and problems? Why do the depressing tales keep recurring?

Basically, nursing homes are in a difficult, often discouraging, business. Good help is hard to get, and staff turnover is frequent from administrators to aides. Improvements urged by inspectors and consultants are usually expensive. Admission of Medicare patients brings a flood of frustrating paperwork.

The state inspection staff—which tries to make two unannounced visits a year to 700 facilities, conducts reviews for Medicare and Medicaid certification and holds informative workshops for nursing-home personnel—consists of only 14 full-time workers. Officials have asked for 45, but the Legislature has repeatedly turned down such requests. The federal government, which pays full cost of certification of nursing homes admitting Medicare patients and 75 percent toward checking those admitting Medicaid patients, says Minnesota is not doing enough.

Another problem is the lack of satisfactory written standards to which inspectors and nursing-home operators could refer. Specific federal guidelines, awaited several years, have still not been issued. State regulations in use were written in 1952; however, revisions have been prepared and may be approved soon by the state Board of Health.

Even without frequent government inspection, nursing-home owners and managers have an obligation to their patients to maintain a high level of care in clean, well-equipped institutions. Many nursing homes in Minnesota do meet such standards, but too many still do not. So long as there are any nursing homes that neglect or mistreat patients, there should be a more effective system of public inspection and controls than now exists.

[From the St. Paul Dispatch, Dec. 1, 1971]

MAKING DO ON SWILL, FILTH, AND NEGLECT

(By William Sumner)

We really shouldn't need the presence of two United States senators to come to grips with the fact that our old people, in nursing homes, are being treated like animals in many instances. At a matter of fact, there are many of us Sumners who probably treat our animals better.

The ones getting the happy twilight in nursing homes are the old men and women on welfare and those of extremely modest means. In most cases, they are unable to care for themselves in matters of personal hygiene or cleanliness. Many are senile or feeble or both. They are not the easiest humans in the world to care for, but they are, really, humans and we like to think that we are several steps above the middle ages when it comes to our view of mankind.

Regarding the last, we no longer execute tots or adults for thefts or other annoyances but, rather, worry about the well-being and rehabilitation of criminals. As we should. We like to think we are concerned. We also live longer, and there are more of us to live longer, the Black Plague now being a matter of extremely remote concern. We don't leave our old folks out on icebergs or find other methods of putting them away. Also we don't appear to give a damn about them, which may be worse.

Various societies have through history, found one way or another to deal with their aged, some revering them and some, as noted, disposing of them. Either extreme seems more humane than letting them rot in their own filth, undernourished, yelled at and unable to fight back or give verbal protest to the indignities they suffer.

If you believe half of the testimony given to Sens. Walter Mondale of Minnesota and Frank Moss of Utah in St. Paul Monday then you must feel some anger and shame. Unfortunately, these old folks are good business, human pawns in an aberrant perversion of the free enterprise system.

Unfortunately, the answer too often is suggested by the headline in a Dispatch story yesterday. It stated: "White House Study on Aging Settles Down to One Issue—Money." Money for what? For profitable nursing homes? Or care for the helpless to near helpless aged?

More money no doubt would be of some help, but a large part of the problem is one of attitude. In this fast-paced, very mobile and very selfish and hedonistic age of ours these wretched old people are regarded as nuisances to be maintained with a minimum of discomfort—mental or financial—to the rest of us. The idea of family responsibility seems a dim memory. We concern ourselves with our pleasures and worry only about threats to them, threats such as fist-waving young snots in search of revolution or blacks in search of respect or the advances of middle age which manifest themselves in such forms as sagging muscles and pot bellies. We don't want to consider age or aging.

Two obvious solutions present themselves in the current problem which, as you might be aware, is not confined to St. Paul or to Minnesota. One is suggested by the headline cited. Another would be the establishment of state-owned and managed nursing homes. Neither seems to be a substitute for concern and compassion or, in the case of family, love.

Regarding the second solution, it may be the best if we want to get away from the notion of the elderly as a commodity and it would probably cost more money, which gets us into the first solution. But there is nothing I have seen to suggest that state management would be much better. If attitudes are not changed, our sick, feeble or senile old people will continue to live in filth and to live off swill.

Well, attitudes. You can't legislate them, and what have we in the meantime? Surely there must be some decent nursing homes which offer good care in sanitary conditions. We ought to hear about them and from them, for the two senators obviously got the worst of it in testimony. If there are any good ones we ought to learn why they are good. Apparently state inspection is a joke. We could insist on better performance here through surprise inspections rather than show and tell sessions prearranged through announced visits.

Meanwhile, it seems necessary to get away

from the concept of regarding these old folks as good businesses, one to be franchised like hamburgers or pizzas.

FOOD-TRADE QUESTION BECOMES WORLD THEME

Mr. DOLE. Mr. President, in November of this year the Food and Agriculture Organization—FAO—of the United Nations conducted its 16th biennial session in Rome, Italy.

Mr. Roderick Turnbull, public affairs director of the Kansas City Board of Trade and retired farm editor of the Kansas City Star, was one of the U.S. advisers to this year's session. A recent issue of the Kansas City Star contains one of his reports on the meeting from Rome. I ask unanimous consent that the article be printed in the RECORD to obtain wide distribution and to call attention to the present status of agricultural production. The article also contains some indications of future problems we may face in expanding export markets for our agricultural commodities.

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

[From the Kansas City Star, Nov. 28, 1971]

FOOD-TRADE QUESTION BECOMES WORLD THEME

(NOTE.—Roderick Turnbull, retired agricultural editor of The Star, now serving as director of public affairs for the Kansas City Board of Trade, recently visited Rome as an official U.S. adviser at a meeting of the Food and Agriculture Organization of the United Nations. Some of his observations.)

ROME.—A drift in world thought that could be tremendously important to the American farmer, the grain trade and all agri-business was in evidence here at the 16th biennial session of the Food and Agriculture Organization (FAO) of the United Nations. The 3-week meeting ended November 26.

What surfaced was that the under-developed nations of the world want export markets for their products and because they are primarily agricultural producers, they are talking about agricultural products.

This in itself would be of no great moment as trade in farm products has existed since one man was able to produce as surplus over his own family's needs. But the lesser-developed countries indicate much more than this. They are demanding access to markets in the industrialized nations and they say these markets should, in effect, be allocated to them as part of their development programs.

To put it bluntly, the lesser-developed countries were saying to nations like the United States: "You should produce less and thereby deliberately let us into your markets, and at prices which will give us a profit."

Of course, they didn't put it that bluntly. The key phrase here was agricultural adjustment. These are not new words for America, but they were given much wider application here than in the States.

In the United States, agricultural adjustment means primarily production control generally through acreage reduction. Among the lesser-developed countries at FAO it has meant increasing agricultural production access to new markets in the rich (developed) countries, employment for rural people and in general a better way of life for mankind.

FAO, which had its origin in the United States in 1945, serves as a forum for the nations of the world to discuss the international agricultural problems. Primarily, the problems have been of feeding the hungry.

The organization also has a budget which it can use in aiding needy countries through technical assistance. The regular budget is $86 million for the next 2 years. In addition it administers funds from other sources. Those funds have amounted to about $100 million a year during the 1970–71 biennium. The United States supplies about 31 per cent of the total funds. No other nation supplies more than 8 per cent.

FAO now has 125 member nations, with the lesser-developed countries far outnumbering those that are called developed. When reference is made to the developed or rich nations, usually the United States, Canada, Western Europe, Oreania and Japan are indicated.

Every member nation has a right to speak at FAO sessions and most of them take advantage of this privilege. The United States had the largest delegation made up of men and women from the Agriculture, State and Commerce departments, who are experts in their fields and knowledgeable in world affairs.

They are fully aware of the implications of the proposed world agricultural adjustment. That terminology, incidentally, is to be the theme of the next FAO biennial session to be held here in Rome in 1973. Americans should get used to the phrase, because it is certain to be a major world issue.

I attended 10 days of this year's FAO session as a member of the U.S. delegation, officially described as an adviser. Frankly, my participation consisted entirely of listening.

From listening to countless speeches in many tongues of the world (all translated into English) I developed certain conclusions. Admittedly, others more experienced in international affairs might have others which more accurately reflect the real feeling of the conference.

To me the primary trend in the session was toward the demand for access to markets in the industrialized nations. Ironically, in a session in an organization which I had assumed has at least the initial purpose of seeking ways to feed the hungry of the world, the priority at the 1971 session was on market outlets for the lesser-developed countries.

Yet hunger still exists and with the population explosion the problem may be compounded in years to come .The great current hope is in the Green Revolution, which for some countries, at least, is buying time.

But country after country—day after day, in the Rome session, in position statements, etc.,—told of plans first to become self-sufficient and then to enter the export market. In almost every instance, they referred to the access of markets as a right that should be accorded the poorer nations.

One of the basic reasons for the anxiety of the developing countries (and those trying to help them) to find markets at stable prices for the agricultural products they have for export is the projection that there will be an additional 400 million people in the rural areas of Asia, Africa and Latin America by 1985.

Unless ways are found to keep them on the land producing food either for domestic consumption or export, they will flock to the already-crowded cities with their masses of un- and under-employed. Many people—sociologists, economists, demographers—believe this trend could build up social and political pressures leading to violence.

Americans, steeped in the tradition of free enterprise, will find these proposals difficult to understand. They run counter to anything we ever have considered. After all, any country has the right to export if it can find a buyer at its price. Despite this tradition, there may be areas where the poorer nations can make a case. Europe, for instance, might produce more proteins and less sugar and let the tropical countries grow more sugar cane.

It is in such areas that discussions may take place in the years ahead. But the problem appears terribly difficult. Before the session here ended, the delegates from the lesser-developed nations were beginning to recognize some of those difficulties, but they knew they had planted seeds for world digestion.

At the same time some of the developed nations were indicating their reservations to the proposal.

When the chairman at one of the discussions recognized "the distinguished delegate from Germany," that delegate commented:

"I should like to warn against governments expecting too much from agricultural adjustment so we should define just what we mean and what will be discussed in 1973."

He added that agricultural adjustment was "a very important domain," but that "we must remain realistic." At another time he had said in effect Germany wasn't about to do anything that wasn't good for the German farmers.

The delegate from Italy followed with the comment:

"It is not an easy task to ascertain the meaning of agricultural adjustment. We remain skeptical."

Those two statements indicate what is ahead for the world in discussing the issue in the years of the future. Doubtless agricultural adjustment will mean one thing for the developing countries and another for the industrialized nations. Again, it will be difficult for the American farmer to acquiesce in the specific points made by the lesser-developed nations, though he may fully sympathize with their aspirations.

Incidentally, the U.S. delegation went on record as approving the agricultural adjustment as an appropriate subject for the 1973 conference, with the reservation or hope that clarification can be made of the objectives.

The scene of the FAO conference is the world headquarters of this organization here in Rome, a huge building in the ancient section of the city. It is surrounded by many of the historic places. From the roof garden plainly to be seen are the Coliseum, the dome of St. Peter's, the Palatine Hill, the Circus Maximus, where the Ben Hur type of chariot races were held. The FAO building itself is rather new, having been erected by Mussolini for his colonial ministries.

In what is called the Plenary Hall, the main sesions of the conferences were held. In other halls were held what were called commission meetings.

Each hall had at least three seats apiece for the delegations from the 125 countries and at each seat earphones were available for simultaneous translations into English, French, Spanish, Arabic and German.

It was surprising to me how many delegates, no matter from what country, read their statements in English.

For instance, a rather young delegate, J. E. Cooper undersecretary of agriculture in Liberia, spoke in English and he well demonstrated the plight of some of the lesser-developed countries.

He praised FAO for the help that had been given his country in the way of technical assistance and agreed that some progress had been made. But many problems remain to be tackled and he said: "we cannot do this alone."

"We are faced," he said, "with expanding populations, price distortion problems, low labor productivity, the increasing gap between rural and urban incomes, and urban bias in the provision of social services and last, but not least, our inability to feed ourselves adequately.

"We are told not to expand rubber production because of declining world prices for natural rubber, not to become self-suffi-

cient in rice production because with the Green Revolution we can import rice more cheaply, not to expand coffee production because of the ICO quota limitations, not to expand cacao production because of the uncertain price situation. What then should we do with the approximately 80 per cent of our population tied down in subsistence agriculture?"

Americans could sympathize with the Liberian's problems. But what to do about them? The answer for many of the developing countries seemed to be rather definite—the rich countries must buy what they can produce.

Said the minister of agriculture from Mauritius, a country which became independent in 1968. "It's high time that the existing international arrangements and agreements on commodities be strengthened, extended and reviewed so as to protect the export of primary products of developing countries." He added the developing countries will be able to accomplish little unless rich nations meet specific trade and aid targets.

A contrast to statements from some other countries was that from Israel whose minister of agriculture proposed that FAO aid should go to countries which demonstrate willingness and ability to help themselves and "do more than only look for assistance from outside."

Feeding the world remains a huge problem. Perhaps an even greater difficulty will be finding employment for all and in solving what are listed in the category of social problems.

THE REVEREND EVELYN MURRAY DUKE, "HAVENWOOD'S LADY CHAPLAIN"

Mr. McINTYRE. Mr. President, problems of the elderly have been brought into sharp focus in recent days by the White House Conference on the Aging.

This attention was richly deserved, for a reordering of priorities in behalf of the elderly is long overdue.

But while we are rightly concerned about national policies affecting the aging, we must not lose sight of the individual contributions already being made in community after community throughout the Nation.

People and programs at the local level play an extremely important role in the quest for a better life for our aging citizens. Today I invite the attention of Senators to the particular contributions of a truly remarkable woman, the Reverend Evelyn Murray Duke.

As the chaplain for Havenwood Retirement Village in Concord Heights, N.H., the Reverend Mrs. Duke has helped to solve one of the most crucial problems facing the elderly—housing.

Her many achievements were spotlighted recently in an article published by the Concord Monitor. As a tribute to Evelyn Duke, I ask unanimous consent that this heartwarming account of her dedication be printed in the RECORD.

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

[From the Concord Monitor, Nov. 30, 1971]

HAVENWOOD'S LADY CHAPLAIN

(By Gladys Harvey)

CONCORD HEIGHTS.—The Rev. Evelyn Murray Duke, chaplain at Havenwood Retirement Village since last July, received her Bachelor of Divinity degree in May, 1969, from Andover Newton Theological School, Newton Center, Mass., and on May 11, 1969, was ordained at the Dunbarton Congregational Church with Dr. Everett R. Barrows, N.H. Congregational Christian Conference Head, officiating.

She was affiliated at that time with Havenwood as Program director-counselor.

Born in Malden, Mass., Dec. 27, 1908, the Rev. Mrs. Duke graduated from Malden High School and attended Simmons School of Social Work. Following her graduation in 1931, she went to work with the Children's Aid Society in Boston, Mass., receiving a permanent appointment as a case worker for the Family Welfare Society in Providence, R.I.

In 1933 she married George T. Duke. He was also a graduate of Andover Newton Theological School and was dedicated to rural ministry. The first parish of his career was the Baptist Church of Bradford, N.H. Here their first child, a daughter, was born.

The Rev. Mrs. Duke's training in dramatic arts and participation in youth groups at the church, made her capable and available to take her husband's place in the pulpit at times when he was ill. From Bradford, the Dukes were called to Errol, N.H. Here, he became a congregational minister and their first son was born.

They moved to Thetford, Vt., then to Lyme, N.H., to what was called a yoked parish and included two parishes. Their second son and third child were born. All this time Mrs. Duke was busy teaching and giving elocution lessons in the home as well as visiting parishioners.

She was also busy learning to sew and bake bread, for a minister's salary was not large, she stated. During her ministry of calling on the sick, she decided to one day become an ordained minister. Her husband became seriously ill and their many friends started a fund for them. In 1957 they took up residense in Dunbarton and three years later he died. During their life there she had substituted many times for her husband and had started to study under Dr. Frederick W. Alden, who at that time was minister of the New Hampshire Congregational Conference. She also studied in 1958 in the N.H. Lay Preacher's Fellowship, often attending sessions at Pembroke Congregational Center. She continued to be a lay minister at Dunbarton and in 1960 the church called her to be its pastor. After serving there five years, she resigned, and went to Andover Newton to resume studies to become an ordained minister. She took special training at Community Village, Columbus, O., which is a development similar to Havenwood.

Even now the Rev. Mrs. Duke continues her education by taking a course every Monday morning at the Laconia State School, with a group of other ministers. The course is concerned with pastoral counseling, its director is Rev. William Zeckhausen.

THE EVERGLADES

Mr. PACKWOOD. Mr. President, one of the most gratifying developments in the environmental field this year has been the emergence of proposals that will remove the last major threat hanging over Everglades National Park.

National attention has focused on the fate of the Big Cypress Swamp, as a result of the jetport that was proposed to be built in the area. In 1969 an interdisciplinary study done by the Department of the Interior under the direction of the distinguished geologist Luna B. Leopold found that the Big Cypress is essential to the maintenance of the south Florida ecosystem, including the national park, the shrimp fishery in Florida Bay, and water for cities adjacent to the Big Cypress.

More recently, proposed oil exploration and drainage developments have put the Big Cypress in new jeopardy. It would be a cruel irony if—after all the effort, in Congress and out, to protect the Everglades—the battle were lost by acquiescence of piecemeal development of this kind.

The administration proposal would authorize Federal acquisition of the Big Cypress Swamp. The area, which already receives extensive public use, would continue to be open to hunting and fishing, and other uses characteristics of national recreation areas, and it would simultaneously serve the central purpose of water conservation. This is a new concept of conservation, tailored to the needs of the Everglades.

I heartily support this proposal, and I will be pleased to cosponsor legislation to implement it.

I ask unanimous consent that the text of the President's statement be printed in the RECORD.

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

BIG CYPRESS NATIONAL FRESH WATER RESERVE

(Statement by the President)

About 35 miles west of Miami lies the Big Cypress Swamp, a unique ecological preserve of paramount importance to the future of Southern Florida. In order to protect Big Cypress Swamp from private development that would destroy it, and to insure its survival for future generations, it is now essential for the Federal Government to acquire this unique and vital watershed. I will therefore propose legislation to acquire the requisite legal interest in 547,000 acres of the swamp.

The end of Big Cypress Swamp would not only severely cut back South Florida's water supply, but would also mean the destruction of the Everglades National Park—and with it the loss of a treasure-trove of natural resources, teeming with flowering plants, rare birds and other forms of uncommon and endangered wildlife. The swamp's huge stands of cypress, wet prairies, and slightly higher islands of pine trees are together an essential link in the ecology of both Everglades National Park and the rich Floridian estuaries of the Gulf of Mexico. Animals and birds move between the park and the swamp without knowledge of the artificial borders drawn by man.

This land acquisition will mark the fourth time this administration has taken steps to protect the unique natural resources of South Florida. First was the halting of the commercial jetport proposed in Big Cypress, which would have wrought irretrievable damage to the area. The pledge to locate the jetport elsewhere has given us time to examine again alternative plans for the survival of the swamp. Second, through the 1970 Rivers and Harbors Act, the Eastern portion of Everglades National Park has, for the first time, been assured an adequate supply of water. Third, by legal action, the administration has halted the threat of destruction from thermal pollution to Biscayne National Monument, one of the newest units of the National Park System, thus assuring the preservation of an important ecosystem next door to Miami.

My decision today is intended to secure the future not only of the Big Cypress, but also of an adequate water supply for the western part of Everglades National Park. This action will also assure an adequate water supply to the growing communities on Florida's west coast, because the swamp is a natural water storage area.

To guarantee the continued availability of Big Cypress to the people, I propose that, upon acquisition of those private lands whose development would destroy the watershed, the Secretary of the Interior be authorized to enter into an agreement with the State of Florida for the management of Big Cypress. The State is in the process of acquiring other public areas nearby and is the logical agency to provide single unified management. The Nation, as a whole, will benefit through the protection of Everglades National Park and through the addition of another major wildlife haven and recreation area.

NEED FOR MORE RATIONAL FOREIGN AID PROGRAM

Mr. MONDALE. Mr. President, we all know how much both the objectives and the results of the U.S. foregin aid program have been under fire recently.

Some of us have criticized military aid. Others would have us cut back economic aid and our contributions to the United Nations. But there can be little dispute that we have shortchanged one way or another the needs of millions of people living in the developing countries. In many recipient countries, conditions among the people have often gone unimproved after 20 years of U.S. aid.

There is just no question that we have to build a new, more responsive and more rational foreign aid program.

My distinguished colleague from Minnesota recently contributed a thoughtful speech to this vital debate.

Senator HUMPHREY stresses the building from the grassroots of an essential and strong cooperation between the people of the United States and the people of underdeveloped countries.

I commend to Senators a careful reading of Senator HUMPHREY's remarks in Columbus, Ohio. In his own words:

Those who say that America no longer has any self interest or moral obligation to continue foreign aid are gravely mistaken. We live in an international community and we should seek to improve it peacefully. We should not turn our backs and refuse to assist economic and social progress in the rest of the world.

If we are to renew foreign assistance, if we are to succeed in our efforts to conquer hunger throughout the world, our programs will need a new emphasis—an emphasis on assistance at the grassroots people level.

I ask unanimous consent that the text of Senator HUMPHREY's address to the Community Hunger Appeal of the Church World Service, be printed in the RECORD.

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

COMMUNITY HUNGER APPEAL OF CHURCH WORLD SERVICE

(Remarks by Senator HUBERT H. HUMPHREY)

This occasion marks the twenty-fifth anniversary of the work of Church World Service to combat hunger throughout the world through CROP.

Through your voluntary efforts you have made significant contributions, not only toward better conditions and hopes for development for hungry people abroad, but also toward greater understanding and public support for the war on hunger here at home.

But in paying tribute to your efforts for the past quarter of a century, I would like to suggest that your task has only just begun:

The challenge you face is heightened by last week's Senate action in refusing to extend the Foreign Assistance Act.

I deeply regret this action. I believe it ignores the constructive and positive efforts of the overall program.

We should not forget that the Foreign Assistance Act this year included $368 million in technical and economic assistance, $250 million for Pakistan famine relief, and $139 million for voluntary United Nations agencies.

We should not forget who would receive that assistance. Much of it would go to help the over nine million Pakistan refugees in India. The technical assistance would go to developing nations whose continued economic and social progress greatly depends upon this kind of constructive effort. United Nations agencies, such as the United Nations Development Fund, cannot continue their on-going programs without U.S. contributions.

The National self-interest and moral obligation which originated our foreign assistance programs are no less real today. Two-thirds of the world's people live in the less developed countries, but they share only one-eighth of the world's production of goods and services.

The gap between the have and the have-not countries remains tremendous—and dangerous.

The average annual gross national product in the non-Communist industrialized countries is about $2,850 per person. But in the underdeveloped countries it is just over $200.

In these underdeveloped countries, misery, despair, and hostility prevail. In some of these countries as many as one half of the children die before they reach the age of five—from malnutrition and disease.

In some of these countries there is only one doctor for every 20,000 or 30,000 people, compared to one for every 700 people in the United States. In these countries 300 million school age children get no schooling. Two-thirds of the adults remain illiterate.

We should not forget that the United States invests less than one half of one percent of its gross national product while eleven other developed countries now surpass us in their assistance levels.

The Senate's vote to kill the AID program resulted from a variety of concerns which have developed in the Senate.

Many of us are concerned about the Administration's policies in South Asia. We regret the President's failure to complete the withdrawal of our forces from Indochina. And we want to register our opposition. I did so along with other Senators, by voting for amendments which would have bound the President to make expenditures only for complete withdrawal within a period of six months from the enactment of the bill. Regrettably, this amendment did not pass.

Only the Mansfield Amendment with a six month deadline passed. But the essential point is that it did pass.

By voting down the AID bill, the Senate also voted down the Mansfield Amendment. Similarly, it voted down amendments which would have effectively restricted military operations in Cambodia and Laos.

Some Senators were disturbed by the expulsion of Taiwan from the United Nations and registered their protest by voting to end AID programs.

Many Senators believe that bi-lateral assistance is unwise and that we should concentrate on multilateral programs.

Only a few days ago, the Senate voted contributions to the International Development Association, the Inter-American Development Bank and the Asian Development Bank. All these are multilateral institutions.

Surely we can and should do more in this regard, but at the same time, we must do something to carry us over while the reform of our foreign assistance program is underway.

Those who say that America no longer has any self interest or moral obligation to continue foreign aid are gravely mistaken. We live in an international community and we should seek to improve it peacefully. We should not turn our backs and refuse to assist economic and social progress in the rest of the world.

Certainly, one of the reasons the Senate voted against extending the Foreign Assistance Program was the belief that our aid too often fails to reach the people who most need help.

If we are to renew foreign assistance, if we are to succeed in our efforts to conquer hunger throughout the world, our programs will need a new emphasis—and emphasis on assistance at the grass roots people level.

Such an emphasis and direction could revitalize our interest and concern and bring positive gains and hope to the hundreds of millions who now suffer hunger and poverty in the developing nations.

First we must recognize the fact that hunger cannot be conquered simply by providing food for hungry people—although that is important.

Nor can it be conquered by developing ways to produce more food—although that, too, is important.

The conquest of hunger can be achieved only by attacking its causes, which include such factors as poverty, ignorance, over population, underdevelopment, violence and war.

CROP's history, its activities and its philosophy testify that it has always looked at hunger in this broad context.

During the '60s we became aware of the population explosion and of its grave import, especially from many of the newly developing nations. This sparked a new consciousness of a world hunger crisis, and the nation was aroused to launch a "war on hunger" and to assume worldwide leadership in mobilizing forces and resources to fight that war.

Under our Food-for-Peace program we have provided billions of dollars worth of foodstuffs from our own agricultural abundance to people in the hungry nations—to help meet emergencies, prevent famine, upgrade levels of nutrition, provide food-for-work, and inaugurate school lunch programs.

We developed a new determination to go much further than simply providing food for the hungry by attacking the more fundamental causes of hunger, and by helping people in the hungry nations to achieve a higher level of economic development so that they could produce or purchase more food for themselves. We led in international, multilateral efforts, through such agencies as the FAO, the UNDP and UNICEF to help in the war on hunger.

Much has been accomplished. But it would be foolish to say that the war against hunger has been won.

One of the problems we face today is that there seems to be a diminishing public concern about world hunger. And one reason is that on the surface, at least, we appear to be well-fed here at home—in this abundant land where the average per capita consumption of calories is often too high for our own good.

We know that hunger and malnutrition in the United States is not due to the lack of availability of food. It is due rather to ignorance and poverty.

Hunger in America is not due to any lack of efficiency on our farms, or in the business of handling and processing foods, or even to the high cost of food in relation to incomes. The latter is the lowest in history.

Rather it is because we have not yet succeeded in establishing social, political and economics under which poverty and deprivation—which result in hunger—have been conquered.

In recognition of the importance of nutrition and nutrition education here at home.

I recently introduced a bill to establish a universal child nutrition and nutrition education program in this country.

My bill would provide that every child in school or in a day-care program would receive at least one free meal a day, thus eliminating the economic caste system which has been built into the present program.

Even in this wealthy country of ours, with its agricultural abundance, we reach only half our school children through the school lunch program.

Some 23,000 schools offer no program at all, and that excludes 10 million American children.

I believe that good nutrition is as basic as good schools, good textbooks and good teachers. And we should make provisions for good nutrition on the same free, universal basis that we provide other school necessities.

We cannot overemphasize the need to bend every effort to eliminate poverty at home. But I am equally convinced that the neglect of hunger abroad can in no way contribute to that end. A continued widening of the gap between standards of living in our own country and in the poor nations of the world could have an explosive potential as serious as that of the world's nuclear stockpiles.

The conquest of hunger and poverty is a goal that must be sought on a world-wide scale.

I believe a new emphasis and a new direction for our foreign assistance are essential to rekindle public interest and support for such a program. I believe that the foreign aid program of the United States should be oriented and organized specifically and directly toward the conquest of hunger and poverty at grass roots levels throughout the world.

I believe we should talk more about the numbers of people raised from the depths of misery and deprivation than about increases in Gross National Product.

This would mean that our aid programs would be designed to benefit directly those at the lowest economic levels in the poor countries.

My philosophy has always been that benefits should "percolate up" rather than "trickle down."

Too often our aid to governments has failed to trickle down.

Too often programs that may have succeeded in helping to bring about an increase in the GNP have so concentrated their gains at the top of the economic ladder that they almost completely evaporate before they can trickle down to the peasants and the campesinos and the unemployed in the city slums.

The GAP between rich and poor in the poor countries themselves has widened—and the threat of unrest and violence has intensified.

This new emphasis in our aid policy would mean that a very high proportion would be directed to the villages and the rural areas, where most of the poor still live in the newly developing countries.

It would need to be specifically geared to combat the unemployment that is reaching staggering proportions in much of the world.

Aid directed specifically to the grass roots, aimed against hunger and poverty where they exist could raise the level of living of the great majority of the poor and benefit the entire economy by expanding markets and trade.

Aid to the agricultural sector is of paramount importance. But it must be designed specifically to reach the millions of peasants and campesinos who cultivate the soil, rather than the landowners.

It should be accompanied by provisions for supervised credit for the farmers themselves, and technical assistance in farming as well as in organizing cooperatives for marketing and supply.

For countries wanting such assistance, the program should include help in the whole spectrum of improvement in the agricultural and agribusiness sector in order that a real impact could be made in improving incomes and levels of living.

Another way to direct aid more specifically to the grassroots would be to expand our use of private, voluntary agencies in their people-to-people programs—in the cities as well as in rural and village areas.

American voluntary agencies have long since progressed beyond merely providing food for the hungry. They have launched and carried out successful development efforts. They have helped in family planning programs—which certainly have a direct bearing on the conquest of hunger and poverty.

But voluntary agencies could do a great deal more. And I believe our public aid policy ought to encourage and assist much greater private participation, especially directed to providing grass roots benefits.

We also could do more toward the building of cooperatives as a method of directing the benefits of development to the grass roots.

Ten years ago I sponsored an amendment to the Foreign Assistance Act of 1961 incorporating in our foreign aid program assistance to cooperatives, credit unions and savings and loan associations.

While the Agency for International Development has given proportionately little attention to this field, some significant progress nonetheless has been made.

American cooperatives have voluntarily contributed a million dollars to the building of a large, modern fertilizer plant owned by farmer cooperatives in India, for example.

Assistance in the development of credit unions in Latin America has resulted in a directed agricultural production credit program through which poor campesinos have been able to double their incomes in only a few years.

It is in the cooperative tradition to organize to meet needs at grass roots levels, and to leave the wealth that is produced among those who produce it.

Under conditions that prevail in many countries today there is a growing suspicion of private enterprise as represented by the huge multi-national corporations that have become so important in international economic growth.

Justifiably or not, such enterprises are often regarded as a new and engulfing form or imperialism and exploitation.

At a time when their potential contributions are most needed, and when business leadership is far more enlightened and development-oriented than ever before, conventional business institutions frequently face growing resentment and opposition as they try to expand in development countries.

In such places, cooperatives may be the one segment of the private sector through which development efforts would be welcomed. The role of cooperatives as a tool for grass roots development could thus be substantially enhanced.

Finally, I should like to suggest a major expansion of these aspects of our Food for Peace Program that specifically meets the new emphasis that I am proposing—that directly attack the causes of hunger and poverty at the grass roots level.

Our massive food aid programs in the past have enabled us to use our vast agricultural productivity to help millions of people, by relieving hunger and suffering and promoting development throughout the world.

But certain factors, however, have limited the expansion of that part of our Food for Peace program that is carried out by means of concessional sales for local currencies. These sales to recipient governments operate from the top down, and their benefits do trickle down.

Their volume, moreover, must not be so great that the increased availability of food grains lowers prices to local farmers and serves as a disincentive to improved agricultural development in recipient countries.

And the policy of increasing the portion of the payment that must be made in dollars limits the capacity of the recipient countries to use this form of aid.

Food aid for school lunch programs has been developed successfully in several of our Food for Peace donation programs. Such food aid is "additional."

Far from competing with local farmers, it builds expanding markets for them by providing for a "phase out" period during which our aid will gradually diminish as local efforts take over.

By furthering literacy and encouraging educational development it strikes at root causes of hunger and poverty. It can directly reach the masses at the lower economic levels.

Perhaps the most constructive impact of an appropriately expanded Food for Peace program in the immediate future lies in its potential to relieve the burgeoning problems of unemployment that today threatens most of the newly developing countries.

Our own problems of unemployment here at home are alarming. But consider the 20 and 25 percent rates of unemployment that are common among the urban labor force in the overcrowded cities of newly developing nations.

Today, within the newly developing nations themselves, the concern for hunger is outranked by the concern for the masses of unemployed crowding into their cities.

The magnitude of the problem has become so great and its consequences and potential dangers so apparent that they must try to develop policies that will meet the unemployment problem before it erupts into further misery, violence and revolutionary disruption.

In the search for policies to halt this trend and to provide constructive employment in newly developing areas, one approach offers hope for reducing unemployment without too great a burden on capital investment and in a relatively short period of time.

That calls for the development of massive public works programs in both rural and urban areas. The building of public facilities and roads, the construction and rehabilitation of irrigation ditches and wells, reforestation and many similar programs have much to offer.

Such programs could reduce unemployment. They could provide jobs and incomes for millions at the lowest economic level, thus raising demand and "percolating" up to help the entire economy.

Employment is the best single indicator of how many people share in progress. And improved employment opportunities would make a real inroad against hunger and poverty.

They would slow down, and perhaps even reverse, the flight to the cities. They would bring renewed hope to millions and help to solve the complicated and threatening political and humanitarian problems caused by the unbelievably crowded conditions as people without work move into urban slums.

What better use could be made of the surplus productive capacity of American farms?

The new emphasis I propose would focus on the numbers of people employed rather than on dollars expanded for factory equipment. It would emphasize numbers of children in school provided with nutritious school lunches rather than on cost-effectiveness ratios. It might even consider new jobs created for men and women as a more important indicator of progress than increases in GNP.

I believe that this emphasis on people—and on directly helping those who need it most—still has an appeal for the people of America.

And that progress at the grass roots would percolate upward and outward to make for a better world.

BAREFOOT DOCTORS IN MAINLAND CHINA

Mr. JAVITS. Mr. President, shortages and maldistribution of health manpower exist everywhere in the world. In many developing nations, the manpower problem is extremely acute. Rising expectations, dramatic increases in population, a developed awareness of the possibilities of good health, all are producing urgent demands for more health manpower and for better health delivery systems.

It would seem especially appropriate to study what has been happening in mainland China, now that she is opening her doors to improved relations with other nations; as we in this country also are confronted with shortages and maldistribution of health manpower. There, the "barefoot doctor" approach, an interesting development in the use of paramedical personnel, seems to have assisted considerably in China's health delivery system. We have our own supply of paramedical personnel in our 30,000 medical corpsmen discharged annually from the Armed Forces.

The Medical Tribune and Hospital Tribune have published a series of articles on the subject. I ask unanimous consent that three of the articles be printed in the RECORD so that Senators may have the opportunity to study them.

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

[From Medical Tribune, Sept. 29, 1971]

BAREFOOT DOCTORS FIRST LINK IN MASSIVE HEALTH PROGRAM

CANTON, CHINA.—"Barefoot doctors" are bringing medical aid to the 600,000,000 workers and peasants of China as the first step to what could become the world's most massive health care system. They provide the first link in a chain of medical aid that reaches from tiny rural villages to major hospitals having full general and specialist staffs in Peking and other main cities.

Barefoot doctors are, in fact, neither barefoot nor doctors. A cross between a first-aid worker and a district nurse, they run both rural and industrial medical services with what officials describe as diligence and frugality. Their work has gone far towards solving a problem that troubles many other countries to one degree or another—how to provide remote areas with adequate medical service.

The exact number of barefoot doctors is not made available by the authorities. Guesses range between 1,000,000 and 5,000,000 throughout the country, and a story in a Peking newspaper mentioning that 12,000 of them function in the area of the capital suggests that this estimate is probably correct.

As district health visitors, the barefoot doctors are able to dispense simple remedies and deal with simple fractures, burns, cuts, etc. Once they have been given rudimentary training in medicine and health protection, they frequently add age-old Chinese medical techniques.

By thus combining modern medicine with such treatments as acupuncture, massage, and herbal prescriptions, they are often able to handle difficult as well as routine cases.

Probably the main service they provide is the development of better social and personal hygiene. Following Mao Tse-tung's instructions to put prevention first, they lead the fight against flies, cockroaches, bugs, fleas, and the snails that have devasted whole areas of the rice-growing areas of south China.

Tung Tai-ho, a barefoot doctor from Shunyi county, is often cited by officials as an example of outstanding zeal in this respect. He organizes regular checks on water supplies and visits the homes of all commune members regularly to spray insecticides. He also teaches fellow members of the commune how to prepare herbal medicines.

With a population exceeding 700,000,000 people, China is desperately short of medicine and medical equipment. Yet officials report that more than 1,000 small pharmacies have been set up around Peking, using almost exclusively the medicinal herbs and acupuncture techniques that the barefoot doctors are substituting for the more sophisticated medical practices of the West.

In the Chiang Tai people's commune, on the western outskirts of Peking, 19-year-old Wang Lee-hua typifies the barefoot doctor. Born and raised in the area, she now works as an assistant to Dr. Chou Hua-chin, the commune's woman doctor, and her aim is to become a fully trained physician. Working with Dr. Chou and getting practical training with the peasants in the fields will, she told a recent visitor, eventually equip her for her desired career and perhaps give her better training than if she had spent six years in medical school.

Sixteen barefoot doctors work in the Chiang Tai commune, but only four are assigned to Dr. Chou's clinic. This is the standard ratio for barefoot to regular doctors. Dr. Chou, a plump middle-aged woman from Peking, volunteered to work in the countryside a year ago.

The commune itself is divided into "production brigades," the basic unit for work in the fields. Dr. Chou treats patients from 681 households in the production brigade served by the clinic. Apart from a small token payment, treatment is given free.

The clinic itself is housed in a small one-room cottage with an earthen floor. The walls are whitewashed and the equipment limited to a few bare wooden chairs, a threadbare couch, and one small, roughly made medicine cabinet. The cabinet contains a bare minimum of drugs, and there is no sign of records or other equipment.

The clinic practices mainly Western medicine, with some acupuncture for such ailments as headaches or stomach upsets. When, operations need to be performed patients are sent to the eight-bed commune hospital, which has a staff of doctors and nurses. More difficult cases are sent to the bigger hospitals in Peking.

WORK HALF DAY IN FIELDS

The barefoot doctors work half a day with the production brigade in the fields and half a day at the clinic. While working in the fields they check on the health of their fellow workers, to whom they teach hygiene as well as methods of curing simple illnesses.

Although clinics such as the one operated by Dr. Chou are rudimentary by Western standards, they offer a viable alternative to the total lack of facilities available before. Previously the sick could spend days waiting for treatment at the commune hospital. Now, minor ailments, which formerly would have meant loss of work, are dealt with promptly, and a valuable amount of work time for the "brigade" is saved.

Although relatively primitive at the lower levels and forced on China by necessity, the barefoot doctor program has brought a modicum of medical service to millions for the first time in their lives, creating the framework for a nationwide health scheme.

[From Hospital Tribune, Nov. 1, 1971]

BEST MEDICINE FOUND EQUAL TO AMERICA'S

KANSAS CITY, MO.—The best of Chinese medicine is apace with the best of American medicine, Dr. E. Grey Dimond reported on his return from a two-week visit to the People's Republic of China.

"The Chinese aren't a bit out of date," said Dr. Dimond, provost for health sciences at the University of Missouri at Kansas City. "Their best hospitals have everything ours have. I really had nothing medically to contribute to China. Their physicians know as much as I do."

The sole purpose of the trip was to "reestablish communications between American and Chinese physicians," he said, and rumors that he and fellow cardiologist Dr. Paul Dudley White were asked to China to care for a supposedly ailing Mao Tse-tung were simply not true.

"We did not see or visit with a political figure during our stay," Dr. Dimond said. "We met and talked with Chinese physicians about medicine."

Drs. Dimond and White were guests of the All-China Medical Association for 13 days. During that time they visited seven hospitals in and near Canton and Peking. Dr. Dimond examined 40 patients.

"I was, of course, most interested in heart patients since that is my specialty," he said. "I carried around a stethoscope and read ECGs. That's a universal language no one needs to translate for you."

Dr. Dimond refuted the notion that heart disease is virtually nonexistent in China. He found, in fact, that heart disease and high blood pressure are as significant diseases in China as they are in the United States.

The two American cardiologists were escorted during their stay by English-speaking Chinese physicians. Dr. Dimond had prepared a list of requested visits and interviews, and none of them were denied, he reported.

"The Chinese cooperated graciously with each of my requests," he said. "Every date I had was met on time."

One of the visitors' specific requests was to witness acupuncture anesthesia. Dr. Dimond has always had an active interest in acupuncture, and during a visit to Saigon in 1964 he made rounds with an active practitioner of the technique and wrote an article on that experience for the *New England Journal of Medicine*.

In China he viewed about 10 operations using acupuncture anesthesia. He commented that he is "running the risk of being called a madman," but "there seems to be some margin of truth" in the technique.

Although Dr. Dimond was unwilling to speak at length about the operations he witnessed because he plans to write articles dealing with them for various journals, he did describe two specific cases.

In one, a growth was removed from a man's throat after a needle was inserted in one side of the neck and an incision was made across the rest of the throat.

"The patient stayed awake and cheerful throughout the operation," Dr. Dimond related. "And when it was over, when his entire throat was sewn up, the man sat up with a smile. He picked up the little red book of Chairman Mao's thoughts, waved it, and said: 'Long live Chairman Mao! Welcome to our American friends!' Then he buttoned up his pajama shirt, got off the operating table and casually walked off to his room."

SECOND CASE DESCRIBED

The second case that he described was that of a patient, a chest surgeon, suffering from tuberculosis. The operators inserted a needle about 1½ inches long into the patient's left arm and then opened the left side of the

chest to remove the upper half of the left lung.

"The patient's chest was wide open," Dr. Dimond recounted. "I could see his heart beating. And all this time the man continued to talk to us cheerfully with total coherence. Halfway through the operation he said he was hungry, so the doctors stopped working and gave him a can of fruit to eat."

Dr. Dimond said that the operation continued for an hour and that when it was over the patient sat up as if nothing had happened.

"I saw more of acupuncture than I know how to believe," said Dr. Dimond, who returned to Kansas City with a teaching-model manikin and set of needles. "As you stand there watching these procedures your scientific brain says, 'My God, this can't be true,' but we were still seeing it."

The physician said he intensively queried Western-educated Chinese physicians about the procedure "after cocktails, while riding behind the curtained windows of our limousine, and other places."

"But never could I get them to break down and say there wasn't some margin of truth in the procedure," he added.

Chinese physicians, he noted, do not brag about the procedure and readily admit it "does not work in all cases."

"The Chinese Government realized you can't create instant Western medicine," he said. "So they married the two to obviate the development of Western medicine."

[From Hospital Tribune, Nov. 15, 1971]

U.S. VISITOR SEES MARRIAGE OF OLD, WESTERN MEDICINE

KANSAS CITY, Mo.—Since the Cultural Revolution, there has been a "marriage of traditional medical techniques to Western medical techniques," Dr. E. Gray Dimond said on his return here from a two-week visit to the People's Republic of China.

Dr. Dimond was told that last December the Chinese cut their medical and pharmacy curriculums in half to speed up training of health care personnel. Medical education now requires three years and pharmacy two and one-half years.

Chinese physicians indicated to Dr. Dimond that the major thrust of the Government now is to deliver some kind of health care to all of the nearly 800,000,000 Chinese. They have developed a variety of delivery systems, including the "barefoot doctor" concept, to reach their goal.

Dr. Dimond observed that the barefoot doctor should not be misconstrued by Americans to be the people's only source of medical care. On tours of some of the rural communes he saw the barefoot doctors in practice, he said, and they are really "the medical corpsmen of China."

"Every handful of Chinese has its barefoot doctor," he said. "He is nothing but a man of the village who has been told about vaccinations, the use of DDT, and personal hygiene. He keeps complete records on his handful of 'patients.' But he is not out there freelancing. He is backed up by a whole medical care system which includes a well-equipped dispensary staffed by a pharmacist. The dispensary is then backed up by a commune hospital."

Dr. Dimond was told that there has not been a reported case of venereal disease in China in 10 years and that there is no alcoholism, no drug abuse, no prostitution, and no epidemics. When Dr. Dimond was asked if he saw any documented evidence of these claims, he replied that the reporting system due to the Communist Party organization is amazing.

"Each human being in China is responsible to a party member," he said. "They would be required to report any illness, and I can't see how they could escape it."

Before the Cultural Revolution, Chinese physicians told Dr. Dimond, they traveled extensively to international medical meetings. Demands now on delivering care, however, are so great that such travel has been virtually eliminated. The Chinese have not published any medical journals for several years, he learned, and will not resume such publications until the goals of the Cultural Revolution have been attained.

Upon visiting the Chinese Medical Association and the Chinese Academy of Sciences libraries in Peking, Dr. Dimond discovered that there is no lack of medical literature in China.

"These libraries were filled with medical journals from all over the world," he continued. "I noticed the August issue of the 'New England Journal of Medicine' on one table, and one librarian showed me the most recent issue of the Missouri State Medical Association monthly journal."

Basic or unstructured research in China had been eliminated for the duration of the Cultural Revolution, Dr. Dimond was also told. No effort is made to hide this fact, he reported, and the Chinese "frankly admitted" that their scientific goals had been redirected by the Government.

"The thrust now is to give care to people," he emphasized. "Every medical student, physician, or faculty member is required to spend time in the rural communes on mobile medical units."

Medical students are mostly from the peasantry, the military, or the working class, Dr. Dimond related. The way to get into medical school in China, he said, is to "finish middle school, go out and work in a factory or rice paddy, and depending on your good behavior and work points, you are admitted to medical school."

IMPRESSED WITH PROFESSIONALISM

In his tours of hospitals Dr. Dimond was impressed with the professionalism of the staffs and their "friendliness and kindness towards each other and the patients."

The major hospitals were equipped with all of the most modern medical instruments and machines, he said, adding that he saw dialysis equipment and open heart surgery equipment as sophisticated as that in the most modern U.S. hospitals.

"They are equipped to do any kind of open heart surgery," he said. They were interested in Shumway and his heart transplants but said none had been attempted in China. Although they perform open heart procedures, they aren't done to the extent they are in the United States, probably because the Chinese just aren't as aggressive as Americans."

Dr. Dimond observed, however, that the Chinese have an active rental transplant program.

The majority of the medical equipment used in Chinese hospitals appeared to have been manufactured in Shanghai, he said, but 95 per cent of the drugs used were manufactured in China, the rest coming from Europe. "They had a polio vaccine similar to the Sabin but it was Chinese-made," Dr. Dimond reported. "Every hospital has its own drug-manufacturing department where herbs are ground, drugs compounded, and sterile solutions made. I believe this was part of the war readiness theme evident throughout the country. Every institution was capable of surviving and caring for its patients without outside help."

With regard to family planning, Dr. Dimond said:

"The Party absolutely supports birth control either by the pill or pessary. And with the strength of that government one would assume something would get done."

Dr. Dimond said that he felt fortunate in being one of the first four American physicians admitted to China in nearly 25 years. He related that the invitation came directly from the Communist China Embassy in Ottawa after he and his wife had told Edgar Snow, a friend, about their interest in visiting the country prior to one of the author's trips to China.

FUTURE OF U.S. MERCHANT MARINE

Mr. MAGNUSON. Mr. President, I recently had occasion to read two articles relating to maritime policy by Mr. Jesse M. Calhoon. Mr. Calhoon is well known to the Members of this body as the president of the Marine Engineers' Beneficial Association, AFL–CIO, and as a particularly articulate and effective spokesman for the U.S. merchant marine.

The articles are thought-provoking and I commend them to Senators concerned with the future of the U.S. merchant marine. I ask unanimous consent that the articles be printed in the RECORD.

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

WHY NOT RECIPROCAL PACTS FOR SHIPS?

(By J. M. Calhoon, MEBA national president)

A recent item in the press announcing the termination by Belgium of its 25-year-old Aviation Agreement with the United States, following an American refusal to grant landing rights in Chicago for Sabena, the Belgian airline, prompts the question that if the countries of the world have, practically since the inception of aviation, found it in logical self-interest to enter into bilateral air pacts to guarantee and protect the rights of their respective national air carriers in other lands, why cannot ocean carriers be given the same reciprocal rights through the establishment of bilateral maritime pacts between countries?

While the American doctrine of "equality of trading opportunity" is closely allied to the international principle of freedom of the seas, history does, nevertheless, tell us that when a country sees its own national interest menaced it has not hesitated to enact legislation aimed at regulation of a determinate maritime area.

As early as 1651, a navigation act was passed by the British to offset the maritime supremacy of the Netherlands. This act, which remained in force for two centuries, required that the national trade by sea be carried in ships under the national flag.

In 1849, a statute was added to the 1792 maritime treaty between the United States and Britain, which established that U.S.-flag ships be admitted to British ports on the same terms as British ships were admitted to the American trade.

There will, of course, be those who airily, or perhaps I should say opportunistically, dismiss regulation as not in keeping with the free-trade exigencies of our modern maritime era.

But commendable as the principle of free trade is, it should not be made to work when in doing so the U.S. national interest is in jeopardy.

The continually increasing flow of United States capital abroad and the consequent decline of jobs for American workers, as little by little they are exported overseas, must sooner or later call for Government regulation in those areas that are hardest hit.

With our country's economy at its present dangerous level, the government should move to assume to a degree the foreign economic policy of the nation.

The economic policies of most countries are regulated by their governments, which

set up preferential and other controlling legislation to protect their own interests, while the United States remains unique as the world's most unrestricted country in international commerce.

When a country's economic prosperity is at stake, the philosophy of free trade must inevitably be substituted by a philosophy of fair trade.

As late as 1935, the United States Government, when its seaborne commerce between American ports was being menaced by foreign-flag interests, saw fit to pass legislation on the national coastwide traffic to ensure that trade for the U.S.-flag carrier.

Why, therefore, could not protection be given to the maritime industry, which stands in dire need of assistance, through the institution of bilateral pacts aimed at ensuring to the U.S.-flag ocean carrier the same proportionate equity now enjoyed by national airlines under international air treaties?

Aviation agreements are generally drawn up nowadays between two trading countries to ensure reciprocity in landing points within both countries for their respective air carriers.

The proportion of reciprocity between the treaty states is arrived at via the dollar-load-value factor of the respective landing points in both countries, thus establishing a degree of equity and proportion between two countries possessing disproportionate air fleets.

REVITALIZING THE U.S. MERCHANT FLEET THROUGH BILATERAL PACTS FOR VESSELS

(By J. M. Calhoon, MEBA national president)

If to date bilateral pacts for ships have not been contemplated in this country or elsewhere, it is certainly not because of aversion to maritime regulation.

Rate disparities are still with us in the continuing North Atlantic rate conflict, but there is a move afoot to reach an international accord to "rationalize" this and other facets of maritime trade.

If regulatory "rationalization" is conceivable in these other phases of maritime commerce, there surely should be nothing to obstruct party countries from entering into bilateral treaties containing national-flag clauses to ensure proportionate reciprocity for ships of the national merchant fleets of the contracting states.

A pro-American-flag merchant marine policy is essential to the well-being of our national economy and of our national defense.

Today, the U.S. merchant fleet is wholly inadequate for either purpose. The tragic statistic that the government tends to gloss over is that less than six per cent of our foreign waterborne commerce is carried in ships flying the U.S. flag.

A bilateral vessels' pact between the United States and another party country would serve as an instrument to further the prosperity of the American merchant marine.

It would put more American cargo into American bottoms. It would, by its reciprocal nature, also ensure a quota of foreign cargo for U.S.-flag vessels.

Such a pact would also help many countries now trading with the United States to set themselves up with a maritime fleet, or enlarge their present fleet. Their ships, under the terms of the treaty, would be viable ships.

A bilateral ships' pact would serve as well to alleviate the resentment many small countries feel when they see their tiny merchant fleets crowded out of the ocean carrier field by the monopolistic predominance, not so much of the national-flag ships of the bigger maritime powers, but of the immense foreign holdings translated into millions of tons of ships flying the runaway flags of convenience of Liberia, Honduras and Panama.

Just look at what these runaway companies are doing to the U.S. merchant marine and to its workers, for example. As of December 31, 1969, there were 433 ships totalling 21.9 million deadweight tons owned by foreign affiliates of U.S. companies, as against an April 1, 1971 figure of 699 privately-owned U.S.-flag active ships in the American merchant marine.

If one pauses to think that the Standard Oil companies of California and New Jersey had, between them, as of December 31, 1969, almost 8.8 million deadweight tons in their foreign-flag merchant fleets the need for at least a modicum of regulation at government level is immediately apparent.

Many of these U.S. companies with foreign-flag holdings also have ships sailing under the American flag. But their foreign-flag fleets today consist of new, modern ships, far superior to those they have under U.S. registry.

Bilateral pacts for ships would be of inestimable help to the U.S. merchant marine. Over and above assuring more cargo for U.S. bottoms, they would ensure the return of a healthy percentage of U.S. owned foreign-flag ships to the American flag, because the depletion of the present-day U.S. merchant marine would need more national-flag ships to comply to the bilateral treaty terms.

The current efforts of the U.S. Government to assure more cargo for American-flag ships are only half measures.

It is not enough to try, through promotional means, to convince U.S. exporters and importers to ship more of their commercial cargoes in American bottoms in order to increase the portion of the nation's trade that is carried in U.S.-flag ships.

It is a prime requisite of government to give preference to a national industry to meet foreign competition. The U.S. Government, instead, leans on foreign-flag ships for government cargo to the detriment of its own merchant fleet.

International bilateral treaties for national ships of the party countries could well be a means to enable the U.S. merchant marine to safely weather itself through the rough seas of today toward a haven of accomplishment much bigger than that envisaged by the Merchant Marine Act of 1970.

VALUE OF OIL IMPORT QUOTA SYSTEM

Mr. TOWER. Mr. President, during the debate on November 20 on amendment 693 to the Revenue Act of 1971, the distinguished Senator from Massachusetts (Mr. KENNEDY) raised some interesting questions concerning the value of the oil import quota system. I should like to respond to the questions.

First, the Senator asked why President Nixon's task force "Report on the Oil Import Question" was not accepted and implemented. Some background information on this question would be helpful. It is noteworthy that the task force study was initiated by the President at the request of the petroleum industry. Neither the industry nor the President intended that the oil import quota system be abolished. Rather, the purpose of the study was to examine and attempt thereby to correct certain inequities which had crept into the system during its existence beginning in 1959. It is not difficult to conceive that inequities would occur in administering this highly complex program. The program was instituted by President Eisenhower to protect our national security interests. For over a decade four Presidents have recognized the importance of the oil quota system in protecting our national security interests. The petroleum industry itself supports the system.

The staff of the task force was composed entirely of academicians, none of whom had any firsthand knowledge or experience with the oil import system. Based largely on the assumptions and recommendations of the task force staff, the task force committee suggested some ill-conceived and sweeping alterations to this proven, workable program, and even recommended the changing of a large part of the program from a quota to a tariff system.

One example of the ill-conceived work of the staff was their basic asumption that the world price of crude oil would remain substantially below the domestic price.

This assumption led to the unfounded but often quoted conclusion that the oil import quota system costs the American public $5 billion per year. In fact, only a few months after the report was issued, the world price of crude oil rose to unprecedented heights. On some occasions, the world price exceeded the domestic price. Thus, at best, it is difficult to determine the cost of this program which at times has saved the American people money.

Another example of the ill-conceived work of the task force staff concerned the security of supplies of Eastern Hemisphere crude oil. The staff assumed that none of the Eastern Hemisphere countries which produces crude oil would violate its own economic self-interest by voluntarily reducing its crude oil production by a significant amount for any extended period of time. Yet, just months after the report was issued, two large Eastern Hemisphere crude oil producers voluntarily caused substantial reductions of crude oil production totaling approximately 800,000 barrels per day. These reductions lasted for several months and wreaked havoc in the world crude oil markets, including the United States. However, this erroneous assumption led the staff to conclude that we could rely on foreign sources to supply our large and growing crude oil needs.

Thus, most knowledgeable people, including the President, rejected these and other major conclusions reached in the task force report.

The Senator from Massachusetts proposed that we should "preserve the oil in strategic reserves in this country and utilize the sources outside."

This oft-suggested solution to our crude oil supply problems will not work for several reasons.

First, as I already pointed out, we cannot be assured that foreign sources will be able or willing to supply our needs. Several times in the recent past, crude oil producing countries in the Eastern Hemisphere have acted irrationally and contrary to their own economic best interests by causing disruptions in the production and transportation of crude oil. But, even if these unstable countries did want to supply our needs, forces beyond their control could cause disruptions. As I pointed out in my statement on this subject on November 20, the Russians are increasing the size of the fleets in the Eastern Hemisphere, particularly in the

oil-rich Mediterranean Sea and Persian Gulf areas. Thus, they are increasing their capability to disrupt shipments of crude oil to us and to Western Europe.

Second, serious technical problems are involved in shutting in producing wells. By being shut in, many producing geologic formations can be irreparably damaged through water encroachment, or by parafin, salts, or rust buildup on the face of the producing zone. This damage would likely cause us to lose forever significant quantities of crude oil.

Third, assuming for the sake of discussion that the first two problems could be overcome, we would have to solve serious economic problems.

For example, assuming that all oil wells are shut in, where is the revenue to be derived to finance future exploration and development of new reserves of oil or the revenue for the return on risk capital, to investors who are producing reserves and equipments, the refineries, pipelines, and distribution systems? What becomes of our highly skilled employees in the domestic oil industry if there is no new exploration or development? Do they simply stand idle until the time when our foreign supplies are exhausted or disrupted? How do we allow for the normal time lag of several years required from beginning exploration to delivering the products to the consumer?

These are all serious questions which must be satisfactorily answered before we change from a known, workable system to a new and untried system such as the Senator suggested.

Until such a satisfactory new program is devised. I feel strongly that we must preserve our own energy self-sufficiency by maintaining an active and healthy domestic petroleum markets from being The requisite viability must be maintained through providing adequate tax, economic, and other incentives to attract the required amounts of high-risk capital to explore for and develop, refine, and distribute our own vast, undiscovered petroleum reserves. This must be done to properly protect our national security interests.

Also, the maintenance of some inhibitory system is necessary to protect our domestic petroleum-producing industry. unfairly inundated by imports of crude oil from unsure foreign sources. One such workable system is the present oil import quota system.

Mr. President, I fervently hope that Senators advocate drastic and precipitate changes in this system and further oppressive actions against the domestic petroleum industry will examine carefully the long-range national security ramifications of such changes. I further hope that they will not rely on the now largely discredited task force report or on simplistic solutions to our complex and vitally important petroleum supply problems.

EAST-WEST TRADE

Mr. MONDALE. Mr. President, I was pleased to read of President Nixon's letter announcing that he has decided that Export-Import Bank loans to promote trade between the United States and Romania are in the national interest. This is a step which I have urged for some time, and which could lead to important increases in U.S. trade and exports.

This step should be followed quickly by others, and I hope that the administration intends that this should be the case. Export-Import Bank financing should be extended to trade with the remaining Eastern European countries including the Soviet Union, where it is not now available. I think that this is a logical result of Secretary Stans' trip to Eastern Europe and to the Soviet Union.

In addition to steps increasing trade financing, I hope that the administration will support efforts in the Senate to win authority to negotiate most-favored-nation treatment with Romania and other Eastern European countries. Our failure to accord this treatment is costing us dearly in lost trade opportunities.

The potential for increasing trade with Eastern Europe and the Soviet Union is enormous. This could mean many jobs for our workers and farmers. Recent large export breakthroughs which involve agricultural products and machinery are examples of the potential that exists.

During the first 6 months of 1971, the United States did a smaller percentage of its total trade with Eastern European countries and China than did any other major trading country. Germany, Japan, the United Kingdom, France, Switzerland all did three to five times more of their total trade with these countries than did the United States. The President's action removes one knot from the rope with which we have tied our own hands. We must untie the others quickly.

I ask unanimous consent that a memorandum concerning the President's communication, published in the CONGRESSIONAL RECORD of November 30, 1971, be printed in the RECORD.

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

PURCHASE OR LEASE OF PRODUCTS AND SERVICES TO THE SOCIALIST REPUBLIC OF ROMANIA

A communication from the President of the United States, reporting, pursuant to law, his determination that it is in the national interest for the Export-Import Bank to guarantee, insure, extend credit, and participate in the extension of credit in connection with the purchase or lease of any product or service by, for use in, or for sale or lease to the Socialist Republic of Romania; to the Committee on Banking, Housing and Urban Affairs.

BOEING LOOKS TO FUTURE AT BOARDMAN, OREG.

Mr. HATFIELD. Mr. President, it was during my term as Governor of Oregon that we focused our efforts to expand and diversify our State economy. I had the opportunity to work with officials of the Boeing Co. on a particular project in Oregon.

After great effort, here in Washington, D.C., in the State of Oregon, and in the State of Washington, we were able to offer to the Boeing Co. a 100,000-acre tract of land in northeastern Oregon under a long-term lease. This effort was culminated in 1964.

I was delighted to be briefed by Boeing Co. officials recently on the company's plans for the development of this site. It is an imaginative, innovative program.

I was pleased to see in the November 29, 1971, issue of Aviation Week and Space Technology that a fine article by Richard G. O'Lone discussed Boeing's plans. Because of the interest of Senators in such matters as rural development, I ask unanimous consent that the article be printed in the RECORD. If efforts such as this can succeed, they will offer a new vista for our consideration as we review legislation affecting rural economic development.

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

BOEING SOWS DIVERSIFICATION SEED IN DESERT

(By Richard G. O'Lone)

SEATTLE.—Boeing Co., which played a major role in putting man on the moon, now has a long-range goal of performing another challenging task here on earth by causing the desert to bloom and creating a productive community in an Oregon wasteland currently suited only for rattlesnakes and rocket engine tests.

In one of its most ambitious diversification efforts to date, Boeing is implementing the initial stage of a master plan that foresees a riverside town of 5,000 or more persons arising on 100,000 acres of sand and sagebrush in northeastern Oregon that would be made productive by irrigation.

The plan envisions a community supported by agriculture and related industries, with a water reservoir and nuclear power plants playing key roles, and perhaps even recreation facilities along its 10-mile stretch of Columbia River frontage. The plan would provide for recycling of wastes back into the land and using reservoir water—rather than the Columbia River—to cool the power plants and utilizing the heated water for irrigation.

These goals admittedly are many years away, but a start has been made and Boeing executives more accustomed to the complexities of aircraft production rates and missile design are soberly studying recycling of livestock wastes and irrigation hardware as an aerospace company moves for the first time into the field of multiple land use development.

The site involved is an old World War 2 bombing range, about 275 miles east of Portland, that Boeing acquired in 1966 when the future for rocket and supersonic transport engine development appeared considerably brighter than it does now. This wasteland—vast and remote—was ideal for testing rocket engines and aircraft powerplants—a business too noisy and hazardous for the densely populated Puget Sound area—and Boeing took a lease on the land from the state through the year 2040.

As aerospace business began to decline, however, the chances of utilizing all of this huge site for its original purpose started to fade, and Boeing began looking for other uses. In January, the company hired the Corvallis, Ore., firm of Cornell, Howland, Hayes and Merryfield/Hill to assist in this effort, which was given impetus by the death a few weeks later of the U.S. supersonic transport program (AW&ST Mar. 24, p. 14).

The master plan that emerged was approved by Boeing top management in April, and contained this broad outline:

Development of an extensive irrigation system that eventually could convert about 50,000 acres of desert to productive land for grazing as well as field crops, vineyards and orchards.

Emergence of a tier of light industry to process, store and distribute the meat, vegetables and fruit produced on the irrigated land.

Creation of a community of at least 5,000 persons supported by farming and related industries. Irrigation of land along the riverbank could create an attractive place to live, with fishing, swimming and golfing for recreation.

A key item in realization of the master plan is establishment of a nuclear power plant and water reservoir on the site. The two would have interrelated functions. The reservoir would store water for irrigation and for cooling the nuclear plant. The state thus would avoid further heat pollution of the Columbia River, while the warm reservoir water used for irrigation could extend the growing season. In addition, the warm water could be fed into ponds for fish breeding, and could be used in "fogging" vineyards and orchards to protect the fruit from low temperatures.

The plan received a major boost in October when Portland General Electric Co. (PGE) announced it had narrowed its search for a nuclear plant site to two locations on the Boardman property—the McCarty and Six-Mile reservoir sites—located adjacent to each other in the southeast portion.

The sites were named as the best of six prospective locations by a soils engineering firm hired by PGE, a decision that was seconded by a consulting board of geologists and geophysicists. Added seismic surveys are being made at the McCarty and Six-Mile sites.

Portland General Electric, which has the state's first nuclear power plant under construction on the lower Columbia River, plans to complete the Boardman site plant by the fall of 1979.

The backbone of the entire plan is the irrigation system, which will begin with a pumping station on Willow Creek, which runs off the Columbia River at the northwest corner of the site. From the station, large underground pipes and smaller tributaries would carry water to an area to be irrigated, where it would be spread by means of massive circular systems that can cover up to 160 acres per unit. In these type of systems, already in use elsewhere, water piped underground to a central pivot point is distributed by means of electrically powered wheeled devices arrayed in ranks and moving in a circular fashion, with the wheels moving at the proper relative speeds to maintain a straight line.

Ultimately, the water would be carried by pipeline to higher ground where a canal would take over and feed it into either the McCarty or Six-Mile sites that would have been dammed to form a reservoir. Year-around irrigation of the entire acreage then could be provided by gravity feed.

The irrigation effort already is under way and will proceed incrementally, with nearly 6,000 acres scheduled to be ready for planting by next spring. Of this 4,000 acres represent the first of 12,000 acres that have been leased to a Spokane firm that intends to raise alfalfa for pelletizing.

The Spokane company has a long-term contract with a Japanese firm engaged in corporate farming to ship the pelletized alfalfa to Japan as poultry and livestock feed. Additional 4,000-acre increments will be brought under irrigation and planted with alfalfa during the succeeding two years.

An additional 1,850 acres will be irrigated for pastureland to be available next spring, and Boeing expects no problem in leasing it.

Another key part of the plan is recycling of wastes. As pasture lands are created and begin to support food lots. Boeing envisions recycling the livestock wastes back into the ground. A pilot program already has begun to test the use of Boardman for recycling wastes from the Portland metropolitan area.

Under this program, Columbia Processors Cooperative—a joint venture of about 20 Portland area waste disposal firms—provided 200 tons of solid and liquid waste material that was trucked to Boardman and has been tilled into 24 test patches of desert sand. The theory is that the wastes will decompose and form a humus-like soil that—unlike the pure sand—will retain water and perhaps become productive.

If so, this could help solve the problem of Portland's overloaded sewage treatment facilities and present an alternative to sanitary land fills—a waste disposal method that is becoming a pollution problem as well as becoming more expensive as sites are pushed farther away from metropolitan centers.

The Oregon Dept. of Agriculture and Oregon State University are cooperating in the experiment, which is expected to continue until early spring. Full-scale operations will not begin until both health and agriculture authorities give their approval, after results are obtained from the test patches that have been planted. It is expected that authorities will not allow food that is to be consumed directly by humans to be raised on such soil for one year after wastes are tilled into it, but this is not considered a problem as there is no such ban on hay or grass for animal consumption.

When approval is granted, Boeing and Columbia officials anticipate an operation like this:

Columbia will collect solid wastes and sewage sludge from the Portland area and run the solid material through a hammer mill shredder that reduces it to a pulpy compost. At a waterfront transfer point, it will be loaded on huge covered barges.

After being barged up the Columbia River, the material will be unloaded at a dock Boeing will build at its Boardman site. This facility will include a storage building for solid wastes and holding tanks for liquids.

Trucks will pick up the solid material and spread it over the desired area in a 4-in. layer. Tank trucks will follow, adding a half-inch of sewage, followed by a large tiller that mixes the material 6 to 12 in. into the sand. Water—either from a tank truck or irrigation system—then must follow so that the freshly tilled soil will not blow away.

Boeing and Columbia also have a plan to handle industrial chemical wastes, in which this toxic or obnoxious material would be trucked to Boardman and dumped into long, narrow trenches dug in the rough, rocky areas that are unsuitable for any other purpose. The trenches would be lined to prevent the material from eating into the soil and covered with a screen to prevent wildlife or insects from getting into it.

Gradually, the sun would evaporate the water, leaving a solid or semi-solid residue that then could be sold to firms interested in reclaiming the metals and minerals it contains.

If successful, Boeing believes that this waste recycling experiment could have significant implications, even though these methods are not available to every city with a disposal problem. It could demonstrate, for example, that even if the land available in some areas would not benefit from the waste treatment, it would not be damaged by it.

Boeing figures that this waste disposal method can be employed without an unreasonable increase in the price to the customer.

"Our financial analysis says that it should be possible for Columbia and us to both make a reasonable profit," Preston T. Smith, Boeing's Aerospace Group director of community development, said. "If our numbers are off and it costs too much, we won't do it."

Boeing plans to spend $1 million on the first phase of the overall Boardman project, and estimates of the total cost over a period of 12-15 years range between $100 million and $150 million—including the investment of lessees. In addition to providing irrigation, roads and power, Boeing anticipates participating in the ventures with lessees to the extent necessary to attract them. This could involve, for example, entering into a joint venture with a lessee, or constructing a special facility for him.

Profits will be slow in materializing. Smith anticipates that it would take eight to ten years for this type of development to generate a cash flow, depending on how quickly new acreage becomes available and is leased.

The Boardman effort is not a labor-intensive undertaking. Boeing has a handful of employees on site, and there are only about 250 persons in the entire area now. The company anticipates that about 1,500 jobs would be created if events follow its master plan, but most of these would be local persons working for the lessees.

While Boeing certainly is looking for a "reasonable return" on the project, the company believes that the effort could assist in some of the major problems besetting the world. It could make a significant contribution, for example, if the project provided an alternative to sanitary land fills, and if a community of about 5,000 persons does indeed arise in the desert, the firm will have demonstrated one approach for luring some population from the world's huge metropolitan complexes. Smith added this point:

"Fifteen years from now, if things go according to the master plan, Boardman could serve as a prototype model for many areas of the world, showing how relatively unproductive land—thousands of square miles of it—could be put to productive use."

THE CONSTITUTION AND THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, some people who oppose the Genocide Convention do so because they believe that the treaty will become the supreme law of the land, superseding the Constitution. Article VI of the Constitution says that the Constitution, acts of Congress, and treaties are the supreme law of the land. Is it true that the Genocide Convention is supreme over the Constitution?

No. If that were true it would also be true of every other treaty that the United States has ever been a party to. In the 195 years that we have been an independent nation, we have been a party to hundred of treaties. If treaties superseded the Constitution, then our beloved Constitution would now be but a shambles. The fact that our Constitution is still intact and that our Government still functions proves that this theory is not correct. The Genocide Convention, as with all other treaties, is not in conflict with the Constitution.

A careful reading of article VI shows that treaties are made in pursuance of the Constitution. The U.S. Supreme Court in Reid against Covert has made this very clear. They said:

> It would be manifestly contrary to the objectives of those who created the Constitution . . . —let alone alien to our entire constitutional history and tradition—to construe Article VI as permitting the United States to exercise power under an international agreement without observing constitutional prohibitions. . . . The prohibitions of the Constitution were designed to apply to all branches of the National Government and they cannot be nullified by the Executive or by the Executive and the Senate combined.

Therefore the Bill of Rights, which guarantees every American citizen free-

dom of speech, religion, the right to a fair trial, and so forth cannot be changed by the Genocide Convention or any other treaty the United States might become a party to.

Mr. President, I urge the Senate to ratify the Genocide Convention as soon as possible.

DISCRIMINATION IN EMPLOYMENT—RELIGION

Mr. JAVITS. Mr. President, with all the attention that has been focused in recent years on the problem of race and sex discrimination in employment, we may sometimes forget that title VII of the Civil Rights Act of 1964 also forbids religious discrimination in employment. Although not as conspicuous as race or sex discrimination, religious discrimination still exists as an impediment to the enjoyment by many Americans of full equal employment opportunity.

Recently, the Office of Federal Contract Compliance issued a set of guidelines concerning the elimination of religious discrimination by Federal contractors. The guidelines are contained in a memorandum from John L. Wilks, Director of the Office of Federal Contract Compliance, to the heads of all compliance agencies. The memorandum has not been printed in the Federal Register.

In view of the widespread interest in the subject, I think it would be extremely beneficial to have the guidelines printed in the RECORD. I, therefore, ask unanimous consent that the memorandum setting forth the guidelines be printed in the RECORD.

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

(MEMORANDUM TO ALL CONTRACT COMPLIANCE OFFICERS, FROM JOHN L. WILKS' CIRECTOR)

GUIDELINES FOR RELIGIOUS AFFILIATION COMPLIANCE REVIEWS

I. PURPOSE AND SCOPE

The purpose of these provisions is to set forth the interpretations and guidelines of the Office of Federal Contract Compliance regarding the implementation of Executive Order 11246 for insuring equal employment opportunity without regard to religion for all applicants and employees of Government contractors (or subcontractors).

Government contractors are expected:

1. to be cognizant of the religious minorities in their work force,

2. to identify employment problems based on religion, and

3. to institute appropriate affirmative actions to obtain solutions.

II. BACKGROUND

A. Employment discrimination based on religion

Discrimination on the basis of religious affiliation or background is as inconsistent with American principles as any other form of discrimination proscribed by Executive Order 11246, as amended. Despite the fact that religious discrimination has been illegal under all Executive Orders dealing with the obligations of Government contractors and under Title VII of the Civil Rights Act of 1964, there have been few effective plans and programs dealing with this subject.

Evidence indicates that religious discrimination affects mainly Jews and to a lesser extent Catholics, who are primarily excluded from the executive and managerial levels of industry. Members of these religious groups are entitled to attention and redress. Action in two areas has now been initiated to deal with employment problems based on religion. First, regulations have been promulgated concerning the special problems of Sabbath observers. Secondly, guidelines (contained herein) have been set forth to establish an effective religious affiliation compliance activity.

B. Religious affiliation compliance activity

A pilot religious compliance project has been conducted by the Social Security Administration.

1. Religious Affiliation Questionnaire (Form SSA 1776)

In December 1968, the Bureau of the Budget approved a religious affiliation questionnaire to be used by the Social Security Administration in the insurance industry. This questionnaire was designed to deal with the problem of executive and middle management discrimination against Jews and Catholics. The questionnaire (Form SSA 1776) was completed by the contractor during onsite compliance reviews.

2. Onsite Reviews

From April 1969 to May 1970, the Social Security Administration conducted a total of 28 onsite religious affiliation compliance reviews of Medicare contractors. These reviews disclosed that religious minority groups, especially Jews and to a lesser extent Catholics, were not generally found in executive positions or in the career positions leading to the executive ranks.

3. Statement of Secretary of Labor

The experience gained by Social Security in administering this specialized compliance activity provides the basis for an expanded yet efficient program in this area of contract compliance. Accordingly, a statement from the Secretary of Labor on the subject of religious discrimination has been issued on ———— to all compliance agencies. This directive makes this specialized program a mandatory part of compliance activities under Executive Order 11246.

III. COVERAGE

A. Contractors

All Federal contractors and subcontractors or contractors and subcontractors performing under Federally assisted construction contracts subject to Executive Order 11246, as amended, are covered by these guidelines, provided such contractor or subcontractor has 50 or more employees and a contract of $50,000 or more.

B. Population areas

There are no official United States Census figures based on religion. The Jewish and Catholic population statistics that are available are published annually in the *American Jewish Yearbook* and the *Catholic Almanac*.

C. Religious groups

1. Jews, Catholics, and Others

Jews and Catholics have been traditionally defined as the two largest religious minorities in the United States. Discrimination based on religion has been primarily directed against Jews and to a lesser extent against Catholics. Other religious groups, notably Seventh Day Adventists and Seventh Day Baptists (as well as others), may have also experienced religious discrimination in employment.

Religious affiliation compliance reviews should focus on the employment discrimination problems of Jews and Catholics. Where applicable, the reviews will include problems based on any religion.

2. Definitions

For purposes of religious affiliation compliance activities, a Jew, a Catholic or a person of any other religious persuasion is an employee or official of a Federal contractor who would, if asked, identify himself as having the subject religious affiliation either by birth, tradition, conviction or otherwise.

IV. METHODOLOGY

These guidelines envision that religious affiliation activity will be incorporated into normal compliance reviews.

A. Compliance personnel

Responsibility for compliance activities relating to religion should be assigned to compliance personnel in conjunction with their regular duties.

B. Job levels

Experience has shown that employment discrimination based on religion is most pronounced in upper level positions or in those career patterns that may lead to the executive ranks. Accordingly, religious affiliation compliance activity will be concerned with executive and middle management positions. However, where appropriate any job level can be the subject of this review.

C. Review format

Religious affiliation compliance activity must involve these basic steps:

1. Description of EEO Policies and Practices

The Federal contractor must describe his organization's policies and practices to provide equal employment opportunity without regard to religion in the recruitment, hiring, promotion, and placement of applicants and employees. This detailed description must also contain an explanation of the formal internal and external dissemination of this policy.

2. Identification of Religious Minorities

Management officials, with assistance of the compliance specialist when necessary, must determine the number of Jews and Catholics occupying executive and middle management positions in their organization. Where appropriate, this identification may be extended to other religious minorities.

There are many methods of identifying the religious affiliation of employees. The contractor has the option in selecting the most feasible method.

The Federal contractor must identify employment problems based on religion. He must determine the religious composition of his work force and analyze his utilization of religious minorities. This includes the identification of organizational components and job categories where religious minorities (mainly Jews and Catholics) are underutilized.

3. Affirmative Action

Management officials must undertake affirmative action measures designed to resolve identified problems.

4. Program Evaluation

At frequent intervals, the contractor and the compliance agency must evaluate the contractor's affirmative action efforts and the results achieved.

D. Training

The Office of Federal Contract Compliance will undertake the responsibility for specialized training to implement this program.

V. AFFIRMATIVE ACTIONS

Contractors *are required* to develop affirmative action programs. A partial list of some affirmative action steps regarding religion includes:

1. *Identify the total number* of executives and middle management persons and determine the number of Jews, Catholics and other religious minorities.

2. *Obtain pertinent literature* describing employment problems of Jews, Catholics and other religious minorities. Circulate this material to supervisors and to persons involved in recruitment and hiring.

3. Where personnel records have been put on *data processing* equipment, integrate the religious identification of employees into this system.

4. *Review records* of Jewish, Catholic and other religious minority persons in lower

level jobs to determine if they can qualify for management training positions.

5. *Convey to each recruitment source* (such as employment agencies and college placement directors) the company's equal employment opportunity commitment and impress these sources with the need to refer religious minorities.

6. *Establish a dialogue* with religious minority oriented organizations, such as:

Project Equality.
Catholic Vocational Service.
American Jewish Committee.
Anti-Defamation League of B'nai B'rith.
Knights of Columbus.
Jewish Vocational Service.
Prominent local Rabbis and Priests, etc.
Jewish Community Relations Councils.
Jewish Federation.
National Jewish Commission on Law and Public Affairs.
US Catholic Conference, Department of Social Development.
National Conference of Catholic Men and Women.

Some of these organizations have applicant referral capability and other groups can merely be used for advice, education and technical assistance.

7. Initiate the *use of the Anglo-Jewish and Catholic press* for institutional advertising, employment advertising, as well as for publicity of promotion announcements and special involvement activities of Jewish and Catholic employees.

8. *College recruitment* is usually a prime source of applicants for entry level managerial and administrative positions. Direct college recruitment activities toward obtaining increased numbers of religious minority applicants.

(a) Review and, if necessary, revise *college recruitment schedules* to include schools with substantial religious minority enrollments.

(b) *Establish contact with campus* Newman Clubs, Hillel Foundations, prominent fraternities and sororities which have a substantial Jewish and Catholic membership, the resident campus Rabbi and Priest, prominent Jewish and Catholic faculty.

(c) *Orient college recruiters* on techniques for seeking out religious minority applicants.

(d) Use Jewish, Catholic and/or other religious minority persons for recruiting.

(e) Analyze college recruitment results to obtain the approximate number of Jews, Catholics and other religious minorities hired. Then, modify recruitment efforts to increase this number.

9. Mail invitations to religious minority college students who are attending schools outside of their home town. Such invitations should invite these students to seek employment with the respective companies during their school vocations.

10. Discuss the corporate affirmative action program with selected high level Jewish, Catholic and other religious minority officials and to request that they refer applicants.

11. To foster understanding among employees, place brief articles in the employee publication to explain various Catholic, Jewish and other religious holidays.

[Memorandums to Heads of All Agencies]

EXECUTIVE ORDER 11246—STATEMENT ON EMPLOYMENT DISCRIMINATION ON THE BASIS OF RELIGION AND NATIONAL ORIGIN

U.S. DEPARTMENT OF LABOR,
Washington, D.C., May 20, 1971.

Discrimination on the basis of religious affiliation or national origin is as inconsistent with American principles as any other form of discrimination proscribed by Executive Order 11246, as amended. Discrimination has, of course, been illegal under Executive Orders dealing with the obligations of Government contractors and under Title VII of the Civil Rights Act of 1964, yet there have been few effective plans and programs dealing with this subject.

Studies indicate that religious discrimination affects mainly Jews, and to a lesser extent Catholics, who are primarily excluded from the executive and managerial levels of industry. To a certain extent, this problem is interrelated with discrimination on the basis of national origin. The subjects of either type of discrimination are entitled to attention and redress in the form of effective affirmative action programs.

Accordingly, I have directed the Office of Federal Contract Compliance to develop a compliance program to deal with the problem of religious discrimination. This program will be made a mandatory part of your compliance activities under Executive Order 11246. The Office of Federal Contract Compliance will provide, as necessary, the technical assistance needed to implement this religious compliance program.

At the same time, I am asking the Office of Federal Contract Compliance to develop appropriate programs to deal with discrimination on the basis of national origin.

J. D. HODGSON,
Secretary of Labor.

INTERNATIONAL TOURISM

Mr. MAGNUSON. Mr. President, 10 years ago Congress enacted the International Travel Act of 1961 which created the U.S. Travel Service in the Department of Commerce, and inaugurated a positive national program to promote travel to the United States.

At the time I introduced this legislation in the Senate, many Members of Congress were concerned that as a government the United States was not sensitive to the social, educational, and economic potential of a program directed at encouraging people in foreign countries to visit the United States.

Since its enactment I believe it is fair to say the number of tourists who now visit our shores, and the receipts from their visits have grown yearly. I also believe our development in this field is due in large measure to the combined efforts of the U.S. Travel Service and the private sector of the travel industry.

The Committee on Commerce held hearings in July 1969, to review the effectiveness of our program under the International Travel Act and to determine if the U.S. Travel Service needed additional authority and funds to build on its accomplishments.

The chairman of the hearings was the distinguished and able member of the Commerce Committee, the Senator from Hawaii (Mr. INOUYE).

As a consequence of the testimony received from all segments of the travel industry—private as well as Government—the committee reported legislation which significantly increased the stature and authority of the U.S. Travel Service.

That legislation was enacted in the 91st Congress.

Among its most significant features are the following:

First. The position of Director, U.S. Travel Service, was elevated to that of Assistant Secretary of Commerce for Tourism.

Second. The annual authorization for the Travel Service was raised from $4.7 to $15 million.

Third. A program of matching grants was established to encourage the 50 States to promote foreign tourism to their respective areas.

At the beginning of this Congress many Senators shared my conviction that international tourism would be one of the most significant social and economic forces in the coming decade.

In order that the Commerce Committee would be fully abreast of trends and developments in this most critical area, and thereby be in a position to discharge its legislative responsibilities to the Senate, as chairman of the Commerce Committee, I created a Subcommittee on Foreign Commerce and Tourism. The chairman of that subcommittee is Mr. INOUYE.

I wish to commend the Senator from Hawaii for the leadership he has shown in this area, and especially for the farsighted and statesmanlike keynote address he recently delivered at the American Society of Travel Agents World Travel Congress in Sydney, Australia.

In the words of the Assistant Secretary of Commerce for Tourism, C. Langhorne Washburn:

Senator Inouye, in his keynote address, has clearly stated the facts of life regarding U.S. Tourism.

In my judgment, the distinguished Senator from Hawaii did this and more. He clearly and incisively pointed up the importance to the United States of international tourism, and the significant contribution it can make to our serious balance-of-trade and balance-of-payments problems.

Mr. President, I commend Senator INOUYE's address to the attention of every Senator and ask unanimous consent that it be printed in the RECORD.

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

SPEECH DELIVERED BY SENATOR DANIEL K. INOUYE AT THE AMERICAN SOCIETY OF TRAVEL AGENTS WORLD TRAVEL CONGRESS IN SYDNEY, AUSTRALIA

On August 15th, the President of the United States announced a new economic policy. On October 7th, he announced phase II of that policy.

The continuation of an extremely high rate of inflation, accompanying a rising and high rate of unemployment, at a time when 27% of America's industrial capacity was idle impressed President Nixon with the need to take strong action. With interest rates near their highest point in 100 years and with the real Gross National Product in 1970 declining for the first time since 1958, the President's action had strong popular support. Moreover, in 1971 the United States will suffer the first balance-of-payments deficit since 1893. For July of 1971 it had reached a $676.4 million figure. The second quarter 1971 deficit was the greatest in our nation's history, $3.5 billion.

Spurred by these facts, the President imposed a 10% surcharge on most imports as a part of his economic plan. That surcharge is designed to help our balance-of-trade by increasing the cost of imported goods to the American consumer and thereby encourage the purchase of American products. All of us, I am confident, support that objective and hope this step will help achieve that goal.

What struck me as strange, however, was that nowhere in the President's messages was anything said about tourism, and there was no attempt in his plan to utilize the potential

of tourism to help our balance-of-trade and balance-of-payments problem. And let there be no mistake about it, tourism is a significant factor in these areas.

Consider, if you will, just two items that will be affected by the 10% surcharge. In 1970 the United States imported $1.7 billion of textiles, and exported slightly more than $1 billion. Thus, on this item we had a deficit of slightly over $700 million.

For the same year we imported $5.5 billion of motor vehicles and equipment, and exported $3.5 billion. A deficit of $2 billion.

Now what dollar amounts were involved in international tourism in 1970? Americans travelling abroad spent $5.2 billion, and our receipts from visitors amounted to $2.7 billion. The balance-of-payments deficit for tourism, $2.5 billion, exceeded either textiles or motor vehicles and equipment.

It seems to me that of the four major items within our international accounts which make up our earnings of foreign exchange—*merchandise trade, return on direct investments, merchandise transportation,* and *tourism*—the latter, *tourism,* has perhaps the greatest future potential to earn additional foreign exchange for our nation and improve our balance-of-payments position.

World tourism is a $17.4 billion business involving 168 million tourist trips per year. Although the United States has captured less than 10% of the visitors (13.2 million in 1970) and less than 16% of the receipts ($2.7 billion, including transportation), we know that there are some 80 million persons throughout the world with the financial ability to travel to the USA.

We must remember that each additional overseas and Mexican foreign tourist is equal to an export worth $400. This is their average foreign visitor expenditure in the United States. As a highly developed country, the United States is becoming more service-oriented with over 50% of our GNP now devoted to the service sector, *and tourism is a service industry.*

If the United States could attract 6.4 million more overseas and Mexican visitors, equaling an additional 8% more of the potential market, we would go a long way towards wiping out the travel gap.

Throughout the world, there are major impediments to trade and investment. With regard to tourism, however, no major western country has any serious restrictions on travel. The freedom to travel and the freedom to make a appeal for the tourist dollar remains more unencumbered than any other form of international transaction.

Every nation is competitive in its tourism attractions because each country has its unique areas. Nowhere else can you see Diamond Head, the Grand Canyon, Glacier Park or Mount Rushmore, except in the USA. Moreover, surveys have shown that foreign tourists, especially Europeans, place the U.S. Number One or Two on their list of desired travel destinations. With the development of competitive packages, we should be able to attract our share of world visitors. In addition, this country is so large and offers such a scenic and cultural variety that we should attract foreigners for a repeat visit. As an example of competitive packaging, in September of 1969, a $250 round-trip inclusive tour charter air fare was introduced between Japan and Hawaii. With Japanese monthly disposable incomes rising from $145 in 1963 to over $257 in 1970, and with the virtual elimination of currency restrictions on travel, Japanese travel to U.S. destinations has skyrocketed from 23,000 visitor arrivals in 1961 to over 207,000 visitors in 1970. In fact, Japan has become the second largest supplier of tourists for the U.S. and will probably take the lead in 1972. In addition, Japan ranks first in U.S. travel receipts from *overseas* countries with $101 million in 1970.

Tourism also brings with it jobs and tax revenues. For every $10,000–$12,000 spent by travelers, one job is created. Thus, 1,000 new or return foreign visitors spending $400 each, will provide 40 new jobs. In addition, 9% of every dollar spent in a non-financial establishment goes to taxes, with the Federal Government taking approximately 6% and State/local governments taking 3%. These same 1,000 people, therefore, would produce not only 40 new jobs but $36,000 in total direct tax revenues. This does not include any multiplier effect on the velocity of money nor does it include the money spent on transportation to and from the U.S.

This, then, is the reason I found it strange that there was no mention of tourism in the President's New Economic Policy. For you in the business of travel, however, I imagine it came as no great surprise. As a Government we have paid scant attention to the economic potential of tourism. Prior to 1961 we did nothing at the Governmental level to encourage tourists to visit the U.S. In that year Congress enacted the International Travel Act which created the United States Travel Service, and inaugurated a positive national program to increase the number of foreign visitors to our shores.

Even these efforts have been relatively modest, however. According to one source, the U.S. ranks twenty-sixth in terms of the amount of money it budgets for promotional spending to attract foreign visitors. For example, five years ago we spent $3 million, and the Republic of Ireland spent $10.5 million. In 1970 we spent $6.5 million, and the Republic of Ireland spent $13.7 million. The State of Texas spent $1.83 million in 1970; and Hawaii spent $730,000 in the same year. Throughout the entire world we have only eight United States travel Service officers and one international convention office to promote tourism to our country.

With such show of enthusiasm and support from our Government, it is not too difficult to imagine the problems a travel agent encounters trying to convince a prospective tourist that the USA is the place to see.

In my judgment it was also short-sighted of the CAB to deny approval of the agreement among domestic air carriers to expand the program of reduced-rate education and familiarization trips for travel agents.

After all, you are the people who *will sell* tourism in and to the United States, *if anyone will.*

My purpose for being here is not to lament the past, although we must learn from it. I am here to speak of the future. And by the future, I mean to include the *here* and *now.* There is, I believe, sound reason for brighter expectations. I would like to explain what has been done recently by the Congress in an effort to increase the flow of visitors and dollars to the United States, and what might reasonably be expected for the future.

In this, 92nd Congress, as part of his long standing commitment to, and recognition of, the value of international tourism, Senator Warren Magnuson, the Chairman of the Senate Commerce Committee, created a Subcommittee on Foreign Commerce and Tourism. I am privileged to be the Chairman of that Subcommittee. I also consider it to be a challenge.

In July 1969, I presided over hearings on legislation designed to increase and expand the role of the United States Travel Service. Many of us in the Congress were convinced of the tremendous opportunity before us as a nation to attract foreign visitors to the United States in the 1970's and ensuing decades. We also knew that in order to capitalize on this opportunity, Government and private industry must renew their efforts.

As a consequence of those hearings, major amendments to the International Travel Act of 1961 were enacted into law in October 1970.

Among other things, those amendments upgraded the Office of Director of the U.S. Travel Service to that of Assistant Secretary of Commerce for Tourism; increased the yearly authorization for the Travel Service from $4.7 million to $15 million; provided a program of matching grants for tourism promotion projects; and created a Travel Resources Review Commission to study the tourism needs and resources of the United States in the next decade.

In May of the following year my Subcommittee requested the new Assistant Secretary of Commerce for Tourism, Mr. C. Langhorne Washburn, the Chairman of the newly created National Tourism Resources Review Commission, Mr. Charles S. Thomas, and members of the private sector to appear before it and give a broad overview of the increased efforts by the Government and the private sector to improve the position of the United States in the world travel market.

At that hearing, Secretary Washburn listed a number of priority items which the Travel Service intended to pursue. I believe they bear repeating now, not only because they are most worthwhile in my judgment, but also to serve notice of my Committee's continuing interest in seeing they are developed Secretary Washburn said, and I quote:

"Among the high priority activities that I intend to pursue are:

"*First,* to follow a market segmentation strategy approach, tailoring each marketing mix to the needs and wants of the particular country and population segment to assure that our advertising message reaches the appropriate members of the market. Segmentation is absoluately vital because the international tourism market is one of the most sophisticated and highly competitive operations on the world scene today.

"*Second,* to obtain a sufficient base of information about the key tourist-generating markets in order to provide this information to industry and to use it as feedback regarding the effectiveness of our various projects.

"*Third,* to expand our efforts to secure more international conventions in the United States and more people to attend those conventions already scheduled for this country.

"*Fourth,* to encourage the industry and our States and cities through matching grants and joint contracts, to become more involved in marketing international travel to the United States. One high priority project is that of increased development of an inclusive tour system. It is estimated that by 1975, over 15 million people will travel via inclusive tours—211 percent more than the 4.9 million who did so in 1969. We need to build the necessary institutions and facilities in the United States to get our share of this market.

"*Fifth,* to improve our tourist plant facilities through:

"Expanded use of port reception corps at airports and airport symbols;

"Greater encouragement and involvement of Americans to be friendly hosts; assisting in alleviating the language problems through the hotel multi-lingual language certification program and the travel-phone to service the needs of the non-English-speaking foreign visitor."

This is all well and good, and I concur, but like previous attempts, good intentions and the rhetoric of hope will not suffice. If we are to carry out the program set forth by Secretary Washburn, several steps must be taken by the Congress and by the Administration. Let me briefly list some of them for you.

First, I most respectfully suggest to the Civil Aeronautics Board that the Board once again consider the matter of reduced fares for orientation trips for travel agents. Our hotels may increase their services, our airlines may provide many more extras and lounges, and our rent-a-car agencies may

offer better deals. But, if the man and the woman behind the counter, our travel agents, are either reluctant or refuse to sell America to our customers, all these extras will be wasted. It is commonly accepted among travel agents that American travel agents know more about foreign visitor destination points than they do about American visitor destination points. Every effort should be made to make it easy for our travel agents to visit and know our United States and to make them aware that our nation is much more than Las Vegas, Disneyland, New York City and Waikiki Beach.

We have the desired destinations. In fact, our attractions are considerably more exciting and varied than can be offered by any other country. In what other country can one visit the Glaciers of Alaska, the Salt Lake of Utah, the rugged seashore of Maine, the excitement of Miami, the adventure of Las Vegas, the tropics of San Juan and of Waikiki? I could go on and on. We have the destinations that have to be sold. If we expect our sales personnel to sell America, we should give them the opportunity to sample America.

Second, we should systematically amend and repeal those laws that serve only to discourage foreigners from visiting our shores.

In western Europe, a citizen need not go through the cumbersome application process for visas, health certificates, passports, etc. Why can't we simplify our process? For example, today Americans can visit Bermuda without a passport. All he has to do is to declare that he is an American citizen. The same is true for Mexico and Canada.

I have been told that our strict immigration laws applicable to foreign visitors have been established to keep out the "undesirable", but all of us know that an "undesirable", if he really wants to get into the United States, notwithstanding the cumbersome visa application, will do so. What I am suggesting is that, in our attempt to keep out the "undesirable", we are keeping out the "desirable".

Third, every effort should be made to convince the members of Congress and the Administration of the importance and urgency of the business of tourism. The program set forth by Secretary Washburn is deserving of support, not with just lip service, but with hard cash, and a piddling $6.5 million is just not enough. We have an opportunity of providing jobs for thousands of Americans. We have an opportunity to close the unfavorable trade gap, and a piddling $6.5 million is just not enough to do the job.

I shall do my best to convince my Congressional colleagues of this importance and urgency, and I hope you will join me in doing likewise.

RISE IN CORPORATE FARMING

Mr. COOK. Mr. President, in the December 5 edition of the New York Times, there appeared an article by D. Drummond Ayres, Jr., entitled "Rise in Corporate Farming, a Worry to Rural America." I believe the overwhelming majority of my colleagues in the Senate share this concern.

I believe, as my colleagues, that now is the time to reverse this trend. As the recent consideration of Mr. Butz for Secretary of Agriculture indicated, this issue has our attention.

The conclusion of Mr. Drummond's article best sums up the attitude of many of us here in the Senate.

Maybe Earl Butz will turn out to be the best thing that ever happened to us.

I wish him well in this endeavor, and ask unanimous consent that the Drummond article be printed in the RECORD at this point.

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

RISE OF CORPORATE FARMING A WORRY TO RURAL AMERICA

(By B. Drummond Ayres Jr.)

KANSAS CITY, MO.—Few things are growing faster down on the farm these days than corporate influence.

All across the United States, from the wide-open prairie surrounding this cattle and grain center to Maine's fertile potato fields and California's irrigated grapefruit groves, big business is diversifying and moving in on what once was strictly a family enterprise, a way of life.

International Telephone and Telegraph now produces not only transistors but also Smithfield hams.

Greyhound now runs not only buses but also turkey processing plants.

John Hancock now sells not only insurance but also soy beans.

Corporate farming or conglomerate farming or agribusiness—by any name it strikes deep fear in rural hearts, such deep fear that the new Secretary of Agriculture, Dr. Earl Butz, was almost rejected by the Senate after he had espoused the advantages of agricultural giantism and had disclosed membership on the boards of such super farm firms as Ralston Purina and Stokely-Van Camp.

Senator Gaylord Nelson called Dr. Butz's views "brazen" and has begun to investigate corporate influence in agriculture legislation. The Wisconsin Democrat says: "Corporate farming threatens an ultimate shift in power in rural America, a shift in control of the production of food and fiber away from the independent farmers, a shift of control of small town economies away from their citizens."

The Agribusiness Accountability Project a non-profit study group with headquarters in Washington, has been looking into corporate farming for more than a year and reports:

"Corporations generally have become the dominant force in rural America. Their concentration of agricultural markets and their power over rural people is increasing every day. Control of American agriculture has moved from the fields to the board rooms of New York, Kansas City, Los Angeles and other centers of big business."

Farmers themselves speak even more directly the problem. Summing up the position of one of the largest farmer associations, the National Farmers Organization, Rogers Blobaum of Creston, Ia. said:

"A corporate takeover of the food industry would be a national disaster."

Corporations everywhere deny any takeover is threatened.

"We're not trying to run anybody out of business," says George Kyd, a spokesman for Ralston Purina.

A MISLEADING PICTURE

At first glance, corporations do not seem to loom large on the agricultural scene. Of the 2.7 million farms left in the United States, only about 1 per cent are carried on the Agriculture Department's books as incorporated or owned by corporations. And most of the incorporators still insist they are "family farmers."

But that picture is misleading.

Corporate farms are big farms. Many consist of thousands of acres of the best land obtainable. Their owners often have backlogs of development capital and, if diversified, obtain numerous tax advantages.

On the other hand, the average American farm, the unincorporated farm, consists of only about 400 acres, some of them nonproductive. The man who owns this relatively small plot probably has no big capital backlog, often is deep in debt, and seldom receives any special tax breaks.

Eventually, he may have to sell out, flee to the already jammed city, surrender to those who have the capital to compete in a business where $6,000 deals have replaced $60 mules.

This surrender, in one form or another, takes place 2,000 times a week all across America. That is the average number of farm sales weekly, according to the Agriculture Department. Often, a well-heeled corporation names in to fill the void, or maybe a wealthy city doctor looking for a tax deal or maybe a neighboring farmer who has somehow found the means to expand and is on the brink of incorporation.

Actually, not all farming corporations own land. Some only lease and thus do not show up in farm statistics.

Other farming corporations neither own nor lease land. They simply contract for crops, an operating method that now accounts for about a fifth of the country's total agricultural output.

METHODS COMBINED

A few corporations use a combination of operating methods.

For instance, the Tenneco Oil Corporation owns and farms about 35,000 acres of Southern California's best crop land. It leases 100,000 acres more. And it contracts for the crops of dozens of other farms in the area.

The overall effect is to make Tenneco one of the dominant agricultural forces in one of the biggest farming areas of a state that provides more than a third of all vegetables eaten in the United States.

Tenneco has no monopoly on the vegetable market. But in some other agricultural sectors, corporations have achieved dominance or near dominance.

Three companies—Purex, United Brands and Bud Antle—produce a large share of the lettuce eaten in America, a situation that has led to a rare agricultural antitrust investigation by the Federal Trade Commission. Many Government officials contend that a corporation cannot grow lettuce any cheaper than a family farmer, a point farm economists have frequently made, not only about lettuce but also about most other crops.

Another sector of agriculture dominated by corporate America is the broiler industry. There, 20 or so corporations are in control, producing everything from chicks to feed to packaged drumsticks. Among these companies are Pillsbury, Perdue and Ralston Purina, with which Secretary Butz was associated.

CHANGE AFTER WORLD WAR II

Until shortly after World War II, many broilers were raised in the barnyards of family farms. Small flocks of chickens, though always underfoot, supplied added income, cash for birthday presents or a winter weekend in the city.

Today, there is virtually no market for barnyard chickens. Instead, the family farmer is usually growing broilers under contract for one of the big agri-giants.

In a shed built with a loan from a corporation, he feeds mash produced by the corporation to chicks hatched in the corporation's incubators. When the birds are mature, the corporation takes them away, slaughters them in its own processing plant, packages them prettily, then ships them off to a supermarket—perhaps its own.

The farmer is paid $50 or so for every 1,000 chickens raised. But in any year, if times are hard or management particularly tough, the corporation may cut the growing fee in half.

Should the farmer refuse to sign a new contract, fine—so long as he pays off his loan on the corporation-financed chicken house.

Only last week, chicken farmers on the Delmarva Peninsula—comprising parts of Delaware, Maryland and Virginia—threatened court action when some broiler corporations proposed cutting growing fees in half.

And two years ago, in northern Alabama, growers became so incensed about reduced growing payments that they refused to sign new contracts and began to picket the offices of broiler companies. The companies refused to negotiate, however, and eventually the strikers gave in and returned to work.

Commenting on the strike's failure, one grower, Crawford Smith of Cullman, said:

"Us folks in the chicken business are the only slaves left in this country."

George Kyd of Ralston Purina counters:

"Chicken is cheaper to eat today than it was after World War II, and besides, a lot of farmers have been given work."

THE LESSON IS THERE

To which Harrison Wellford, one of Ralph Nader's agriculture "raiders," replies:

"Poultry peonage. One economist cranked in every applicable factor and concluded that most chicken farmers make minus 36 cents an hour. The broiler industry is the most corporatized in American agriculture and the lesson is there."

Foes of corporate farming refer to the broiler industry as being "vertically integrated"—that is, the corporations control almost everything from field to table. Few other segments of agriculture are so thoroughly integrated. But the trend is in that direction.

Tenneco recently told stockholders:

"Tenneco's goal in agriculture is integration from seedling to supermarket."

In fact, the corporation has almost achieved its goal. Not only does it own land, but it also makes tractors, tractor fuel and pesticides. Furthermore, it packages farm products and sells them in little groceries attached to its service stations.

In the potato industry, some companies have achieved full integration. This became evident several years ago when Idaho farmers tried to get more money for their potatoes by withholding them from processors for several months.

The processors refused to give in. Instead, they dipped into storage houses filled with spuds they had quietly grown themselves or had quietly obtained through growing contracts.

Eventually, the growers surrendered. Their potatoes were beginning to rot.

In the hog and cattle industries, vertical integration remains limited. But corporate influence is being felt.

For instance, some concerns like Ralston Purina now rent gilts and boars to farmers, sell the farmers grain to feed the resulting pigs, then offer to market the pigs once they reach maturity.

In the cattle business, a few petroleum corporations have set up huge feed lots in the Southwest, some with 50,000 head or more. As a result, oil companies are steadily becoming an influential force in cattle feeding, encroaching on the family farmer, the man trying to pick up a little extra income by raising a dozen steers out in the barnyard where the chickens used to scratch.

Big food chains often buy directly from feed lots or set up their own feeding operations. Thus, they reduce the need for stockyards, the one place where the family farmer can always be sure of getting the best price for his cattle because the bidding there is always competitive.

Victor Ray, an official of the National Farmers Union, a large farmers association, contends that several years ago Denver supermarkets whipsawed steer prices down from 29 cents a pound to 21 cents a pound simply by repeatedly shifting purchases from feed lot to stockyards and back to feed lots. Mr. Ray says:

"When the chains weren't buying at the yards, prices naturally would drop. Of course, the chains denied any connection. But interestingly enough, all the while that wholesale meat prices were going down, retail meat prices stayed the same. I figure the people of Denver paid at least $4-million more for food during that period than they should have."

Here in Kansas City, there is a company that specializes in investing the excess capital of wealthy corporations or individuals into cattle and other agriculture operations. Called Oppenheimer Industries, it takes on no client with a net worth of less than $500,000 or an income tax bracket of less than 50 per cent.

Its specialty is "cowboy arithmetic," tax savings for the rich through depreciation, favorable capital gains levies and other legal loopholes. One of its clients is Gov. Ronald Reagan of California, who paid no state taxes in 1970.

The president of Oppenheimer Industries, H.L. Oppenheimer, argues that the money he steers away from the United States Treasury and into farming actually helps keep the family farmer in business and does not contribute significantly to the corporate invasion of rural America.

Federal tax records indicate that at least three out of every four people with annual incomes of $100,000 or more are involved in farming in some way, most of them reporting agricultural losses that can be written off against taxes on nonfarm income.

If Federal tax laws seem to help the city corporation that farms on the side more than the family farmer who farms full-time, they are not the only ways in which Federal programs tend to work against the little man.

The biggest farms—the ones with the wealthiest owners—receive the biggest agriculture subsidies. The biggest farms also get the biggest dollops of Government-supplied irrigation water.

Recently, Congress placed some limits on subsidies. And the courts are beginning to crack down on the big water users, particularly those who do not live on the land they farm.

But still the gap widens between the rich and the poor.

"We lost the battle against Earl Butz but the struggle sure swung attention toward the farm issue. I've never seen Washington so upset over an agricultural thing. Maybe Earl Butz will turn out to be the best thing that ever happened to us."

THE WRINGING OF HANDS

Mr. HARTKE. Mr. President, for the last 8 months this country has pursued a policy of ill-concealed support for the Pakistan Government of President Yahya Khan. During this period, the administration has steadfastly refused to take those actions which might have defused the growing crisis between India and Pakistan before it erupted into open warfare. Our failure to condemn the repressive policies of Pakistan, which have resulted in thousands of deaths in Bangla Desh and the creation of an unsupportable refugee problem in India, is in no small way responsible for the present conflict. The fact that we have chosen on several occasions to support the position of the Government of Pakistan to the detriment of India, makes our responsibility in this matter even more plain.

At this late hour we can undo the damage already done to our reputation in that part of the world only by preserving our strict neutrality in the events as they develop between the two warring nations. I would hope that our prior expressions of sympathy for the goals of President Khan will not be repeated in the coming days and that we will work through the United Nations to bring lasting peace to East Pakistan. Nor should we retreat from the possibility that the only way to achieve this goal may be through the recognition of Bangla Desh as an independent State.

A column published in today's New York Times aptly summarizes our misguided actions and concludes that this country's reputation, which was already at a low point because of our policies in Southeast Asia, is now in danger of irreparable harm. I ask unanimous consent that the article entitled "The Wringing of Hands," be printed in the RECORD.

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

THE WRINGING OF HANDS

(By Anthony Lewis)

LONDON, December 5.—Suppose that Britain, in the 1930's, had responded to Hitler's savagery by the early threat or use of military force instead of appeasement. If the Nixon Administration had been in power in Washington at the time, it would presumably have sent some official out to wring his hands in public and charge Britain with "major responsibility for the broader hostilities which have ensued."

So one must think after the American statement over the weekend blaming India for the hostilities with Pakistan. Few things said in the name of the United States lately have been quite so indecent. The anonymous state department official who made the comment matched Uriah Heep in sheer oleaginous cynicism about the facts of the situation and about our own moral position.

Consider first the immediate origins of this dispute. They are exceptionally clear as international relations go.

The military junta that rules Pakistan under President Yahya Khan held an election. The largest number of seats was won, democratically, by a Bengali party that favored effective self-government for East Pakistan. Yahya thereupon decided to wipe out the result of the election by force.

Last March West Pakistan troops flew into the East in large numbers and began a policy of slaughter. They murdered selected politicians, intellectuals and professionals, then indiscriminate masses. They burned villages. They held public castrations.

To compare Yahya Khan with Hitler is of course inexact. Yahya is not a man with a racist mission but a spokesman for xenophobic forces in West Pakistan. But in terms of results in terms of human beings killed, brutalized or made refugees—Yahya's record compares quite favorably with Hitler's early years.

The West Pakistanis have killed several hundred thousand civilians in the East, and an estimated ten million have fled to India. The oppression has been specifically on lines of race or religion. The victims are Bengalis or Hindus, not Czechs or Poles of Jews, and perhaps therefore less meaningful to us in the West. But to the victims the crime is the same.

This record has been no secret to the world. First-hand accounts of the horror inside East Pakistan were published months ago. The refugees were there in India to be photographed in all their pitiful misery.

But President Nixon and his foreign policy aides seemed to close their eyes to what everyone else could see. Month after month the President said not a word about the most

appalling refugee situation of modern times. Private diplomacy was doubtless going on, but there was no visible sign of American pressure on Yahya Khan for the only step that could conceivably bring the refugees back—a political accommodation with the Bengalis.

Pakistan's argument was that it was all an internal affair. Yes, like the Nazi's treatment of German Jews. But even if one accepts as one must that Pakistan was bound to defend its territorial integrity, this issue had spilled beyond its borders. The refugee impact on India very soon made it clear that the peace of the whole subcontinent was threatened.

It was as if the entire population of New York City had suddenly been dumped on New Jersey to feed and clothe—only infinitely worse in terms of resources available. Yet when Indira Gandhi went to the capitals of the West for help in arranging a political solution in East Pakistan, she got nothing.

The Indians can be sanctimonious. Mrs. Gandhi acts for political reasons, not out of purity of heart. India has helped the Bangla Desh guerrillas and, in recent weeks, put provocative pressure on East Pakistan. All true. But given the extent of her interest and the intolerable pressure upon her, India has shown great restraint.

After all, India has not intervened in a civil conflict thousands of miles from her own border. She has not destroyed one-third of a distant country's forests, or bombed that land to such a point of saturation that it is marked by ten million craters. The United States has done those things and is still doing them; it is in a poor position to read moral lectures to India.

American policy toward the Indian subcontinent is as much of a disaster by standards of hard-nosed common sense as of compassion. India may be annoying and difficult, but she does happen to be the largest nation in the world following our notions of political freedom. In position and population she is by far the most important country of Asia apart from China. To alienate India—worse yet, to act so as to undermine her political stability—is a policy that defies rational explanation.

THE TERRORS OF AN AMTRAK TRAIN JOURNEY

Mr. ALLOTT. Mr. President, an enterprising journalist—a man brave to the point of foolhardiness—has exposed himself to the slings and arrows of rail passenger service. The journalist, Frank Leeming, Jr., is business editor of the Philadelphia Inquirer.

Mr. Leeming recently decided to investigate Amtrak from the railroad passenger's point of view. He voluntarily boarded the St. Louis-to-Philadelphia train. His report of the terrors of that journey is instructive.

In the belief that to be forewarned is to be forearmed, and as a gesture of solicitude for my fellow Senators, I ask unanimous consent that Mr. Leeming's report of that journey be printed in the RECORD.

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

[From the Philadelphia Inquirer, Dec. 5, 1971]

RATTLES AND GROANS MARK TYPICAL RUN FOR AMTRAK RIDER

(By Frank Leeming, Jr.)

One of the first things to do after accepting a new job is determine how to get to it. In terms of public transportation, there are usually three alternatives—plane, train and bus. Checking them out can be instructive.

To get from Decatur, Ill., to Philadelphia, the airlines would charge $76 for a first class seat, $1 less than a coach fare because of an arrangement between two carriers. Bus fare would be $38. And a train ticket from St. Louis—Decatur is off the passenger track—would cost $118 for a seven-by-four-foot bedroom.

Intrigued by the high fee and the fact that the St. Louis-to-Philadelphia train was operated by this city's bankrupt Penn Central Transportation Corp., it was decided to go by rail to see what would lure an individual into spending an extra $52 and 15 hours on the ground instead of traveling through the air. After all, Amtrak's national advertising campaign had been proclaiming that, "We want to save you time, money and aggravation." Maybe they want to, but they don't.

A passenger's initial moments in massive and deserted Union Station in St. Louis are aggravating. Handling baggage is a do-it-yourself affair. Tickets are sold for cash; credit cards haven't been recognized yet by Amtrak. The handful of passenger tracks are at a distant end of the station.

Once aboard, the porter apologized for the overheated room. "The heat's out of control," he said with a shrug. He also apologized for the grimy window, saying the window-washers had been too busy fixing the brakes.

There were only 16 passengers on the whole train, which had a capacity for 144 persons. That's an occupancy rate of 11 percent, compared with better than 70 percent on Penn Central—Amtrak's very successful Metroliner between Washington and New York.

In seeking to find out why prices were so high, one is told the rates are a carry-over from pre-Amtrak days when the railroads were doing all they could to discourage passenger service. Raising prices out of reach was one technique.

With Amtrak losing an estimated $150 million a year—the railroads lost $460 million a year before Amtrak took over—it is questionable whether rates will be lowered soon. However, Amtrak does feel it has the power to raise and lower prices without approval from the Interstate Commerce Commission and it may be recognized that long-term success will be possible only if fares are competitive.

Penn Central spokesmen cited more traditional reasons for the high fares. Unlike bus and airline firms, railroads must maintain their own rights-of-way and terminals. In most cases, governments own and operate airports and bus terminals, and planes fly through free air and buses use public highways.

In addition to high prices, long-distance railroad rides suffer from rough roadbeds. The ride between St. Louis and Philadelphia, for example, was quite rocky; it was difficult to read or write much of the time.

"They took our profits and poured them into everything but the railroad," a conductor said of Penn Central. "When they should have been fixing up the roadbed, they were buying pipelines. Now the rails aren't smooth enough for freight, let alone people."

"That's the old story," a Penn Central officer snorted. "The fact is that all railroads are losing money on their railroad operations. The only thing that's keeping the companies alive is their outside investments."

Railroad officials say the firm spent an additional $20 million on roadbed maintenance in the first 10 months of 1971, but one executive conceded that "some areas need more work."

Other delays are caused by freight trains. Although they are supposed to move aside for passenger traffic, many freight are so long the sidings cannot accommodate them and the two trains must jockey back and forth to permit the passenger to pass.

Labor costs, the traditional target for rail management, is another carry-over problem facing Amtrak officials. In the 21-hour journey from Kansas City to New York, five separate crews were employed to run our train. No crew worked more than five hours and 35 minutes, and one worked only four hours. Each member of a crew—there were at least five—received at least a full day's pay.

Because the individual railroad companies continue to operate passenger trains under contract with Amtrak, management practices that almost destroyed the service are still around. Ticket reservations, for example, are still handled ineptly, although Amtrak hopes to put everything on airline-like computers.

High-priced meals (60 cents for tomato juice, $3.40 for a hot turkey sandwich, 60 cents for a two-cup pot of coffee, $6.20 for a 14-ounce steak dinner), regardless of their excellent quality, still face the competition of free meals on airline flights. "They ought to serve free food, or at least free coffee and donuts," one passenger grumbled.

So why do people ride the rails? Those who work on the trains cite several reasons. It is generally relaxing and businessmen can corner themselves away from telephones and customers. Other persons are afraid to fly. Still others reject the long hours and motel living associated with highway travel. Finally, there are the railroad buffs who simply enjoy riding on trains.

But when analyzed, these reasons will not support a national railway system. Amtrak officials realize this, just as they recognize their $337 million initial bankroll will not be enough. In a continuing effort to reverse years of neglect and outright opposition, they went recently to the Federal Office of Management and Budget and asked for an additional $260 million subsidy to tide things over until June 30, 1973. The budget bureau cut the request back to $170 million; what will emerge from Congress is unclear.

Railroad officials in Philadelphia recognize the problems. They contend that long-distance rail service may always be a losing operation. They become enthusiastic about passenger trains only when the conversation turns to the northeast corridor and the heavily traveled stretch between Los Angeles and San Francisco.

"To be successful—which means keeping the fares down, running frequent trains, offering comfortable equipment—you have to have high volume," an area railroad executive said. "That means dealing with the businessman, who is the prime traveler.

"But to get his business, you have to show him you can save him time—that's the big thing. The only place we can do that is in the congested areas where we can zip into downtown areas and beat over-all air travel time."

REPORT OF NATIONAL PUBLIC RADIO ON HEALTH CARE

Mr. KENNEDY. Mr. President, National Public Radio is a noncommercial radio network with 118 affiliates broadcasting in 36 States, as well as Puerto Rico and the District of Columbia.

Last September, the National Public Radio system held public hearings on health care in six major cities across the United States—San Francisco, Boston, Atlanta, Philadelphia, Ann Arbor, and New York.

During the course of the hearings, both professionals and consumers alike continually reiterated the many reasons that more adequate health care and delivery are drastically needed in America today.

Mr. President, due to the continuing interest by all of us in the cause of health reform, I ask unanimous consent that a report summarizing the six hearings and broadcast over National Public Radio be printed in the RECORD.

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

REPORT TO CONGRESS AND THE NATION—NATIONAL PUBLIC RADIO "PUBLIC HEALTH CARE HEARINGS"

(Barbara Newman, moderator)

My name is Donald Quayle and I am President of National Public Radio, which is the noncommercial radio network with 118 stations broadcasting in 36 states, Puerto Rico and the District of Columbia.

Mr. Chairman, we appreciate the opportunity to appear before you today and transmit to this committee the information which National Public Radio has gleaned from its six public hearings on health care and national health insurance which were held this past September in San Francisco, Boston, Atlanta, Philadelphia, Ann Arbor, and New York.

We do not appear here today as experts on the intricacies of national health insurance nor do we come here to espouse any of the proposed bills. We appear here today to transmit to you the findings of the NPR health hearings. First, I would like to give you a little background on these hearings. Our purpose in holding them was two-fold. Because the health crisis is undoubtedly one of the most important issues on the legislative agenda of this body, we felt that it was important to inform people regarding the complexities of the proposed national health insurance legislation to enable them to participate meaningfully in this public debate. Second, it was our purpose to facilitate communications between those most concerned about health—consumers, providers and insurers—and those who will ultimately enact health care legislation—members of the United States Congress.

We realize that this committee has permitted testimony from all who desire to appear here. However, the fact remains that the average citizen is not the customary congressional witness. So, it is our hope that we can transmit to you today knowledge which you otherwise might not have received.

I think the primary function which we can serve is to humanize the debate. These several weeks you have all been hearing testimony regarding the health crisis, testimony replete with statistics of the soaring costs of health care which command 7 percent of the GNP, of the inacessibility of health care, of the health manpower shortage, and of uneven quality care. Statistics are a somewhat cold commodity, devoid of the urgency of human experience. What we found during our health hearings was a widespread concern about the health crisis and what we heard was the human agony which some people have experienced at the hands of the health system.

EINAR MOHN. According to the AFL–CIO research department, sixty percent of all personal bankruptcies in America are directly attributable to health costs. But beyond the bankruptcies are the millions of people who simply do without health care except as a last resort; who delay treatment because they cannot afford it; who do not fill their prescriptions because of the cost of drugs; who must allow minor health problems to become major because in our health industry today the cash register sits next to the appointment book.

EVE MAPES. I am alone with, and support my three children, one of whom is asthmatic. Nearly every year of his life he must be hospitalized with pneumonia. Medical insurance for the whole family was cancelled on the grounds that we did not list the child's asthma as a pre-existing condition when in fact we did not know he had asthma.

This left us unexpectedly in debt for several hundred dollars. We had been a middle class tax paying family who believed in yearly medical checkups and trips to the dentist. But from that point on, our economic situation and the level of health care deteriorated. One of the worst effects of this situation was, of course, psychological. We found that we lost our dignity when we lost our money.

BARBARA NEWMAN. Health care in this nation is in crisis. Speak to almost any person in America and you get a health horror story. You hear about families with savings wiped out, about unavailability and shoddy quality of care, and a growing resentment against health providers. The image of the doctor has become somewhat tarnished.

Chairman Wilbur Mills of the House Ways and Means Committee recently opened his committee's health hearings with the remark that Americans are increasingly resentful of trying to find their way through a maze of referring practitioners to find services for which a higher and higher part of the family budget must be used, and this without confidence that the care finally obtained is appropriate or of high quality.

Congress will undoubtedly pass a health bill within the next few years. A Harris Poll found public support for passage of national health insurance running at almost two to one, and most politicians on Capitol Hill are in favor of one of the health insurance proposals pending before Congress. The question is, what kind of a bill will be passed, and how adequate will it be in ending the health crisis?

Because health is such an important issue, and because House Ways and Means Committee has not permitted live coverage of its health hearings, National Public Radio this past September sponsored a series of six public hearings on health care and national health insurance. With the belief that the public should be apprised of the differences in the pending legislation, and that legislators in turn should be apprised about the wishes of the public, we went to San Francisco, to Boston, to Ann Arbor, New York, Philadelphia, and Atlanta. As participants we invited those most concerned with the issue of health—health consumers, insurers, physicians, and hospital officials, as well as those who will enact national health legislation, U.S. Congressmen.

One of the most insistent themes throughout the hearings was the hardship brought by rising health costs. The two people you heard at the beginning of this program, Einar Mohn of the California Teamsters Union, and Eve Napes, a Los Angeles housewife, testified at our San Francisco hearing.

National health costs—seventy billion dollars a year—are rising at twice the rate of the consumer price index. According to the Department of Health, Education, and Welfare medical expenses will rise fifty percent in the first half of this decade, and the rise in the health share of the gross national product will be as great as the rise in defense spending at the start of the Vietnam war.

One health planner characterizes health as the Vietnam of the 1970's. He sees billions and billions of dollars going into a quagmire. At the NPR New York health hearing, Shirley Kronberg, director of the Neighborhood Service Council of the New York Hotel Trades Council, recounted some incidents of high medical cost in a discussion with New York Republican Congressman Ogden Reid.

SHIRLEY KRONBERG. I have one bill here where a woman entered a hospital in this city at 9 AM, was discharged at 6 PM, and her bill is three hundred and nineteen dollars. Interestingly enough, laboratory services, a hundred and twenty-seven dollars. We asked the hospital for a breakdown of these laboratory costs. They sent us a list of all of the tests made. And we understand that there is now a computer through which they put these few drops of blood and they can obtain a variety of tests for a very, very small fee. Nevertheless, they charged her tests—you know, fifteen dollars, twenty dollars, twenty-five dollars—whereas in fact these tests cost them very, very little.

Congressman OGDEN REID. What was the actual room charge there?

KRONBERG. Seventy-five dollars. For room and board.

Congressman REID. For less than twenty-four hours?

KRONBERG. Six hours. Blue Cross pays eighty dollars for maternity confinement, and is now increasing this to a hundred dollars. But the average bill is over six hundred dollars. And I have a very interesting bill that was brought in by one of our workers this week in which his wife delivered prematurely at home. A policeman called, he got the ambulance, she was brought to the hospital, she was in the hospital three days. She had already delivered the baby. His bill for this three days in the hospital is two hundred and nineteen dollars for the baby, and three hundred and sixty-two dollars and fifty cents for the mother. Now this is for three days. And here are the two bills. And Blue Cross of this paid eighty dollars.

Congressman REID. Have you found, Mrs. Kronberg, that group medicine and peer pressure and peer judgment has lowered some of the costs?

KRONBERG. I don't see where the peer judgments have lowered anything. I know that the AMA spent millions of dollars fighting against Medicare, and they've been the greatest beneficiary of Medicare. The insurance companies haven't done anything over the years to stay the rising costs. And the insurance companies, and in some cases such as Blue Shield, which a doctor operated, have certainly not done anything about questioning their costs, either by the doctors or the hospitals.

NEWMAN. That was Shirley Kronberg at our New York hearing.

The greatest increase in health spending has been in hospital rates. They have risen five-fold in the last four years and now hover at about a hundred dollars a day. The *New York Times* states that some projections put average hospital room charges at a thousand dollars a day by 1981.

Critics of the health insurance industry charge that private insurance companies have not acted effectively to keep these costs down. Much of the criticism of the health industry is directed at Blue Cross, which pays about fifty percent of the nation's hospital bills. Blue Cross is non-profit and tax exempt. But some think that its very institutional structure perpetuates the interest of the hospitals at the expense of the health consumer. The American Hospital Association actually owns the Blue Cross trademark, and in most of the nation's seventy-four local Blue Cross plans, the boards of directors preponderantly represent hospitals' and physicians' interests.

The key area of debate, then, on national health insurance will be the role of the insurance industry. Of the major national health insurance bills pending before Congress, only the Health Security Act, introduced by Senator Edward Kennedy, would eliminate the insurance industry from health care. Under the Kennedy legislation, cradle-to-grave health coverage would be available to all U.S. residents. It would be administered by the Federal government.

The administration's Health Insurance Partnership Act retains the insurance industry as fiscal intermediary in health care. It actually mandates that all employed persons must purchase private health insurance. The administration has proposed tighter regulation of the insurance industry, but would leave enforcement up to the states.

The AMA's Medicredit bill and the Health Insurance Association's Health Care bill both provide tax incentives for the voluntary purchase of private health insurance.

There are a great number of health experts who question the advisability of retaining the private insurance industry under national health insurance. From Boston,

John O'Leary, former Massachusetts Rate Commissioner, and from Ann Arbor, Doctor S. J. Axelrod, Professor of Medical Care Organization at the University of Michigan. First, O'Leary.

JOHN O'LEARY. I have considerable questions in my mind as to the role that the health insurance industry should play in a national health insurance program. I cannot help but express extreme concern over the lack of effort on the part of the insurance industry, generally speaking, in the past, to try and influence the organization of the health care delivery system in order to bring about somewhat more efficient and economical delivery of service.

Doctor S. J. AXELROD. The very widespread interest in health insurance, as evidenced by the numerous proposals now before Congress, it seems to me is largely a response—a political response—the high and rising cost of medical care, primarily, and also a response to the inadequacies of private—that is to say voluntary—health insurance as a means for handling these costs. The private enterprise, or ethos, if you will, of our health service industry sees further expression in the fact that private commercial health insurance dominates the field, and this kind of dominance results in considering health insurance not so much a means of providing adequate service, but rather a means of paying bills. And along with this fiscal view of health insurance, of course, it is accepted that there will be payments levied on patients who regard themselves as insured, but payments through deductibles and co-insurance which very often act as important deterrents to the receipt of care.

The fiscal view of insurance concentrates on large medical bills which relatively few people have—very large medical bills, that is. And in general the whole coloration of the health insurance industry takes the view that health insurance should be a mechanism for exchanging dollars, rather than for providing necessary and adequate health services.

NEWMAN. That was Professor Axelrod of the University of Michigan. From California, labor leader Einar Mohn.

EINAR MOHN. For twenty-five years we have gone to the bargaining table with employers and come away with more and more money to pay for health care—money that was needed for wages and other benefits. For twenty-five years we have given the private insurance industry every opportunity to work, we have put our hard won health benefits into their hands, asking them to restrain costs, and to exercise some control over the quality of care provided in hospitals and physicians offices.

The record of achievement by the insurance industry is marked by failure, disinterest, neglect of health needs, and certainly profiteering. California's unions are now pumping one billion dollars annually into the health industry through negotiated benefits. Our estimates make us believe that at least twenty percent of the money negotiated for in our contracts does not go to provide health care. It goes for costs, it goes for a lot of other things, but do not provide health care. That's far too high a cost.

In good faith, labor has tried to live with the private insurance industry, and tried to live with voluntary methods of policing quality. But the experiment is over. We now want, and need, national legislation that will publicly manage our dollars and exercise public control over the health industry.

NEWMAN. On the other side of the issue are representatives of organized medicine, the insurance industry, and the hospitals who wish to retain the private health insurance industry. These views were best expressed at our San Francisco hearing by William Wayland, Executive Secretary of the California Hospital Association, and Dr. Roberta Fenlon, President of the California State Medical Society. In Ann Arbor, Edward Connors, Director of the University of Michigan Hospital, spoke for the hospital interests in favor of retaining the insurance industry and health care. First, William Wayland.

WILLIAM WAYLAND. Despite the criticism of the health industry, it has been eminently successful in fulfilling its basic goal, the provision of good quality health care.

Doctor ROBERTA FENLON. A national system of health care must be based on the insurance concept. Just as every driver in California is required to have automobile insurance, everyone should be required to carry adequate health insurance.

EDWARD CONNORS. I believe that government's role in financing should complement and strengthen the basic health insurance mechanisms, rather than replace them. I acknowledge without question that health insurance needs to be strengthened; it needs to be required or assured for all citizens. And it needs, I believe, to be subject to tighter regulation. But I think the record in many respects of health insurance in this country has been remarkably good, and I would disagree with some of the former speakers that implied that all they are interested in—these are health insurance now—that all they are interested in is just the financing portion—in trading dollars. And I think sitting from my perspective as a provider, there has been a fair amount of progress—probably more progress than in any other sector that I know of—prompted by particularly the Blues in health insurance on such important issues as the appropriate use of the hospital, and cost containment and control. And from my view I think it would be a tragedy as a public policy to dissolve this vital link in the system.

NEWMAN. That was Edward Connors, Director of the University of Michigan Hospital. In Philadelphia, Robert Carpenter, vice president of the Penn Mutual Life Insurance Company, critiqued the proposed national health insurance bills from the insurance industry's viewpoint.

ROBERT CARPENTER. The health insurance industry's plan does not attempt to promise more than can be provided, establish a whole new government bureaucracy, create huge new demands on the existing facilities by promising "free care," and impose huge new taxes on the constituency which is already reeling from tremendously increased taxation in recent years, such as the health security act program sponsored by Senator Kennedy does. Neither does it force a substantial financial burden on employers, or provide different standards of care for different classes of citizens which the administration proposal includes. It covers the broad range of the problem as contrasted with the limited approach to covering catastrophic health care costs under Senator Long's bill. It does not place its complete reliance on the yet relatively untested organizational structure for delivering care as proposed by the American Hospital Association's Ameriplan, and it does not rely primarily upon tax incentives for private health insurance programs as proposed by the American Medical Association.

NEWMAN. Thank you very much, Mr. Carpenter. The report of the—the staff report of the Senate Finance Committee of 1970 stated: "Carrier performance under Medicare has in the majority of instances been erratic, inefficient, costly and inconsistent with congressional intent. Unquestionably, many millions of dollars of public funds have to subsidize carrier inefficiency." In view of this, why should we retain the insurance industry in national health insurance legislation?

CARPENTER. That's always an interesting question. And the health insurance industry does have to stand on its record. I believe that when any program is inaugurated you're going to have these types of problems. I think that if you were to move away from private insurance toward the direction of the national security health program advocated by Senator Kennedy you would find that the government bureaucracy to be created would be so much tremendously more inefficient that you would have much greater problems.

NEWMAN. Insurance executive Robert Carpenter found a surprising ally in Pennsylvania's State Insurance Commissioner, Herbert Denenberg. Doctor Denenberg is a vociferous reformer and critic of the health insurance industry, but surprisingly refused to endorse the Kennedy health security bill. He questioned the advisability of administering national health insurance through a governmental bureaucracy.

HERBERT DENENBERG. Public confidence must be reestablished in the federal bureaucracy before great additional responsibilities are entrusted to it. The Kennedy proposal, the national health security plan, scraps private health insurance altogether. Thus, the proposal scraps good and bad insurance companies without distinction. It is true that private health insurance has not performed effectively. But it is also true that we have not subjected it to effective regulation. We are trying to make up for this shortcoming in Pennsylvania.

The Kennedy bill, in view of the deficiencies of private health insurance, would therefore abandon private insurance and substitute government insurance. Medicare demonstrates government is not the whole answer. And it can be as unsatisfactory as private insurance. Many non-profit insurance companies, for example, are doing a better job than Medicare in controlling costs and quality.

Here you see bureaucratic distortion of the intent of Congress in the establishment of the Medicare program. Congress intended Medicare to pay for the necessary costs of patient care to our senior citizens. The bureaucrats somehow distorted the congressional intent and turned Medicare for the aged into an uncontrolled educational subsidy for the medical profession. Medicare, however laudable in its social purpose, has greatly contributed to our runaway inflation of medical costs. Medicare, which should have been part of the solution, instead has become a central part of the problem of our health delivery system. Medicare not only contributes to the problem, but attempts to veil its operations in the cloak of secrecy. We asked for certain studies of Medicare fiscal intermediaries, and were turned down on the basis of executive privilege. The Medicare people thought the studies might be "misinterpreted." Others were refused access to the studies as well. We finally obtained copies of the study, only for our own use, but they still have not been made public. How can we entrust further responsibility to a government agency that now betrays its public trust? How can we extend Medicare to national health insurance when Medicare now fails to perform its central function of cost and quality control over medical and hospital care?

The key issue is not so much the mixture of government and private insurance, as the mixture of cost and quality controls in the system that emerges.

NEWMAN. Pennsylvania's State Insurance Commissioner, Herbert Denenberg.

People often lump quality and cost together when they discuss the health crisis. For example, proponents of each of the national health insurance bills claim that their bill will provide cost controls while upgrading the quality of care.

New York City, under the direction of its Deputy Health Commissioner, Doctor Lowell Bellin, has embarked on a unique program of auditing costs and quality of care rendered by private practitioners to New York Medic-

aid patients. Doctor Bellin's staff actually goes into doctors' offices, randomly pulls patient files, and examines medical records. This is the only medical audit of its kind in the nation, and has aroused great resentment from physicians.

Doctor Bellin is one of the most outspoken critics of poor quality medicine and the ineffectiveness of medical peer review. Medicine is self-regulated. Traditionally, doctors have argued that only doctors can regulate quality and costs. Doctor Bellin doesn't dispute this point, but he does feel that peer review must involve outside physicians who don't have a stake in protecting their colleagues. He is not optimistic about quality controls within any of the national health insurance bills.

Doctor LOWELL BELLIN. In an attempt to meet the health care crisis, every proposal deals with financing, manpower, and improvement of the delivery system. Regrettably, every proposal also bypasses quality control of services provided to patients. For example, the major emphasis of the President's program and the Kennedy bill are cost controls and minimum standards. The American Hospital Association plan stresses cost controls and peer review. And the health insurance industry plan provides for state control and controls on over utilization through patient payments of deductibles and co-insurance.

Quality control, which includes the availability, acceptability, and nature of care, is defined as a system for verifying and maintaining a desired level of quality in a product or process by careful planning, use of proper equipment, continued inspection, and corrective action when required. Quality is the prerequisite element of that cost control. Without it any cost is too much. Because the major abuse in dollar value is over utilization of service, enormous sums of money can be saved by constraining over utilization, not only within private offices, but particularly within hospitals.

People who emphasize how much auditing of health care services cost the government are either uninformed or wish to keep others misinformed. At present the New York City Department of Health is saving and recovering two and a half to three dollars for every auditing dollar spent. There is only one spot to place ultimate auditing activities of publicly funded health care services. That spot is a public agency. This means that the public agency must have courage. Many of our public agencies are craven as well as technically incompetent.

After the instructive experience of the past five years with Medicare and Medicaid, it is incongruous that anyone dare suggest to legislators that the appropriate place for auditing is exclusively, a) within professional societies, or b) within the fiscal intermediary. They both are too intimately associated with the constituents to be granted the ultimate responsibility of either quality control or cost control. It is an administrative truism that evaluation must be isolated from operation. For the Federal government to violate this principle by funding evaluation of health care services primarily in professional societies, and/or in fiscal intermediaries, is to replicate the folly that has bedeviled Medicare and Medicaid since the mid 1960's.

Since 1965 we all should have learned that tokenistic regulation of quality and cost of health services always discredits any publicly funded health care program.

NEWMAN. Doctor Lowell Bellin, New York's Deputy Health Commissioner.

Supporters of the Kennedy National Health Security bill put great store in its quality controls. Its main quality control is that only board certified or qualified surgeons will be reimbursed for major surgery. There are currently twenty specialty boads in medicine and surgery. In order to be board certified, the doctor must participate in several additional years of post graduate work after residency, and must pass a rigorous written and clinical examination. The reason the Kennedy bill focuses on surgery is because many people feel that far too much surgery is performed in this country. Of the seventeen million surgical procedures that will be done in hospitals this year, many doctors feel that a great number will be inadvisable.

As surgery always involves risk of post operative infection or problems with anesthesia, the old adage, when in doubt, cut it out, is not good medicine. Yet Fortune magazine quotes an official of the AMA as saying that the rise in tonsillectomies under Medicaid verges on the scandalous. This unnecessary surgery has become so prevalent that a new term, remunerectomies, has been coined by critics.

Doctor Lowell Bellin, concerned about unnecessary surgery, does not think that even the Kennedy health bill has sufficient quality controls.

BELLIN. The basic, I think is not going to be attacked by addressing specifics, like whether or not there will be a board certified or a board eligible surgeon who is going to be reimbursed for his service. There is no guarantee, for example, that a board certified surgeon is going to do the job properly. This is only one step forward. We know, for example, the famous study carried out by Doctor Trussell, formerly the Hospital Commissioner and Dean of the Columbia University School of Public Health, some years ago here in the city of New York, that a significant portion of the surgery in New York—something like one-third was found to be inadequate, despite the fact that frequently, and most of the time, these were board certified and board qualified surgeons. When the study was continued, to actually ask the patients, what did you think of the quality of work you received; about eighty-five percent of the patients who had received this care, which in Doctor Trussell's and his staff's opinion was completely inadequate, were quite happy with that care and returned to their original doctor.

So what I'm trying to point out is this, that this is one step. But I'm even more concerned with something more fundamental, the actual issue of getting the right kind of structure to monitor this thing, to promulgate a number of standards, and to enforce these standards. This is what's the key to the entire issue.

NEWMAN. One of the basic reforms in the health system is the development of Health Maintenance Organizations—HMO's. Both the Kennedy and administration national health insurance bills provide funds and incentives for their creation. The largest HMO in the nation is the Kaiser plan on the west coast.

HMO's are actually pre-paid group practices; places where several doctors join together in a group practice and are paid a certain amount per patient per month, regardless of how often the patient uses the services. This is called payment on a capitation basis. Currently most doctors are paid on a fee-for-service basis. That is, you pay them for each office visit, and for each procedure they perform. Critics say that this encourages a system of sickness care and not health care. There is no incentive now for the physician to keep the patient well when he is paid only when they are sick.

In Atlanta, Reverend Andrew Young, Vice Chairman of the Southern Christian Leadership Conference, made a strong case for HMO's.

Reverend ANDREW YOUNG. I'd like to think of us as working toward a health care system that rewarded people and doctors for health rather than for sickness. Right now, the more operations they perform, the sicker people get, the richer doctors get. In fact, it's even more ridiculous because you get to go in the hospital and get an operation, and then your health insurance pays for it, when a doctor could probably do it in his office.

And I think the setup of our hospitalization insurance presently drives people to the hospital, and encourages hospitalization, when I think we've got to have some kind of health insurance or some kind of health plan that encourages people to stay well. Along with this I think, the kind of system that would reward people for good nutrition. I'd like to see a group of patients or community served by a team of physicians where at the end of the year they would get a bonus if they had less than the national average of operations for people in that age and income bracket, rather than be rewarded for the more operations they have. I think in some health care plans—I think this was true in the Kaiser plan—where people were rewarded for going to get regular checkups. And they found that in certain categories of operations, they were remarkably less when people received rewards for staying well than they were when people almost had to get sick in order to get some kind of serious medical attention or some consideration from their insurance.

NEWMAN. Reverend Andrew Young of the Southern Christian Leadership Conference.

In San Francisco Republican William Mailliard and Kaiser Foundation Vice President Robert Erickson discuss how Kaiser has kept costs lower than commercial insurance plans. Congressman Maillard speaks first about commercial health insurance.

Congressman WILLIAM MAILLIARD. The nature of the coverage is much more complete if a patient is hospitalized than if they're kept out of the hospital.

ROBERT ERICKSON. That's true. And our system does have comprehensive outpatient coverage as well as inpatient coverage so that the physician can choose the care that's most appropriate to the patient without being concerned about the out of pocket cost to the patient. I think the most unique feature is savings in hospital utilization.

NEWMAN. Regarding Kaiser's ability to keep costs down and hospitalizations lower than other plans, doctors receive extra bonuses if costs are kept within a budget framework. Would you explain that, please?

ERICKSON. There is an incentive program that gives the physician an added piece of the action, you might say, in controlling costs and in accepting financial responsibility. And if there is a surplus above the budget at the end of the year, they receive a share of that surplus.

NEWMAN. Mr. Erickson, we hear that the surgical rate for those with group plans is half that for those with commercial health insurance. And people have indicated that there seems to be too much surgery—much unnecessary surgery in this country.

ERICKSON. I do know that studies have indicated that the rate of surgery in organized group practice programs, including Kaiser, is substantially less. And it may resemble a fifty to sixty percent rate, at least in many of the studies. I think it may be even more marked in some of the truly elective type of surgeries, such as tonsillectomies, OBGYN-type surgeries that are truly elective. The incentives for unnecessary surgeries are removed from an organized system, and this may be a factor in the surgical rates.

NEWMAN. Are you saying, in other words that the doctors under the group plans such as yours are remunerated on an annual basis, and do not make extra money for doing surgery?

ERICKSON. That is correct. They are paid so much per member per month.

NEWMAN. Despite the fact that most health reformers advocate HMO's, there are some who doubt their ability to improve the nation's health system. Dr. Oliver Fein of the Health Policy Advisory Center, who has

done extensive research on health, expressed his misgivings about HMO's at our New York hearing.

Dr. OLIVER FEIN. The health maintenance organization program, a program that Nixon—reorganization of the health system is pointed to as one program that is likely to keep costs down. But I say at the expense of the patient. Here's the way it works. The government contracts with an HMO to provide care to a certain population at a fixed pre-paid price. If the costs of providing care exceed the pre-paid price, the HMO will have to make up the deficit itself. If, on the other hand, the HMO keeps its costs under the prepaid amount, then the HMO keeps the difference as profit. The profits lie in holding services to a minimum. HMO's are just one more way of reducing consumer demand. This will be done by long waiting lines, delays in elective surgery, rather than in real preventive care.

Without consumer control to monitor the practices of HMO's, they will end up serving the doctors and the hospitals interests, not the patient.

NEWMAN. Dr. Oliver Fein at the New York Health hearing.

And this leads to a major issue for which we found a surprising amount of support. When one hears the words "consumer control" one tends to dismiss them as rhetoric of the left, or stale slogans of the Great Society. Yet in every city we went we found support for consumer participation and even control of a revitalized health system. The support came from doctors, nurses and from Pennsylvania Insurance Commissioner, Herbert Denenberg.

HERBERT DENENBERG. I think the most important thing in the whole system, and it's both the cost and quality control, is to be certain that the consumers are in control, and that the consumers are participating in these decisions as much as possible. Our health delivery system is a Frankenstein monster, built on Rube Goldberg principles, and it is now confronted by a public with rising expectations and by a new technology that is dramatically extensive and dynamic. But it goes on its merry way, indifferent to the needs of the community in its limited ability to pay ever increasing medical and hospital costs.

The system is basically run for the benefit of doctors, hospitals, the drug industry, and the other providers of medical care. I have seen first hand the contempt for consumer input and participation in our hospitals while I participated in the negotiations of a new hospital Blue Cross contract. As a result of this indifference, and even contempt, for the consumer, the system delivers bad medicine at high prices. For example, it duplicates facilities for open heart surgery for the convenience of doctors to the point where costs are way up, while quality is way down because of the limited volume in each facility.

The system's inability to control costs is exceeded only by its inability to control quality.

NEWMAN. In Philadelphia a spontaneous discussion developed on the issue of consumer control and peer review between Doctor Ted Tapper, a recent Harvard Medical School graduate, and Doctor Benjamin Friedman, a representative of the AMA.

Doctor TED TAPPER. I think that physicians reviewing their own quality and practices is like asking the owners of the National League and American League baseball teams to review their programs and practices. I think that if you have no outside people looking in, especially people who have no vested interests, as obviously physicians do, in medical schools, in practices in local areas, and in hospitals, if you have no outside people looking in, you're going to get the same kind of system that you have now. Which, in effect, is no quality control and no peer review of a true nature.

Doctor BENJAMIN FRIEDMAN. I do want to comment about peer review approach. Our desire is to create a structure so that there will be constant review of quality. We have seen in other nations where massive interference has resulted in decline in quality. It is our desire to set up a program which would not result in such massive, complicated, bureaucratic procedures so that we could not to the best of our advantage discharge our responsibility to our patients.

TAPPER. I agree with you. I think that it would be undesirable to set up a vast bureaucratic structure. And I think it would be undesirable to compromise quality of control. My only point is that if you have physicians looking after other physicians, with no one else looking at them, you are going to have the same kind of very quiet behind the scenes covering up of poor quality and rampant cost non-control. I would hope that you would get much more truly representative consumers, other than some of the mainline types who are on hospital boards of trustees, on the utilization review committees and really get people who are going to start questioning doctors, who are going to start saying why was that very minor surgical procedure kept in the intensive care unit for four days after his tonsillectomy; why was that child with an upper respiratory tract infection admitted to hospital in the first place? Until you start getting people in who are going to make these questions very, very vivid to the physicians and hospital administrators, I think that you are going to have the same sort of system that you have now, which is a very inadequate one.

NEWMAN. Doctor Ted Tapper in Philadelphia.

Several witnesses criticized all of the proposed national health insurance bills as inadequate in providing accountability to health consumers. Doctor Oliver Fein at our New York hearing.

FEIN. If we look at all the proposed schemes on the spectrum from the Nixon administration proposal, which is among the most conservative, to the Kennedy proposal, which is the most liberal, it becomes apparent the Nixon administration proposals will change almost nothing—just a larger number of people will be insured with the inadequate health insurance that Mrs. Kronberg described earlier. The Kennedy proposals will likely leave control of the system unchanged, or shift it toward control by the corporate forces, such as the big hospitals, medical centers, and insurance companies.

To this dead end I can only propose a fundamental alternative. The only way to change the health system so that it provides adequate, dignified care for all is to take power over the health system away from the people who now control it. Not merely the funding of the system, but the system itself, must be public. It then becomes possible to face such questions as how we decentralize the national health care system to make it responsible to the community and accountable to it, and how we insure that patient care is the primary priority of the system, and how we insure equal access to health institutions and to practitioners.

NEWMAN. That was Doctor Oliver Fein in New York.

From Boston, Mrs. Ann Stokes, head of the Columbia Point Neighborhood Health Center's Consumer Organization.

Mrs. ANN STOKES. Health insurance bills, as they stand at the present time, do not include consumer participation in a way that the recipient of service can determine what kind of care will be given. The consumer areas of interest are: one, receiving comprehensive health care; two, to be able to give their reaction to the care received; and three, a degree of knowing that they will receive continuous family care.

The medical professionals, AMA, must begin to communicate with the communities. Information must be shared. And the professional and the community will have to work together to develop a health plan, to define concerns, and identify those powers which belong to the community, those which belong to the professional, and those we share. Or else, like welfare reform, antipoverty programs and the various health plans will be doomed before they are implemented.

NEWMAN. Mrs. Ann Stokes in Boston.

Mrs. Ann Garland, chief outpatient nurse at Pennsylvania General Hospital.

Mrs. ANN GARLAND. Minority patients have great resentments in the hospital. Mainly among them are the first name basis. When a patient comes in the hospital, whether they're in a private room or a ward, they're not in the hospital five minutes before a nurse pops right into the room and greets them with a cheery smile and says how would this patient like to be addressed, Tom or Thomas? The hostility shield comes right down. This tends to make the patient not relate to the doctor or to the hospital. They do not tell the truth about what's wrong with them. And since the patient is not well informed about medical practice, they do not know that the doctor cannot treat them unless they tell them what's wrong with them. They think the doctor is all omnipotent, knows everything, not knowing, as we do, that they knew very little unless you tell them. So when they do not tell the patient what's wrong with them—the doctor what's wrong with them—then the treatment of course, is stymied.

Thre's a total lack of privacy offered to these patients in interviews or in an examination. The policies become nonflexible with poor patients. Research is done on these patients without their permission. They know nothing about it and they give no consent. There is a lot of drawing blood for special studies not relevant to their illness, drugs given for drug reactions for these companies. These things should not be.

NEWMAN. Mrs. Ann Garland in Philadelphia.

If consumers had control over health expenditures, then according to the people we just heard they would upgrade medical care quality. They would presumably have a decisive voice in allocating health resources, and could channel funds into areas not now effectively covered by health insurance.

In Atlanta, former Congressman James Mackay, who is now President of the Metropolitan Atlanta Mental Health Association, and Reverend Andrew Young of the Southern Christian Leadership Conference each expressed a desire for greater attention to mental illness. Mr. Mackay speaks first.

JAMES MACKAY: Frankly I'm more concerned about a person's health than any other feature. If you don't feel well you can't relate to your wife and children, and you can't produce down where you work. And health is a fundamental need that we all have.

And the thing that bothers me, I might say to the members of the panel, is all of these programs are frightened by mental illness. And they generally cut you off pretty quick. And yet we know that—I think it's accepted that over half of the people in the hospital beds of America—not the mental hospital beds, but the general hospital beds—have no objective evidence of illness. But they're not functioning well. And mental health and physical health are inseparable.

Reverend YOUNG. I happened to be in Chicago in 1967 when what is commonly called a riot began. We were having a meeting in a little church and heard a disturbance outside, and got outside the church just as the police were coming to the scene and breaking up a group of kids that were in a fight around a water faucet. In the summertime

they wanted to be in the sprinkler system, and the police turned it off, and that started a little incident. The young people moved over into a housing project and we followed them over there, trying to calm them down. And they immediately became inflamed by a young man who was carrying the Bible and quoting from the book of Obediah and saying that this was the day of judgment for the Lord, and the white man's day was done. And he proceeded to try and inflame that group of kids. And did succeed. We were able to try to hold on to him. We tried to get the police to come and get him, to take him out of the crowd in hopes that we could control the crowd. But we were unable to do that. And it was so obvious to us that what ended up being a full-fledged riot, running into hundreds of millions of dollars in Chicago by the time it ended a week later, really was fanned out of an incident by a young man who needed, mainly mental health care. Now, he also needed a job, and I would not want to minimize the problems of unemployment and inadequate housing and education and all the other things in causing urban unrest. But the primary situation there was here was a guy that needed a psychiatrist, or at least an outpatient mental health clinic in this impoverished community.

Now I say to you that Chicago nor Atlanta's health care will ever be secure so long as you have the level of mental illness which floods through our communities. And I think one of the things I've been looking for in almost all of the present health care programs is some real full-fledged attention to the problems of mental health. When we have people living in overcrowded urban areas, it's not as though it was a century ago when we were living in small towns where you could get sick and you were a hundred yards away from the next family, and your disease, whether it was mental or physical, was not contagious. In an urban area, anything that happens to anybody inevitably will affect everyone else.

And so until we have a health plan that's so comprehensive that it gets the people who are unemployed, that it gets the people who are poorly educated, that it gets the people who are mentally ill, then I think any kind of health plan we come up with will be inadequate.

NEWMAN. Reverend Andrew Young of the Southern Christian Leadership Conference in Atlanta.

Another key area of controversy surrounding national health insurance is whether legislation should restructure the health system, or simply provide health financing. Critics of the present health system feel that it is inadequate to producing enough manpower, and in rationally distributing the available resources. They point to the fact that certain suburban communities are replete with physicians, while hundreds of rural counties have not one physician.

The nation's leading advocate for restructure is Doctor S. J. Axelrod of the University of Michigan.

Doctor S. J. AXELROD. The proposed changes envisaged in the legislation with respect to the financing of health care—and the emphasis is on the financing of health care, whatever the source and the amount of funds—is not in and of itself adequate to handle the current deficiencies we have in our delivery system. We must have a significant restructuring of what it is we have at present. There is no regulation for control of kinds of physicians that we produce or where they practice, and we have a situation, therefore, where we have many more neurosurgeons than we need, and not nearly enough family physicians. We have an excess of physicians in affluent communities, and a serious shortage of physicians and other health workers in our deprived communities.

The major proposals that have been put before the Congress respond in varying degrees to what seems to me to be the basic necessity, that is to say, to significantly restructure our medical care delivery system. Indeed, some of the bills, like the AMA's Medicredit bill, and the catastrophic health insurance bill, which are being proposed by two very important and influential legislators, the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee, really make no pretense at all at restructuring the admittedly inadequate delivery system. But they preserve the status quo, and deal solely with the financing of care. The catastrophic health insurance bill has a lot of political attraction to it. That is, it costs very little—so few people get the benefits. Moreover, everyone knows the case of a family that really went broke because of truly catastrophic costs. And this kind of experience is a terrifying one indeed to large numbers of people.

Other kinds of major proposals—the administration's health insurance partnership and the health insurance industry's health care plan—rely heavily on the present health care system, with emphasis on extending the admittedly inadequate private health insurance. Both of these latter schemes, the Nixon plan and the health insurance industry plan, as a matter of fact set up two standards of care—one for the poor and one for the nonpoor. And they actually provide different levels of benefits—different services—for both categories of people. I'll leave it to you to decide which of the two groups get the lesser benefits.

Really only one of the major proposals—the Kennedy/Griffiths Bill—the so-called Health Security Bill—it seems to me addresses itself very seriously to the problems of organizing a more rational delivery system. There are incentives—strong incentives—to developing of primary health care centers having a full array of health personnel available in the centers to provide a full range of benefits. The Kennedy bill carries with it important incentives for establishing linkages between various parts of the system—between hospitals and nursing homes. It modifies current patterns of physicians' care, and reinforces the position of the family physician, so he is the one who refers to the specialist, and at the same time is not in the uncomfortable position of having to carry on specialist work himself—work for which he is not trained or not qualified.

The Kennedy bill foresees important redistribution of health personnel, and carried with it cost controls. I would suggest to you that the leverage for structural change does exist in any national health insurance plan, but only in a potential sense. And American medical care it seems to me cannot continue to be unresponsive to the need for change.

NEWMAN. University of Michigan Professor, Doctor S. J. Axelrod.

On the other side of the issue was Doctor Roger Mann, who appeared in Boston on behalf of the AMA's Medicredit plan.

Doctor ROGER MANN. Medicredit does not require restructuring of the entire health care system, which provides care very well for the vast majority of Americans. Some of the other programs before Congress would dismantle what now exists, and rebuild along untried lines. It does not hold up group practice, or any other form of medical practice, as the best or only effective system of patient care. Finally, Medicredit does not obligate government—the nation's taxpayers—to pay for care of people who can afford to handle most of their medical problems themselves.

NEWMAN. Doctor Mann was referring to the Kennedy plan, which some think, by offering basic health care as a right to all U.S. residents, would bankrupt the nation. HEW Secretary Elliot Richardson, appearing before the House Ways and Means Committee, said that the Kennedy bill will cost taxpayers sixty billion dollars in new taxes, and is simply unfeasible. Backers of the Kennedy bill deny this. They admit that it would cost about sixty billion dollars, but claim that they would simply reallocate health funds currently misspent by a wasteful health system.

When all is said and done, a nation must be judged on how well it takes care of its citizens; on how it provides for the needs; and how effective it is in insuring people a climate receptive to the accomplishment of individual potential. Sickness humbles. It saps strength, confidence and drive. We will have a national health insurance bill, but we must make sure that the legislation that passes will indeed hold the cost line while upgrading quality. As former Congressman James Mackay said in Atlanta:

MACKAY (tape). Within the next four to eight years there will be a national health bill passed. And I'm glad we've got some lead time, because I think this panel this morning has illustrated how intricate the subject is, and how much we need to know. Thinking in terms of politics, I think the real hazard here is that we could pass a very bad bill. But I believe that we need legislation, but I don't think legislation is a panacea. A very learned man has just written an article and said that we can pass a sweeping medical insurance bill that will not appreciably improve the services to the American people. And I believe that.

NEWMAN. Only an aware and informed public will insure passage of legislation which will truly protect its interests. It was the hope of National Public Radio that we might be helpful in this effort.

This is Barbara Newman.

CAMPAIGN FINANCING—THE CHECKOFF SYSTEM

Mr. ALLOTT. Mr. President, public reaction to the great Treasury raid, otherwise known as the checkoff system for allowing politicians to use tax revenues to finance their campaigns, continues loud and clear. The public does not like the checkoff system.

KLZ radio and television in Denver has stated the case against the system with admirable succinctness. The editorial says that the checkoff system is unwise, unjust, and probably unconstitutional.

I agree.

So that all Senators may profit from KLZ's intelligent comments, I ask unanimous consent that they be printed in the RECORD.

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

PRESIDENT SHOULD VETO CAMPAIGN BILL

President Nixon has said he will veto a Senate tax reduction bill if the House does not eliminate an amendment providing federal funding of Presidential campaigns. We think the President is right—a veto would be justified. The dispute between Congress and the White House appears strictly political. The Democrats want tax money for next year's campaign. The Republicans don't, having already raised sufficient funds.

But politics aside, the idea of giving individual taxpayers a check-off procedure for appropriating income tax dollars would set a dangerous precedent. Once established and then expanded, the taxpayer option formula would create havoc in the federal government spending structure. Some Washington observers believe the dollar check-off plan is unconstitutional on at least two points: It appropriates money from the U.S. Treasury but is not an appropriations bill, and it ignores recent court decisions rejecting in-

dividual selection of income tax expenditures.

Another questionable element of the Senate plan is the "optional use" clause. Since the Republicans have already announced they'll not accept tax money for the '72 campaign, this country would be in the ridiculous position of having a Democratic candidate, and possibly a third party candidate like George Wallace, spending up to $27 million to try and defeat a privately-financed incumbent President. Equally objectionable is the spending of tax dollars for personal, individual promotion, which actually is what a political campaign is all about.

If this hasty, ill-advised tax diversion does become law over White House objections, the people will still have a veto. All they have to do is ignore the political checkoff option when they file their income tax returns early next year.

VACCINE REGULATION

Mr. RIBICOFF. Mr. President, on October 15, I released a memorandum which alleged that there were serious deficiencies in the regulation of the effectiveness and safety of vaccines by the Division of Biologics Standards in HEW. The memorandum had been prepared by Dr. J. Anthony Morris, for 15 years an employee of DBS, and Mr. James Turner, an attorney who has done considerable work in the area of food and drug regulation. Because I was deeply disturbed by the allegations made by Dr. Morris and Mr. Turner, I sent a copy of their memorandum to the Secretary of Health, Education, and Welfare, urging that he fully investigate the charges raised and provide me with a full report as soon as possible.

The Secretary appointed a committee to look into the charges. On November 29, he sent me a copy of the committee's report and the Department's evaluation of that report. With my staff, I have examined the report carefully. I must say, with deep regret, that this report does not provide satisfactory answers to the very serious questions raised in the Morris-Turner memorandum. Questions remain—major questions about how well the public is being protected against products that may endanger health without providing any corresponding benefit.

I am today releasing an analysis of the DBS committee's report prepared by Dr. Morris and Mr. Turner. This analysis considers the committee's arguments point by point and indicates areas where uncertainty remains. Unfortunately, these areas are numerous.

To begin, the materials provided by HEW are sometimes self-contradictory. In my speech of October 15, I pointed out that one of the central problems with vaccine regulation was confusion over the extent of DBS's legal responsibilities. I said:

> DBS apparently believes that it has no legal authority to test vaccines for effectiveness in actually preventing diseases . . . This means that no Federal agency tests vaccines to see if they work. If this legal interpretation is correct, Congress should act to give the Division the duty to do so; if the interpretation is incorrect, the Division should begin to fulfill its responsibilities.

The Secretary has enclosed, together with the DBS committee's report, a memorandum from the General Counsel of HEW, stating that the Department has legal authority to require testing for efficacy, but that such authority has never been delegated to DBS. In spite of this failure, however, he states that DBS has nevertheless not licensed since 1962 any biologic which they otherwise would have rejected as ineffective. Leaving aside the question of DBS testing for effectiveness of the many biologics licensed before 1962, the leadership of DBS has apparently been unaware of the interpretation given in the General Counsel's memorandum. In a document dated October 19, 1971, the Acting Director of DBS states that:

> In view of this legislative history, clearly showing that effectiveness in use was not intended by Congress to be the same as potency, the Office of General Counsel (of HEW) advised the biologics control people that they could not establish any regulation requiring biologic products to be effective in use.
>
> Starting in 1964 and every year thereafter, we have included in our legislative proposals a request that effectiveness in use be inserted into the PHS Act. Such requests apparently have not interested the Department since no bills containing such a provision have been introduced since the 88th Congress.
>
> As has been indicated many times by DBS the effectiveness in use request is to place the licensing of biologic products on the same level as that required for the approval of new drugs. There is absolutely no scientific or medical basis for such a distinction. Thus such a distinction between drugs and biologics would be very hard for the Secretary to explain, if asked.

In light of the confusion between the Office of the General Counsel and the DBS leadership over the Department's and the Division's legal responsibilities, and the fact that DBS felt it necessary to recommend again and again that its legal authority be extended to include efficacy testing, a substantial question arises about the accuracy of the General Counsel's bland assertion that—

> Since 1962, DBS has acted substantially as though it did have formal authority to regulate biologics as to efficacy.

I believe further inquiry into this question is imperative.

Dr. Morris and Mr. Turner raise many further questions about the committee's report and its method of operation. The incidents which Morris and Turner cited and which I spoke about on October 15 are serious enough to call for the most serious and careful scrutiny by the Department. In summary, the following incidents were included:

In 1954 and 1955 one of the Division's most noted scientists, Dr. Bernice Eddy, discovered that several lots of polio vaccine contained live virus capable of causing the disease itself. In spite of Dr. Eddy's finding, which was known to the DBS leadership, this vaccine was released in the spring of 1955 and over 150 individuals who were associated with its use contracted paralytic polio. Just a few months before this incident, the Division had given Dr. Eddy a special "superior accomplishment award" in recognition of her outstanding achievements. In 1957, she and a coworker discovered the polyma virus. In recognition of her outstanding work, Dr. Eddy was featured on the cover of Cancer Research magazine in March 1971.

In the late fifties, DBS developed a so-called adenovirus vaccine, a vaccine essentially for the treatment of the common cold. In the late fifties and early sixties, this vaccine was being administered to all Army personnel. In 1960, Dr. Eddy discovered that material then used in the manufacture of adenovirus vaccines was capable of causing cancer in hamsters.

DBS responded to her discovery by denying her permission to attend certain professional meetings and to publish other papers. She was deprived of most of her testing animals and most of her testing facilities. Finally, on March 8, 1961, she was relieved of her job and reassigned.

Subsequent research by scientists outside DBS confirmed Dr. Eddy's findings. In the meantime, vaccines containing the substance continued to be used on the American people. Finally, DBS decided that Dr. Eddy had been right after all.

Still, it allowed adenovirus vaccine containing this material to be released as late as September 16, 1963, and it allowed a combined adenovirus influenza vaccine containing the same material to be released as late as August 10, 1964.

Other disturbing events allegedly have occurred including:

Reliance by DBS on dubious techniques for testing the potency of influenza vaccine;

The Division's failure in 1966 and 1967 to bar the release to the public of three lots of influenza vaccine for failure by the manufacturer to show that the lots were free of trace metal contamination;

Falsification of labeling and tampering with test results for influenza vaccine;

Active attempts by DBS to discourage scientific research which might tend to cast doubt upon previously taken agency positions; and

Failure to DBS personnel to be aware of and enforce the Division's own regulations.

In analyzing the DBS committee's report, Morris and Turner have cited numerous errors in substance and method which cast considerable doubt on the committee's findings. Morris and Turner have summarized these errors in their reply:

> The way in which the report of the ad hoc committee was prepared calls for a serious undertaking of reevaluation of the interdependence of the DBS and its expert advisory committees. In conducting its deliberations, the ad hoc committees:
>
> 1. Failed to consider all the evidence made available to it. Most notably the committee report does not reflect any committee awareness of two documents—the May 12, 1955 Eddy memorandum on contaminated Cutter lots and the October 29, 1971 memorandum of Dr. Aulisio—both of which were given to the committee chairman and both of which showed the committee conclusions in their areas to be erroneous.
>
> 2. Failed to interview any individuals known to be critical of DBS practices, including Dr. Morris, Mr. Turner, Dr. Eddy (except for two very short phone calls), Dr. Aulisio, Dr. Smith and Dr. Young and many others, all of whom had important information about one or more of the incidents in the report.

3. Relied almost exclusively upon DBS memoranda prepared by the very people responsible for any regulatory failures which might have occurred. Of the more than 200 pages, only six were prepared outside of DBS. (One of the memoranda represented by the six pages opposed the ad hoc committee's position on its treatment of cancer-causing substances in vaccines; the other presented the rationale for more vigorous action on the part of DBS to help develop a new influenza vaccine.)

4. Allowed itself to be misled by illogical, selfserving arguments in the memoranda prepared for it by the DBS. While it should rightly be disappointed by the quality of the work it received, it must share some of the responsibility for the weaknesses for believing that it could rely on the institution it was investigating to obtain meaningful and unbiased information upon which to base its findings.

5. Responded to issues which it raised that were not in the original report and failed to respond to issues which were originally raised.

I have previously asked the GAO to look into the manner in which the Division of Biologics Standards is conducting its operations. I expect to have some data from General Accounting Office investigators in the next several weeks. In the meantime, I am sending to the GAO a copy of the documents HEW has supplied to me and a copy of the Morris-Turner analysis of those documents. I do not intend to allow issues as serious as these to continue unresolved. Either the Division will provide us with satisfactory explanations or Congress will have to act to remedy the problems and give the American people the protection they deserve.

I ask unanimous consent that the documents supplied by HEW and the Morris-Turner analysis be printed in the RECORD.

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

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., November 29, 1971.

Hon. ABE RIBICOFF,
Chairman, Subcommittee on Executive Reorganization and Government Research, U.S. Senate, Washington, D.C.

DEAR SENATOR RIBICOFF: This is in further reply to your letter of October 15 concerning allegations by Dr. J. Anthony Morris and Mr. James Turner of scientific mismanagement at the Division of Biologics Standards.

Transmitted herewith is a report from Dr. Robert Q. Marston, Director of the National Institutes of Health. Dr. Marston's report based on his own review of the charges, staff discussions and memoranda, and on scrutiny of the Morris/Turner allegations by a group of expert scientists. His report has been reviewed by Dr. Merlin K. DuVal, Assistant Secretary for Health and Scientific Affairs, who concurs in Dr. Marston's evaluation.

In addition, I am enclosing a memorandum prepared by our General Counsel on the issue of authority for the regulation of the efficacy of biologics. Our conclusion is that sufficient and adequate regulatory authority already exists under the Food, Drug, and Cosmetic Act and that, in practice, the Division of Biologics Standards has been exercising such authority. Hence, we do not believe additional legislation is necessary in this area.

With kindest regards,

Sincerely,

ELLIOT LEE RICHARDSON,
Secretary.

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
OFFICE OF THE SECRETARY,
Washington, D.C., November 23, 1971.

To: The Secretary through: OS/ES——.
From: Wilmot R. Hastings, General Counsel.
Subject: Division of Biologics Standards, NIH—Regulation of Efficacy—Information Memorandum.

You have asked for my views as to the following statement made by Senator Ribicoff on the floor of the Senate on October 15, 1971:

". . . DBS apparently believes that it has no legal authority to test vaccines for effectiveness in actually preventing diseases. As I pointed out earlier, this means that no Federal agency tests vaccines to see if they work. If this legal interpretation is correct, Congress should act to give the Division the duty to do so; if the interpretation is incorrect, the Division should begin to fulfill its responsibilities."[1]

This statement is in part correct, in part incorrect and in any event highly misleading. The situation, however, has lent itself to considerable and wholly understandable confusion.

My conclusions, as discussed below, are:

1. The Division of Biologics Standards (DBS) has never been formally delegated the authority to regulate biologics as to efficacy;

2. The Department has never had authority under the Public Health Service Act to so delegate to DBS, but has, since 1962, had such authority under the Food, Drug and Cosmetic Act;

3. Since 1962, DBS has acted substantially as though it did have formal authority to regulate biologics as to efficacy; and

4. The Department ought to confer on DBS, by appropriate delegation and regulation, the technical authority to continue its informal practices as to regulation of the efficacy of biologics.

A. STATUTORY BACKGROUND

The Virus, Serum, Toxin Act of 1902 was enacted for the purpose of regulating biologics which were to be sold, bartered, or exchanged in the District of Columbia or in interstate commerce. Section 351 of the Public Health Service Act (42 U.S.C. 262) is the current legislative embodiment of that Act. This section was enacted in basically its present form when the Public Health Service Act was passed by Congress in 1944. Section 351(d) limits the regulating powers of DBS over the licensing of biologics to the safety, purity, and potency of such products. The House bill which became the Public Health Service Act in 1944 originally included "efficaciousness" as one of the criteria for licensing; this wording was removed by the Senate, however, and the Act was passed without any requirement of efficacy.

Despite the enactment, in 1962, of the "Kefauver Amendments", which provided authority in the Food, Drug and Cosmetic Act to control efficacy, section 351 of the PHS Act was not correspondingly amended. The original 1962 House bill (H.R. 11581) leading to these amendments had contained a separate section on the regulation of biologics, including their "efficaciousness", which was deleted by the House Committee on Interstate and Foreign Commerce. It was this action, in particular, which has led to the confusion as to the authority of DBS in this area.

This confusion is understandable, since one can argue that the refusal of the Congress to confer express authority on the Department to regulate biologics under the Public Health Service Act, both in 1944 and 1962, was tantamount to an express Congressional rejection of such authority, despite the otherwise inclusive provisions of the 1962 "Kefauver Amendments" to the Food, Drug and Cosmetic Act. Drugs under the latter Act are no less drugs because of their biologic origin. Despite the ambiguity of this situation, it can be argued equally convincingly that the Congress deleted an express treatment of biologics in 1962 as an unnecessary duplication of authority otherwise conferred in those very amendments. In any event, in my view, this ambiguity does not justify reading an implied exception into the 1962 Food, Drug and Cosmetic Act amendments. Biologics are subject to the provisions of that Act, including the requirements as to efficacy.

A second cause of confusion relates to the techniques of regulation. Under the Public Health Service Act (section 351), it is theoretically possible that a license would have to be issued for a biologic that is "safe, pure and potent" *but not efficacious*, while at the same time interstate shipment of that biologic would be prohibited by the Food, Drug and Cosmetic Act. Such an incongruity, however, is more apparent than real, since such a license would be meaningless, and should be able to be handled by appropriate regulations.

B. REGULATORY BACKGROUND

We have attempted to ascertain the actual practices of DBS as regards the efficacy of biologics and are satisfied, within the limits of our technical competence, that these practices have amounted to regulation of efficacy as a practical matter.

Investigational New Drug applications which involve biologics are, pursuant to 21 CFR 130.3(g), sent directly to DBS rather than to FDA. During the investigational new drug period, including the phase 3 clinical testing on human subjects, data is collected by the manufacturer or sponsor for efficacy as well as safety, purity and potency. If any questions involving efficacy arise during this period, DBS feels free to make appropriate comments and suggestions. "Potency" is defined in the regulations under section 351 of the Public Health Service Act as (42 CFR 73.101(t)): "The word 'potency' is interpreted to mean the specific ability or capacity of the product, as indicated by appropriate laboratory tests or by adequately controlled clinical data obtained through the administration of the product in the manner intended to effect a given result." This Office has historically held that this requirement is not the same as efficacy. For example, the potency of a biologic may be demonstrated by the production of a certain level of antibodies, antitoxins, etc., but that determination is different from saying that such a level will be effective to produce the desired result of preventing or curing a certain disease. As a practical matter, however, in rare cases where a biologic may be found to be safe, pure, and potent, but DBS does not believe that it is efficacious, DBS will, in effect, refuse to pass on it.

The representatives of DBS are of the opinion that, as a practical matter, the manufacturers and sponsors of new biologics are submitting data to them sufficient to establish efficacy, even though they are not formally required to do so by current DBS regulations. They are also of the view that since 1962 they have not licensed any biologic which they otherwise would have rejected had section 351 of the Public Health Service Act contained an express authority to regulate "efficacy."

C. PROPOSED CLARIFICATION OF AUTHORITY

In order to eliminate any remaining ambiguities as to the authority of DBS to regulate the efficacy of biologics, we are now working with the Assistant Secretary for

[1] CONGRESSIONAL RECORD, Oct. 15, 1971, 36370.

Health and Scientific Affairs, FDA and NIH to develop a delegation of authority to be issued from you, through the Assistant Secretary for Health and Scientific Affairs, to the Commissioner of the Food and Drug Administration and the Director, NIH, authorizing the latter two concurrently to administer those provisions of the Food, Drug and Cosmetic Act applicable to biologics—such delegation to be implemented in accordance with a memorandum of understanding to be worked out between the two agencies. Because there are aspects of the regulation of biologics which FDA is better able to handle, e.g., seizure and recall, I am suggesting a concurrent delegation, with the two agencies undertaking expeditiously a determination of which is best suited to do what. That determination would result in a formal memorandum of understanding between the agencies and probably also would involve some corresponding amendment to the Food and Drug regulations.

Under the proposed delegation there are two regulatory provisions of the Food, Drug and Cosmetic Act which would be utilized to exercise "efficacy" control over biologics; (1) the new drug provisions [2], and (2) the misbranding provisions [3].

Pursuant to the new drug provisions, substantial evidence of effectiveness could be required to be presented by an applicant establishing that a drug will have the affect that it purports or is represented to have. The proponent of any drug marketed in interstate commerce since 1938, whether or not licensed by DBS, may be required to establish such evidence. The delegation of such authority will enable DBS to go back to the 1938–1962 period and reexamine its licensed products for "efficacy" to the extent such reexamination is appropriate. Naturally, DBS will continue to regulate "efficacy" with respect to all new applications for licensure.

Pursuant to the misbranding provision, no drug may be shipped in interstate commerce if its labeling is false or misleading in any particular. This authority is not limited by the 1938 "grandfather clause" applicable to new drugs, and DBS advises that all licensed biologics contain labeling setting forth the purpose for which the biologic is to be used. To the extent that the biologic is not effective for the stated purpose it may be deemed false or misleading and therefor misbranded. Furthermore, if a manufacturer, in an attempt to avoid the misbranding provisions, were to remove from his labeling any statements with regard to intended use, such change would remove the "grandfather" protections of the new drug provisions and render the biologic a "new drug" under the Food, Drug and Cosmetic Act.

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
NATIONAL INSTITUTES OF HEALTH,
Washington, D.C., November 17, 1971.

To: The Secretary, Through: OS/ES ——; ASHSA ——.

From: Director, National Institutes of Health.

Subject: Review of Charges Made by Dr. J. Anthony Morris and Mr. James Turner of Scientific Mismnagement at the Division of Biologic Standards—Information memorandum.

BACKGROUND

In a letter of October 15, Senator Ribicoff requested that you investigate charges made by Dr. J. Anthony Morris and Mr. James Turner concerning the operation of the Division of Biologics Standards, National Institutes of Health, and that you make a full report to his Subcommittee on Executive Reorganization and Government Research.

In a speech and a press release on the same date, Senator Ribicoff also expressed his general concern as to the effectiveness of regulatory agencies, and specifically commented on regulatory problems of the Food and Drug Administration, the Department of Agriculture, in addition to those of the DBS. He has introduced a bill to establish a Consumer Protection Agency.

Further, he did disclose that representatives of the General Accounting Office have been reviewing the regulatory responsibilities of DBS. We were told by the GAO that their report is anticipated about December 31.

Furthermore, you will recall that on August 12, based upon employee grievance proceedings previously requested by Dr. J. Anthony Morris, I directed the NIH Office of Management Policy and Review to conduct a management review of DBS. A report of this review is due to me about January 7, 1972.

This memorandum with attachments constitutes my assessment of the charges made by Dr. Morris and Mr. Turner in their memorandum to me of September 27 entitled, "Misapplication of Scientific Resources at the Division of Biologics Standards, NIH."

REVIEW OF CHARGES

In reviewing these charges I have used the following resources for information and advice:

1. *Ad Hoc* group of experts: The group consisted of present members of the Board of Scientific Counselors of the Division of Biologics Standards, except for Dr. Geoffrey Edsall, who was out of the country, supplemented by additional experts. The list of members of this group is attached. (Tab A)

The group met on Friday, October 22, and again on Thursday, October 28. After a one-hour briefing session, at which I discussed their mission and our need for a completely objective evaluation of the allegations made in the Morris/Turner memo, and at which arrangements were made for information-gathering for them, they met in executive session for the entire duration of their deliberations. Only when they wished to request specific information and data were they joined by Dr. Sam T. Gibson, Acting Director of DBS, to whom they addressed such requests.

The committee was also provided the attachments to the Morris/Turner memorandum; documents prepared by various staff members of DBS (Tab C) which described in detail the circumstances, scientific and legal, surrounding the instances of the alleged actions or failures to act described by Morris/Turner; and two memoranda prepared at my request by senior staff members of the National Institute of Allergy and Infectious Diseases, presenting views on viral oncogenesis and on the efficacy of influenza vaccines (included in Tab C).

The document I am transmitting to you herewith (Tab B) is the product of the deliberations of the *ad hoc* committee. While the addendum to the letter from the Chairman, Dr. Benenson, states that "while the final version of this report has not been reviewed, it has been approved in principle by the Committee members," I have confirmed by telephone that they have now reviewed the document and are unanimously agreed that the specific allegations in the Morris/Turner memorandum are unfounded.

2. Responses from DBS, both verbal and written, concerning the charges.

3. Knowledgeable staff of the various Institutes of the NIH.

4. Intensive review by my own office of all aspects of these charges, including the pertinent scientific aspects of the fourteen volumes of testimony of the Morris grievance procedure.

CONCLUSION

On the basis of my review, I find that the Morris/Turner charges of scientific mismanagement are without merit.

ROBERT Q. MARSTON, M.D.

AD HOC COMMITTEE TO REVIEW MORRIS/TURNER ALLEGATIONS

Dr. Abram S. Benenson, Professor and Chairman, Department of Community Medicine, College of Medicine, University of Kentucky, Lexington, Ky.

Dr. Floyd W. Denny, Jr., Professor and Chairman, Department of Pediatrics, University of North Carolina, School of Medicine, Chapel Hill, N.C.

Dr. Edwin Kilbourne, Professor and Chairman, Department of Microbiology, Mount Sinai School of Medicine, City University of New York, New York, N.Y.

Dr. J. Vernon Knight, Professor and Chairman, Department of Microbiology, Baylor University, College of Medicine, Houston, Tex.

Dr. Serafeim P. Masouredis, Professor of Pathology, University of California at San Diego, Basic Science Building, La Jolla, Calif.

Dr. Paul S. Moorhead, Associate Professor, Department of Medical Genetics, University of Pennsylvania, School of Medicine, Philadelphia, Pa.

Dr. David J. Sencer, Director, National Center for Disease Control, Atlanta, Ga.

Dr. Margaret H. D. Smith, Professor of Pediatrics and Epidemiology, Tulane University, School of Medicine, New Orleans, La.

Dr. Harry A. Feldman, Professor and Chairman, Department of Preventive Medicine, Upstate Medical Center, State University of New York, Syracuse, N.Y.

Dr. Samuel L. Katz, Professor and Chairman, Department of Pediatrics, School of Medicine, Duke University, Durham, N.C.

Dr. Frederick C. Robbins, Dean, School of Medicine, Case Western Reserve University, Cleveland, Ohio.

UNIVERSITY OF KENTUCKY,
Lexington, Ky., November 9, 1971.

Dr. ROBERT Q. MARSTON,
Director, National Institutes of Health, Bethesda, Md.

DEAR DR. MARSTON: The *ad hoc* committee appointed to review the allegations brought against the Division of Biologics Standards by Dr. J. Anthony Morris and Mr. James Turner met at the National Institutes of Health on October 22 and 28, 1971. Dr. Knight was unable to attend the meeting on October 22; Drs. Smith and Denny were not present on October 28. The Committee examined the various documents submitted in support of the allegations, and those relating to the charges which had been prepared by the Division. Additional information was requested and provided during the meetings of the Committee.

The Committee considered the individual charges in detail, reviewing all relevant factual information which could be obtained, as well as the scientific information which was available at the time the particular event had occurred. Each charge is discussed below, identified by the letters used in the original memorandum of September 27, 1971.

(A) Dr. Morris and Mr. Turner state that in 1954 and 1955 the Division of Biologics Standards leadership failed to act on the discovery, made in DBS laboratories, that some lots of inactivated poliomyelitis vaccine contained virus capable of causing disease in recipients of this contaminated vaccine. They further state that Dr. Bernice Eddy recovered virus from three lots of Cutter vaccine and reported this to her superiors. It is implied that Dr. Bernice Eddy's findings were ignored and that Cutter vaccine was released and used in spite of the knowledge that it contained infectious virus; this is a charge of the gravest nature. With regard to these allegations, the following seem to be the facts, as best as they can be determined.

It was recognized by the NIH staff, the manufacturers and the scientific advisors to NIH and the National Foundation for Infantile Paralysis that infectious virus could be

[2] 21 U.S.C. 355.
[3] 21 U.S.C. 352.

isolated from some lots of vaccine following treatment with formaldehyde as recommended by Dr. Salk. Changes in the minimal requirements were introduced in March 1954 which made the safety tests more likely to detect residual infectious virus. Also, initiation of the large scale field trial was delayed until the situation could be reviewed and Dr. Salk could complete an additional small scale trial. Thus, although in retrospect the minimal requirements established for polio vaccine production and safety testing were proved later to be inadequate, there is evidence that NIH and its advisors did adjust safety standards on the basis of evidence that infectious virus was present in some vaccine lots.

The specific episode concerning the handling of data provided by Dr. Eddy is more difficult to evaluate. No records of these observations are available in current files. Dr. Eddy has provided the Committee with the lot numbers of the vaccines from which she isolated virus, and assures the Committee that none of these were released for use.

It should be pointed out that Dr. Morris and Mr. Turner accuse the DBS leadership of failing to take proper action, but this agency did not exist at that time; the regulatory body was in fact the Laboratory of Biologics Control of the National Microbiological Institute. It should be recognized that the LBC was neither staffed nor equipped to deal readily with the new and complicated problems presented by the polio vaccines. Indeed, it was only *after* the "Cutter incident" that the DBS was created to replace LBC. Nonetheless, the staff of LBC utilized extensively the advice of scientists, including the principal experts in the fields of virology and poliomyelitis in the United States and even a few from abroad. These scientists, along with Dr. Salk, developed the minimal standards for vaccine production, reviewed progress of the program, recommended changes in requirements and participated in the review of the problem when it was recognized that vaccine-induced cases were occurring.

Thus, although there is no doubt in retrospect that certain incorrect decisions were made concerning the safety of the inactivated polio vaccine and that the original minimal requirements proved to be inadequate, there is no evidence that the staff at NIH were peculiarly culpable. All decisions were arrived at with the assistance of the best experts available and the mistakes reflect deficiencies in the state of the art at the time rather than conscious suppression or neglect of available data. There is no evidence that any vaccine lot *known* to contain infectious virus was ever authorized for release.

(B) It is not possible to substantiate the allegation that the DBS leadership did not act effectively and rapidly in 1960 when it was observed that the material used in the manufacture of polio and adenovirus vaccines was capable of causing malignancies in hamsters on review of available data with particular attention to the sequence and development of scientific information and its publication.

The contamination of some monkey kidney cells with the vacuolating virus, later designated SV–40, was first observed in 1960. The initial report of the oncogenicity of some monkey kidney cell extracts for newborn hamsters was published in 1961. By 1962 these two independent investigations merged when it was discovered that the oncogenic factor was the SV–40 virus. Of the two dozen significant papers most directly relevant to vaccines which were published on this topic in the 1960–63 period, it is to be noted twelve originated in the laboratories of DBS investigators, (See Appendix A). By March 1963, DBS had amended regulations to exclude SV–40 from licensed vaccines based on the accumulated knowledge and techniques which justified this far-reaching decision, necessitating the development of new seed strains of viruses.

The interactions of Dr. Eddy with her laboratory supervisor are difficult to evaluate at this time in the context of their occurrence in the early 1960's. However, the available information seems consistent with the exercise of critical direction in the careful search for confirmation and elucidation of important laboratory observations. While there is no basis for determining the latent period for development of viral induced human tumors, it is important to note, that, despite 8–10 years of intensive study and 16 years since SV–40 was first injected, there is still no evidence that SV–40 plays any role in the production of human tumors (references 23 and 24, Appendix A).

(C) This issue bears on the validity of the chicken cell agglutination test to measure the potency of influenza vaccine. Influenza viruses, even when inactivated for vaccine production by formalin or ultra-violet irradiation to a state of non-infectiousness, retain their capacity to agglutinate the erythrocytes of many avian and mammalian species. This property of hemagglutination resides in the major external structural protein of the virus, the hemagglutinin, which is the principal immunizing antigen of the virus. Serum antibody to this antigen induced by injection of influenza vaccine has been reported in a number of studies to correlate with immunity to influenza. For these reasons, it was deemed logical to employ the chicken (red) cell agglutination (CCA) test as a single *in vitro* procedure for the measurement of viral antigenic mass ("potency") of commercial vaccines, during and after production. In practice, the CCA test has been less than ideal for a variety of reasons, including variation in the hemagglutinating activities of individual viral strains and technical problems in calibrating and reading the reaction. It is only fair to state, however, that the deficiencies of this test became fully apparent only with its continuing use.

It is to the credit of DBS that the deficiencies of the CCA test were recognized in-house and that successful efforts were made to standardize, correct and improve the procedure. This was accomplished in collaboration with an independent university laboratory of international renown. Measurements of CCA activity in DBS and manufacturers' laboratories now correspond closely in repeated checks.

In studies undertaken to standardize the CCA test, the cooperation of vaccine producers was requested. While the test was still imperfect, CCA values seemingly were assigned by negotiation and arbitrary decision. An accommodation to the Pharmaceutical Manufacturers Association or indivirual commercial laboratories may be read into the resultant readjustment of labeling but in actuality this represented a readjustment of arbitrary standards at a time when the standards themselves were under intensive scrutiny and revision. Rectification of the test in fact depended on a conference with licensees (Appendix B).

In summary, while the CCA test is not ideal as a measure of vaccine "potency" if "potency" is equated with immunogenicity (its ability to produce immunity against disease), successful efforts have been made within the DBS laboratories to standardize this test so that its reproducibility has been improved; at present it appears to be a satisfactory procedure for estimating the content of the major influenza virus antigens in a vaccine. It is clear that better tests are necessary for the measurement of influenza vaccine immunogenicity; the problem of developing laboratory measures of immunogenicity is not unique to influenza vaccines.

(D) It is true that influenza vaccine lots were released that had been marked "hold" pending further information from manufacturers. However, the implications that these lots might have "trace metal contamination" is misleading since the designation "hold" was attached to these vaccine lots by scientists in the course of research on the detection of preservatives containing "trace metals," and not as part of the formal control and regulation of the vaccines. Although manufacturers are required to indicate that preservatives are being added and their concentration on their initial applications, they are not required by law to "furnish any information on preservative testing in lot-by-lot protocol data for DBS release." (Appendix C) (There is no evidence that this omission would be detrimental to the public since dangerous amounts would be detected by the safety test each lot of vaccine must pass, in which mice and guinea pigs must survive massive doses compared to that given to man).

(E) DBS is charged with failure to act on influenza vaccines after their efficacy had been questioned. Inactivated influenza vaccines have been used in man for almost 30 years. Studies in all age groups, in a variety of environmental settings, have demonstrated that such vaccines can prevent influenza, when administered in sufficient dosage at the proper time interval before a population is exposed to an influenza virus antigenically similar to that contained in the vaccine.

There is no question, however, that inactivated influenza vaccines are imperfect instruments for the prevention of influenza. In part, this is inherent in the vaccine, and, in part, to the capriciousness of the disease. Influenza A virus is unique among the infectious agents of man in its capacity to undergo mutations so extreme as to circumvent pre-existing immunity to antecedent strains. The need, therefore, for frequent changes in vaccine formulations and the incorporation of new "relevant" strains of virus has presented health workers with continuing problems of revision and reassessment. Influenza vaccines are unique in their requirements for periodic change and reevaluation.

Even when appropriately "matched" to the prevalent disease-producing virus, the vaccine may be ineffective if given in sub-optimal dosage or route, or at an inappropriate time; the vaccine may appear to be ineffective if other respiratory diseases are simultaneously present and serologic confirmation of cases is not obtained. Thus, the best advice available to the DBS from responsible and respected students of influenza has been to the effect that the vaccine is imperfect but useful and, indeed, potentially life-saving in certain "high risk" subjects with cardiopulmonary diseases, etc.

It should be noted that responsibility for recommending which members of the population should be immunized with a vaccine would seem to exceed the functions of the DBS, which by law is charged only with the safety, purity and potency of biological products (Appendix D). Recommendations for immunizations are promulgated by the Public Health Service Advisory Committee on Immunization Practices. The Director of DBS is a member of this committee, which is based at the Center for Disease Control, Atlanta.

The inferences that influenza vaccines may be damaging (particularly to pregnant women) because of their chicken-egg origin are completely unsubstantiated by experience. It is recognized that blood group A substance may be present in chicken-egg vaccines and antibodies may be produced in individuals vaccinated with influenza vaccine, but there is no evidence of any clinical disease associated with such response. Although some problems with "hypersensitivity" have been related to inactivated measles and an experimental RS (respiratory syncytial) virus vaccines, there is no evidence whatsoever that any such "hypersensitivity" has followed influenza vaccines.

(F) This charges that the DBS failed to undertake detailed research to determine the nature and importance of electron micrographic observations by a DBS investigator,

Dr. Kendall Smith, of "viral particles" in duck embryo cells, the substrate for production of a rubella vaccine. It is stated that subsequent to this reported observation "efforts to characterize the nature of the observed particles were discouraged." This Committee has satisfied itself that the attitude of the Director of DBS and his response were appropriate and effective, in that conferences were arranged shortly thereafter with two well qualified electron microscopists who were of the opinion that the particles in question were not viral. This was accepted. Subsequent tests performed at DBS failed to develop further evidence of the presence of latent viral agents in this cell culture material. Contaminants of cell cultures of duck embryo tissue which had been found by a contractor were identified as strains of certain Mycoplasma which are not indigenous to duck tissues. (Appendix E).

(G) This charges that DBS actively discouraged research on "slow viruses". While the problem of the slow viruses is of great concern to those involved with biologicals, particularly live agents, the pertinent question is whether adequate research is being done in this field. The National Institutes of Health, in other units of its organization, has been supporting work on the slow viruses, both in intra and extramural programs. Estimates of expenditures for the current fiscal year are as follows:

NIAID	$1, 820, 549
NINDS	1, 180, 000
Total	3, 000, 549

In addition, NCI estimates that in the current fiscal year it is spending about $500,000 on slow-virus oncongesis, and that in the next year this figure will increase severalfold. It is to be noted that these agents require special and expensive space and equipment since, as was shown by Dr. Morris, the laboratory spread of such infections is a distinct possibility.

The decision not to work with scrapie can be cited as an example of the Director's responsibilities. Within the limitations imposed by budget, personnel allocation and space, priorities must be set and duplication of efforts of the different Institutes must be avoided.

(H & I) These charge that the leadership of DBS discourages important scientific work, and as a result forces scientists to either work under conditions which limit their effectiveness or to leave. As noted above, the Director is provided limited resources with which to carry out his responsibilities for establishing and maintaining standards of quality and safety for all the biological products that fall within the jurisdiction of the Public Health Service. This requires that he establish priorities for the optimal expenditure of the resources provided. While this Committee acknowledges that various employees have resigned or transferred from DBS, it is unable to document that this has been at a greater than expected rate or, more importantly, that it has been for uniform reasons.

The most disturbing charge relating to staff resignations is that professional staff members have done so "because their scientific findings adversely affected the vaccine market." The most serious inference that could be drawn from this statement is that vaccines known to be excessively hazardous to recipients have been licensed by DBS for monetary, political or other reasons. No evidence for any decision based upon other than proper grounds was identified by this Committee.

It is evident that there are serious personnel problems within the DBS and that the current charges are the culmination of a long series of such problems. This is regrettable since such interpersonal difficulties must interfere with the effectiveness of the overall program. While these aspects are outside our purview, the Committee was pleased to note that the Office of Management Survey and Review of the NIH is presently surveying this matter.

(J–1) This alleges that a manufacturer was asked to answer questions about a vaccine "prior to its use in clinical trial", but he had already begun the trial. Dr. Morris and Mr. Turner ask for the answers which DBS received, and how this compared with a draft prepared by somebody working for the company, etc. Review of the pertinent material and the correspondence indicates that the point under discussion bore only on the oral use of this experimental varicella vaccine; a completely legal clinical test involving the parenteral administration of this product had indeed begun earlier. The manufacturer decided not to use the vaccine orally, so that the question has no validity and its bearing on the function of DBS is not clear.

(J–2) This implies that inordinate, unjustified confidence is placed on the manufacturers. It is claimed that mumps vaccine was certified as safe by its manufacturer over the scientific doubts of some of its own researchers who were concerned that the seed was neurovirulent. The fact is that DBS did indeed make detailed studies of the neurovirulence of measles, mumps and rubella vaccines. (Appendix F). The outcome of these studies did indicate that mumps especially, when injected into the brains of monkeys, caused a cellular response which was greater than could be attributed to trauma alone. Based on studies with these vaccines and a cesium gradient fraction of adenovirus, it was concluded that the cellular lesions in the brain were responses to by-product components of these viruses and not to a specific neurotropic effect of vaccine viruses themselves or adventitious neurotropic agents. Proposed changes in regulations reflect this knowledge.

The other question raised under this heading bears on the techniques permitted one manufacturer for the detection of contamination of a lot of measles vaccine by members of the avian leucosis virus group. Current regulations require that fluids from control vessels of the tissue culture system on which an attenuated measles vaccine is produced "shall be tested and found negative for avian leucosis, using either Rubin's procedure for detecting Resistance Inducing Factor (RIF) or another method of equivalent effectiveness." It would appear from the data provided the Committee that one lot of measles vaccine was passed on the manufacturer's protocol although the RIF test was carried out only with a single antigen; this test would then detect the most frequent subgroup of avian leucosis virus which occurs in the United States but others could remain undetected. While this virus is oncogenic in chickens, no evidence has yet been observed of an adverse effect on man despite its inadvertent inclusion in yellow fever vaccine which has been given over a long period of time to large numbers of people in compliance with international regulations. It is to be noted that the DBS took the lead in developing an avian leucosis-free seed strain for the production of yellow fever virus. This new strain still awaits acceptance for the World Health Organization before it will be accepted for the purposes of international travel. It is noted that the DBS is actively investigating the most effective techniques for detecting contamination of vaccines with this virus and has not ignored the problem. However, the release of an inadequately tested lot of measles vaccine, even though made on eggs coming from a flock of chickens reared under conditions so that viral contamination is most unlikely, and constituting no danger to the public welfare, was an improper deviation from the published requirements.

(J–3) This questions the dual role of the DBS as a regulator and developer of vaccines, implying that this carries with it a built-in conflict of interest. Major developments which led to a vaccine against rubella were indeed accomplished by DBS scientists. Careful examination by the Committee of the licensure procedures for this vaccine and the overall responsibilities of the DBS revealed no evidence of collusion or of a conspiracy between DBS and industry. The fact that an attenuated strain of rubella had been developed at DBS and that a vaccine using this strain was subsequently licensed by a manufacturer has been taken by some to imply conflict of interest, but no preferential treatment for this manufacturer could be established. In view of the appearance of bias which existed in this situation, there is need to establish formal and explicit guide lines for the scientific staff to avoid activities which could be interpreted as promotional or as representing conflict of interest. While the regulatory function of the DBS should be preeminent, conditions should be retained to encourage DBS scientists to develop new and useful vaccines.

It must be noted that on some issues there might not be a completely uniform opinion throughout the scientific community; decisions for action have been based on the predominating opinions of recognized experts. It is unfortunate that many of the issues were raised as public challenges without full background information. It was noted that the rule-making mechanisms permit any person, including Government employees, to comment on any standards or changes proposed in the licensing and control of biological products. Some of the charges raised in the basic document could well have been made by that route at the appropriate time, rather than by impugning the safety and effectiveness of the outstanding program of vaccine development, production, control and utilization enjoyed in this country.

The implication that the Division activities were concerned with an effect of its actions on the vaccine market to the detriment of the public was not substantiated, nor was the charge confirmed that research was discouraged for fear the scientific findings might adversely affect the vaccine market. It was recognized that withholding a vaccine because of unsubstantiated suspicions of a hypothetical threat to health could deny the public immediate benefits of lives saved and disabilities prevented.

The Committee was impressed by the excellent utilization by DBS of external advisors and consultants in making decisions about new products and in the resolution of specific problems. DBS has been active in organizing international scientific symposia in anticipation of new biological product issues such as rubella vaccine, the use of continuous cell cultures as vaccine substrates, and tuberculins, This technique has permitted free public discussion by experts to provide a globally informed basis for final decisions.

DBS has a clear legislative mandate to establish and maintain standards to insure the continued safety, purity and potency of biological products, but there is no legislative requirement that these products be effective. However, the continuing active collaboration of DBS with the Center for Disease Control in Atlanta, and the Infectious Disease Section of the National Institute of Allergy and Infectious Diseases offers a mechanism for assuring the effectiveness of vaccines. It is to be noted that the Center for Disease Control has a major responsibility for monitorizing the effectiveness of biological products and of adverse reactions after licensure and in field use.

The most important issue considered was whether the regulatory activities of the DBS have been administered so that the public has been protected at the highest possible

level, both in terms of a minimum of hazard and a maximum of benefit. In this regard *the Committee could find no evidence that any product had been released for general use which, by the standards of the time and the knowledge then available, was unsafe,* including the cited polio episode. It is noted that the Division of Biologics Standards was established as a result of the "Cutter incident."

A second large issue is whether the scientific programs of the DBS have been performed in a manner which compliments its regulatory activities. It is obvious that the principal thrust of scientific inquiry in the Division must be concentrated on current and anticipated problems relating to biological products and their standardization. In order to attract and retain competent personnel, reasonable opportunity must be allowed for investigators to carry out personal research in broad areas related to their assignments. The Committee was impressed by the range and scope of scientific inquiry related to the use of biologicals; many instances were noted in which in-house personnel gained experience which prepared them to evaluate new products submitted for licensure and release. This often was accomplished in the face of deficiencies of space, personnel and funds. The Director is responsible for evaluating his total program and making a judicious distribution of these limited resources. In making his allocations, he must be aware not only of imminent and future needs but of related work under way elsewhere which might provide information required to cope with current and anticipated problems. The Committee feels that these functions have been responsibly fulfilled by the Director.

In general, based on this review and our own knowledge and judgment, the Committee was impressed by the conscientious efforts demonstrated by the DBS leadership over the years to safeguard the public from biological hazards while maintaining high levels of potency and safety. The Committee did not recognize a major breakdown in the scientific integrity of the DBS. Of the specific charges raised by Dr. Morris and Mr. Turner, only a few minor irregularities could be confirmed; however, these did not involve any risk to the public. The Committee is concerned over the interpersonal problems within DBS, but cannot substantiate the charge of misapplication of scientific resources at the Division of Biologics Standards.

Sincerely yours,

ABRAM S. BENENSON, M.D.,
Chairman, Ad Hoc Committee.

While the final version of this report has not been reviewed, it has been approved in principle by the Committee members who are:

Dr. Floyd W. Denny, Jr., Dr. Harry A. Feldman, Dr. Samuel L. Katz, Dr. Edwin D. Kilbourne, Dr. J. Vernon Knight, Dr. Serafeim P. Masouredis, Dr. Paul S. Moorhead, Dr. Frederick C. Robbins, Dr. David J. Sencer, and Dr. Margaret H. D. Smith.

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*Indicates report by DBS investigators.

MORRIS-TURNER ANALYSIS

WASHINGTON, D.C., *December 6, 1971.*

Senator ABRAHAM RIBICOFF,
Chairman, Senate Subcommittee on Executive Reorganization and Scientific Research, Senate Office Building, Washington, D.C.

DEAR SENATOR RIBICOFF: The report of the ad hoc committee appointed to review the memorandum entitled "Misapplication of Scientific Resources at the Division of Biologic Standards, National Institutes of Health" is of such poor quality as to call into question the very process by which reports of this kind are prepared. Dr. Marston's conclusion that "I find that the Morris/Turner charges of scientific mismanagement are without merit" is a gratuitous comment not supported by careful review of the report *and its inclosures.* In fact the substance of the ad hoc committee's report either side steps, corroborates or expands the seriousness of the situation described in our (i.e., Morris/Turner) memorandum.

Specifically the committee found that "It is evident that there are serious personnel problems within the DBS and that the current charges are the culmination of a long series of such problems. This is regrettable since such interpersonal difficulties must interfere with the effectiveness of the overall program. While these aspects are outside our purview, the Committee was pleased to note that the Office of Management Survey and Review of the NIH is presently surveying this matter."

The essence of the original memorandum presented to Dr. Marston was that the "serious personnel problems within DBS" had "interferred with the effectiveness of the overall program" and that that interference had serious implications for the public health. While the committee confirmed the existence of the personnel problems and the fact that they might adversely affect DBS programs they concluded that "Of the specific charges raised by Dr. Morris and Mr. Turner only a few minor irregularities could be confirmed; however, these did not involve any risk to the public." On this point, perhaps because they felt that the personnel problems were outside their purview, or perhaps because of the limited amount of time the members could spend on their review, the committee is merely mistaken. Major irregularities which did involve public risk can be confirmed. In particular:

A. The committee so seriously misstates the situation concerning the release of contaminated polio vaccine as to call into question the integrity of the process by which the report itself was prepared.

The committee concluded that "although in retrospect the minimal requirements established for polio vaccine production and safety testing were proved later to be inadequate, there is evidence that NIH and its advisors did adjust safety standards on the basis of evidence that infectious virus was present in some vaccine lots." This conclusion is based on the observation that, according to the committee, "safety tests more likely to detect residual infectious virus . . . were introduced in *March of 1954.*" (Emphasis added.) This statement was made in spite of the fact that the chairman of the ad hoc committee had been informed by Dr. Eddy during the deliberation of the committee that she made her discovery of contaminated Cutter vaccine lots (which was ignored at the time of its discovery) in September, October and November of 1954, *six to nine months after* (and probably as a direct result of) the institution of more rigorous tests. Mass immunization did not begin until April of 1955, *5 months after* the ignored discovery of contaminated lots.

As the document entitled "The Salk Poliomyelitis Vaccine Chronology," which was enclosed with the ad hoc committee's report, shows between May 1954 and April 26, 1955—when the first five paralytic polio cases associated with the vaccine were reported—there was no discussion of the possible contamination by live polio virus of the vaccine lots. This lack of discussion occurred in spite of the fact that dozens of meetings—including site visits to all manufacturers—between the National Foundation for Infantile Paralysis, Dr. Salk, The Laboratory of Biologics Control of the Public Health Service and the Vaccine Advisory Committee concerning potency and sterility of the vaccine were conducted during that same time. Everyone proceeded on the assumption that ". . . the possibility of infectious activity remaining in any vaccine meeting the specifications and minimal requirements (of the March 1954 standards which by May had been tested) had been reduced to a point below which it cannot be measured." But between September and November of 1954 Dr. Eddy discovered live polio contamination in three vaccine lots showing that contamination existed and could be detected. Still lots of Cutter vaccine were released to the public without being tested by the government laboratory. Nor apparently was Dr. Eddy's discovery reported to the various expert committees advising on polio.

Dr. Eddy informed the ad hoc committee chairman investigating the incident that the discovery of contaminated Cutter lots occurred as follows:

1. Lot 154 was tested between August 8, 1954, and November 2, 1954. One monkey inoculated as part of the new more vigorous testing procedures "was completely paralyzed in right hind leg and partially in left hind leg" . . . the pathologist test showed the monkey "positive for poliomyelitis."

2. Lot 254 was tested between September 1, 1954, and November 11, 1954. In test on this lot one monkey without clinical symptoms was "positive for poliomyelitis histologically" while "another monkey inoculated was paralyzed in 4 days, and sacrificed on the fifth day. The histopathological report was positive for poliomyelitis."

3. Lot 354 was tested between September 27, 1954, and November 14, 1954. "Four bottles (of this lot were) positive for virus . . . one monkey inoculated with virus was paralyzed after 6 days" and "positive for poliomyelitis histologically."

The memorandum containing this information (from Dr. Eddy, polio control officer, to Dr. V. H. Haas, director of the National Microbiological Institute) dated May 12, 1955 was provided to the ad hoc committee chairman and is enclosed with this report.[1] In spite of this fact the committee concludes "the specific episode concerning the handling of data provided by Dr. Eddy is more difficult to evaluate. No records of these observations are available in the current files."

If the ad hoc committee means by the statement that no records are available they are mistaken. There is no indication of why they failed to consider the documentation provided them by Dr. Eddy. Equally important is the question why the committee failed to find the dozens of records concerning the release of contaminated lots of polio vaccine which were prepared in 1955. Enclosed with this report are copies of two such reports, one dated June 1955 and identified as report no. 12[2] and one dated July 7, 1955 and identified as report no. 18[3] (both have thirteen addressees and were prepared on ditto machines). These reports chart the disposition (when they were received, released, recalled etc.) of all polio lots received from January 1955. If the committee was unable to find any trace of this massive amount of documentation a new mystery is added to an already disturbing situation.

The committee also mistakenly suggests that some significance should be attributed to the fact that in 1954–55 control of vaccines was not the responsibility of the Division of Biologic Standards but rather was the responsibility of the Laboratory of Biologics Control, its predecessor agency. This fact would more properly be cited as evidence of the unimportance of administrative reorganization rather than as an excuse for regulatory failures.

As the general counsel of HEW pointed out in the legal memorandum transmitted to the Senate Committee the basic authority for regulating vaccines under the Public Health Services Act has remained unchanged since 1944. The term "DBS leadership" was used purposely in the original Turner/Morris memorandum because the current director of the Division of Biologic Standards was the Assistant Chief of the LBC. As an occupant of this position he received (shown by the addressee list on report 183 and recalled by Dr. Eddy) the major portions if not all of the information concerning the contamination of polio vaccines. Finally the administrative change from LBC to DBS has relevance only if the ad hoc committee is correct in its assertion that "the LBC was neither staffed nor equipped to deal readily with the new and complicated problems presented by the polio vaccines." In this judgment the committee erred as far as Dr. Eddy's discovery of contaminated Cutter lots is concerned. Dr. Eddy was on the staff of the LBC, she did have the laboratory equipment necessary to make the discovery, and the discovery was made. The administrative elevation of the Assistant Chief of the vaccine control authority to the position of chief of vaccine control authority and the change of its name in no way alter the realities of the organization structure relating to the discovery of live polio contamination of Cutter vaccine lots or the fact that in spite of this discovery Cutter vaccine lots were released for public use without government tests.

These facts present a situation, in the words of the ad hoc committee "of the gravest nature." The first case of vaccine-caused polio was reported on April 26, 1955. According to the "chronology" provided as an enclosure to its report by the ad hoc committee safe vaccines were ready for issue to the public by the week of May 30, 1955—one month and four days after the discovery of contamination. Dr. Eddy positively identified polio in the first test monkey on August 30, 1954 and in the last test monkey on November 5, 1954. If the exact procedure undertaken on April 26, 1955 had been undertaken on Nov. 5, 1954 the polio manufacturing problems which caused the contamination could have been eliminated by December 9, 1954 or nearly four months before the mass immunization program began. Such a result would have avoided the cases of paralytic polio caused by the contaminated vaccine.

That this tragedy was not avoided can be traced directly to the fact that the expert committees reviewing the polio program were not informed of Dr. Eddy's findings. The ad hoc committee is wrong in its statement that "All decisions were arrived at with the assistance of the best experts available and the mistakes reflect deficiencies in the state of the art at the time rather than conscious suppression or neglect of available data." An expert committee can be no better than the information upon which it relies.

In its preparing of this segment of its report—as in virtually all other instances—the ad hoc committee relied on a report prepared by a high-placed official of the DBS (in this case an acting assistant director) which is biased and incomplete in its presentation. It is in reliance on reports such as this that the committee makes its most serious errors.

B. The ad hoc committee again confuses the significance of various dates when it argues that DBS acted promptly to meet the dangers suggested by the discovery that monkey kidney substrates employed in the manufacture of poliovirus and adenovirus vaccines had cancer causing properties.

The committee completely begs the point about when the cancer causing property of the monkey kidney substrate was discovered when it states "the initial report of the oncogenicity of some monkey kidney cell extracts for newborn hamsters was *published* in 1961." The point of the original assertion by the Morris/Turner memorandum was that publication of Dr. Bernice Eddy's *1959* discovery of the cancer causing property of monkey kidney substate was held up for a substantial time.

Since the ad hoc committee did not see fit to interview Dr. Eddy in detail it is impossible to know whether they received any evidence of this 1959 discovery. (It should be noted that Dr. Eddy identified June 1959 as the date on which she began the studies leading to the discovery in her 1962 paper on SV40). The committee was given a July 6, 1960 memorandum which showed that Dr. Eddy's discovery had been made previous to that time (addendum seven of the original Morris/Turner memorandum.) Why the committee choose to identify the publication date of the discovery (May 1961) (which according to the original assertion had been held up) rather than the actual date of the discovery some time between June of 1959 when the work began and July 6 of 1960 when Dr. Eddy sought in writing permission to publish her findings is unclear. Whatever the reason for this mistake, it undermines the ad hoc committee's argument supporting its belief that DBS acted promptly.

Clearly by no later than July 6, 1960 DBS knew officially that polio and adenovirus vaccines were contaminated by some substance which could cause cancer in hamsters. Measuring the promptness of the DBS response to this potential danger must begin no later than this date. Instituting amended safety regulations to correct this situation in March of 1963 two years and eight months after the discovery can hardly be construed as prompt action.

Even if the date erroneously preferred by the committee (some time in 1962 apparently May 1, 1962, the date of publication of Dr. Eddy's paper first showing that SV40 was the cancer causing agent) is chosen as the starting point to measure promptness, safety regulations issued, in March of 1963, ten months later cannot qualify as an exoneration. In fact the May 1, 1962 paper was received by the journal on January 15, 1962, indicating that DBS must have had official knowledge of the publication by December of 1961 and of the data upon which the paper was based sometime before that. Therefore even by the committee's improper assertion that the point at which DBS knew that SV40 and the cancer-causing agent were one and the same, the proper time from which to measure the promptness of action, 15 months elapsed before new regulations were issued in March of 1963.

The failure of DBS was that in spite of the fact that it knew that it had at least one and perhaps two agents (SV40 and/or a cancer-causing substance) contaminating polio and adenovirus vaccines in 1960, it did not issue new safety regulations concerning this contamination until March of 1963—a lapse of 32 months. On June 6 of 1961, the New York Herald Tribune reported "that a virus that produces cancer in hamsters" was in polio vaccine. On July 25, 1961 the Washington Evening Star reported that "two manufacturers of the Salk polio vaccine have had to suspend production temporarily because they have not been able to rid the vaccines of monkey virus, SV40." Clearly, the DBS knew it had one or two problems and just as clearly it did not react quickly to provide a solution.

To understand what DBS did do, it is necessary to separate consideration of the problem (in the way the original Morris/Turner memorandum did) as it affected polio vaccine from consideration of it as it affected adenovirus. In the case of polio vaccine, the March 1963 regulations were effective (though late) because SV40 can be removed from polio vaccine. However, in the case of adenovirus vaccine, the March 1963 regulations were irrelevant since adenovirus vaccine cannot be produced in monkey kidney cells without SV40 contamination. The rest of this presentation concerns DBS tardiness in preventing adenovirus from reaching the market.

It must be remembered that the benefit of the polio vaccine is extremely high. Conversely the benefit of adenovirus vaccine is low. It has at best a spotty record of protection against a relatively mild illness. On July 12, 1961, the Director of DBS issued a memorandum to manufacturers of adenovirus vaccine (enclosed)[4] citing "the Division's continuous review of accumulating data relating to the problem of SV40." The memorandum required adenovirus manufacturers to conduct "valid tissue culture test for SV40" and to obtain "negative results" or the vaccine would not be considered for release. The Director went on to say "Our present testing program for this agent is proving hazardous to our other test operations. We, therefore, are reluctant to test further lots of adenovirus vaccine for this agent until the manufacturer has demonstrated that he can produce lots which are free of this virus."

If this standard had been applied to the release of adenovirus to the public, the production of the vaccine would have ceased upon its publication because it would have been impossible to produce adenovirus vaccine lots free of SV40. The failure of this

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feeble attempt at regulation is what led to the institution of stricter regulations to control SV40 contamination of adenovirus vaccine in March of 1963. Adenovirus vaccine free of SV40 could not be produced in monkey kidney cells but DBS continued to release adenovirus vaccine to the public until August of 1964. (It is interesting to note that the DBS recognition of the seriousness of the problem presented by SV40 contamination occurred six months earlier than the ad hoc committee believed extending the period of delay from the time that even the committee felt important action should be taken to 20 months.)

Manufacturers complained about the March 1963 regulations because if they followed them, SV40 kept showing up in adenovirus. Repeated unsuccessful efforts were made to produce SV40-free adenovirus vaccine. Then finally it was learned that SV40 and adenovirus could infect a cell simultaneously leading to the explanation that the growth of that adenovirus in rhesus monkey kidney cells was dependent upon the presence of SV40. In view of this discovery it is clear that if the DBS policy of July 12, 1961 or the March 1963 regulations had been followed, no adenovirus vaccine would have reached the market place. In fact the last lot of combined adenovirus-influenza vaccine was cleared for the market place on August 10, 1964, four years and one month after Dr. Eddy discovered the cancer-causing properties of an agent in monkey kidney cell substrate. This cannot qualify as promptness. In fact DBS did not take official action to halt the release of adenovirus vaccines until October 14, 1964.

When the committee characterizes the removal of Dr. Eddy from her laboratory, animal rooms, heavy censorship of all her proposed publications, and the loss of laboratory technicians as "consistent with the exercise of critical direction in the careful search for confirmation and elucidation of important laboratory observations" it once again reveals how it refuses to consider DBS personal matters and in so doing so undermines its ability to make critical judgments about the quality of DBS science. The fact that the committee states that "there is still no evivence that SV40 plays any role in the production of human tumors" indicates that it failed to consider the one paper suggesting otherwise. To quote the original Morris/Turner memorandum:

"There is still no clear answer to the question of how the injection of SV40 might have affected its recipients. One study found a statistically significant ($X^2$12.182, P 0.0005) (the probability that the findings will occur by chance are 1 in 2000) increase in leukemia of children inoculated with SV40 contaminated poliovirus vaccine when compared with a comparable control group of children inoculated with vaccine uncontaminated with SV40. It concluded that there is reason to continue careful surveillance of the potential of SV40 to cause cancer in man."

The paper cited was M.D. Innis, "Oncogenesis and Poliomyelitis Vaccine," Nature, Vol. 219, August 31, 1968. The fact that it exists indicates *some* evidence of a possible problem. The two papers cited by the committee to support their contention that no evidence existed were both by Fraumeni, one in 1963, the other in 1970. In 1963 Fraumeni wrote "continued surveillance is indicated for it would be premature to conclude from this study that SV40 is innocuous to man." In 1970 he said "Our study has certain limitations. Whereas the attenuated (oral) vaccines (which he studied) contained much higher amounts of viable SV40 than the formalinized (subcutaneous) vaccines, the neoplasms in laboratory animals were, nevertheless, induced by parenteral and not oral administration of the SV40. In addition, we could not have detected neoplasms associated with a latent period which is longer than 8 years." (It should be pointed out that the Innis paper dealt with parenterally administered vaccine.)

The Journal of the American Medical Association followed Fraumeni's first paper with this statement:

"The lack of an effect on cancer mortality rates by no means indicates that SV40 is without oncogenic capacity in man. The results might have been different had the dose been higher, the observation period longer, or the vaccinees younger (i.e. newborns.) Extrapolation from animal experimentation suggests that it would be unlikely for the SV40 in killed polio vaccine to induce cancer in human beings, because the dose was probably too small and the vaccinees were probably too old. Nevertheless, it is important to have these expectations confirmed by observations based on human experience." JAMA, August 31, 1963.

There do not appear to be any extensive follow-up studies on the effect on man of SV40 contained in adenovirus vaccine.

In preparing its comments on the SV40 incident, the ad hoc committee again relied on two inadequate memoranda prepared by senior DBS officials. One of these comments on the Innis paper saying "the author . . . discusses the question of whether test and control groups are comparable and whether there is a relationship between socioeconomic status and vaccination and between socio-economic status and the genesis of leukemia. The conclusions are that further surveillance is needed."

This comment gives a clear insight into how the DBS staff misled the committee on minor details as well as major issues. What Innis actually said about the socio-economic issues was "it was concluded that the observed differences in the poliomyelitis immunization histories was *not* entirely attributable to socio-economic factors, if attributable at all." When an official of DBS, laboring under the clear conflict of interest of being assigned to investigate problems within her own institution, finds it necessary to mislead about a matter in this way, it is little wonder that the committee relying on that official makes important mistakes.

C. The ad hoc committee (again relying primarily on a memorandum prepared by a senior DBS official) errs in concluding that "at present it (the chicken cell aglutination—CCA—test) appears to be a satisfactory procedure for estimating the content of the major virus antigens in the vaccine."

Contrary to this statement, Dr. Edwin D. Kilbourne, a member of the ad hoc committee wrote in Hospital Practice, October 1971:

"A lesser objection to current vaccines, or at least to the means used to test them, is that there is still no satisfactory method of predicting the immunogenicity in man of any given preparation. Studies of immunogenic potential in animals are not required for licensure of vaccines and the immunogenic mass is estimated from results with the chicken cell agglutination (C.C.A.) test. This measures the erythrocyte-agglutinating activity of only one of the viral antigens and is both archaic and unsatisfactory. Vaccine production could, however, be readily improved in this respect without any very large expenditure for research."

Besides mistakenly characterizing the CCA test as "satisfactory," the ad hoc committee missed the point of the original assertion. The point was that in *November of 1960* (eleven years ago) Dr. Eddy sought to publish her findings on the variability of the CCA test because she felt "there would be interest (from the scientific community) in a test to replace it." She was blocked from publishing. Her supervisor backed by the DBS director called Dr. Eddy's work "of little consequence to immunologists . . . hence it would reflect no credit on the author, the DBS, or the NIH." Not only were Dr. Eddy's efforts to improve influenza potency testing discouraged, but the DBS continued to officially take the erroneous position that the CCA test is "satisfactory."

By taking this position the DBS lost the opportunity to be an important source of stimulation of work that could have "readily improved vaccine production . . . without any very large expenditure for research." If, over the last decade, as much time, effort, and money had been spent by DBS for research into an alternative to the CCA test as was spent on unsuccessful attempts to establish its usefulness, the CCA test, a test that because of its physical base cannot be used to measure the antigenic content of a multivalent influenza vaccine, might well not be a problem today.

The ad hoc committee fails to address the public health implications of what it calls "a readjustment of arbitrary standards" between pharmaceutical industry and the DBS. It does not consider the effect of this arbitrary readjustment on the physician who is giving vaccine or the patient who is receiving it. Rather it focuses on the propriety of the industry and the agency "negotiating" the "arbitrary standards." The committee completely ignores the potentially serious public health implication of the course of action DBS proposed to follow. The DBS sought to impose "arbitrary standards" (the committee's words) on influenza vaccine which would have led physicians to rely on an announced (on the product label) level of potency which exceeded laboratory measured potency. DBS sought to take this action in spite of the fact that in its own laboratories Dr. Morris (then control officer) had shown that the CCA values of reference vaccine were much lower than the value on the label of the vaccine. It was only after the arbitrary, and in the words of the Deputy Director of the DBS "rather hurriedly assigned," improperly excessive CCA value came under industry attack that negotiations were undertaken to adjust the value back downward to just slightly higher than the value found by Dr. Morris. By ignoring the existence of these facts the committee is rendered incapable of assessing the amount of damage to the public health that such a product can cause.

The committee also fails to comment on the fact that faced with the failure of the CCA test in 1966–67, Dr. Tauraso (who by this time had replaced Dr. Morris as influenza control officer) suspended *all DBS potency tests for influenza for one year*. It is interesting to note the inconsistencies of the DBS in its reliance on CCA tests. For the 1967–68 season, manufacturers were instructed not to include CCA values—the only measure of vaccine potency recognized by DBS—on the labels of finished lots. This ruling left physicians with no suggested measure of potency for the vaccine they gave to patients. It is unclear how the committee can believe that it conducted a thorough study of the problems at DBS when it chooses to ignore facts of such importance to the public health.

D. The ad hoc committee finds "true" the fact that influenza vaccine lots were released in spite of being marked "hold." But then the committee said:

"However, the implications that these lots might have 'trace metal contamination' is misleading since the designation 'hold' was attached to these vaccine lots by scientists in the course of research on the detection of preservatives containing 'trace metals,' and not as part of the formal control and regulation of the vaccines."

This quotation offers an opportunity for excellent insight into the kind of thinking and the process of preparation that underlies the entire ad hoc committee report.

First, whether or not the scientist involved found trace metals is in no way dependent on whether or not their work was part of formal vaccine control and regulation. Much of the committee's report is characterized by an attempt to explain away a scientific discovery or failure because it was made outside of or corrected by DBS regulatory announcements. The ad hoc committee bases too much of its argument on statements of DBS policy or intent and not enough on scientific facts.

Second, the Morris/Turner memorandum contained no "implications" about trace elements. It did contain the statement that "If the vaccines being reviewed by Dr. Hiatt were in fact contaminated with trace metal (perhaps resulting from excessive use of preservatives) the laboratory books will show it. When these were sought for detailed examination, access to them was denied, although an earlier cursory perusal had been permitted. That perusal suggested the possibility that some vaccine released had an excess of trace metal contamination." The committee chose not to seek out and examine the laboratory books. As a result the situation outlined in the original memorandum remains exactly as it was. The assertions of a potential problem in the way DBS regulates preservative remains unrebutted.

Thirdly, the committee completely ignores the one "implication" that was drawn from the appearance of the word "hold" on vaccine lot protocols—that there is confusion in the DBS regulation of preservatives. As the original Morris/Turner memorandum pointed out:

"Whether Dr. Hiatt thought he was performing a regulatory function or an investigative function the confused DBS internal procedures on preservatives raises serious questions about public welfare. If Dr. Hiatt felt he had important reasons for withholding a vaccine from public use, it might well be that the public should not have received the vaccine. Conversely, if there was no proper reason for withholding the vaccine but Dr. Hiatt was attempting to withhold it (as the ad hoc committee now alleges) then his effort was to improperly use his authority to attempt to advance his own personal research activities" (by withholding vaccine from the public.)

The committee merely ignores the implications of the confused situation that it confirms existed.

That there is confusion in the DBS regulation of preservatives is further illustrated by the case of the benzethonium chloride—the preservative which caused a Federal Judge, as pointed out in the original Morris/Turner memorandum, to award $650,000 for brain damage traced to its use. On June 17, 1969 Dr. Stanley H. Singer, a DBS project officer reported that "it is my opinion that in this one experiment the Division has enough data to indicate that the carcinogenicity of this compound (benzethonium chloride) * * * in one species of animal. It should now be the manufacturers' responsibility, if they desire to continue using this compound, to launch experiments to confirm or refute these findings. The Division's role in future testing could then be focused on studies designed to obtain further basic information about the chemistry of this compound and to insure that the small amounts of this compound used in vaccines in the past have been perfectly safe."[5] The compound is no longer used in vaccines. However, it is still used in thrombin,[6] a biologic blood product regulated by DBS and indicated for oral use to stop intestinal bleeding. That the committee did not explore more deeply into the preservative regulation confusion at the DBS is further evidence of the superficiality of the procedure upon which it relied.

Finally, the committee again relied on a memorandum from a senior DBS official which was both self-serving and contradictory. The memorandum says that no "standards . . . (by which) to test products for preservative content" were ever promulgated by DBS so therefore "such writings as 'satisfactory,' 'hold,' 'manufacturers preservative content not reported,' etc. . . . carried no regulatory significance." This means that DBS did not even require the manufacturers to indicate the name of the preservative used in any given lot of vaccine.

On the other hand the memorandum does claim that DBS has very strict regulations about the amount of certain preservatives that can be used in certain cases (not more than 1:10,000 sodium ethylmercuri-thiosalicylate or 1:12,500 phenylmercuric borate in influenza, for example.) The package inserts and containers for vaccine products contain statements indicating that these standards are met. The DBS memorandum says that "manufacturers were meeting these standards," including manufacturing procedures for any preservative. Thus the DBS regulation, manufacturer's licenses and package inserts and containers all indicate that the very precise amounts of preservatives are present. Then the DBS memorandum goes on to say that neither DBS nor the manufacturers "had any prescribed tests by which" the amount of preservative present could be measured. Thus while all the various precise qualitative statements sound reassuring, there is no way to know whether they are true or not.

The committee does not believe that this unanswered question is of any importance. They argue that any dangers of mercury or other trace metals "would be detected by the safety test each lot of vaccine must pass, in which mice and guinea pigs must survive massive doses compared to that given to man." When tests were run on thimerosal (sodium ethylmercuri-thiosalicylate) under DBS Contract #Ph 43-67-676, Mason Research Institute, Worcester, Mass., some interesting questions were raised.

"*Drug-Related Organ Pathology.* During the examination of about 2000 rats, a great variety of pathology was observed. The most frequent of these were mild changes in the liver, kidneys, heart, and lungs. Only in the Thimerosal-treated animals were the lesions in the lungs numerous or severe enough to warrant comment (see Table 6). Here only disease incidence in the high dose of each compund is recorded. The three compounds chosen had the highest incidence of broncho-pneumonia and in comparison with the controls it is evident that Thimerosal had a damaging effect on the lung or its defense apparatus. Since the death rate in this group paralleled the deaths in the other compounds, it must be concluded that the damage was slight, continuous, and perhaps cumulative. The incidence of pneumonia within the four dose levels of the Thimerosal group was dose-related." (Clinical Toxicology, June, 1971.)

None of this is meant to show definitively that preservatives in vaccines are currently harming people. It is meant to show that some potential preservative dangers are going unexplored by DBS because of "confusion over preservative regulations." Confusion over preservative regulations was the heading of the section of the original Morris/Turner memorandum which the committee attempted to refute when it argued that the release of protocols which were marked "hold" was of little importance. That the committee failed to explore the indication of confusion, but instead relied on another DBS prepared memorandum to evaluate the situation further undermines the credibility of the process by which the report was prepared.

E. In attempting to refute the argument that DBS should have taken some action when it became apparent that influenza vaccine was not protecting the public from influenza while possibly presenting dangers, the ad hoc committee relies on three arguments. First, it argues that while influenza vaccine use has been questioned "the vaccine is imperfect but useful and, indeed, potentially life-saving in certain 'high risk' subjects with cardio-pulmonary diseases, etc."

Second, it argues that DBS has no authority over efficacy of vaccine but "is charged only with the safety, purity and potency of biological products." The committee again relies for this position on a seriously flawed DBS legal memorandum.

Thirdly, the committee argues that "there is no evidence whatsoever" that "'Hypersensitivity'" has followed influenza vaccine use, and there is "no evidence" that influenza vaccine of chicken-egg origin can be damaging (particularly to pregnant women.) In each of these arguments it appears that the committee again failed to consider seriously all the implications of facts known about influenza vaccine.

First, the fact that the Public Health Service Advisory Committee on Immunization Practices (and for that matter the ad hoc committee) finds it necessary to limit their arguments for the usefulness of influenza vaccine to "high risk" groups is impressive support for the lack of efficacy of the vaccine in the general population. But even the usefulness in the so-called "high risk" group cannot be easily defended. If the vaccine is not effective in the young and otherwise healthy, why should it be effective for "high risk" groups? In 1965 the Advisory Committee on Immunization Practices explained why "high risk" groups should be included in its recommendations:

"That influenza vaccine prevents mortality from influenza, particularly among the aged and chronically ill, is based upon inference. It is presumed that vaccine protection demonstrated in studies among younger persons is similar among the aged and chronically ill, the group at particular risk of death should they acquire the disease. It is further assumed that such protection against clinical disease serves to protect them also against mortality associated with epidemic influenza."

The Advisory Committee has concluded in 1971 that "inactivated influenza vaccines have not been used to control epidemic influenza in the general population. Their effectiveness is variable, and protection is relatively brief. Nevertheless, since they are the only available influenza preventives, they should be given to chronically ill patients and possibly to older persons in general." Since the value of the influenza vaccine to "high risk" groups was originally "inferred" from its supposed effectiveness "among younger persons," it would seem that now, as it becomes increasingly difficult to demonstrate vaccine effectiveness among younger persons, that recommending it for "high risk" persons should be reevaluated. Perhaps it is time, for example, to consider the development of a new (possibly live) vaccine.

This is precisely what Dr. Robert M. Chanock of the National Institute of Allergy and Infectious Diseases said to the ad hoc committee (in one of two memoranda prepared for the committee by persons outside of DBS.) While unwilling to support Dr. Morris' belief that "influenza vaccine as constituted cannot induce in man appreciable resistance to influenza," Dr. Chanock did say that "In an open, partially vaccinated population influenza vaccine rarely has been more than 60 to 70 per cent effective in preventing disease; sometimes it has had less of an effect." Even Dr. Chanock recognized this as a vaccine of limited efficacy and endorsed the "development of attenuated influenza virus strains for use in live vaccine" to be delivered other than parenterally. Interest-

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ingly enough this is precisely the solution to the vaccine efficacy problem that Dr. Morris proposed at the close of his grievance hearing in March of 1971. The original Morris/Turner memorandum said "the fundamental observations concerned with the immune response in man to influenza virus, whether encountered in natural disease or by vaccination, put severe theoretical limits upon benefits to be derived from parenteral injection of an inactivated influenza vaccine."

The scientific argument which caused Dr. Morris to become involved in controversy at DBS was his assertion, first made in 1965, that influenza vaccine which induced circulating antibody could only provide incidental protection and that only creation of local antibody in the respiratory tract could provide protection. This view was based on Dr. Morris' own laboratory and field work, his discussion with Dr. Thomas Francis of the University of Michigan and the early observation (1942) of Dr. Francis that "local mechanism . . . available at the portal of entry, may be much more immediately concerned with determining whether influenza virus introduced to the respiratory tract will successfuly institute infection." Dr. Chanock says that "the rationale for his approach is based in part upon recent (sic) recognition of the major importance of local immune mechanisms in resistance to respiratory infection . . ." By coming to this position, Dr. Chanock lends his weight to essential parts of Dr. Morris' argument that the theoretical basis of inactivated vaccine has to make its effectiveness doubtful. Dr. Morris believes that the failure of the inactivated vaccine to create much local antibody explains its ineffectiveness while the fact that it creates some local antibody—when given in very high doses—explains what limited effectiveness that does occur. Dr. Chanock believes that this is only partly the explanation. Both agree on what next steps should be taken. The memorandum presented by Dr. Chanock supports in large measure the argument made by the Morris/Turner memorandum.

The committee completely skipped over the proposals made to it by Dr. Chanock: a. He proposed two alternatives to the CCA test which he felt should be tested. "DBS should take the lead in initiating and coordinating such studies; b. He said "it is essential that DBS become conversant with the genetic techniques now being used for alteration of virulence of influenza virus;" c. He said "DBS should attempt to anticipate problems of a regulatory nature which might impede progress in this area;" d. He urged that DBS maintain liaison with others in the field because "it would be tragic if attempts to stem the next influenza epidemic were aborted by a failure of DBS to remain *au courant*." None of these recommendations was mentioned by the committee though they go to the heart of many of the scientific failures of DBS outlined in the Morris/Turner memorandum.

The second argument made by the ad hoc committee is that even though the influenza vaccine has limited effectiveness, DBS should not be expected to do anything about that fact. (The committee does not explain why, the DBS in accordance with its authority to develop vaccines, should work on rubella vaccine but not on a live influenza vaccine. Nor does the committee explain why Dr. Chanock and his associates outside the DBS and not DBS should establish a Sub-committee on Influenza—which includes no DBS staff as members—to encourage new approaches to influenza prophylaxis.) The DBS should do nothing the committee argues because it is charged by law with only "the safety, purity and potency of biological products . . . there is no legislative requirement that these products be effective." That a responsible group of scientists could in this day and age make such an argument in the defense of a government regulatory agency and make it without even suggesting that the situation should be changed is disturbing. The fact that the argument is untrue doubles the disappointment.

Fortunately, the Secretary of HEW, relying on the recommendations of the HEW General Counsel argues against the committee and takes essentially the same position as the Morris/Turner supplemental legal memorandum that DBS does have authority for determining efficacy under the Food, Drug and Cosmetic Act. Unfortunately, the General Counsel's memorandum misses the point that since it believes that it does not have this authority the DBS has not been moving as vigorously as possible in insuring efficacy of vaccines. For example, the various activities undertaken by groups outside the DBS to help insure, improve, or develop (depending on your point of view) the efficacy of influenza vaccine should be the responsibility of DBS if it has the authority to establish efficacy. It is not doing much to insure influenza vaccine efficacy presently.

How could a committee of national experts in biologics, as well as the agency assigned to regulate biologics manufacturers believe that the law did not require these products to be effective while at the same time it is clear to the HEW Secretary that biologics efficacy is required by the law? The committee erred once again by relying on memoranda prepared by the DBS staff. Unfortunately, the legal memoranda of the DBS staff are self-serving and misleading as are the scientific memoranda of the DBS. The argument of the legal memoranda appears to be that since FDA wrote a regulation excluding biologics from their new drug provisions, "Biological products . . . are exempt from complying with the New Drug Section of the FDA Act by reason of Section 130.2 of the FDA regulations." Clearly with the Secretary arguing in one direction and the DBS and the expert committee arguing in the opposite direction, new legislation requiring biologics to be shown effective must be adopted. During investigation into the subject of biologics efficacy, some attempt might be made to discover how widespread the notion is that an Act of Congress can be nullified by a regulatory agency's announced regulation.

The third argument by the ad hoc committee against the Morris/Turner position on influenza is that there is no evidence of harm or hypersensitivity related to the use of influenza vaccine. Once again the committee is mistaken. One commentator writes of the "risk of having a significant adverse reaction to most of the (influenza) vaccine currently on the market" as being "practically equal to the ability of the vaccine to prevent influenza. About eighty per cent of those who receive the present-day (1970) influenza vaccine report some local (sore arm) or systemic (feel as if they have flu) reaction. Ten to twenty per cent have fever, and about ten per cent miss a day of work or school. Reactions to influenza vaccine are far more severe in children than adults." (Dr. Steven R. Mostow, American Journal of Nursing, October 1970.)

In its discussion of blood group A substance, the committee confirms exactly what was stated in the Morris/Turner memorandum. The substance may be present in vaccines of chicken egg origin and antibodies may be produced against it in influenza vaccine recipients. The Morris/Turner memorandum then concludes "In pregnant women, this can be a dangerous event and result in fetal damage." The committee concludes "there is no evidence of any clinical disease associated with such response." In 1964 Springer reported:

"ABO immunization may exert its effect in foetal life to produce abortion and miscarriage (estimated to amount to 15–20% of all human pregnancies), giving rise to few cases of erythroblastosis. This is conceivable since A and B antigens, in contrast to the Rh factors, are not confined to the red cells but are present in nearly all tissue cells very early in embryonic life. Thus necrosis of foetal tissue cells may result following the action of anti-A and anti-B antibodies and the closely related anti-Forssman antibodies. Only recently has evidence been adduced for the teratogenic effect of anti-tissue antibodies *in vivo* during critical phases of embryonic development.

"In conclusion, the seriousness of the potential ailment and the ability of the potential patient to cope with it should be considered on an individual basis before administering present day influenza virus vaccines to women of child-bearing age."

Following the appearance of their paper, pregnant women were removed from the high risk group identified by the Advisory Committee.

As was pointed out in the original memorandum "In pregnant women the existence of blood group A antigens can be a dangerous event and result in fetal damage."

Finally, there is evidence that hypersensitivity has followed influenza vaccine use. Burnet[7] reported in 1943 that "when type B virus was inoculated in volunteers three to six months after a primary infection, the second infection had a much shorter incubation period, and the severer symptoms were experienced by those with higher serum neutralizing antibodies levels . . . these facts raise the possibility that the symptomatology of influenza virus infections does indeed have an allergenic component." (Rhodes and Rozee, 1967.)

In a small 1968 study on the USS Finch, Weibenga reported that 54% of the most recently immunized group contracted severe cases of Hong Kong influenza when the ship came in contact with an epidemic. Only 25% of the unimmunized group contracted the disease. Again in 1968 a study in a small group of industrial workers showed similar results—55% of the immunized group got the disease while 26.3% of the unimmunized group contracted influenza. A single case reported in 1970 "describes a patient in whom meningoencephalitis developed 12 to 14 days after inoculation with a purified influenza vaccine . . ." The observer, Rosenberg,[7] suggests an auto-immune allergic mechanism as possibly related to his patient's illness. A 1966 report of a case of autoimmune hemolytic anemia following "injection of influenza vaccine" (which itself was followed by "a sore arm and an influenza-like syndrome") concludes saying "It is interesting to speculate on the role of the influenza vaccine in the etiology of the autoimmune process since, it was, at least temporarily, related to the acute onset of hemolysis." In 1971 a Welsh physician, C. E. C. Wells,[7] reported eight cases in which "vaccination against influenza (was) complicated by a neurological illness." All eight neurological illnesses had an autoimmune basis. Each of these observations provides some evidence to suggest the existence of a positive relation between hypersensitivity and influenza vaccine use. However, the committee report dismisses the point of the original Morris/Turner observation. The point was that since myxoviruses have shown a tendency to hypersensitization, since influenza is a myxovirus, and since the WHO[7] reported in 1970 the influenza outbreaks in Europe (where vaccination is relatively limited) were "in general clinically mild" while "in the United States . . . an extensive outbreak covering nearly all States was associated with a large number of deaths from acute respiratory disease, a prospective study of hypersensitivity in relation to influenza vaccine should be undertaken." The point was that nobody was then or now collecting evidence on which a definitive determination might be based. The com-

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mittee attempted to refute the observation by saying that no evidence existed.

The committee did not explain why the DBS failure to undertake a prospective study of this nature and its effort to discourage investigation of hypersensitivity in relation to influenza vaccine was a sound administrative and scientific procedure. The DBS treatment of influenza vaccine is of major importance because in spite of generally known limited effectiveness, and in spite of the significant negative side effects associated with its use, approximately one-fifth (18.8%) of all vaccine doses released in the 5-year period 1966–70 in the United States are influenza vaccine.

F. The effort of the committee to explain away the existence of certain contaminants in duck embryo cells presents its most curious mistake. Rather than investigating the facts presented in the Morris/Turner memorandum, the committee substitutes its own alegations against DBS and then refutes them.

Specifically, the Morris/Turner memorandum said "a DBS investigator observed in cultured duck cells virus-like particles which were (not) identified because the investigator was told to abandon his studies of the particles (since the presentation of the Morris/Turner memorandum, the DBS has begun efforts to determine the nature of the particles) because they were 'biologically inactive.'" Instead of focusing on this fact that the committee cites another fact and erroneously attributes it to the Morris/Turner memorandum saying "the DBS failed to undertake detailed research to determine the nature and importance of electron micrographic observations by a DBS investigator, Dr. Kendall Smith, of 'vital particles' in duck embryo cells."

The incident referred to in the original memorandum concerned discoveries of DBS senior scientist Dr. Calvin Aulisio and not the work of Dr. Kendall Smith. The committee could have ascertained this fact by merely contacting either Dr. Morris or Mr. Turner. The reasonable way for the committee to sharpen its understanding of the points in the controversy. In this case, the committee's reliance on the DBS memorandum not only led them to be mistaken in their answer, it also led them to be mistaken in what they were answering.

More important than the failure to speak with the authors of the Morris/Turner memorandum is the fact that an unblasted reading of the original allegation would have made it obvious that the Kendall Smith problem was not the one referred to. Mr. Smith's name is not associated with the facts. (In fact the only mention of Dr. Smith in the original memorandum is in connection with his belief that he can show that DBS engaged in a conflict of interest which is treated later in this memorandum.) In addition, Dr. Smith continuously argued that he had discovered "viral particles" while Dr. Aulisio and the Morris/Turner memorandum referred to "virus-like" particles, an important distinction in detailed virus work. Also Kendall Smith, as far as we know, was not told to discontinue his work—in fact his work continued until the particles were identified as ribosomes. Finally, in the context of this discussion, ribosomes (the particles discovered by Dr. Smith) cannot be called "biologically inactive." If the facts presented by the original memorandum had been read without bias, it would have been clear that they referred to work other than Dr. Smith's. If the committee had contacted Dr. Morris or Mr. Turner, they would have learned that the work of concern had been conducted by Dr. Aulisio and that it remains uncompleted. Instead the committee relied on DBS memoranda which set up its own charge and then refuted it.

Nor does the committee deal with the additional two points about duck cells made in the original memorandum. It dismisses the comment that one DBS contractor found cytopathic agents in 4 to 10 replicate trial cultures by saying these were identified "as strains of certain mycoplama which are not indigenous to duck tissues." The existence of these mycoplasma was pointed out in the original memorandum in distinguishing them from "yet another contaminant" whose existence went essentially uninvestigated allowing DBS to once again miss a potentially important scientific opportunity. The committee does not comment on these "other" particles. Nor does it comment on the unexplained deaths of ducks at one manufacturing establishment.

The committee fails to comment on any of the points about duck cell contamination raised in the Morris/Turner memorandum. Conversely, it raises and then refutes the existence of an entirely different problem. It makes this mistake because of uncritical reliance on the DBS memorandum prepared for it. The handling of this issue again raises serious questions about the whole process followed by the expert committee.

G. Concerning the slow virus problem, the committee again fails to understand the failure of DBS and in fact by its answer actually dramatizes that failure. The point made about DBS was that "In 1962 it was recognized that 'slow viruses' were potential contaminants of cell cultures employed in the manufacture of vaccines for use in man" and that DBS has from that time to the present discouraged all research into slow viruses including and most important *their ability to contaminate vaccine cell cultures.* The discouragement of this research took extreme forms, including the ordered destruction of 4,000 mice on long term scrapie studies ostensibly to make room for other important DBS research. The room from which the mice were removed remained vacant for over one year after their destruction.

The committee underlines the importance of this DBS oversight when it points out that currently NIH spends 3.5 million dollars on slow virus research and intends to double that amount next year. The point is that only a very small portion if any of that money is spent on research to discover if slow viruses are contaminants of vaccines. Further DBS, the agency responsible for insuring the safety, purity and potency of vaccines, spends no money on such research.

The committee excuses that failure by arguing that "these agents (slow viruses) requires special and expensive space and equipment since, as was shown by Dr. Morris, the laboratory spread of such infections is a distinct possibility." What Dr. Morris said is:

"It seems likely that virus might have been carried from cage to cage by forceps, scattered bedding, or unwashed hands, mixed water bottles or cages, or even insufficiently sterilized cages in the long period of over one year of daily handling and feeding of the animals. Thus, airborn infection, while not ruled out, would appear to be unlikely in view of the small number of control mice who have acquired scrapie. It is established that scrapie is readily transmissible to sheep, goats and mice by feeding."

"Pattison . . . has presented convincing evidence that under the conditions of his experiment, scrapie did not spread after prolonged and intimate contact from sheep to sheep or from sheep to goats."

The precautions that Dr. Morris talked about concerned primarily that mice might well transmit scrapie among themselves by eating of contaminated materials. There was no suggestion that laboratory workers would be endangered by work on the materials. Further the facilities in which Dr. Morris worked were licensed and inspected by the Department of Agriculture and approved as safe. The inspecting officer appeared, with his records, at the hearing of Dr. Morris' grievances and discussed among other events, the inexcusable destruction of the scrapie mice.

It should be pointed out that since presentation of the original Morris/Turner memorandum, the first steps have been taken by DBS to correct the situation by the appointment of Dr. Morris as Chief of the Section of Slow, Latent and Temerate Virus within DBS.

H & I. Even a cursory reading of the information preceding this shows that the committee's belief that there has been no discouragment of important scientific work or a progressive deterioration of working conditions at DBS cannot be supported. Apparently, the committee's reluctance to consider personnel matters in detail limited its insight into the serious problem of the DBS.

The committee purposely misrepresented and distorted the suggestion as to why this situation has been allowed to develop and continue. The Morris/Turner memorandum states:

"Unfortunately, DBS has not, for the highest of motives probably, seen fit to allow the development of this kind of science (free of bias for the use of vaccines) of scientific inquiry in a number of instances. Apparently, because of a strong belief in the need to protect vaccines from adversity, the agency appears to minimize any potential vaccine problem. This procedure, undertaken even for the best of motives, is unscientific and leaves the agency vulnerable to criticism. To the extent that actions of this type taken by the agency succeed, they will achieve the very goal which the DBS seeks to avoid—the discrediting of vaccine therapy."

Rather than address the issue presented—which is currently the subject of growing literature on the responsibility of science—the committee chooses to ignore it and addresses instead "the most serious inference that can be drawn . . . that vaccines known to be excessively hazardous to recipients have been licensed by DBS for monetary, political or other reasons."

Actually the innate biases of men who do not hesitate to violate the rules of proper and fair treatment for their associates because they are convinced of the correctness of their goal is a more serious problem than graft. This is the heart of the problem facing scientific researchers today. The fact that the ad hoc committee recognizes "serious personnel problems within the DBS" is evidence that this problem has reached into the regulation of vaccines by the DBS. It is unfortunate that the committee's choice to avoid consideration of personnel matters allowed it to avoid the scientific implication of the personnel breakdown at DBS.

J–1. The fact that the varicella vaccine clinical trial was "completely legal" does not answer the point. DBS wrote to a company asking for the answer to certain questions which the company's investigator felt should have been asked prior to undertaking clinical trials—including several questions on inoculation of the virus strain. The letter from DBS said "Your notice of claimed Investigational Exemption for a New Drug" submitted April 18, 1969 under the name "Varicella Virus Vaccine, Live" has been received and assigned the code number DBS-IND 375. The designation of an IND number is for identification only and does not imply endorsement or otherwise. The legality of the trial is at best confused again by the impression of DBS legal interpretations. However, even if the trial was perfectly legal, that does not mean that the recipients of the experimental vaccine on clinical trial received enough protection—the point of bringing the facts to the attention of NIH.

J–2. The committee addresses the fact that one industry researcher had doubts about the use of mumps vaccine because the seed strain might be neurovirulent by citing another

DBS memorandum. That memorandum is seriously flawed.

That memorandum states that "the attenuated mumps virus did not replicate in monkeys even in the central nervous system and that, although there were lesions of the choroid plexus and ependyma, they were not caused by replication of the mumps virus since no virus could be recovered from these tissues." This is exceedingly dangerous reasoning. Non-replicating measles virus gives exactly the same experimental results in monkeys (non-replicating virus associated with lesions) but can cause an extremely neurovirulent disease SSPE (sub-acute sclerosing pan encephalitis) in man.

The danger in this reasoning lies in the fact that there are lesions presented without explaining their cause. Even if the lesions were not caused by the viruses, something caused them. The DBS memorandum claims that by analogy with the results of a process of "ultracentrifugation" that was used on adenovirus preparations "it appears likely that the lesions seen in the brains of monkeys after inoculation of preparations of live viruses which are not specifically neurotrophic for monkeys are a universal response of the CNS to the by-products and components of these viruses." By this line of reasoning, the memorandum compounds its original error. In the case of measles virus neurovirulence is caused by the virus in spite of the inability to detect "replication" or recover virus from the lesions. Thus the assumption of the memorandum is not always true. Even if it were true, there is no indicated method for separating the mumps vaccine from "the by-products and components of these viruses" which cause the neurovirulence.

Finally, the memorandum itself points out that "there are problems" with the procedure used to detect neurovirulence in "measles, mumps, rubella and adenovirus." The conclusion of the memorandum is startling:

"In point of fact, since no *significant* neuropathologic lesions have been seen in all the years of testing lots of measles, mumps, and rubella vaccines, DBS is now in the process of preparing changes in the regulations for these products to provide for doing neurovirulence tests in the first five production lots in order to validate the seed virus." (Emphasis in the original.)

It may well be that the test is unable to detect the problem, rather than that the problem does not exist. The ad hoc committee's comments on Rubin's procedure for detecting Resistance Inducing Factor (the RIF test in controversy) reveals how DBS officials were once again able to mislead the committee and all those who relied upon its report. Specifically, the committee failed to consult with the official responsible for conducting the RIF test at DBS, Dr. Calvin Aulisio. Instead they relied on a memorandum prepared by Dr. Aulisio's supervisor. What the committee did not know is that Dr. Tauraso's memorandum was prepared only after he asked Dr. Aulisio to prepare a memo on RIF testing which turned out not to be to his liking. The reason that Dr. Tauraso did not like Dr. Aulisio's memorandum was that it supported the Morris/Turner memorandum. At this point, Dr. Tauraso prepared his own memorandum—which was included as an enclosure to the committee report. After reviewing this report and on the request of the ad hoc committee chairman, Dr. Aulisio prepared a report of his own which was forwarded to the committee chairman raising more than 10 important objections to the Tauraso document. This document was not a part of the material released by the ad hoc committee. It is enclosed with this report. Since the release of the Morris/Turner memorandum, the DBS has moved to improve its procedures to detect the presence of avian leucosis viruses in vaccines.

The committee states "while this virus (avian leucosis) is oncogenic in chickens, no evidence has yet been observed of an adverse effect on man despite its inadvertent inclusion in yellow fever vaccine (a contamination which still continues) which has been given over a long period of time to large numbers of people in compliance with international regulations." The implication of the statement that a substance which causes cancer in animals should not be considered dangerous until it is shown to cause cancer in humans. This is the position which the committee took in reference to the SV40 contamination of polio and adenovirus vaccine. Once again to maintain that position it had to pick and choose the evidence it received.

In a memorandum to the Director of NIH concerning vaccine safety with respect to contamination by oncogenic viruses, Dr. Wallace Rowe of the National Institute of Allergy and Infectious Diseases addresses this problem. (This is one of two memoranda released as supporting documents for the ad hoc committee which were prepared outside the DBS.) He said:

(1) The scientific community is in large part polarized into two camps representing the extreme positions on the magnitude of the problem. One position, often encountered in persons involved in vaccine development and production, is that oncogenic viruses are only a highly theoretical danger conjured up by extrapolation from highly artificial laboratory systems. The other position, to which I subscribe, and which is found mostly in laboratory workers who do not have to make the hard decisions on vaccines, is that oncogenic virus contamination of vaccines is a real and ever-present danger requiring the utmost alertness and concern. These attitudes are dramatically illustrated by the respective reactions to the finding that two licensed vaccines (yellow fever and polio) did in fact contain oncogenic viruses. The one camp uses this experience to justify their lack of concern, stressing the fact that use of the contaminated vaccines did not lead to any harmful effects. The other school feels that these events justify their concern, in that they prove that people can be unwittingly inoculated with tumor viruses, and only by luck have we apparently escaped disaster.

(2) Regardless of the ultimate correctness of the two points of view, I do not see how NIH can do otherwise than proceed on the assumption that oncogenic viruses are a danger to be avoided at all costs.

(3) The problem of oncogenic viruses must be viewed differently from other problems of viral contamination, chiefly because of their ability to be integrated into cells. The three main classes of oncogenic virus—C-type RNA viruses, papovaviruses, and herpesviruses, as exemplified by the Burkitt agent—all share the property of being able to be integrated into cells without production of virus, but capable of being induced to form infectious virus. This has implications both for the source of contamination of vaccines and for the nature of the virus particles which could be in the vaccines.

Commenting on DBS's role in responding to these problems Dr. Rowe says "I see no solution other than establishing a truly first rate basic research program on oncogenic viruses within DBS, involving both RNA and DNA tumor viruses."

The failure of the ad hoc committee to note Dr. Rowe's observations and its perfunctory dismissal of the fact that at least one lot of vaccine was released to the public in violation of the current minimal requirements reveals that the committee's comments on cancer-causing contaminants of vaccine did not fully respond to the serious nature of the potential harm.

J–3. The Morris/Turner memorandum stated that Dr. Kendall Smith said "I believe that I can document a good case for conflict (of interest) within the Division in the case of rubella vaccine development and licensing." There is no evidence that the committee contacted Dr. Smith. The claim remains unevaluated. The committee did, however, recognize the need to establish "formal and explicit guidelines for the scientific staff to avoid activities which could be interested as promotional or as representing conflict of interest."

Following the point by point discussion of the issues raised by the Morris/Turner memorandum, the committee conducted a short general discussion that again reveals the weakness of the investigation it conducted. "It was noted" the committee states "that the rule-making mechanisms permit any person, including government employees, to comment on any standards or changes proposed in the licensing and control of biologics products. Some of the charges raised in the basic (Morris/Turner) document could well have been made by that route at the appropriate time."

This statement represents a profound misunderstanding of the situation that has obtained at DBS for the last decade and a half. Dr. Morris attempted on repeated occasion to call each of these points to the attention of his various superiors. So vigorous were his efforts that the DBS sought to exclude him completely from any influence. In Dr. Morris' recent grievance hearing (held before three senior government scientists one from FDA, one from DBS and one from the National Library of Medicine) it was found "a decision was made in 1964 to build a case for separation of Dr. Morris in accordance with Civil Service procedures, therefore a variety of incidents have been documented over the years for that purpose. This building of a case lasted over a seven year period and it is to Dr. Morris' credit that in this prolonged time no evidence could be produced that could substantiate removing Dr. Morris from his position." The committee recommended that "The entire management of DBS should be censured for allowing the harassment of Dr. Morris . . . to proceed for an extended period of time without taking any remedial action."

On September 10, 1971, after reviewing the report of the Grievance Committee and the 14-volume transcript of its hearing, Dr. Marston, Director of NIH "accepted the Committee's findings and conclusions that there was a valid basis to your claim of harassment by your supervisors. They identified your harassment as elimination of staff, elimination of laboratory supplies and animals, and almost total isolation from all DBS activities." For the committee to suggest that faced with intense harassment designed to discredit all of his work, Dr. Morris should have presented a comment on proposed regulations to the Federal Register (particularly when he made his recommendations as part of his regulatory work) suggest how far from the reality of the situation the committee allowed itself to stray.

SUMMARY

The committee "was impressed by the excellent utilization by DBS of external advisors and consultants in making decisions about new products and in the resolution of specific problems." (It is interesting to note that a majority of the "ad hoc" committee serves now or has served in the past on the Board of Scientific Counselors of the DBS, the group responsible for establishing and overseeing DBS scientific programs. This presents the interesting situation of the ad hoc committee congratulating itself on its own work.)

The way in which the report of the ad hoc committee was prepared calls for a serious undertaking of reevaluation of the interdependence of the DBS and its expert advisory committees. In conducting its deliberations, the ad hoc committee:

1. Failed to consider all the evidence made available to it. Most notably the committee

report does not reflect any committee awareness of two documents—the May 12, 1955 Eddy memorandum on contaminated Cutter lots and the October 29, 1971 memorandum of Dr. Aulisio—both of which were given to the committee chairman and both of which showed the committee conclusions in their areas to be erroneous.

2. Failed to interview any individuals known to be critical of DBS practices, including Dr. Morris, Mr. Turner, Dr. Eddy (except for two very short phone calls), Dr. Aulisio, Dr. Smith and Dr. Young and many others, all of whom had important information about one or more of the incidents in the report.

3. Relied almost exclusively upon DBS memoranda prepared by the very people responsible for any regulatory failures which might have occurred. Of the over than 250 pages, only six were prepared outside of DBS. (One of the two memoranda represented by the six pages opposed the ad hoc committee's position on its treatment of cancer-causing substances in vaccines; the other presented the rationale for more vigorous action of the part of DBS to help develop a new influenza vaccine.)

4. Allowed itself to be misled by illogical, self-serving arguments in the memoranda prepared for it by the DBS. While it should rightly be disappointed by the quality of the work it received, it must share some of the responsibility for the weaknesses for believing that it could rely on the institution it was investigating to obtain meaningful and unbiased information upon which to base its findings.

5. Responded to issues which it raised itself that were not in the original report and failed to respond to issues which were originally raised.

To the extent that the type of this procedure typifies the manner in which other expert committees work with DBS, it suggests where part of the DBS problem may lie. As a result of the way it proceeded it is not possible to support any of the Committee's general conclusions. The committee concluded that:

1. "There is no legislative requirement that these (biological) products be effective." As the Secretary's memorandum points out this assumption is not supported by analysis of the Food, Drug and Cosmetic Act. That the Secretary of HEW says authority for requiring efficacy exists while the agency supposed to exercise that authority says it does not exist, presents a strong argument for new legislation.

2. *"The committee could find no evidence that any product released for general use which, by the standards of the time and the knowledge then available, was unsafe."* (emphasis in the original.) Evidence has been presented in this memorandum to show the release of vaccines which were either known to be harmful at the time of release or so potentially harmful as to require withholding of the product.

Thus the committee was mistaken in its major findings as well as in each of its subordinate findings. The work product and process of the ad hoc committee of experts investigating DBS is seriously enough flawed to suggest including them in an investigation of the regulatory activity of DBS under the authority of your Executive Reorganization and Scientific Research subcommittee. The interaction between serious personnel problems and poor scientific research is much too important a fact to be dismissed without investigation.

Sincerely,

J. ANTHONY MORRIS, Ph. D.
JAMES S. TURNER.

FOOTNOTES

[1] Bull, R., and Burnet, F.M., Med. J. Aust. 1:389, 1943.

[2] Rosenberg, G. A., New Eng. J. Med. 283: 1209, 1970.

[3] Wells, C. E. C., Brit. Med. J. 23 Sept. 1971.

[4] Influenza-Respiration Disease Surveillance Report No. 85, June 30, 1969.

[5] U.S. Government Memo. To the record. From Director, Intramural Research, NIAID. August 26, 1968. (Signed by John R. Seal, M.D.)

[6] WHO Chronicle 24:264, 1970.

[7] Meara, J. F., et al. Transfusion 7:48, 1967.

COAL STRIP MINING

Mr. BAKER. Mr. President, the problem of coal strip mining is receiving increasing and well-deserved attention in Congress. As one very familiar with the situation in the Appalachian region, I am anxious to see the development of strong and effective legislation to counter the devastation in this area which mounts at a fantastic rate each day we delay.

Last week in hearings before the Subcommittee on Minerals, Materials, and Fuels of the Committee on Interior and Insular Affairs, the distinguished senior Senator from Kentucky (Mr. COOPER), who has long been an outstanding voice in the development of mining legislation, made a statement which aptly and incisively distilled the problems of surface mining and delineated many of the important provisions which must be incorporated in an effective legislative response. I ask unanimous consent that his testimony be printed in the RECORD.

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

STATEMENT OF SENATOR JOHN SHERMAN COOPER BEFORE THE SUBCOMMITTEE ON MINERALS, MATERIALS AND FUELS, SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, DECEMBER 2, 1971

Senator Moss, and members of the Subcommittee: I appreciate very much the opportunity to appear before this Committee, as it considers legislation for the regulation, control or prohibition of surface mining, and to speak on a subject of such great importance to the Nation—and especially to my own State of Kentucky, and to all coal producing States. This subject includes the contour mining or steep slope stripping which is typical of mountainous and hilly areas, as well as the area mining practiced on flat or rolling terrain. Both contour and area surface mining are practiced in Kentucky.

I will not attempt to go into great detail about the proposal I shall make today, because I know the time of the Committee is limited. I will submit it for your consideration during the preparation of whatever legislation you may recommend to the Senate.

I was very happy to join in the sponsorship of S. 993, introduced for the Administration by the Chairman of the Full Committee, Senator Jackson, and the ranking minority member, Senator Allott. The Administration bill has, I believe, great value as the initiative of the Administration, and in establishing a national policy to deal with the subject of surface mining. The President is to be commended for his leadership and initiative in this field. I believe he is the first President who has taken this initiative and leadership.

However, I believe the Administration bill can be improved in several important respects. Since it has been introduced, I have given thought to this proposal, and I believe that legislation can be enacted which will work effectively toward this objective; that is to regulate surface mining. In studying this matter, I have consulted with my colleague, Senator Baker of Tennessee, for the problems of our States of Tennessee and Kentucky are similar and we have found ourselves in general agreement. His thorough study has contributed in great part to the recommendations I make. We hope very much to be able to submit a bill embodying our joint proposals.

In preparing the recommendations that I make today, I have relied very heavily upon the experience of the Senate Committee on Public Works—in the preparation of the Clean Air Act Amendments of 1970, which have been enacted by the Congress, and the Federal Water Pollution Control Act Amendments of 1971, which have been approved by the Senate and I am sure will be approved by the Congress in the early part of next session.

At the outset, we must consider the position of many organizations and citizens who urge that surface mining be prohibited. As I will note later, I think it clear that strip mining should be prohibited in certain areas—for example those over a certain steepness of slope, or when it would violate water quality requirements established by law. But I do not favor complete prohibition of surface mining. I cannot do so because, realistically, coal production is needed.

It is well known that the difficult question of provision of energy sufficient to meet the Nation's absolute needs, is a critical one. Energy demands have increased dramatically in recent years and are expected to continue to increase at a growing rate. Energy demands double every 8–10 years. In effect, the use of energy is a measure of the well-being and standard of living of our people, as well as of the changes brought by industrialization and urbanization. I understand this Subcommittee is conducting these hearings at least in part under the authority of S. Res. 45, of which I was a co-sponsor, providing for a National Fuels and Energy Policy Study, and I know the Committee will make its report by 1973. I hope that that report will address the whole question of levels of use of energy, available resources, and the costs—including environmental costs—of developing those resources, of converting them into energy, and of consuming that energy and the products to which it is in turn applied.

It may be, following such appraisals, that it will be found possible to shift away from strip mining to deep mining and the development of other resources. Nonetheless, I think it important we not wait until 1973 to take the necessary, if interim, steps for the regulation of surface mining.

It has been suggested in testimony before this Committee that alternate fuel sources to coal can be provided by other fossil fuels, by nuclear energy, and some say even by solar energy. Each of these fuels has problems, both in the availability of resources and in the environmental impact of their recovery and conversion to energy, and I do not think they can be relied upon now to furnish the necessary energy requirements of the nation. I, therefore, favor the regulation of surface mining, and my remarks are addressed to this subject.

Strip mining for coal has grown from minimal proportions to become a major factor in coal production. In 1970, nationally, surface coal production totalled 264 million tons, or 44% of the total of bituminous and lignite production. In Kentucky, 48% of coal production was produced by strip mining methods—125.3 million tons. This figure, for Kentucky alone, represents better than 10% of the Nation's total production of coal in 1970, and more than 23% of the Nation's surface production.

Strip mining is expanding rapidly. Nationally, strip mining was 23% higher in 1970 than in 1969. In contrast, underground production decreased 2.4% between 1969 and 1970. Unless something is done and done quickly, the situation will be completely out of control, and vast areas have already been devastated.

If surface mining is to be regulated rather

than prohibited, the first question is whether Federal legislation is required, or whether the States shall maintain jurisdiction. I would like to praise my State—Kentucky—for I believe it is generally agreed that it has developed the outstanding State regulatory program in the Nation.

But, I have concluded that a Federal law is required for two reasons:

First, because the problems of providing energy and preserving the environment are national problems which require national policy;

Second, because regulation state-by-state introduces competition for markets which places a premium on low standards, and a statute that will be uniformly applicable is required in equity and fairness.

The question then arises of whether the regulation of surface mining should be administered solely by the Federal Government, or should it be through a cooperative Federal-State relationship? With the experience of the recent Water Pollution Control Act, passed by the Senate 86–0, which restores State participation in water pollution control, and from my experience in other pollution control programs, I favor the Federal-State relationship, and this is the system that I prefer.

The first proposal I make is that a bill to control strip mining should be enacted quickly, and must deal with time elements. I believe the procedures which I have incorporated in this proposal, which Senator Baker and I have drafted and expect to introduce, are more definite and would secure quicker action than S. 966. Senator Baker and I have concluded that the proper agency for control would be the Environmental Protection Agency, cooperating with the Department of the Interior's Bureau of Mines, and with the Forest Service and Soil Conservation Service of the Department of Agriculture, and others.

In order to establish an adequate Federal-State regulatory program, it is necessary to provide timely and orderly procedures, involving public participation. Our proposal has two phases.

Under the primary control phase, the Administrator of the Environmental Protection Agency would be required, after the model of the Clean Air Act and Federal Water Pollution Control Act, to promulgate criteria and guidelines for the control of surface mining activities, and to establish minimum requirements for the State regulatory program.

Following promulgation of these criteria and guidelines (which would be required within six months of date of enactment) the State would be given six months to adopt, after public hearings, and submit to the Administrator a regulatory program which would be required to meet certain criteria set forth in the bill. Included in these criteria are requirements for permit programs. If the Administrator determines that the State regulatory program meets the requirements of the statute, the State program would be approved. In the event the program is held to be inadequate, the Administrator is given authority to substitute all, or a portion, of the regulatory program for the State. The entire procedure for the development of the regulatory program would consume eighteen months, a period of time coincident with the period of the first phase.

Following the establishment of an effective regulatory program—either State-administered and approved by the Administrator, or an EPA-substituted program where the State program submitted is inadequate—all persons, including those presently conducting surface mining operations, would be required to comply with the provisions of the regulatory program.

The next important question, of course, is that of enforcement, and of what agency will be responsible for on-site monitoring, application of the practices required, and enforcement—including citation of violations and prosecution of penalties or mine closure. I would propose that, as soon as Federal guidelines have been established, and there has been an opportunity for the States to develop plans conforming to the Federal regulations, responsibility for enforcement should reside with the State. This would obviate the necessity of building a large body of Federal personnel to assure that the State carries out and enforces its responsibility. My proposal would provide that the Environmental Protection Agency would have the authority not only to require adequate regulations for strip mining and enforcement, and to review and approve or refuse the State plans, but would have the authority of ultimate enforcement if a State fails to act.

It has been suggested that the Bureau of Mines should have primary responsibility. My experience is that the Bureau of Mines functions first to encourage the production of coal, and second, above all, to insure safety. These functions are not the same as those concerned with the environment. Surface mining is directly related to environmental quality, as well as the production of needed energy fuel. EPA is developing the techniques in the field of environmental protection, and it can more properly and effectively do so in this field (I may say Senator Baker advanced this view, and most persuasively, some time ago.)

Mr. Chairman, the heart of the regulatory program would be a permit system, which would provide that any person undertaking any surface mining operation would be required to give notification to the public and provide an opportunity for public hearings. The State, or if appropriate the Federal government, would issue or deny the permit. In the event the permit was issued, it would of course contain conditions on the operation of the mining activity, including performance standards and plans and performance bonds for the restoration and reclamation of the site.

This procedure, establishing a system of primary State regulations, backed up if necessary and enforced by the EPA, would require 16 or 18 months to develop—6 months from enactment for the EPA to issue comprehensive guidelines and criteria to the States, 6 months for the State to develop its plan based upon the Federal criteria and guidelines, and then 4 to 6 months for the action of the EPA in approving or amending State plans. A serious question arises about what will happen during this year-and-a-half, or two years if the bill is not promptly enacted by the Congress. On the record, the expansion of strip mining in the past two years would indicate that the problem may by then be insuperable, beyond control, and large areas of our coal-producing states beyond the possibility of rehabilitation.

I therefore propose that during this interim period, surface mining be conducted only under Federal authority, with the approval of the EPA.

Our proposal would establish an interim Federal program, under Federal authority of the Environmental Protection Administration. Any person currently operating a surface mine, or proposing to initiate operations at a new site, would be required to file a plan with the EPA describing the method of operation and the restoration program. The Administrator of EPA would have to approve the plan if the operator is to continue operations, or initiate new operations. The Administrator would approve the plan only if assured that restoration is adequately provided for. Six months after enactment no person could operate a surface mine except in compliance with the interim Federal controls and EPA approval.

This interim, exclusively Federal, program of control would be phased out upon the development of the more comprehensive regulatory framework with primary State responsibility, which I have outlined above.

This program we are proposing may seem drastic. But unless immediate action is taken to regulate effectively surface mining, those who desire to operate surface mines will certainly face the prospect of being prohibited from operation.

If the regulation of strip mining is not undertaken quickly, we will face the unhappy prospect of having not only our flat and rolling lands, but even larger areas of our hill and mountain lands, despoiled—and restoration may be impossible.

Mr. Chairman, I believe the outline that I have just described would provide a sound basis for surface mine regulation.

I have been interested in this subject and deeply concerned for some time. In 1962, the U. S. Forest Service of the Department of Agriculture initiated research in the engineering and hydrology of steep-slope mining and reclamation, and it was at my request that the Congress provided increased appropriations for this endeavor, and for continuation of their work on revegetation. The Forest Service is continuing its research, but many difficult problems remain.

Last year, the Appalachian Regional Commission awarded the State of Kentucky a grant of $437,000 to carry out a new research and demonstration program for better strip mining reclamation methods. I also initiated this request to secure Appalachian Regional Commission funds, at the request of Governor Louie B. Nunn, and the Forest Service is participating with the State in this effort.

In the Omnibus Rivers and Harbors bill of 1970, I wrote a provision—which was enacted—to authorize the Corps of Engineers to review and study the effects of strip mining operations upon navigable rivers and their tributaries and report to the Committee on Public Works of the Senate and House of Representatives with recommendations as to measures necessary to mitigate any adverse conditions due to strip mining practices.

The Committee on Public Works, and now the Senate, in the bill S. 2770 recognizes the water pollution effects of strip mining and proposes to require in Section 209 of that bill that each State provide for—and I would like to cite the operative language of Subsection (b(1)(G) of Section 209—

"(G) a process to (i) identify, if appropriate, mine-related sources of pollution including runoff from new, current, and abandoned surface and underground mines; and (ii) set forth procedures, processes, and methods (including land use requirements) to control such sources to the extent feasible;"

Nearly seven years ago, in the Appalachian Regional Development Act of 1965, which Senator Randolph and I joined in introducing, we directed the Secretary of the Interior in Section 205(c), to make a survey and study of strip and surface mining operations and their effects in the United States, and to submit to the President recommendations for a long range, comprehensive program for reclamation and rehabilitation of strip and surface mining areas. This report, which was not restricted to the Appalachian area, was made in 1967 and constitutes one of the more comprehensive efforts, as the Committee knows. However, because of the explosive expansion of strip mining, especially in the last year or two, I am afraid it is sadly out of date.

In addition, our water pollution and Appalachian amendments have included provisions for demonstrations and research in acid mine control and stripped land reclamation, and I have urged upon the TVA better enforcement of their contract requirements in the purchase of coal.

I mention these efforts not to indicate that they have been sufficient, but as evidence of my long and continuing interest,

which I have expressed whenever the opportunity arose, and which we have tried to write into legislation wherever appropriate.

Mr. Chairman: I think all of us are deeply concerned, and I hope very much the Committee will seriously consider the proposal which Senator Baker and I are offering today.

I think it would be valuable for this Committee, in considering this legislation, although it does not have jurisdiction of the subject, to address itself to one of the primary causes for the increase in strip mining—the enactment of the Federal Coal Mine Health and Safety Act of 1969.

I was a cosponsor of the bill, and voted for it, and I approve most of its provisions. But when it was considered by the Senate in October 1969, I opposed that provision in the bill which abolished the long existing classification of underground mines as "gassy" or "non-gassy" and classified all as "gassy" whether or not they were in fact "gassy". I offered an amendment to maintain the classification which was debated for four days and, although defeated by a vote of 45 to 31, I believe that many in the Senate recognized the problem that removal of the classification would create.

I pointed out in the debate that with respect to Kentucky's mines, its approximately 3,000 non-gassy small mines were safer than the 392 large gassy mines and that to require them to install the costly equipment necessary for gassy mines would inexorably drive the small non-gassy mines out of business with no gain in safety for the miners. Unfortunately, this has occurred. Many have been driven out of business. More will be, and the safety record since March 31, 1971, the effective date of the new Coal Mine Safety law, is worse. I predicted in my statement on the Floor in 1969 that the closing of these small mines would result in the expansion of strip mining.

"Another consequence if my amendment is defeated, is strip mining of the small acreages at the tops of the hills, for they cannot be mined with permissible equipment economically. There is one way they might be mined, which is through strip mining. As one who has flown over the areas and seen the country devastated by strip mining, and its effect upon the environment, I know what I am talking about; conservationists in the Senate should know."

Unfortunately, this prediction is also true.

I ask consent to submit to the Committee a list of some of the regulations of the Bureau of Mines which do not contribute to safety, some which actually reduce the safety of the miners—regulations which should be repealed or modified, regulations which, as I have said, have driven and continue to drive the non-grassy mines out of business.

The Bureau's enforcement procedure seems to rely chiefly on imposing fines in varying amounts for infractions of its regulations—mandatory fines without prior opportunity of an operator to be heard which is contrary to "due process" of law, and which has seemed to only confuse operators as to the safety measures they are required to take.

Since the first effective Federal Mine Safety Act, the Act has contained a provision authorizing the Bureau of Mines to close mines when a condition of imminent danger exists. Several years ago when the Senate was considering a mine safety bill, I proposed that mines should be closed down when conditions that could lead to imminent danger existed, until the conditions were abated. This was adopted and is now found in Section 104(c)(1). I think it would be well to abolish the uneven, unequal, perhaps arbitrary imposition of mandatory fines, use Section 104(c)(1) to close down mines until the danger has been abated and when necessary and, wherever required, impose fines and penalties for failure to abate and with due process of law. This in my view, would provide safety for miners and fairness to the operators.

I bring this to your attention because I will make these proposals to the Senate Committee on Labor, and your interest would be of great value.

CHANGING THE COLOR OF THE CORPSES

Mr. HARTKE. Mr. President, any assessment of President Nixon's success or failure in bringing the conflict in Southeast Asia to a conclusion must necessarily take into account the current level of bombing. A study recently released by a group of scholars at Cornell University indicates that while this country's overall military involvement in South Vietnam has decreased, its air activity is continuing at an unacceptably high level. The report shows that almost 300,000 tons of bombs will be dropped this year, bringing the total amount expended during the course of the war to more than 6 million tons.

These grim statistics highlight the truth that our progress toward peace in Southeast Asia cannot be measured solely in terms of the number of American troops withdrawn; we must also look closely at the intensity of our air effort and here we find that no progress has been made.

In a recent issue of the New York Times, Herbert Mitgang set out the conclusions of the Cornell study, conclusions which I think will be of interest to all Senators. I ask unanimous consent that Mr. Mitgang's November 21, 1971, article, entitled "Changing the Color of the Corpses," be printed in the RECORD.

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

AIR WAR: CHANGING THE COLOR OF THE CORPSES

(By Herbert Mitgang)

The prospect in Vietnam for the rest of this year and well into 1972 is American withdrawal through air power. Last week—as if to punctuate President Nixon's warning 10 days ago that "air strikes on the infiltration routes" would continue "in support of the South Vietnamese until there is a negotiated settlement"—American pilots clambered aboard helicopter gunships, fighter-bombers and B–52's and strafed and bombed Communist tragets in South and North Vietnam, Laos and Cambodia.

From the vantage-point beneath the jet wings, the demilitarized zone separating the Vietnams more than ever seemed a phantom. For the 77th and 78th times this year, American fighter-bombers attacked targets in North Vietnam last week.

An unofficial scenario for the months ahead can be found in a report put out in the last fortnight by a group of scholars at Cornell University's Center for International Studies. Their independent study, "The Air War in Indochina," disputes Mr. Nixon's assertion that the war is winding down. It asserts that the war can continue causing destruction and death even though United States ground forces supposedly are in a defensive posture.

The diplomatic leverage dimensions of the air war, especially the "protective-reaction" strikes north of the demilitarized zone this year, have been disclosed before. The westward course of the bombing against targets in Laos and Cambodia was uncovered by Senator Symington's Foreign Relations Subcommittee on Security Agreements and Commitments Abroad. But neither the State Department nor the Defense Department has revealed the full scope and character of the continuing air war.

The Defense Department has tended to brush off the Cornell study. Jerry W. Friedheim, the Pentagon spokesman, said last week he was not an expert on the study and did not know what the "methodology" was. However, the Pentagon's Southeast Asia desk has requested a copy of the report, and acknowledgement has been made that the bombing tonnage figures were furnished by the Defense Department.

The advance version of the Cornell study (a more detailed report is planned for late next month) was prepared under the guidance of Raphael Littauer, professor of physics, with the assistance of 19 professors and scholars. They had access to information provided by over 80 anonymous consultants in Washington, Southeast Asia, and elsewhere including pilots, diplomats, Congressional staff members, and International Voluntary Services civilians who had assessed the effects of the bombing from the ground up.

These are the principal conclusions reached in "The Air War in Indochina":

The total American bomb tonnage dropped in the war is expected to reach about 6.2 million tons by the end of this year. Although the annual tonnage has decreased from the peak levels of about 1 million tons dropped in 1968 and in 1969, the 1971 rate will still be almost 300,000 tons. More bombs have been dropped on Indochina since President Nixon took office in 1968 than the total dropped (2.9 million tons) during World War II and the Korean War combined.

The troop withdrawal program is not intended to include reduction of the air war over the Ho Chi Minh Trail, the principal Commnuist supply and infiltration route that runs through Laos and Cambodia. Interdiction will remain beyond the capability of the South Vietnamese Air Force.

"Free-fire zones" have been renamed, apparently to remove the implication of indiscriminate bombing. They are now called "specific strike zones," but the same unrestricted military activities continue there.

An estimated 325,000 civilian deaths have occurred in the last five years, while about 6 million South Vietnamese are thought to have become refugees as a result of artillery and aerial bombardment. (Senator Edward M. Kennedy's Subcommittee on Refugees has disclosed these figures.) Interdiction of guerrilla fighters inevitably spills over to the civilian population.

The bombing has failed to achieve its political goals. In northern Laos, it has had a counterproductive effect; in Cambodia, the dependence on United States air power is likely to continue. The "destruction of Indochinese societies continues while more and more governments become dependent for their survival" on American arms, including air support.

The air war has been a severe shock to all the natural ecological systems of Indochina. Bombing and spraying have destroyed farms, rice paddies, forests and animals.

The Nixon Administration apparently plans to continue bombing and air support and assistance operations "for the indefinite future"—at a cost that could approach $4-billion a year.

Only at the very end does the Cornell study turn philosophical. "We suspect that the crucial failure occurred in a different domain than competency," the report concludes. "It was a failure of the imagination. Decision-makers in Washington remain isolated from the effects of their decisions; military commanders are similarly separated from the consequencies of their actions. The reasons for this collective failure of the American imagination are manifold, but two seem particularly relevant to the use of air power.

"First, the United States has never suf-

fered aerial bombardment. Suppose the North Vietnamese had been in a position to carry out occasional air raids in retaliation for the bombing of their country, say against Seattle. Who can doubt that the tenor of the bombing discussions would have changed radically? Second, the very availability of an advanced technology tends to inhibit the imagination. If powerful tools are at hand, it is almost a reflex to reach for them first—and how much greater the temptation to do so if the cost is low. A reassessment of our position is long overdue."

THE A–7D, SURPRISE TACTICAL ATTACK BOMBER OF THE YEAR

Mr. GOLDWATER. Mr. President, the greatest thing that has happened to America's military aircraft system in a long time is the A–7D which may be the surprise tactical attack bomber of the year.

What makes the story of the A–7D so dramatic is the fact that its predecessors in the A–7 line left a lot to be desired. As a matter of fact, I was inclined to oppose the A–7 a few years ago and so informed the Senate Ad Hoc Subcommittee on Tactical Air Power. But, since then, I have had a chance to watch the A–7D perform at Luke Air Force Base and am convinced that it is one of the best airplanes our country has ever come up with.

In this connection, Mr. President, the Armed Forces Journal recently set out to discover what the men who fly the A–7D and the A–7E—the Navy's version—think about this plane. The result is a very timely and informative article in the December issue of the Journal entitled "They Call It 'Sluf'—Short, Little, Ugly Feller." The article was written by Mr. George Weiss, an extremely competent writer.

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

THEY CALL IT "SLUF"—SHORT, LITTLE, UGLY FELLER . . . OR SOMETHING LIKE THAT

(By George Weiss)

They call it Sluf—"Short, Little, Ugly Feller"—or something close to that. If you listen to the men who fly "Sluf," Vought Aeronautics' A–7D, it may be the surprise tactical attack bomber of the year.

The "D" in A–7 terminology is quite important. So is the "E" (Corsair II) when speaking of the Navy's latest model. Its first two aircraft in the series, the "A" and "B," weren't bell-ringers, being underpowered and "iron sighted."

It was the "D" model that changed the A–7 from a sleeping ramp tabby into a somewhat more vicious jungle cat.

The Air Force is buying 387: 74 were delivered by the end of last year, and deliveries are now underway on the FY 70 order for 128 more at a cost of $372.3 million. The buy dropped to 88 in FY 71 ($242.7 million) and USAF's three-wing buy will be completed with FY 72 funds for the final 97 aircraft ($205.2 million). The Navy had previously purchased 395 A–7A/B models and is receiving 494 "E" models, with production to run until FY 76.

The men who fly the "D" and "E" feel a little neglected: they miss all the publicity, but hit their target. That's the impression The Journal formed after visiting air bases and headquarters from coast to coast to find out what the jocks really think of "Sluf." The Journal visited Myrtle Beach AFB, S.C., where the A–7D is at wing strength, and Davis-Monthan AFB, Ariz., where a second A–7D wing is nearing completion and where training is done.

The A–7 is relatively new to the Air Force, which is now "learning" the system; the Navy, however, has been flying combat missions with the aircraft since 1967. Nevertheless, the Air Force can make a respectable claim to combat experience in both the A–7A and E, since it entered a joint combat program with the Navy. Small groups of USAF officers were carrier-qualified in the A–7 and flew SEA tours with the Navy, returning to Air Force units with combat experience. The Air Force has also "borrowed" naval officers to speed its learning process for TAC's A–7 wings.

Air Force Capt Ralph F. Wetterhahn flew 80 A–7E sorties from the USS *America*. He is now assigned to the 355th Tactical Fighter Squadron at Myrtle Beach AFB.

Captain Wetterhahn's previous combat tour in SEA was with an F–4 squadron. He told The Journal he was able to place more and better bombs on target with the A–7E, in either manual or automatic operating modes. He liked the A–7E's ability during night operations which the Navy flew over the Ho Chi Minh trail. These missions were directed by Forward Air Controllers; targets were illuminated with flares.

From an accuracy standpoint, Captain Wetterhahn believes he could provide close air support, with confidence, up to within 50 meters of U.S. troops while strafing, within 100 meters using low drag bombs, and within 50 to 75 meters with high drag weapons. This, he says, is somewhat better than he would attempt in any other fighter-bomber he has flown. His only negative comments on the A–7D are that the nuclear capability has been removed (the Air Force did so to improve its usage for close air support) and that it lacks a dual refueling system, which would allow probe drogue as well as its bomb refueling. (The Navy has retained a nuclear delivery capability in the A–7E and recently assigned the "E" model a night nuclear target folder in the Strategic Integrated Operations Plan.)

A constant concern of Air Force pilots flying close air support for friendly forces under fire is the possibility of a stray bomb killing or injuring Americans.

Studies made at Vought Aeronautics plotted 37,000 bombs scored and indicated that six bombs in 10,000 *might* endanger friendly forces—with the A–7D operating within 300 meters of a U.S. position.

The Air Force has remained unusually silent in public praise of the A–7D. The Navy, however, is beginning to speak out on the aircraft's potential.

In a recent memo to flag officers in the Washington area, RAdm T. R. McClellan, Commander Naval Air Systems Command, noted that "our official reporting systems are principally concerned with the reporting of problems, over-runs, and assorted troubles, so the good news always seems to be lost in the shuffle." The admiral went on to support his point with four pages of extracts from A–7E combat pilot reports and similar communications. He added, in summary, "There is little doubt that the Navy-industry team, in the A–7E, as confirmed by over 160,000 flight hours and 14,000 combat missions, has produced the finest light attack weapon system in the world." Combat losses for the "E" model have averaged one in 5,000 sorties, the Navy claims. In 47,000 combat sorties by "A," "B," and "E" models, 19 were lost to enemy action; 16 were "A" and "B" models, three were "Es," The Journal was told.

"Look at it this way—the A–7D is the fighter pilot's dream. It is the F–86H with four hours' fuel and 10,000 pounds of bombs aboard," says LCol Danny K. Salmon of the 354th Tactical Fighter Wing at Myrtle Beach AFB, S.C. Colonel Salmon has delivered bombs and bullets in a variety of combat conditions and restrictions from the Yalu to the Mekong.

"Always before," he said, "the man who was superior in eyesight and ability got the best bomb hits. The avionics package [in the A–7D/E] has made a true quantum jump in weapon delivery. We are looking at a weapons system that is better than the pilot flying the airplane. The *airplane* can drop bombs better than any pilot in the world.

"More than one-half the pilots in this wing are former F–100 pilots who never looked at a radar before, don't know a computer, not really knowledgeable in nav systems, doppler, and IMS. In only a year we are in a position other tactical wings didn't get to in three, four, maybe five years.

"We have a monthly shoot-off between squadrons. I was a judge on the last one. I had a kid, a weapons officer, drop two skips that were hits, two low-angle bombs that were shacks [bull's-eyes], two high-angle bombs—one was 15–20 feet off, the other was a shack—and he strafed 86%. I suppose he could have made another shack and strafed 100%, but the weather was bad that day. That's as good as anyone is going to do in any airplane today.

A NAVY PLANE?

A quick way to get an argument going in an A–7D unit is to suggest they are flying a Navy-developed aircraft. "Not so," say some Air Force pilots, "the Navy is flying [in the A–7E] an Air Force bird."

Their logic is that the A–7A/B was pure Navy and that, while the aircraft did fly combat from Navy carriers in late 1967, it wasn't until the Air Force asked for major changes that the A–7 became the excellent close air support plane it is today.

The Air Force asked for 26 major revisions or modifications to the A–7 A/B to come up with the "D" model. (Sol Love, President of Vought Aeronautics, explained to The Journal that the "C" model was to have been a two-seater, but was never built.)

At the time the A–7A was first coming off the production line, the Air Force was looking for a replacement for the A–1 and F–100. This was December 1965 and, according to quotes attributed to the SPO, Col. (later BGen) Robert E. Hails, "We practically reinvented the airplane." General Hails had a charter from the Air Force (*Airman*, February 1969) to make the A–7 "the best close air support aircraft" that could be built.

One of the first changes required was the engine, since the "A" and "B" models were underpowered. Selected was the Allison/Rolls Royce (Spey) TF41-A1 rated at 14,250 pounds thrust (the "A" had but 11,350 pounds thrust). Most pilots today would prefer an even more powerful engine (with afterburner) giving about 3,000 pounds more thrust for takeoff. The Navy's A-7E began with a 12,200-pound thrust engine, but now has an improved Spey at 15,000 pounds.

But what really turns the aircrews on is the A-7D/E electronics, and black boxes, ordered by the Air Force.

The black boxes integrated into the A-7D's Navigation/Weapon Delivery System (NWDS)—and then into the A-7E—is an IBM Nav/Weapon Delivery Computer; a Singer-General Precision Inertial Measurement Set; Doppler Radar; Texas Instrument's Forward-Looking Radar; Garrett's Air Data Computer System; Elliott's Head-Up Display (HUD); Armament Station Control Unit; Computing Devices of Canada's Projected Map Display and navigation system with four dead-reckoning modes; and finally an internal Electronic Counter Measures (ECM) system that can be augmented by a Westinghouse ECM pod added to one of the A-7's six weapons pylons.

The Nav/Weapons systems are expensive (approximately $400,000 per set) and they are complicated. It take a man 10 minutes

to learn to fly the aircraft and 100 hours to learn the system, said one pilot. But the system is proving its worth on bombing ranges in the U.S. and in Southeast Asia with the Navy.

What is it the A-7D/E NWDS does for the pilots, who usually refer to themselves as the "final" computer in the system? One way to get the picture is to look at the A-7's capabilities in terms could be developed for the American motorist, you might find yourself doing this:

Visualize yourself cruising down a strange superhighway at near top speed. While looking ahead at some point in the distance you can also see superimposed on your windshield the highway number, direction you are traveling, and speed. You get an automatic warning if you enter a new speed zone and are told the correction to make. Reach out and touch a button on the center console and information is immediately flashed onto your windshield telling you the distance to the next turnoff and the turnoff number. Press another button and a map of the area appears on the instrument panel. Passing a cloverleaf you press another button and the computer immediately corrects itself, based on a known, fixed landmark, after several hours of traveling, eliminating any errors that crept into the system.

As you approach your turnoff, the windshield lights up with additional information giving you proper ramp speed, the direction to take as you leave the main highway, and tells you which state road to take to your final destination.

Entering the town you press another button and the system locates a parking place near your hotel and guides you to it. All the time, of course, the system has kept you aware of any speed traps and hidden motorcycle cops. If you had approached a dead end or any other dangerous obstacle, the system would have given you a steady, flashing warning signal on the windshield telling you of danger ahead.

Pulling out of your parking place in the strange town, your auto computer now directs you to as many as nine places in the area (provided you've told the computer in which order you want to make the visits).

If the car had refused to start at some point in the trip, you could switch the map display to a checklist telling you how to restart the car, giving you a step-by-step sequence of checks to correct the problem.

The A–7D/E navigation and weapons delivery system frees the pilot of an attack profile that used to be necessary, but deadly: holding a straight-line approach (going "down the chute") during an attack, giving enemy gunners a chance to calculate his eventual position in space during the long seconds he has to hold a predetermined dive angle, airspeed, and release altitude while keeping the "pipper" on target.

Now, the A–7D/E pilot can "jink," take violent evasive action, while on the bomb run and not affect the bomb impact point. The on-board computers are busy: they recalculate the bomb impact point some 3,000 times in a one-minute run. As one pilot put it, "The computer never panics, forgets, or chickens out."

The navigation system continually updates the aircraft's position and displays it to the pilot, while a terrain-following radar warns him of features ahead. The nav system can also store up to nine coordinates and direct the aircraft to them. On an armed recce mission the pilot can mark a suspicious area simply by pressing a button as he flies over or near it. The coordinates are stored in the computer's memory bank to help the pilot fly back over the area or bring home more accurrate intelligence at the completion of the mission.

The HUD (head-up display) is the most obvious and exotic system in the A–7D/E and is much like the system in the Marines' V/STOL Harrier.

The system lets the pilot keep his eyes on the terrain and target, while providing him target-aiming and attack data from instruments just below his line of sight. Its 16,000-plus word memory store trajectory data on all the weapons carried by the A–7D/E. It gathers the necessary information on aircraft speed, direction, altitude, and attitude, and does all the computations for on-target weapon release.

While the pilot looks at the target through his windscreen he sees, in a soft green light, all the necessary information presented to him in symbols, always in focus and updated 50 times a second.

Whereas the F–100 pilot has to precalculate his bomb run prior to the attack, deciding on his heading, dive angle, and airspeed, the A–7D/E pilot needs only to move his target indicator over the point he desires to hit; from then on the computer does the calculating for him, and the SLUF jock is free to concentrate on maneuvers to avoid enemy fire.

If he has to change his attack from west to east, the target is still locked into the computer when he rolls in and the target marker settles on the selected point. Should flak force him to pull up or "jink," the computer remains with the target and continues to compute the proper release time. Even if he is forced to pull up from his dive before reaching the target, the computer continues to work, and he can "toss" the bomb with accuracy. From 10,000 feet altitude and a five-mile slant range, A–7D/E pilots at Davis-Monthan claim they can get 50% of their bombs within 100 feet of the target even while "toss" bombing.

LCol Edward V. "Cougar" Coggins, commander of the 354th Tactical Fighter Squadron at Davis-Monthan AFB. Ariz.—one of the three mission squadrons of the 355th Tactical Fighter Wing there—is a Vietnam combat veteran who calls the A–7D "the only aircraft I ever flew that was designed to do the job it had to do."

He told The Journal that a TAC fighter pilot must get his bombs within a 140-foot circle to qualify—unless he is an A–7D pilot. Then he must bomb within a 100-foot circle. To qualify for strafing, the TAC fighter pilot must place 25% of his 20mm rounds in the target; the A–7D pilot has to score 40%.

TSgt Ray M. Sweeney of the 333rd Tactical Fighter Training Squadron, a 10-year veteran and former F–105 crew chief at Korat, has two years' experience on the A–7D and likes its ease of maintenance. He says maintenance personnel want to transfer into the A–7D units "since the word has gotten around." He cites such items as a 10-minute tire change on the A–7D, a chore that takes an hour and a half on the F–100.

Navy figures show that even the complex "D" and "E" models require only about eight maintenance manhours per flight hour, well under the contract guarantee of 9.55 hours.

Another thing pilots like about SLUF: it's racking up a lot of respect as a safe airplane. In its first 125,000 flight hours, the Navy version saw fewer fatal accidents than the F–100, F–104, F–4B, F–102, F–101, F–105, and F–111 experienced at a comparable point in time. Its overall safety record (counting non-fatal major accidents and destroyed aircraft as well) is beaten only by the F–106 and F–111. Air Force experience with the A–7D is equally promising, with only three accidents in 50,000 hours.

At a time of cost overruns on most defense contracts, the A–7 "D" and "E" models must be a keen disappointment to Senator William Proxmire and the General Accounting Office, both of whom thrive on bad news. Costs have exceeded Vought Aeronautics' estimates, but not by much. The Dallas-based company missed the A–7D contract (now 80% completed) by 4.2% and the A–7E (with 95% completed) by 6.2%. Capt. J. T. Shepherd, Navy Project Manager for the A–7, says, "We had a well thought-out objective and nobody bothered us."

Not only has the program progressed quietly with no major cost problems, but it's performing as advertised.

The A–7D has beat LTV's guarantees in such areas as speed (but by only 1%) while carrying an armament load; it has exceeded the time-on-station specification (by 11%); is well under the specified takeoff and landing distance (10% and 26%); and it exceeds (by 5%) the ferry range promised with internal fuel. One Air Force report did indicate the aircraft might be two miles short on guaranteed radius of action.

Weapons delivery and navigation guarantees have also been met, and bomb scores are 20% better than promised. Gun accuracy is 50% better than anticipated. The navigation system guarantee was for not more than 2nm drift per flight hour; the system is averaging 1.6 to 1.8nm.

Field maintenance men agree, however, that maintenance would be better if Pentagon cost-cutters had ordered more high-value spare parts. The two A–7D wings are having to juggle their supplies until reliability rates are more firmly established. This has led to cannibalization of some aircraft, but the units still maintain an operationally ready rate of 71 to 73%.

A–7 "F"?

The Air Force and Navy have a joint test program at Patuxent River, Md., to turn the A–7D into a night attack configuration: it may become the second-generation A–7 "F."

Both Services are experimenting with low-light-level TV and forward-looking infrared radar to give the jet capabilities at night matching its daytime accuracies.

The Navy will be comparing the modified A–7 with its A–6, which currently has such a mission, and the Air Force is weighing the A–7 "F" against its F–111. Both the A–6 and F–111 are more expensive aircraft.

HOW MANY CHILDREN ARE GOING TO DIE TODAY, MR. PRESIDENT?

Mr. MONTOYA. Mr. President, on December 30, 1970, President Nixon signed into law the Poison Prevention Packaging Act, which had been passed by a concerned Congress to correct an appalling situation that still exists today. Annually, 600,000 American youngsters under age 5 are poisoned by swallowing hazardous substances. This comes to approximately 1,643 every 24 hours and more than 68 every 60 minutes. At least one child daily dies from such poisoning, and for each one that expires, at least one other is crippled for life.

Yet all across the Nation there is blissful unawareness of this situation. Because most Americans believe that somehow and somewhere Government is protecting them from such household disasters. The sad truth is that no such protection exists in spite of enactment of the excellent law I have already referred to earlier. It is the same sad story encountered so often in this administration; no concern with consumer protection; no will to enforce a tough, good law; no desire to hold to the fire of enforcement those whose products are poisoning, killing and maiming children daily. The story is as dreary as it is disgusting.

What actually poisons our children? Ordinary, everyday household products

sold in most stores across the Nation. All are marketed by industry with the usual disregard for consumer, particularly child safety. Carnage results, as can be expected.

Lye, oil of wintergreen, aspirin, hundreds of prescription drugs, furniture polishes, antifreeze, pesticides, moth balls, Drano, gasoline and cosmetics are only a few such products extracting a daily toll. Any detergent, particularly those containing caustic substances, will wreak havoc with a small child's insides when swallowed. Emergency rooms of every American hospital know full well how severe and inexcusable this situation truly is. Case histories outdo one another in agony. Yet the answer to this terrible situation is at hand, as it has been for years.

Safety closures are the answer, and are called for in the act passed by Congress and signed by the President almost 1 full year ago. Safety closures have been patented in significant numbers. Many have been tested in a Government hospital in Tacoma, Wash. All such closures are immediately available to industry, if it seeks to utilize them. So far this has not been the case.

The Poison Prevention Packaging Act of 1970 simply requires all hazardous, commercially available substances to be labeled as such for the purpose of being equipped by industry with safety closures. It also requires standards of effectiveness for them to insure that they will resist efforts of almost all children to open them.

The Department of Health, Education, and Welfare is charged with responsibility for enforcing this measure. Its subsidiary, the Food and Drug Administration, is the organization immediately charged with enforcement in this instance. It has totally evaded its responsibility to the American consumer under this law. One fact stands out above all others. Eleven months and more after the President signed the law, not a single safety closure is being sold anywhere in the Nation. Not a single hazardous product of the thousands available to American consumers and their children comes equipped with a safety closure. And daily the toll mounts.

The Product Safety Division of the Food and Drug Administration is supposed to be the cutting edge of enforcement of this measure. Once again, there has been total nonperformance. Bureaucratic gobbledegook substitutes for energetic enforcement. Consultation is shoved forward as an excuse for nonfunctioning of one of the most important agencies of Government. If the average enraged taxpayer wants to see what in microcosm is wrong with his national governmental apparatus, here it is for all to behold.

First they plead no mandate from the Congress. Yet the law is complete, simple, all-encompassing, easy to interpret and definite in its requirements. Second, they claim there is not enough manpower for enforement, the classic defense of the embattled do-nothing public servant. This too is a specious defense, as budget figures show.

The real answer is that there is no desire on the part of servants of the people to vigorously administer this law. We can prove this by tracing what happened to the law from its date of enactment and signature by the President until the present time.

In March of this year, the President proclaimed National Poison Prevention Week. Laudable, to be sure. Yet the man charged with overall responsibility for the law's enforcement, Secretary of HEW Richardson, was off on a Utah skiing vacation.

After months of prodding by concerned citizens, the media, and Ralph Nader, FDA finally got around to the herculean labor of appointing a technical advisory committee. This group was supposed to assemble in Washington, determine which products were dangerous enough to young children to require safety closures, and set standards of efficacy for them. In the past 11 months, this committee has only gathered twice. That speaks for itself.

A testing protocol was supposed to be set up, finalized, and published in the Federal Register. Under its terms, selected groups of children under age 5 were to be assembled in order to test various safety closures. From such tests, FDA was to lay down standards closures would have to meet, while simultaneously informing affected manufacturers what their responsibilities under the law were.

In the process, standards of efficacy for individually dangerous categories of products were to be published in the Federal Register as well. It is of course in the interest of the general public that as many standards as possible be set, published, and enforced. Also, that they be set as high as possible. In this, too, FDA has been dilatory to the point of unconscionable negligence.

Only four categories of products have had standards for closures set on them under the act. These are aspirin, oil-based furniture polishes, hazardous drugs, and oil of wintergreen. In each case, manufacturers have asked for and received several extensions because of delay in finalizing the testing protocol. Promises by FDA to set high standards on many other categories of products have not been fulfilled. In late July, Dr. Edwards, head of FDA, testified before the Senate Commerce Committee. In the course of that testimony, he promised standards would be forthcoming at the rate of one a week for 10 weeks. This has not transpired to the amazement of no one at all. Meanwhile, the carnage continues daily.

Mr. President, this is anything but an isolated case. The Food and Drug Administration is something of a collector's item as far as not protecting consumers is concerned. Our papers are replete with one case after another. FDA's main function nowadays seems to be closing the barn door after the horse has been stolen. The agency spends more time denying such accusations than in enforcing sound laws such as the one I refer to here. And when this agency does not function as intended, the health and well-being of every citizen is placed in jeopardy.

Repeated prodding has elicited excuses, further delays, and feeble mumblings from the agency in question. Any cursory glance at a medicine cabinet or under a kitchen sink yields ominous findings. Dozens of products, available in supermarkets, drug stores, and hardware outlets are to be found. Each is lethal to a small child when ingested. The law is plain. So is FDA's charge under the law. Still nothing happens.

Industry, seemingly loathe to comply with this law, has vigorously lobbied against the law with FDA, with what appears to be significant success. What can we conclude, then? Obviously that industry's foot dragging carries more weight with FDA than lives of small children.

Perhaps an investigation of the FDA, particularly its Product Safety Division, is in swift order. A holiday season is virtually upon us once again. Many small children will be injured, crippled and killed during this period, as they were last year. Delay in implementing the protocol and producing further standards is inexcusable. This time tomorrow, another 1,643 American youngsters will have been laid low. Stomachs will be pumped out. Faces will be permanently scarred by lye. An esophagus will be removed from a youngster. A family will bury a small child. And all of this can be prevented.

How long will the administration allow this to continue? How much is the life of an innocent child worth? When will we see the curbing of this utterly useless slaughter of innocents?

Mr. President, the Food and Drug Administration has been guilty of nonperformance again and again in this area. As a result, a climate of permissiveness has been created which offers the unscrupulous manufacturer a temptation he is often unwilling to ignore. Congress cannot and should not stand by and let this situation deteriorate further.

It is time for a complete investigation of this nonagency, with an emphasis on the Product Safety Division. Such an undertaking should seriously consider stripping the Food and Drug Administration of its consumer protection function and assigning it either to another part of Government or to a special Consumer Protection Agency.

We have become the laughing stock of the developed world as far as protecting even the elementary health and safety of our citizens is concerned. Let us do something forthwith.

SENIOR CITIZENS FORUM IN BALTIMORE

Mr. MATHIAS. Mr. President, I recently sponsored a forum in Baltimore, Md., where senior citizens and public officials could discuss the problems of the elderly. I was most impressed by the deep interest shown by the more than 800 senior citizens who attended this pioneering meeting.

At the forum we were very fortunate to have the participation of the Commissioner of Social Security, the Honorable Robert M. Ball. Commissioner Ball made a very interesting and helpful presentation in which he described social

security benefits not only as they presently are, but as the Congress is moving to expand them.

I know that Commissioner Ball's remarks will be of interest to the Senate, particularly as they relate to H.R. 1, the pending social security and welfare-reform bill.

I ask unanimous consent that the Commissioner's address be printed in the RECORD.

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

SOCIAL SECURITY TODAY AND TOMORROW

(By Robert M. Ball)

I appreciate the opportunity to speak to you today about the social security and Medicare programs, about their role in providing economic security for the elderly, and how we hope to further improve these programs. I will not be dealing with the specifics of today's programs but rather with an assessment of where social security stands today and where it will be tomorrow.

SOCIAL SECURITY TODAY

From a modest beginning in 1935, the social security program has grown tremendously until today it provides retirement, survivors, and disability protection for almost all Americans, and health insurance protection for nearly all those aged 65 and over. The social security program touches the lives of practically everyone in the Nation. Over 9 out of every 10 people in paid employment and self-employment are covered or eligible for coverage under the program. Almost 27 million people—one out of every eight Americans—are receiving about $3 billion a month in cash benefits. And 17½ million of these beneficiaries are our senior citizens.

Of the more than 20 million people in this country who have reached age 65, over 90 percent are getting monthly cash benefits or will be able to get them when they or their spouses retire. Moreover, almost all of the 20 million are protected by the hospital insurance part of the Medicare program, and 95 percent of them have chosen the protection of the supplementary medical insurance part of the program. Medicare payments for hospital and doctors' care account for over two-thirds of expenditures for hospital and doctors' services older people receive.

IMPROVEMENTS NEEDED

Despite the significant role of the social security and Medicare programs in providing economic security for the aged, the Administration realizes that the protection afforded by these programs should be further improved.

And H.R. 1, the social security and welfare-reform bill that passed the House of Representatives last spring and is now pending in the Senate, contains many recommendations of the President designed to move us significantly closer to the goal of providing economic security in old age for all Americans.

CASH BENEFIT CHANGES UNDER H.R. 1

The most important of the changes which H.R. 1 would make in the social security cash benefits program is the provision for automatic adjustment of social security benefits. This would in effect make benefits "inflation proof" by assuring that they will at least be kept abreast of increases in the cost of living. While benefit increases legislated by Congress over the years have more than kept benefits up to date with increases in prices when measured against the level of benefits set many years ago, time lags have frequently occurred during which the purchasing power of a person's social security benefits have been seriously eroded. And, of course, later adjustment in benefits can't make up for the deprivation that people have suffered during the time the benefits were inadequate. The automatic adjustment provision would assure that long lags between price increases and benefit increases will not occur as they sometimes have in the past.

Before the automatic adjustment provision goes into effect, benefits would be increased across the board by 5 percent effective with benefits for June 1972. This increase is on top of the 10-percent general benefit increase that was effective for January 1971, and the 15 percent increase that was effective for January 1970, and will mean that for June 1972 benefits will be one-third higher than they were for January 1970, just 2½ years earlier.

H.R. 1 would also change the provision of the law known as the retirement test, to remove the disincentives to work that the provision now contains. Under the present retirement test provision it is possible for a person to actually have less income (that is, social security benefits plus earnings after taxes) if he works at certain earnings levels than he would if he earned less. Presently, there is a $1 reduction in benefits for each $2 of earnings from $1,680 to $2,880, and a $1 reduction in benefits for earnings above $2,880. Under H.R. 1, only $1 in benefits would be withheld for each $2 of earnings above $2,000 regardless of how high the earnings might be; there is no $1 for $1 reduction at any point. Thus, it will always be advantageous for people who can to work and earn more.

Increased benefits over and beyond the 5 percent increase are provided by the bill for some 3½ million aged widows. Under present law, an aged widow's benefit is equal to 82½ percent of the benefit that her husband would have received starting at age 65. Under the bill a person who becomes widowed after age 65 would get a benefit equal to what her husband would be getting if he were still living.

The method of computing retirement benefits for men would be changed to make it the same as that for women. This change will allow men to drop out of their benefit computation three additional years of low earnings, and will enable most men retiring in the future to get significantly higher benefits beyond the general increase of 5 percent.

Higher benefits would also be provided for many long-term, low-paid workers. Low-income workers who have worked for many years under social security would be eligible for a special minimum benefit equal to $5 multiplied by the number of years under social security, up to a maximum of 30 years, providing them with a special minimum benefit of up to $150 a month. This special minimum would apply to those receiving social security benefits now—not just those who retire in the future.

As a result of all of the H.R. 1 changes in the cash benefits program, average benefits will increase significantly. The average monthly cash benefit for old-age beneficiaries whose wives are not getting benefits will increase from $129 to $137; for aged couples the average increase will be from $222 to $234; for aged widows, average monthly benefits will go up from $114 to $133. The automatic adjustment provision will, of course, protect these benefits against erosion if prices rise in the future.

MEDICARE CHANGES UNDER H.R. 1

Health insurance protection under Medicare—both hospital insurance and supplementary medical insurance—would be extended to persons entitled to monthly cash benefits under the social security and railroad retirement programs because they are disabled after they have been entitled to disability benefits for at least 2 years. If enacted, this provision would make about 1½ million disabled beneficiaries eligible for hospital benefits and physician coverage under Medicare. This is a significant provision for older people for although social security disability beneficiaries are under age 65, almost two-thirds of them are over age 50.

As many of you are aware, one of the principal goals of the President is to improve nursing home conditions and to make sure that nursing home patients are treated with dignity and consideration. At present over 900,000 Americans over 65 live in nursing homes, and while many of these institutions provide outstanding care to our older citizens we are all aware that some nursing homes are in deplorable condition. One very important provision of H.R. 1 which will benefit the aged concerns those who are receiving institutional care that is not at the skilled nursing care level approved for Medicare or Medicaid. This type of care is now provided in several thousand "intermediate care facilities." Under H.R. 1, these institutions would for the first time be required to meet prescribed Federal standards related to the quality of care provided and the safety of the institution.

The Administration is pledged to improve nursing home conditions generally. On Tuesday of this week, for example, Secretary Richardson warned those nursing homes who are below standard that they are being watched closely and will not get away with substandard performance under either the Medicare or Medicaid programs.

At this moment, the Administration is engaged in many activities that will help assure that nursing home care provided to the aged is improved. These activities take many forms, including better enforcement of standards for participation in Federal programs; improving the training and professional competence of those engaged in seeing that standards are met; increased funding of State health department services connected with improvement of nursing home facilities; terminating the participation in Federal programs of nursing homes that fail to meet standards; and regular reviews of State health department professional certifications of nursing homes.

WELFARE-REFORM PROPOSALS AFFECTING THE AGED

In addition to provisions for improvements in social security, H.R. 1 also provides for a major new approach to public assistance for older people. H.R. 1 would replace the State-administered programs of assistance to the aged, blind, and the disabled with a new national program financed by the Federal Government and administered by the Social Security Administration.

Under the new program, people will qualify if they have assets that do not exceed $1,500, but the home, household goods and personal effects will not be counted within the $1,500 limitation. By contrast, Maryland now has a general limit of $300 on assets other than a home. The new Federal program will provide, in the beginning, an assistance standard for aged, blind, or disabled individuals of $130 a month and for couples, $195 a month; ultimately these standards will increase to $150 for individuals and $200 for couples. The Federal payment standards of $130 for individuals and $195 for couples represent significant improvement over payment standards to aged recipients in Maryland, where in July 1971 payment standards were $96 for an older individual and $131 for an older couple. Furthermore, States may establish a higher standard than the Federal assistance standard if they choose to do so in their State and pay the difference in cost. Under such circumstances the program could still be administered in that State by the Social Security Administration as a single program.

The ultimate payment levels under the new Federal program of $150 and $200 for individuals and couples, respectively, are based on the current poverty index. Thus, these payment standards establish as a goal of the program a situation in which no older person will need to live on income that is below the poverty level.

Today a little over 2 million older people are receiving payments under old-age assistance. Under the new improved program for providing assistance for needy aged people, about 5 million older people will get assistance payments in the first fiscal year in which the new program's ultimate payment levels of $150 and $200 are in effect.

CONCLUSION

Too often our senior citizens have the right to feel that they are the forgotten segment of our society. We are on the move to correct the situations that lead to this feeling. With H.R. 1 more adequate social security benefits will be provided and those benefits will be made inflation-proof. As a result of a variety of actions, institutional care for the aged is being improved and H.R. 1 will bring for the first time the great bulk of nursing homes under Federal standards. Incentives to work and to continue to be active will be greatly improved under pending legislation. And, finally, through the welfare reform proposals a new program of national assistance will be administered as a supplement to social security benefits with the goal of making sure that no older person has to live in this land of abundance below the level of minimum poverty established by the Government.

But obviously a floor of protection against dire poverty is not enough. Through social security and the improvement of private pension plans and the opportunity to work we must move forward to the goal of adequate income for all.

RETIREMENT OF HARTHON L. "SPUD" BILL FROM NATIONAL PARK SERVICE

Mr. McGEE. Mr. President, tonight a special reception and dinner will be held in the Nation's Capital honoring a man who will soon be retiring from the National Park Service on January 8, 1972, ending 36 years of service to that agency. And no one man will deserve the accolades to be given tonight more than Harthon L. "Spud" Bill.

Therefore, I ask Senators to join me in paying tribute to this man who has made many valuable, innovative, and far-reaching contributions to the national parks system of this country. This system has been held up as a model for the rest of the world, and Spud has played a very vital and creative role in the quality of a system which Americans are most fortunate in being able to enjoy.

Spud has had a highly distinguished career with the Park Service. He has been cited on numerous occasions for his work and innovations. He is the recipient of the Interior Department's Distinguished Service Award. For his outstanding work in the field of conservation, Spud received the coveted Cornelius Pugsley Award this past year.

Spud's first job with the National Park Service was that of senior foreman with the Civilian Conservation Corps at the Grand Canyon. He later moved up to Assistant Park Ranger, then Management Assistant, and was finally appointed Chief Park Ranger at the Grand Canyon.

The year 1947 found Spud appointed Assistant Superintendent of the Mount Ranier National Park. In 1952, he became Assistant Superintendent of Yosemite, and 3 years later he became Assistant Director of the Southwest Regional Office of the Park Service in Santa Fe.

We, in Wyoming, were extremely fortunate when Spud was named Superintendent of Grand Teton National Park in 1960. However, we were very much disappointed to lose him 3 years later, when he became Superintendent of Glacier National Park in Montana.

It was just a year later—in 1964—that Spud came to Washington as Chief of the Office of Resources Management and Visitor Protection. In 1966, he was promoted to Deputy Assistant Director and then Assistant Director for Operations. In 1967, he became Deputy Director.

I have known Spud Bill for many years, and I can, in all honesty, say you will not meet or come to know a finer person. This country has benefited greatly from Spud's service to the agency which serves as custodian over our national parks. It is, therefore, with a sense of regret that we see him step down from this post. However, we accept his deserved retirement knowing full well that his contributions to the national parks system will be felt for decades to come. We wish him the best of luck in his retirement. Thank you very much, Spud, for a job well done.

PLANNING FOR THE FUTURE

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Minnesota (Mr. HUMPHREY), I ask unanimous consent to have printed in the RECORD an article entitled "How Can We Have a Better Future for America?" published in the Texas AFL–CIO News of October 1971.

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

HOW CAN WE HAVE A BETTER FUTURE FOR AMERICA?

(By HUBERT HUMPHREY)

On our small planet, the average person lives about 500,000 hours. Not all of us recognize that what we do during this span of life affects not only ourselves but all those who come after us.

Too often many forget that we have the future—not just the present—to think about. When we pollute the fresh waterways and the air, when we jam our cities with too many people, somebody has to pay the bill, sooner or later.

These, I believe, are some of the lessons Americans are gradually learning. No man is an island. All of us are discovering how our actions affect the future of mankind. Moreover, whenever individuals or corporations squander the resources of nature, some way must be found to pay the bill or replenish these resources.

WHY PLAN FOR THE FUTURE?

On one point we should be clear: not the poor but the rich consume the wealth which nature provides. This is as true for nations as for persons.

A person in an industrial country consumes fifty times as much energy as the individual in a poor society. During the past ten years Americans alone consumed one-third of mankind's total industrial energy. We also used up 40% of the global output of raw materials.

As more nations become industrialized, the demands for raw materials and energy will leap ahead. And unless we properly use nature's goods and plan for tomorrow, we will be faced with worse forms of pollution and more environments not fit to live in.

There is no doubt that we can produce the energy that America and the world will need. We can also build better cities—if only we want to pay the price. Nuclear power alone offers potential energy for millions of years. A national policy of balanced urban-rural growth, could bring a more orderly pace of living into our hyper-active and rapidly changing society.

FREEDOM TO LIVE THE GOOD LIFE

Perhaps we need to enlarge our ideals to help us plan for the future. Traditionally, Americans have prided themselves on their great freedoms—the right to life, liberty and the pursuit of happiness. Perhaps the time has come to expand these ideals to include the right to a quality environment and the right to live in a decent home in a good neighborhood.

Citizens everywhere are demanding the freedom to live the good life. They are tired of polluted rivers, sickened by noxious fumes and fed up with the rush and noise of everyday life. Noise, congestion and pollution are not elements of the Good Life. But is any American untouched by these evils?

Seventy per cent of Americans live on less than two per cent of our land. By the end of the century, unless we do something about it, another 100 million persons will be living in our larger cities.

Americans are very much aware of the connection between overpopulated cities and the problems of crime, drugs, pollution, congestion and psychological stress. As long ago as 1968, a Gallup poll showed that 56 per cent of all Americans would prefer to live in rural communities, with 18 per cent preferring city life and 25 per cent the suburbs.

BALANCED NATIONAL GROWTH

Both the U.S. Congess and the Federal executive branch are on record as favoring a new policy of rural development and balanced national growth. It is time to turn our words into action and create legislative programs to carry out the will of the people.

As we debate the dimensions of a National Growth Policy, we must not forget that cities and urban centers are the heart of our civilization. Above all, any future growth policies adopted must enrich and enhance the cities—not just abandon them. That's why balanced growth is necessary.

To move towards developing a National Policy for Future Growth will be a difficult challenge. We will require:

A sound and growing economy whose benefits are passed on to all our citizens not just to a fortunate few. Since 1968 we have watched the Nixon administration so badly mismanage the economy that only a total reversal of course saved us from national disaster. Some major economic moves were absolutely necessary to our national well-being. But by passing on the benefits of his new economic plans largely to the wealthy, Mr. Nixon has created greater hardships for wage-earners everywhere.

Reform of every level of government so that the genuine needs of people are met—sidewalks get fixed, street repairs are made, housing violations corrected.

A greater provision of necessary funding to states and cities to enable them to provide urgently needed services to the public. To look towards providing long-term credit, I introduced the National Domestic Development Bank of 1971. This would provide new sources of funds for schools, cleaning up pollution, playgrounds and other public facilities. Linked to this bill, I have also prepared a special financing program to aid rural towns and areas with less than 35,000

residents. The purpose is to make it possible for these rural centers to grow in a more orderly fashion.

A BETTER FUTURE

These are some of the new policies we must enact into legislation if we are to put more purpose into our economic growth. They should help us to develop a better future for all citizens—a future in which we are not overwhelmed by problems and challenges which seem too big to manage.

Americans must learn to control their own destiny by planning the future growth of their society. This is an extraordinary challenge. But continuing unplanned and unchecked growth may only mean more of the same—a deteriorating environment, bad housing for millions, and clogged transportation in our cities.

The challenge of producing a better America lies before us. We have the means and the desire to meet this challenge. We have no other choice but to do so.

CRIME IN THE WASHINGTON METROPOLITAN AREA

Mr. MATHIAS. Mr. President, last year the Nation applauded when Mayor Washington announced that, as a result of intensified efforts by the District and Federal Governments, crime had decreased in the Nation's Capital. I joined in that applause. I was, however, deeply disturbed at FBI reports which disclosed yet another increase in suburban crime throughout the Nation, including a significant increase in the Maryland suburbs. I did not know whether there was any correlation between the decrease in the District's crime and the increase in Maryland's crime; I instructed my staff to research the question.

The staff report, which covered calendar year 1970 and the first quarter of 1971, indicated a statistical correlation between the decrease in the District's crime and the increase in the Maryland suburbs in some recognized crime categories.

I called for a "first of its kind" Washington Metropolitan Crime Conference to address the issue of metropolitan crime, and the Justice Department agreed to fund it. That conference was held on September 13 and 14, and I should like to report to the Senate some of my observations as well as the findings of the conference.

The conference was made up of representatives chosen by the respective State planning agencies of Maryland, the District of Columbia, and Virginia. The State Planning Agency, or the SPA, is that State organ established under the Safe Streets Act of 1968 to receive and disburse funds given to it by the Federal Law Enforcement Assistance Administration for support of State law enforcement programs.

The conference was divided into eight workshops—police, corrections, drug abuse, civil disorders, juvenile delinquency, prosecution and defense, organized crime and courts. Each State sent three representatives to take part in each workshop. Thus for the first time in Metropolitan Washington—the first time in the country—judges, police, probation officers, and law enforcement officials of each jurisdiction in a metropolitan area came together under one roof in order to come to grips with common problems.

This in itself was an accomplishment.

Each workship was charged with the task of identifying interjurisdictional problems within its particular field and recommending specific steps for tackling them.

This was not an easy task. It is not easy for the local police chief or prosecutor—politically protective of his territory—to reach his hand out to another police chief or prosecutor in an effort of cooperation.

But they did it. And we all owe them our gratitude and appreciation, for their efforts will serve as a stimulus for similar efforts in metropolitan areas all across the country.

The conferees recognized that in one metropolitan area, most of our problems and patterns of life pay little heed to political boundaries. Our air, our water—our crime—cross State and local lines without regard to their political integrity.

The Metropolitan Washintgon Council of Governments played a major role at the conference. It was through its efforts that we finally got a clear picture of the nature of metropolitan crime.

The Council of Government—COG—for a 3-month period prior to the conference took a comprehensive and systematic look at Washington's metropolitan crime and concluded, as I did, that interjurisdictional crime does exist to the detriment of the Virginia and Maryland suburbs. This point was not clearly made at the conference, and I think this important to do so in this report.

The seasonal nature of the study, the report states, affects only numerical, not qualitative differences in crime; thus, the 3-month study period can be said to be characteristic of the entire year.

Using the current seven recognized FBI index crimes—murder, forcible rape, robbery, aggravated assault, burglary, larceny over $50 and auto theft—within Maryland's Planning Region IV—Prince Georges and Montgomery Counties—and the District of Columbia, the COG report stated, among other things, the following:

First. Comparing the total metropolitan reported index crimes for calendar years 1969 and 1970, one sees the following: A decrease of 3,253 index crimes in the District; an increase of 1,399 index crimes in the Maryland suburbs; and an increase of 4,773 index crimes in the Virginia suburbs.

Second. The District of Columbia has doubled its crime rate per 100,000 since 1964.

Third. A further comparison of the index crimes in the three jurisdictions indicates that in calendar year 1970, crime in the District decreased 17 percent while crime in the Maryland suburbs increased 18 percent—with Prince Georges County crime in the Virginia suburbs increased 16 percent.

A closer analysis of second quarter 1970 to second quarter 1971 showed a 16-percent decrease in the District's crime and an increase of 25 percent in suburban Maryland crime.

Fourth. Twenty-eight percent of all those detained in the Montgomery County jails were residents of the District. Specifically, in the crime of robbery, 32 percent of those detained were residents of the District; in the case of burglary, 20 percent; in the case of larceny, 44 percent; and in the crime of aggravated assault, 27 percent of those detained were from the District.

Fifth. Thirty-three percent of all those detained in Prince Georges County jail were residents of the District. Specifically, in the crime of robbery, 56 percent of those detained were residents of the District. In the case of aggravated assault, 18 percent; in the case of burglary, 10 percent; and in the case of larceny, 29 percent were residents of the District.

Sixth. In looking at the court cases processed in Montgomery and Prince Georges Counties, it was found that in Montgomery County, 16 percent of the adults processed were District residents. Specifically, in the case of robbery, 33 percent of the cases processed involved District residents. In the case of larcency, 21 percent. In Prince Georges County 27 percent of the adults and 36 percent of the juveniles processed were residents of the District. Specifically, in the case of robbery, 36 percent of the cases processed involved District residents. In the case of burglary, 21 percent; and in the crime of larceny, 48 percent.

Seventh. Arrestees—in looking at those arrested in Prince Georges County, it was found that in the crime of robbery, 70 percent of the adults and 66 percent of the juveniles were residents of the District. In the crime of burglary, 37 percent of the adults arrested were residents of the District; and in the crime of larceny by juveniles, 26 percent of those arrested were from the District.

Eighth. Looking at those arrested in Montgomery County for the crime of larceny, by adults, 24 percent were residents of the District. In the case of burglary by adults, 17 percent.

These should not be startling observations. For the veteran criminal looking at the District—with its mobile strike forces, fluorescent, and vapor-lit streets, present bail procedures, its increased police force to saturate high crime areas—it makes sense to go to the suburbs.

The Maryland and Virginia suburbs have a combined ratio of one policeman for every 823 inhabitants compared to a District of Columbia ratio of one policeman for every 113 residents. The District spends 20 percent of its budget on law enforcement and related public safety, while the Maryland suburbs spend less than 6 percent.

FBI reports just recently noted a 12-percent increase in the Nation's suburban crime for this past year.

It takes no expert to figure out the direction of crime.

I accept the proposition that criminals in Maryland and Virginia are in no way better or worse than those in the District and that they too cross State lines to commit crimes. The problem is indeed twofold, for the problem is metropolitan in nature.

As I made the point at the conference, it is not helpful to point the finger, but only the direction. The figures COG has

developed demonstrate that interjurisdictional crime does exist. Metropolitan Washington does not end at Western or Eastern Avenues or the shores of the Potomac. Thus the solutions to these problems cannot recognize political boundaries.

The COG report clearly states that—

There appears to be no evidence available to suggest that a criminal will choose or not choose to commit a crime in a jurisdiction other than where he lives . . . it can be assumed that he would make that choice irrespective of whether the commission of the crime would mean traveling across a nearby political boundary such as a state or county line.

Mayor Washington and Captain Wilson do deserve high credit for their accomplishments. However, we should not forget that they received the personal support of President Nixon, as well as the aid of Congress, of the Federal Government and its huge resources within the Law Enforcement Assistance Administration, of a revitalized 5,100 police force—not to mention the assistance of the FBI, the Capitol Police, the Park and Executive Police, and the Armed Forces. All these political and professional energies and paramilitary and military forces went into the alleviation of the District's crime problem.

What I want to see now, however, is this same energy, this same sense of responsibility, tackling crime in the entire metropolitan region.

LEAA and the Federal Government must devote more money and give a greater priority to interstate metropolitan areas. The administration must look beyond each State's boundary for the causes and solutions to that State's crime problem.

I encourage Senators to urge and support similar studies, for I am confident that they too will discover how serious the problem of jurisdictional crime has become. It is not a unique problem of Metropolitan Washington. There are across the country more than 30 metropolitan areas which cross State lines. Close to a fourth of our Nation's population live in interstate metropolitan areas. I feel confident that this conference laid the groundwork for similar conferences in these areas, as well as enabled us to better comprehend and cope with crime in a metropolitan area.

Mr. President, I ask unanimous consent to have printed in the RECORD the specific recommendations of each workshop at the Metropolitan Crime Conference, in addition to an agreement of cooperation signed by the three jurisdictions at the termination of the conference.

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

DRUG ABUSE WORKSHOP

(By Thomas Gelb)

1. The workshop recommends that consideration be given to the development of a tri-state drug abuse information system. This system would be in the form of a methodone patient registry.

2. Members of the treatment and rehabilitation community (public and private) should be included in a tri-state discussion of certain commonly held concerns in the drug abuse area such as the specific definition of drug addiction—the need for statutory protection of individuals included in the patient registry, etc.

3. The workshop also recommends that improved communication should take place on the State level in the area of drug abuse and drug related programs. The goal would be the development of non-duplicative services and programs in the areas of drugs.

JUVENILE DELINQUENCY WORKSHOP RECOMMENDATIONS

(By Judge Jamborsky)

1. The workshop recommends that an appropriate agency examine the existing child labor laws to bring the various laws into uniformity and eliminate the seeming inconsistency which exists.

2. Intake officers in the Juvenile Courts should discourage the filing of juvenile status petitions (runaway, beyond control) and instead encourage the referral of these cases to an appropriate community agency. The Court should accept these petitions only as a last resort.

3. Because the Committee believes that institutions may promote delinquent behavior in children the Committee recommends that each of the jurisdictions utilize the group and foster homes for these children. The Workshop also feels that the licensing agencies and welfare agencies need more realistic regulations and standards for youth group homes.

4. The workshop believes that there needs to be better communication between the line agencies and officials and the planners and policy makers at the top levels.

5. The workshop recommends that the juvenile needs a better awareness of what rights he has under the Law and what his options and constraints are as well.

CORRECTIONS WORKSHOP RECOMMENDATIONS

(By Leighton Dudley)

1. The workshop recommends that the COG Corrections Committee be reconstituted to include the key policy makers from the three States. These key policy representatives may from time to time utilize various task forces to undertake specific projects of interest to the Committee.

2. The workshop recommends that LEAA should be encouraged to support various impact surveys in the Metro area such as the impact of community corrections on the community, etc.

3. The workshop recommends that consideration be given to the development of region wide corrections facilities particularly oriented to fill the needs of the smaller localities which might not require specialized facilities on their own.

METROPOLITAN WASHINGTON CRIME CONFERENCE, SEPTEMBER 13–14, 1971

Courts: Moderator Chairman—Judge Philip M. Fairbanks, Peoples Court, Montgomery County, Maryland.

Recommendations made on September 13th and 14th, 1971, at the Metropolitan Washington Crime Conference in the workshop session—"Courts".

1. A periodic Judicial Conference of trial judges in the metropolitan region to meet regularly for the purpose of promoting better understanding of common problems and dissemination of useful information.

2. The establishment of a regional bail agency to exchange information on a reciprocal basis and to disseminate information to the appropriate authorities.

3. The committee recommends that the Law Enforcement Assistance Administration (LEAA) issue a proposal to study the feasibility of an interstate compact for extradition and the return of misdemeanor offenders within the metropolitan region.

4. The committee expressed a concern for courtroom and courthouse security to be undertaken by LEAA. This problem should be transmitted to the Council of Governments for appropriate implementation.

5. Concentrate LEAA resources on the problems of conflict in court dates and appearances of the trial bar and the development of the increase in numbers of available trial counsel and for the development of assignment criteria throughout the region.

6. The group recommended that the Conference seek the aid and assistance of LEAA and COG for development of maximum utilization of available resources in the metropolitan region for court purposes, e.g., psychiatric resources.

7. Approval of interstate compact for furnishing of probation services and supervision; pre-sentencing; investigation and the exchange of accurate and informative data.

8. The committee recommended that the regional Judicial Conference consider sentencing procedures.

REPORT OF WORKSHOP ON CONTROL OF CIVIL DISORDERS

(By Police Chief Jerry Wilson)

The workshop on civil disorders viewed its responsibility as one of discussing potential needs and ways, possible processes for improving planning for civil disorders, particularly those civil disorders requiring multi-jurisdictional cooperation within the metropolitan area.

The following points were discussed:

1. *Classification of civil disorders:*

For purposes of their deliberation, the workshop agreed that the term "civil disorders" would be construed broadly to include the following types of incidents:

Natural disasters.

Traditionally construed urban riots.

Campus disorders.

Mass civil disobedience.

Limited incidents such as stoning of firemen, police, or passersby by youth.

Public school incidents.

Prison or jail riots.

Potentials for disorder such as controversial athletic events or rock concerts.

The workshop adopted a view that it is important that each jurisdiction needs to be highly conscious of the wide range and variation in civil disorders in planning their own tactics and strategies as well as in planning for coordination of multi-jurisdictional disorders.

2. *Strategies for handling multi-jurisdictional disorders:*

(a) Police Mutual Aid Agreement:

The workshop participants agreed that there is no apparent need for change in the police mutual aid agreement insofar as it pertains to civil disorders (it was noted as an issue unrelated to the subject of the workshop that legislation seems called for to permit formal interchange of police assistance in dealing with non-crisis situations such as narcotics).

(b) Curfew and travel restrictions:

The workshop participants were of the view that existing arrangements for coordination of curfews or travel restrictions are adequate, particularly recognizing the political reality that these restrictions will have to be handled separately for each event.

(c) Restrictions of sales of firearms, gasoline, or other potentially dangerous items:

The participants were of the view that past coordination of these restrictions has been adequate.

(d) Emergency information services:

The workshop participants adopted a view that it would be politically unfeasible, and probably functionally impractical as well, to try to disseminate area wide information through the instrumentality of any single political jurisdiction.

However, the workshop noted that each major jurisdiction within the metropolitan

area should give priority to planning for central emergency information services within its boundaries with particular attention to (1) dissemination of information through public media to counteract rumors, and (2) development of processes for locating and providing information regarding arrestees in the event of mass arrests.

(e) Intelligence sharing:

The consensus of the workshop was that the existing intelligence sharing between jurisdictions, through the Intelligence Subcommittee of the Metropolitan Washington Council of Governments Police Chiefs Committee is reasonably adequate.

(f) Command and control of multi-agencies handling of civil disorders:

Considerable sentiment was expressed in the workshop that there is a need for better definition and implementation of command and control of forces in multi-jurisdictional civil disorders. This has been perceived by some as a problem in events occurring within a single state or county jurisdiction when several agencies, perhaps with overlapping jurisdiction, assist one another. The workshop concluded that each major metropolitan area jurisdiction should carefully study this problem and clearly establish which official will have command of field forces when various combinations of police or other agencies cooperate in dealing with a civil disorder.

In this connection, also, several workshop participants commented on the need for developing a single mass arrest procedure for use in all civil disorders in the metropolitan area, so that all agencies cooperating at a disorder can use the same procedure—one that their personnel will be familiar with and trained to use if mass arrests become necessary.

(g) Training of Command Personnel

The workshop discussed the possible need for additional training for command personnel in control of disorders, but the consensus was that ample training has been and is available through Federal agencies—the workshop agreed that each department should insure that their middle and top level management personnel attend these programs.

ORGANIZED CRIME WORKSHOP

(By Harold Sullivan)

1. The workshop had only one recommendation for the consideration of the Conference. The workshop strongly recommends that there be much greater prosecutorial input at all stages in the investigation and pre-arrest stages of police work. The workshop felt that by this early involvement the capabilities of the prosecutor as an aid to the police in their investigative work would be enhanced, and in that way better cases would be brought to trial and more convictions result.

POLICE WORKSHOP RECOMMENDATIONS

(By George Owens)

1. The workshop recommends that an operating metropolitan area wide strike force be established in the law enforcement area to focus initially on the drug abuse problem including the detection of both the users and the dispensers of illegal drugs.

2. The workshop recommends that an investigation of the Washington Area Law Enforcement System (WALES) be undertaken to determine whether WALES has met its potential and satisfied its past commitments. In addition the study of WALES should also determine to what extent and in what ways WALES could be profitably expanded to better the Washington Metropolitan community.

3. The workshop recommends that appropriate inquiry be made of the Attorney General of the United States requesting permission for local law enforcement officials to utilize the Federal Law Enforcement Training Center at Beltsville, Md., particularly the range facilities and the emergency speed courses also.

4. The workshop recommends the use of closed circuit T.V. (CATV) between the jurisdictions of the Washington area, and recommends that consideration be given to installing the cable in conjunction with the development of the METRO system.

5. The workshop adopts the concept of having an annual three day metropolitan area wide police seminar for the purpose of continuing education in certain special areas of interest to the law enforcement community at the particular time.

6. The workshop recommends the assignment of three police officers to the Washington Council of Governments Public Safety Committee to serve as expert advisors in developing plans and programs suggested by the various subcommittees (such as narcotics, intelligence, investigative and other subcommittee areas). These officers would be part of the localities contribution to COG in it's work in carrying out the recommendations made at the Conference.

PROSECUTION AND DEFENSE WORKSHOP RECOMMENDATIONS

(By William Greenhalgh)

1. The workshop recommends that a metropolitan area legal intern program be developed for third year law students. The group was undecided as to whether the program should be undertaken by a consortium of the five area law schools or whether one of the schools should take the program on entirely.

2. The workshop recommends that a metropolitan area training program for prosecutors be developed patterned after the very successful program of the U.S. Attorney for the District of Columbia.

3. The workshop recommends that the capability be developed to monitor the "major violator" on a metropolitan basis.

MEMORANDUM OF AGREEMENT REGARDING THE COORDINATION OF CRIMINAL JUSTICE PLANNING EFFORTS IN THE WASHINGTON/VIRGINIA/MARYLAND STANDARD METROPOLITAN STATISTICAL AREA

The State Criminal Justice Planning Agencies in Virginia, the District of Columbia and Maryland, recognizing the interjurisdictional nature of crime in the Washington/Virginia/Maryland Standard Metropolitan Statistical area, and the need for coordinated criminal justice planning at the State Planning Agency (SPA) level to successfully counter the problems caused by this phenomenon, agree to take the following actions:

(1) The three SPA's will continue to work together as they have in the past on projects and programs of common interest such as the Metropolitan Crime Conference and other coordinated criminal justice planning efforts.

(2) The three SPA's will exchange criminal justice planning data relating to the District of Columbia and its Maryland and Virginia suburbs.

(3) The three SPA's will, in conjunction with appropriate local operating agencies and regional criminal justice planning groups, jointly review the findings and recommendations of the Metropolitan Crime Conference for the purpose of identifying problems requiring the cooperative and coordinated attention of Virginia, the District of Columbia and Maryland.

(4) Where appropriate, the three SPA's will consult at key decision-making points during the preparation of their respective Comprehensive Plans for the purpose of coordinating efforts relative to the Washington/Virgining/Maryland Standard Metropolitan Statistical area.

(5) The three SPA's will explore with the Federal Law Enforcement Assistance Administration the possible necessity of developing a special "impact aid" discretionary grant fund to be used to counter the effects of interjurisdictional crime in the Washington/Virginia/Maryland Standard Metropolitan Statistical area.

(6) The three SPA's, to insure the development of coordinated solutions to the interjurisdictional crime problem in the Washington/Virginia/Maryland Standard Metropolitan Statistical area, will share information regarding all project proposals—block or discretionary—relating to this subject developed by area localities or State agencies.

This memorandum of agreement is entered into on September 8, 1971.

BLAIR G. EWING,
Director, Office of Criminal Justice, Plans and Analysis, District of Columbia.

RICHARD C. WERTZ,
Director, Virginia Governor's Division of Justice and Crime Prevention.

RICHARD C. WERTZ,
Executive Director, Maryland Governor's Commission on Law Enforcement and Administration of Justice.

RETIREMENT OF CHARLES L. GRANT FROM DEPARTMENT OF AGRICULTURE

Mr. McGEE. Mr. President, I invite the attention of Senators to the forthcoming retirement of one of the most outstanding Federal employees with whom I have had the pleasure to be associated during my years in the U.S. Senate. Today, December 8, 1971, is the last working day for Charles L. Grant, Director of the Office of Budget and Finance in the U.S. Department of Agriculture. This day brings to an end more than 36 years of Federal service, almost all of which I believe was served with the Department of Agriculture, and I could not let this occasion pass without commenting on the splendid career of Charlie Grant.

Charlie Grant, a native of South Carolina, entered the Federal service in 1935 as a messenger. He proceeded up through the ranks, holding many positions of importance and significance. Since 1957, he has held his present position as Director of the Office of Budget and Finance of the Department.

The fact that he has served with several administrations and under Secretaries of both political parties demonstrates quite clearly the professionalism which Charlie Grant practiced and insisted upon his associates in his office. He has earned the respect and confidence of those with whom he has worked within the Department as well as those of us in Congress. In the delicate and sensitive position as Departmental Budget Director this is quite an accomplishment.

I have known Charlie Grant since I became a member of the Agriculture Appropriations Subcommittee in the Senate several years ago. I quickly recognized then, of course, that he was faithful and diligent in attending all of the subcommittee hearings with Departmental witnesses and that he frequently supplied complete and quick answers to many questions when called upon to do so. He was especially helpful to me and the subcommittee staff during this past year—my first one as chairman of the Agriculture, Environmental, and Consumer Protection Subcommittee.

In leaving the Department, Charlie

Grant takes with him the vast amount of knowledge he has accumulated and which could only have been acquired through a lifetime of service. He is also, however, a most effective executive and he saw to it that his office was manned by professionals at all times. He demanded of them the same degree of perfection by which he was guided. The qualities which he demonstrated as Director have become the hallmark of the entire office and as a result we have had an efficient, smooth-working office and not simply a one-man operation. This is the mark of a true and successful executive, and is one which cannot be overlooked on this occasion.

Many fine things have been said by many people on the career and accomplishments of Charlie Grant, and I can add but very little. In closing, however, I would simply say that he is a gentleman always—in the true and complete sense of the word. He has discharged his responsibilities in a manner that does credit to the Federal service. I am certain that the pride which he exhibited in his career of Federal service was reciprocal and that his fellow workers who knew and worked with him were proud to count him among their membership.

I do not know what plans Charlie has for the future, but of one thing I am certain. Beginning tomorrow morning, he will no longer have the responsibility on his shoulders for the Office of Budget and Finance, and he will no longer be under the tremendous day-to-day pressure under which he has operated for so many years. Tomorrow, he will embark upon a new career—that of retirement—and I only hope that the future will be as productive, as rewarding, and as successful as was his career with the U.S. Department of Agriculture.

Congratulations on your outstanding career—thanks for all of your help in the past—and may the future be kind to you and Mrs. Grant.

CONTINENTAL SHELF OIL LEASING ON THE ATLANTIC COAST

Mr. HANSEN. Mr. President, Secretary of the Interior Rogers C. B. Morton and top members of his Secretariat were kind enough to come to Capitol Hill today to brief Members of both Houses of Congress on the situation relating to the potential oil and gas resources of the Outer Continental Shelf off the Atlantic coast.

Despite having been subjected to a certain amount of political sniping, the Secretary emphasized that if this Nation is to develop its own domestic energy policy—which must be geared to its foreign and national defense policies—the Interior Department must do as thorough a job as it possibly can in developing a reliable inventory of energy resources and a capability of putting them on the line when needed.

Secretary Morton also emphasized very clearly and strongly that undue alarm is being voiced by some persons that oil wells are about to sprout near the beaches of the east coast in the near future. This will not happen.

Secretary Morton stressed the fact that because of problems, and lack of sufficient geological and environmental information at this time, it would not be possible to make a decision to lease any area off the Atlantic seaboard for 2 years or more. He noted that the National Environmental Policy Act would be followed scrupulously, but that even the initial steps toward making a decision under that act could not be taken until the States' claims to the Outer Continental Shelf are resolved, or at least some interim agreement can be made with an individual State or States to proceed.

Mr. President, I hope this will lay to rest the overexcitement voiced by some of our friends. The Secretary very candidly said, as he has said previously:

No decision has been made, nor is such a decision now planned.

Now let us allow our executive branch to proceed with the work mandated to them by the Outer Continental Shelf Lands Act of 1953 and the Mineral Leasing Act of 1920 so that a wise decision can be made when the necessary information is in hand.

WELFARE REFORM

Mr. PELL. Mr. President, in a time of widespread concern over reform of welfare and public assistance programs, I believe it particularly important to consider the views of local government officials charged with the responsibility of administering these programs.

In this regard, I recently received from the Rhode Island Directors of Public Welfare Association a letter stating the association's views and offering suggestions for improving the pending welfare reform bill, H.R. 1.

I believe these views and suggestions will be of interest to my colleagues and ask unanimous consent that the letter from Mr. Gabriel Gregoria, president of the Rhode Island Directors of Public Welfare Association be printed in the RECORD.

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

CITY OF PAWTUCKET, R.I.,
November 22, 1971.

Senator CLAIBORNE PELL,
U.S. Senate,
Washington, D.C.

DEAR HONORABLE SENATOR PELL: In response to your request concerning the new Family Assistance Plan H.R. 1 that we discussed briefly at the Rhode Island American Cancer Society dinner in October, as President of the Rhode Island Directors of Public Welfare Association, I am presenting our views on this bill. The directors support Family Assistance Plan in principle, and are encouraging the Federal Government to take more responsibility for administration and financing the Public Assistance programs.

H.R. 1 in its present form could be improved if the following suggestions can be incorporated into the bill:

1. It is proposed that the Federal Government will allow a minimum payment of $2,400 annually for a family of four. It is our consensus that states which exceed the minimum level of payment should be reimbursed by the Federal Government of at least half of the excess cost of assistance payments over $2,400.

2. The amount of payment of the Food Stamp Program is slated to be decreased or discontinued completely. A provision should be made to increase the basic payment to families of the present amount which they receive as a bonus through the Food Stamp Program.

3. The proposed disregard of earnings for employed recipients is set at $60.00 per month, plus ⅓ of the remaining earnings. The committee feels the present disregard of $30.00 per month, plus ⅓ of the remaining earnings is sufficient and should be retained.

4. Day Care costs for children of school age, and those under six years should be adequately funded by the Federal Government. In addition, standards providing an enriching educational experience for children must be required of all responsible child care personnel in order to avoid mere subsidization of custodial baby-sitting.

5. Job development and training must be adequately developed and funded for welfare programs, hopefully to reduce the number of welfare recipients in our society.

6. In separating eligibility for financial assistance, and social services for clients, it is *essential* that effective quality control be expanded, enforced, and *funded*. Spot checking of eligibility must be continuous, and well publicized to avoid widespread abuses. A system similar to that employed by IRS in checking income tax returns should be implemented.

The above proposals were unanimously agreed upon by the Rhode Island Directors of Public Welfare Association at the November meeting. You are to be congratulated for your interest and concern in trying to develop the best reform possible of the present Public Assistance program.

Very truly yours,
GABRIEL GREGORIO, *President.*

PROPOSED LOW-INCOME HOUSING PROJECT FOR FOREST HILLS, QUEENS, N.Y.

Mr. BUCKLEY. Mr. President, I invite the attention of Senators to a situation which has developed in Queens, N.Y., which has implications which are national in scope. The middle-income community of Forest Hills is about to have thrust upon it a low-income housing project of major proportions. This federally funded project consists of three 24-story buildings, which it is estimated will eventually house some 4,000 low-income tenants. This represents a massive infusion of new people which most observers agree is beyond the capacity of the community to absorb. The project, therefore, represents a direct threat to the stability of the neighborhood.

Many other factors strongly indicate the inappropriateness of this particular project—schools overloaded to the point of triple sessions, poor soil conditions resulting in exorbitant construction costs—the per unit cost will exceed $35,000—overcrowded transportation facilities, excessive aircraft noise, the impact of a two-fare zone on the prospective low-income tenants, and so forth.

It is for all of these reasons that the residents of Forest Hills-Rego Park are so deeply opposed to what they can only conclude is an incredibly misconceived plan which will on balance do little for the poor while threatening to disrupt one of New York's most stable areas. The opposition is not based on bigotry. It is not racial in its concern, as is testified by the broad support which it has attracted from black residents of the area and from responsible New Yorkers of every political persuasion.

I would urge Senators to give the most careful consideration to this particular controversy, because it seems well on its

way to becoming a classic demonstration as to how not to go about the business of creating low-income housing. It particularly emphasizes the critical need to consult community opinion and enlist community support before proceeding with projects of this sensitive nature.

Mr. President, it is not often that I find myself in agreement with either the New York Times or the Village Voice. Yet both publications in recent days have spoken out eloquently and effectively on the Forest Hills situation. In order to shed further light on this issue, I ask unanimous consent that New York Times editorials of November 23 and December 6, 1971, and a Village Voice article of November 26 be printed in the RECORD.

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

CLASH AT FOREST HILLS

The angry protest by residents of Forest Hills against the construction of low-income housing in their midst demands more sympathetic understanding on the part of city officials than it has received; but at the same time it does not invalidate the basic rationale of this bitterly controversial project.

In part, the protests are undoubtedly a reflex reaction that automatically equates poverty with crime and declining real-estate values. These fears are fanned by the experience of so-called "changing neighborhoods," where a combination of uncontrolled population shifts and exploitative block-busting has turned stable middle-class communities into simmering slums. Fear of that process has created a psychology that refuses to trust the assurances of the planners that controlled occupancy patterns in the Forest Hills project are designed to prevent such a course.

But it would be easier to reject such fears out of hand, had the city administration addressed itself more persuasively to many legitimate question about the project. The city has great need for low-cost public housing. It is clearly desirable that such housing be moved out of the imprisonment of existing slums into an environment of dignity and hope. "Scatter-site" location of such projects experiment toward that end. But since it is an experiment, it would seem wiser to scale it to manageable and acceptable size instead of erecting three 24-story buildings in an area where few of the tallest structures are more than half that height. It would also be preferable to build such housing on the edge of areas where middle-class, working and poorer populations meet, rather than as islands in the center of a totally different socio-economic neighborhood.

At the very least, communities should be prepared for, and participate in, the planning. This process should include the advance provision of extra social services such as schools, parks, recreational facilities and transportation. Only then can the influx of a new population be expected to seem not a burden, but rather a party to new and shared advantages.

On a limited front, the clash at Forest Hills showed insensitivity on the part of the planners. In larger societal terms, it underscores the depth of the city's divisions. It is a reminder that there is little hope for an urban rebirth until education, training and jobs can narrow the gap between poverty and affluence. Integration—economic as well as racial—is imperative for this city's survival; but it is far more complex a goal than reshuffling people. It requires a dramatically stepped-up pace of economic upward mobility of the poor toward a society in which all Americans can once again live as neighbors without hostility and fear.

REALITIES IN FOREST HILLS

The scatter-site concept of locating low-income housing outside the slums and ghettos, which has run into opposition in Forest Hills, is an imaginative effort to erase the terrible divisions of urban America. But it is also an experiment with a high potential for failure. Its success obviously depends on the existing community's capacity and willingness to absorb the newcomers and to help them adjust to the socio-economic level of their new environment.

This cannot be accomplished by official dictum any more than by the pretense that the scale of such projects is unrelated to the concept itself. To scatter must mean to blend into the neighborhood, not to erect visible monuments to the projected change. The three proposed 24-story complexes in Forest Hills violate that rule. By appearing separate and different, they are that much more likely to remain so.

Some of the planners themselves concede that in the Forest Hills case the project's size and height are excessive. They point out with reason that a combination of the formula for Federal funding, the high cost of construction in New York and the city's existing zoning code has dictated the objectionably gross dimensions. They admit that ideally they would like to do it differently, but that the alternative might be loss of Federal subsidy for desperately needed housing.

They add moreover that they have tried, within these limitations, to provide the project with such special features as a separate day-care center with seven classrooms and some outdoor and indoor community space. Such features, however, do not meet the basic drawbacks of a project of this size or of the barracks-style design of standard low-cost housing in general. It is unrealistic and unfair to ask the residents of Forest Hills to gamble on the success of a venture which, though sound in theory, is so severely flawed in its implementation.

In the absence of effective communication between community and planners, the residents sense a lack of candor. They ask why the project was switched from the originally approved site in Corona which, though more suitable for construction, appears to have been abandoned under potent political pressure. They resent official statements about underutilized schools, when many of their children attend overcrowded classes. While two of the local schools report a total of about 100 vacancies, the area as a whole has an excess of 1,400 pupils.

Under such circumstances, an important factor in gaining local support would have been to incorporate a solution of the school problem into the new development. This might still be accomplished by locating schools in the lower portion of at least two of the proposed buildings. Such schools could be built, not in the traditional mold, but (as has been done successfully in some of Britain's "new towns") for conversion into community centers at night and on weekends, with facilities for motion pictures, concerts, bingo games and other entertainment.

The success of scatter-site projects depends on arrangements which will integrate the disadvantaged into a community rather than drive the affluent away from it. Community acceptance would be easier to achieve with drastic improvement of services for old and new residents alike. The costs may be high; but the unacceptable alternative is to force individual communities to pay a disproportionate share of the price for basic urban reform.

THE MIDDLE CLASS FIGHTS BACK: BATTLE OF FOREST HILLS

(By Clark Whelton)

When Mayor Lindsay gets around to writing Poor John's Almanac, one of the little sayings certain to be included is: any block worth busting is worth busting right. The annotated edition will explain that this means think big. Don't just settle for chasing out the middle-class families. Break up the entire neighborhood. Turn Brownsville into World War III and the South Bronx into an open sore. Stick a string of welfare hotels into Greenwich Village and knock down a community of self-built homes in Corona. And if someone points out that these changes have made life worse, not better, in the area, then stencil him with words like "racist" or "bigot" and open fire on another neighborhood.

If Poor John's latest attempt at progress-through-disorder goes ahead as scheduled, his Almanac will probably award it a special footnote of its own. Right now on the edge of Forest Hills, Queens, bulldozers are clearing an 8.6-acre site for construction of three 24-story buildings which will provide 840 apartments for elderly and low-income tenants. Thousands of middle-class residents of the area who have been fighting this kind of public housing project since 1967, are now picketing the construction site at 108th Street and Horace Harding Boulevard. They are trying to tell John Lindsay and anyone else who'll listen that they're terribly afraid of the project as it's now designed. The Mayor has responded by calling their demonstrations "deplorable" and by getting a court order to prevent them from picketing. No one in the city administration has been willing or able to calm the fears of these Forest Hills residents that the three public housing towers—divided into 60 per cent low-income and 40 per cent elderly occupancy—will bring crime and urban decay to their quiet neighborhood of low-rise apartments and private homes.

There is more at stake in this struggle than the fate of one of the vanishing New York City middle-class neighborhoods. According to liberal Queens Congressman Benjamin Rosenthal, who opposes the present design of the project, "this is a national test case to determine whether the movers and shakers of the housing industry in this country can do whatever they want or whether neighborhoods will be able to influence their own future."

The opponents of the Forest Hills housing project have compiled an impressive list of technical reasons why the present plan is ill-conceived. The city paid the incredible sum of $300,000 an acre for this site after it had already been rejected by private builders as geologically unable to support apartment buildings. Cost estimates for the project have risen from $17 million to nearly $30 million ($32,000 per apartment), provided contractors can sink support pilings down to a firm foundation (previous pilings have disappeared in the soft subsoil). The 24-story towers would not blend in with the surrounding six-story buildings but would stand separate and apart from them. The project is located in a two-fare transit zone and would strain services, schools, and facilities already inadequate for the present population.

Technical reasons, however, are not the ones which lead most area residents to oppose the project. The real reasons are human and social. The residents are afraid the project will bring to a relatively safe neighborhood (mostly white, but with middle-class black residents as well) low-income blacks from the city's ghettos who will carry with them the crime and drug problems of those areas. This fear, instead of being dismissed as "racist," or "reactionary," deserves to be examined. For this fear is based upon the personal experiences of many people who have sought shelter in Forest Hills after leaving other dying neighborhoods. And this fear is enough to drive them out again, leaving behind them the seeds of another slum.

First, experience has shown that where low-income housing is located, crime increases. The precise facts and figures are subject to debate since the people who supply them invariably have a political interest in one direction or another. But the basic situation is well understood. The poor and disadvantaged classes have always provided the greatest number of criminals, especially in a country where poverty is considered to be either a moral or statutory crime. So large numbers of poor people grouped together in public housing projects produce higher crime rates. When you add to this already unhealthy picture the fact that increasing percentages of housing project tenants are not working poor but welfare poor—people who are among the most hopeless and desperate in the city—the situation grows worse. The city claims that about 16 per cent of public housing tenants are on welfare. Congressman Edward I. Koch of Manhattan thinks 30 per cent is closer to the truth.

"The residents of Forest Hills are expressing two very real and rational fears," says Koch, who has joined Congressman Rosenthal in opposing the present design of the 108th Street project. "The fear of crime is a very real one, and second, it's absolutely rational to believe property values will decline in the area of a high-rise housing project. Fear moves in and people move out."

A woman who picketed the Forest Hills project site this week illustrated this statement with personal experiences. "The city put up a housing project near where I used to live in Brooklyn," she said. "It was the kind of neighborhood where you could leave your door open when you went to the store. Then the kids from the project found out about this gold mine and you could see them going through the back yards in the middle of the day, trying doors to see which ones were open. People began to lock up, buy gates for the windows, but who wants to live that way? Then came the burglaries and muggings and people began to move out. I came to Forest Hills. Where am I going to go next?"

Early in his first term John Lindsay recognized that building low-income housing projects in slum and ghetto areas maintained poor people in an environment harmful to their chances for social progress. Distributing the housing projects into middle-class neighborhoods was the way to stop this piling of poverty on top of poverty. But no one seemed to grasp a simple fact of social engineering. Unless the middle-class neighborhoods *remain* middle class after the housing projects are completed, no progress is made. Instant slums are created in formerly attractive areas. The poor are shifted from one ghetto to another, and *their lives don't get any better.*

There is no curative magic in middle-class neighborhoods like Forest Hills. The people who live there aren't better off because the area is nicer. They're better off because they made the area nicer. Unless new residents contribute the same kinds of middle-class disciplines and values to the neighborhood, it will become something else. This is where John Lindsay and the social theorists who work for him went wrong. Their new housing projects, with few exceptions, put too many poor families together in one place. The poor had more of an effect on the middle-class neighborhoods than the neighborhoods had on them. The neighborhoods became poor.

What Rosenthal Koch, and most of the Forest Hills residents who oppose the present project would like to see is a different approach to low-income housing, an approach that takes into consideration the fact that while integrating races isn't much of a trick in New York City any more, integrating people of different economic levels and value systems is practically impossible. But, in reasonable numbers, it can be done. Instead of cooking up a housing project that will concentrate 536 low-income families in high-rise towers that Rosenthal has called "concrete ghettos," why didn't the planners limit the low-income allotment to 100 families or so? Instead of those towers, why weren't the new buildings kept in close profile with the surrounding ones? And why was a middle-class community like Forest Hills expected to take such a huge dose of concentrated poverty without a single sweetener from the city to compensate?

"We've never had a thing from the city," says Joseph Walderman, vice-president of the Forest Hills Residents Association. "Not one damn thing."

If the Lindsay administration had settled for a smaller number of low-income families in the Forest Hills project, if it had come up with a more compatible design, if it had mixed in some middle-income housing and added a much needed community recreation center, there would have been no large-scale protest by residents of the area. The poor families would have been absorbed into the middle-class neighborhood because their numbers were not large enough to threaten it. Everyone would have benefited. But with the present plan, everyone is in danger. The residents may lose their neighborhood, and the poor may find themselves in another slum.

"Lindsay didn't worry about us," says Walderman, a quiet articulate man, "because he thought he could get away with ramming this thing down our throats. We're middle-class liberals. We're not supposed to fight back. Our picket line must have come as quite a shock to him."

Press coverage and editorial opinion on the Forest Hills affair have hit hard on the theme that the protesters are either bigots or misinformed, or both. This is inevitable, perhaps, because the middle class doesn't make good news copy. They aren't like the lower-class Italian home-owners of Corona, full of colorful little ethnic details, who needed a voice to protest their homes being razed to make room for a new school. The middle class speaks for itself. It believes in the bourgeois values of home, religion, hard work, and tries to do the right thing. It's middle America, and all that term implies. It's dull, ordinary, predictable, and supposedly reactionary in racial matters. This, say the Forest Hills residents who want the housing project, is the real reason why the vast majority of their neighbors oppose it.

This type of slander is effective in an emotional issue like racial integration, but it doesn't check out. Ed Koch attended a dinner recently where Carl Stokes, a black man and former mayor of Cleveland, addressed a number of fellow black politicians. "If you think it's only whites who don't want low-income housing projects in their neighborhoods," Koch remembers Stokes saying, "baby you're wrong!" Stokes then told how his administration had built projects in middle-class black neighborhoods in Cleveland. A black woman and friend of the mayor whose home was near one of these projects said to Stokes: "Carl, I never thought you would do that to me." And she never spoke to him again.

In a middle-class Puerto Rican neighborhood of the Bronx, homeowners are now expressing opposition to two new residence houses for wards of the court planned for their area. The middle class Puerto Ricans are worried that muggings and drug use will increase and their property values will drop. And how many court wards would move into the neighborhood? Just 24. Count 'em. Twenty-four.

The real issue in Forest Hills and in every middle-class neighborhood in America lies in the answer to this question asked last summer by Eleanor Holmes Norton: "Will whites flee as blacks and Puerto Ricans of the same economic status and life-style move in?" In Forest Hills the answer has been no. Middle-class blacks move into a building and although there is nervousness and uncertainty, whites do not leave. People who share similar values and abilities can overcome racial differences. With an influx of low-income families, however, that value sharing is minimal and strained.

If the city administration means to keep New York from deteriorating any more than it already has, there will have to be an end to shoving large numbers of low-income families into middle-class neighborhoods. Disrupting the middle class will not help the poor. It will only deprive them of a better neighborhood to which they can advance when they, like many of the people of Forest Hills today, have lifted themselves out of poverty.

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 PRESIDING OFFICER. The nominations under "New Reports" will be stated.

AMBASSADORS

The second assistant legislative clerk proceeded to read sundry nominations of ambassadors.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

INTERNATIONAL CIVIL AVIATION ORGANIZATION

The second assistant legislative clerk read the nomination of Mrs. Betty Crites Dillon, of Indiana, to be the representative of the United States of America on the Council of the International Civil Aviation Organization.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be notified of the confirmation of the nominations.

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

THE SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination of William H. Rehnquist to be Associate Justice of the Supreme Court of the United States.

THE REHNQUIST NOMINATION SHOULD BE CONFIRMED

Mr. PROXMIRE. Mr. President, I will vote for the confirmation of William Rehnquist as Associate Justice of the Supreme Court.

I will do so first because Mr. Rehnquist obviously has strong intellectual qualifications. The Court demands a high grade of intellectual ability. Mr. Rehnquist has it. His distinguished academic record, his demonstrated competence as

a practicing lawyer, and his acknowledged ability as an Assistant Attorney General handling complex and difficult legal and public policy problems all demonstrate this.

Although the Rehnquist nomination has become controversial, although he has been opposed by many competent critics, I have yet to hear anyone dispute his intellectual capacity.

This level of ability is rare. It is needed on the Supreme Court. It is a strong point in Mr. Rehnquist's favor.

Second, Mr. Rehnquist has given every indication that he is a man of stable temperament. In the intensive study that has been conducted of the Rehnquist background, there has been no evidence that any critic has developed that Mr. Rehnquist would decide questions on the basis of unreasoning emotion or impulse. And his demeanor in the ordeal of confirmation under questioning was impressive. Mr. Rehnquist seems to be a man of judicious temperament.

Mr. Rehnquist has been a lifetime student of the law. He served former Associate Supreme Court Justice Jackson as his clerk, and served with distinction.

Frankly, I have had more pressure in opposition to Mr. Rehnquist than I have had on any Presidential nomination for the Supreme Court in the 14 years I have served in the Senate. That opposition has come from friends of mine for whom I have the greatest respect and whose judgment I trust.

My friends and my staff are almost unanimous on this nomination. They almost without exception oppose it.

And they oppose it for the same reason. They argue the Rehnquist appointment is likely to cast the Court for years to come in a conservative posture. They contend that Rehnquist's intellectual ability and the force of his personality constitute not a national asset but a serious threat to civil rights and civil liberties.

They argue the great advances of freedom made by the Court in recent years will be jeopardized and even reversed.

Mr. President, I reject that judgment. The crystal ball of Senators and even Presidents is very cloudy, indeed, in predicting the future conduct of newly appointed Supreme Court Justices. Holmes and Frankfurter are two of many whose impact on the American law have been quite different than most observers expected at the time of their appointment.

After carefully reading the record, after hearing the criticisms of so many who object to this appointment, I have become convinced that the case simply has not been made that Mr. Rehnquist does not understand or support the Bill of Rights or the other safeguards of liberty in the Constitution.

And, Mr. President, in all honesty I share the conviction expressed by President Nixon that we need a better balance between the forces of law enforcement on the one hand and law violation on the other. That does not mean any less concern for the liberties we should treasure and advance. Those liberties are at the very heart of what makes this country unique and great.

It does mean that the appointment to the Court of a wise and able man who has demonstrated his thorough understanding of the threat that crime and disregard for the law represents—and I believe Mr. Rehnquist is such a man—can be fully consistent with maintaining the Bill of Rights in its full significance.

Finally, Mr. President, I opposed the nominations of both Judge Haynesworth and Mr. Carswell. In one case the conflict of interest was clear and conspicuous. In the other the Supreme Court nominee simply did not have the ability required for this immensely important position.

In this case Mr. Rehnquist does not and has not had any conflict of interest in his conduct in office, and he obviously has great ability.

Under these circumstances, I have resolved what doubt I have—and I do still have some—on the side of the President of the United States and his nominee. If the Senate should establish the precedent of refusing to confirm able and honest nominees on the grounds that we disagree with their political views, we will have a Court that will consist of political weather vanes reflecting whatever political view the Senate happens to hold at any time. We do not need another U.S. Senate interpreting the law. We need a Court of the ablest legal scholars we can find. Mr. Rehnquist should fit well in such a Court.

For all these reasons I will vote for the confirmation of William Rehnquist.

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

Mr. PROXMIRE. I am happy to yield to the Senator from Indiana.

Mr. BAYH. I must say that I find myself deeply distressed by the position taken by my friend, the Senator from Wisconsin. He is a man of great logic, and he has been a real fighter for some of the important issues that have been before the Senate.

The Senator suggested he could find nothing in the record to indicate that the nominee did not possess the dedication to human rights that he should have. Has the Senator had the opportunity to read the hearing record and the minority views?

Mr. PROXMIRE. I have read the record and the minority report and I was impressed by the arguments against Mr. Rehnquist. As I said, my staff took a poll and they unanimously felt he should be rejected on the basis of the record and on the basis of the argument made in the minority views.

However, I was not convinced. For one thing, I think that he has changed his views. He took a different position than I took on civil rights matters 8 or 10 years ago. In my view that does not mean that Mr. Rehnquist now has little or no regard for civil liberties and civil rights. I think what he said in the confirmation proceedings indicated he has had a change of heart. This Senator has changed his views with respect to certain matters during the years; I think the Senator from Indiana has; and I think all of us do that. This man changed, developed, and grew, and I thing on civil rights, by and large, people throughout our country have learned and changed.

Mr. BAYH. I hope the Senator from Wisconsin will bear with me for a moment or two. We have had polls in my office, too, on some critical issues. More than once there has been a 7-to-1 vote but the "one" has been the one who came to the Chamber to vote. That is the way it has to be, and I understand. That is each Senator's responsibility

I have heard a great deal about the nominee's change of mind. But, with all respect to the Senator, I say there is nothing in the record to indicate that is so.

Mr. Rehnquist said he sees no constitutional issue raised by surveillance, the right to privacy. Is that a matter of concern to the Senator from Wisconsin?

We have a nominee who, not in 1964, 1966, or 1967, but 3 or 4 weeks ago when testifying before the Committee on the Judiciary, said he saw no constitutional difficulties presented by surveillance. What about the right to privacy?

Mr. PROXMIRE. That is a generalized conclusion; the Senator would have to be more specific in respect to the nominee's attitude. The Senator is talking about wiretapping, and so forth.

Almost all of the evidence I could see against Mr. Rehnquist is based on his activities when he was in the Justice Department. I think it is very unfair to visit upon an employee of the Justice Department the policies of that particular department. If the Senator from Indiana or the Senator from Wisconsin were working in the Justice Department, either we would do what we were told to do by the Attorney General and the President, or resign. We would either resign or do it the best we could, and that is what he did.

Mr. BAYH. A close reading of the record will show that he said:

> If I did not agree with these policies I would have resigned.

Mr. PROXMIRE. Of course, the Senator is talking about whether he agreed overall with general policies of the President. It does not mean he has to agree with every single aspect. There were occasions when he might have argued against policies; but on the basis of having been heard, the Attorney General made up his mind and Mr. Rehnquist carried out the orders.

At any rate, I do not think the Senator makes a case against the nominee for the Supreme Court on the basis of what happened in the Justice Department while he was an employee there.

Mr. BAYH. Does the Senator from Wisconsin have any examples of these efforts?

Mr. PROXMIRE. The Senator from Indiana knows better than I, because he serves as a member of the Committee on the Judiciary and he was there when the committee attempted, as I understand it, to find out what went on between the nominee and the Justice Department in their conferences on their policies, and that the Justice Department refused to divulge that information. They may have been right or they may not have been right. At any rate we do not know and we do not have a clear record on whether or not the nominee did disagree with his

superiors. The fact that the Justice Department has followed a policy or policies in the last few years and that Mr. Rehnquist carried out some of them is not a basis for rejecting this man, who has a very high intellectual capacity and who has demonstrated his ability.

Mr. BAYH. I ask these questions not to be argumentative but to explore the facts as they appear to one Senator. Of course, we all make different judgments and we give different importance to the same facts. But I think we need to understand that Mr. Rehnquist was not some lower echelon lackey who was ordered into battle to carry out commands of the generals. Indeed, he was one of the top policymakers. He did not just carry out policy: he helped to make it.

I know of no efforts he made to show us that his own views were different from Department policy. We did not ask him to prejudge cases. We tried to get his personal views. In statement after statement he went so far as to say he did not think it would be a constitutional question if the Government wanted to follow, or to put a tail on, the Senator from North Carolina (Mr. ERVIN).

When we were discussing the limits of our right to privacy, he never once denied that the President had the inherent right to bug our telephones in both foreign and domestic security cases without any kind of supervision at all. This was the real William Rehnquist. It was not just Justice Department's view.

This is what caused me to consider that his approach to the Bill of Rights was callous at best. This belief was reinforced by the nominee himself, who said, "If I did not believe in these policies, I would have left." He did not espouse these views because the administration might fire him. He was comfortable; he was a part of formulating that program.

Mr. PROXMIRE. I am sorry. Will the Senator repeat the last observation?

Mr. BAYH. I was suggesting that he was a part of formulating these programs. For instance, the preventive detention bill—I do not know how the Senator voted on that bill, but this was one of William Rehnquist's babies.

Mr. PROXMIRE. I voted for it.

Mr. BAYH. Then, the Senator does not share the concern I have about this particular matter.

Is the Senator from Wisconsin familiar with the 1952 memorandum that then law clerk Rehnquist wrote to Justice Jackson relative to Brown against Board of Education in which he urged that Plessy against Ferguson be reaffirmed?

Mr. PROXMIRE. Yes. I think that was bad—a mistake. I do not think this Senator would have done it. But that was written when the man was in his 20's and then a clerk of a Supreme Court Justice. I think, certainly, Mr. Rehnquist's views have changed since then. I think the views of the Senate have changed since then, and the views of the country have changed since then. To go back to that period and say because he took this position, which in my view was a wrong position, that now, in 1971, he is disqualified, I think is not fair.

Mr. BAYH. I would like to concur with the statement that the Senator from Wisconsin has just made. After all, Mr. Rehnquist was only 28 years of age, which is hardly wet behind the ears. That is exactly the age which Judge Carswell was when he made his now-infamous statement about white supremacy which led to his nomination being turned down by the Senate. The fact that Mr. Rehnquist said that in 1952 does not mean he could not have changed his mind. Unfortunately, I do not think he has had any change of heart. In 1964 he was opposing the Phoenix City Council ordinance to require the integration of public places of business, using very much the same argument which he made in his memorandum to Mr. Justice Jackson. At that time he was 40 years of age. Does it concern the Senator from Wisconsin that at age 40 he still had the same concern for property rights in place of individual rights?

Mr. PROXMIRE. The Senator will recall that when the bill was before the Senate in 1964 we voted to provide against discrimination in places of public accommodations. The Senator from Indiana and the Senator from Wisconsin held strong views on that and were enthusiastically in favor of that. But it was a change in the policy of this country. There were many thoughtful people at that time who opposed it. So it was a change in national policy. Simply because at that time Mr. Rehnquist represented the settled view does not seem to me to disqualify him now for the Supreme Court.

I think that is a very important view now, but it is, nevertheless, a policy view. It is a view that was held at one time by the late Senator from Illinois, Mr. Dirksen, and many other Senators, but in the course of debate he, like others, changed his mind at the time of the adoption of the civil rights bill. He was opposed to the civil rights bill to begin with. He fought it as the principal opponent. But he recognized it was an idea whose time had come, and his position changed. It is probable that Mr. Rehnquist's view has changed, as he said it has.

Mr. BAYH. Mr. Rehnquist has never said that he was wrong when he wrote that memorandum. He has talked about a nine-judge majority and stare decisis and the weight to be given to precedent. But let us remember we are talking about a man who is going on that Court and who will be a part of that nine-man voting block. That is why I think it would be a mistake to put on the Court a man who in 1952 was in favor of sustaining Plessy against Ferguson. I do not say this because of the ultimate conclusion he reached, but because he urged Justice Jackson to vote against Brown against Board of Education on the ground that the Court would be making an error in supporting the rights of this minority. It seems to me it is a mistake to put a man on the Court who does not feel that the Court not only has the right but the responsibility to protect individual rights. That is the reason for the Bill of Rights. That is the purpose of the Court. He talked about Jehovah's Witnesses. He talked about the rights of businessmen. He talked about various other minorities that had to be protected. He talked about slaveholders. He just did not believe the Court should move into those areas. This concerns me because if we confirm him, he will not be a law clerk or an official down at the Justice Department who can be removed if the country does not like his voting. He wil be on the highest Court and every public pronouncement of William Rehnquist would indicate that he does not realize the importance of the rights of minorities.

Sure, of itself it means little or nothing that in 1952 he was against Brown against Board of Education. However, in 1964 he was against letting black people into the drugstores of Phoenix. As a private citizen he became excited enough over a very mild integration plan to take public issue with the school superintendent. That was in 1967. In 1966, as a uniform laws commissioner he did everything he could to stop an antiblockbusting provision, which was favored by the rest of the commissioners. He tried to strike that out of the uniform code. He tried to strike out a section which would have permitted—not required but permitted—employers to compensate for past discriminatory hiring practices. When he was defeated in that fight, he successfully led the effort to change it from a uniform act to a model act.

If there is sufficient reason to believe that Mr. Rehnquist now is sensitive to the rights of minorities, I wish the Senator from Wisconsin would point it out to me, because I do not find it in the record.

Mr. PROXMIRE. I have taken the position I have taken on this nomination, I will say to the Senator from Indiana, because I feel that while the views of Mr. Rehnquist are different from the views I hold very strongly, and as I have said in my statement, while I have some hesitation about it, I think we are wrong if we impose a political test and that is exactly what the Senator from Indiana proposes. I do not think we should appoint people to the Supreme Court based on whether we agree with any political position they have taken. It should be on the basis of their ability, integrity, honesty, and whether or not there is a conflict of interest involved. I think on all those scores this man is outstanding.

After all, he was No. 1 in his class at Stanford Law School. He is a man of great ability and great intellect. We need men like that on the Supreme Court. The argument that he has taken a quite different view, and a view that does disturb the Senator from Wisconsin, on civil rights is not a sufficient basis why he should not go on the Court.

Mr. BAYH. What is the proper scope of the Senate's inquiry, in the view of the Senator from Wisconsin? I ask the question because I have great respect for the Senator from Wisconsin and because the people look upon this body not only as a whole but at individual champions. And they look at the Senator from Wisconsin as one who courageously led the fight against the SST because it was wrong, and they will want to know how he views this nomination. I think that

his vote would be taken as a compliment and they would regard the vote of the Senator from Wisconsin with more than normal weight.

Are there limits beyond which we should not permit a man to go on that Court?

Mr. PROXMIRE. Of course there are. As the Senator knows, I voted against Carswell. I voted against Haynsworth. I probably voted against more nominees of President Kennedy, President Johnson, President Eisenhower, and President Nixon than almost anybody who has been here while I have been in the Senate. I have never taken the view that we should automatically rubberstamp any nominee of the President. But I think when the President makes a nomination to the Supreme Court of a man who is qualified intellectually, who has a good, solid legal background, a man who is open, who is honest, a man whose conduct in that respect has not been questioned, I am going to support him.

I think there was a strong effort made to discredit Mr. Rehnquist on specific grounds, but I did not see any instance in which this was substantiated. I did not see any instance in which it was shown that Mr. Rehnquist was dishonest or where he had acted improperly, or without regard to the law. Under those circumstances, it seems to me that we should give the President of the United States and the nominee the benefit of the doubt.

Mr. BAYH. I guess I should have been more definitive in my question. There are no grounds, apparently, in the policy area that the Senator from Wisconsin feels are sufficient to oppose the nomination.

Mr. PROXMIRE. Policy area? I am not sure I know what the Senator means. Political grounds. There are some——

Mr. BAYH. Being against Brown against Board of Education is not sufficient in the mind of the Senator from Wisconsin?

Mr. PROXMIRE. Well, the fact that he was against it some time ago, no. I would say no. I would say that is not sufficient. Obviously, if it were, I would not be for Mr. Rehnquist.

Mr. BAYH. I asked him about the letter to the editor that he wrote and the issue he had with the superintendent of schools in Phoenix in the very mild integration effort, a freedom of choice plan, really, which has now been outdated by light years. I asked him why he opposed that, and he said he was against long-distance busing. The superintendent himself was against long-distance busing. There is just no evidence, I may say to the Senator from Wisconsin, to substantiate the claim that William Rehnquist would look differently, if he were on that Court today, on the rights of black people than he did back in 1952 when he urged Justice Jackson to vote against Brown against Board of Education.

I shall not pursue this further. The Senator from Wisconsin has been very kind. It is very distressing to me, as I say, that he has taken this position, but each Senator has the right to his own viewpoint, and I know that he feels deeply in his conscience that he is right. I accept that judgment.

Mr. PROXMIRE. I thank the Senator. Mr. President, I yield the floor.

Mr. MANSFIELD. 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. BAYH. 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. BAYH. Mr. President, I should like to follow my colloquy with the Senator from Wisconsin with a few additional observations.

On the past two occasions when the Senate has refused to advise and consent to Supreme Court nominations, we have had a variety of reasons expressed by various Senators as to why they reached the conclusion to vote "No" against the President's nomination.

The Haynsworth nomination, I think the record will show, presented a unique combination of concern over the nominee's views on civil rights, perhaps also his concern over certain social issues closely related to the labor-management area, and concerns about the judge sitting on cases in which he had a financial interest—the ethical question. Because of these matters, 55 Members of the Senate stood up and said, "With all respect, Mr. President, no. Send us another nominee." And the President did.

Then followed another heated battle over the Carswell nomination. The Carswell nomination was not a replay of the Haynsworth nomination. Even stronger concerns were expressed about Judge Carswell's position in the area of civil rights and human rights. This was rather well documented by a statement he had made when he first ran for the legislature, when he was 28 years of age, in which he said that he yielded to no man in his belief in white supremacy.

I find it ironic now to see the similarity that was expressed in the argument of the Senator from Wisconsin, wherein he said that if he felt that William Rehnquist still was opposed to Brown against Board of Education, he would vote against him as a nominee to the Supreme Court.

Some argued strongly in support of Judge Carswell that if they believed he still felt that the cause of white supremacy was valid, they would vote against him for the Supreme Court. But they contended that Judge Carswell had changed his mind.

Now the proponents of William Rehnquist suggest—not that he was right in urging Justice Jackson to vote against Brown against Board of Education and to sustain Plessy against Ferguson—that Mr. Rehnquist has changed his mind.

Just as the Senate, when confronted with the evidence about Judge Carswell, apparently came to the conclusion that he had not changed his mind, I think the evidence is equally clear that William Rehnquist has not changed his mind on the great social issue presented in Brown against Board of Education. I wish it were not the case, because I cannot contest the intellectual capacity of the man. But it seems to me that a man who is wrong on the great philosophical issues that confront this country should not be given the Good Housekeeping seal of approval by the U.S. Senate just because he happens to be magna cum laude. In fact, it would seem to me that a man who possesses this intellectual capacity should have to meet a higher test of understanding of the humane questions of the day.

In 1952, when magna cum laude Rehnquist was advising one of the most distinguished Justices on the Supreme Court, he was totally unaware of the problems, the perplexities, the sensitivities, and the frustrations of the millions of black Americans. To me that indicates that on the outside the grade may be letter "A" but on the inside, in the heart, where it really counts, he fails the course. Such an analysis also comports with his repeated statements that he changed his mind about the open accommodations ordinance, not because he came to realize that all citizens are entitled to the same rights, but because he now knew how much the minorities cared about such rights.

Of course it is possible for a 28-year-old to mature. I think this is a valid hypothesis. Hopefully, it is possible for a 43-year-old to mature and get greater wisdom. But, interestingly enough, if one follows the maturing and, the development of the thought processes of William Rehnquist from the 1952 memorandum to 1967, when he took issue with the Phoenix superintendent of schools on the very same issue, there is no maturing.

If between age 28 and age 40 the position of William Rehnquist on the important area of quality education, of letting minority students have access to our public institutions of education, did not change, why are we to assume that suddenly there was a renaissance beyond age 40?

I think that that is not a valid assumption. Certainly Mr. Rehnquist was a leading member of the bar. He had very set thoughts, a very significantly developed philosophy and intellect. To suggest that there has suddenly been a renaissance between 1967 and 1971 is to look for something that does not exist, and to hope and pray for something that never will be.

I think it is important to look at some of the excerpts from that editorial in 1967 to see what Mr. William Rehnquist thought then about letting the minority children of Phoenix have access to their school system. I begin by setting the issue in perspective. On yesterday we talked extensively about the philosophy expressed in the 1952 memo. Yesterday I quoted, and I quote again today for the sake of continuity, from that memorandum which Mr. Rehnquist wrote to Justice Jackson:

> One hundred and fifty years of attempts on the part of this Court to protect minority rights of any kind—whether those of business, slaveholders, or Jehovah's Witnesses—have all met the same fate. One by one the cases establishing such rights have been sloughed off, and crept silently to rest. If the present Court is unable to profit by this example, it must be prepared to see its work fade in time, too, as embodying only the sentiments of a transient majority of nine men.

He further stated:

To those who would argue that "personal" rights are more sacrosanct than "property" rights, the short answer is that the Constitution makes no such distinction.

Therein was the philosophy of William Rehnquist in 1952. I suggest that his philosophy did not change much between then and 1967, because in the issue that was involved in Phoenix, Ariz., we were not talking about a quota system. We were not talking about forced long-range busing. As I suggested to my friend, the Senator from Michigan, yesterday, we have pounded our breasts and talked about the intellectual capacity and the honesty of the nominee. Yet he had the audacity to come before the Committee on the Judiciary and try to explain away his opposition to the school plan in Phoenix on the basis that he was opposed to long-distance busing. Long-distance busing was not even involved. The superintendent of schools himself was against forced long-distance busing, and if William Rehnquist says that is the reason he wrote that letter, he is not being honest with the Senate.

Mr. Rehnquist said in his letter, and I will quote excerpts from it—but I ask unanimous consent that the entire letter to the editor written by Mr. Rehnquist back in 1967 be printed in the RECORD at this time.

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

"DE FACTO" SCHOOLS SEEN SERVING WELL

(By William H. Rehnquist)

The combined effect of Harold Cousland's series of articles decrying "de facto segregation" in Phoenix schools, and The Republic's account of Superintendent Seymour's "integration program" for Phoenix high schools, is distressing to me.

As Mr. Cousland states in his concluding article, "whether school board members take these steps is up to them, and the people who elect them." My own guess is that the great majority of our citizens are well satisfied with the traditional neighborhood school system, and would not care to see it tinkered with at the behest of the authors of a report made to the federal Civil Rights Commission.

My further guess is that a similar majority would prefer to see Superintendent Seymour confine his activities to the carrying out of policy made by the Phoenix Union High School board, rather than taking the bit in his own teeth.

Mr. Seymour declares that we "are and must be concerned with achieving an integrated society." Once more, it would seem more appropriate for any such broad declarations to come from policy-making bodies who are directly responsible to the electorate, rather than from an appointed administrator. But I think many would take issue with his statement on the merits, and would feel that we are no more dedicated to an "integrated" society than we are to a "segregated" society; that we are instead dedicated to a free society, in which each man is equal before the law, but in which each man is accorded a maximum amount of freedom of choice in his individual activities.

The neighborhood school concept, which has served us well for countless years, is quite consistent with this principle. Those who would abandon it concern themselves not with the great majority; for whom it has worked very well, but with a small minority for whom they claim it has not worked well. They assert a claim for special privileges for this minority, the members of which in many cases may not even want the privileges which the social theorists urge be extended to them.

The schools' job is to educate children. They should not be saddled with a task of fostering social change which may well lessen their ability to perform their primary job. The voters of Phoenix will do well to take a long second look at the sort of proposals urged by Messrs. Cousland and Seymour.

Mr. BAYH. Mr. President, just to excerpt part of that letter so that the Senate may look specifically at what concerns the Senator from Indiana, in referring to the superintendent of schools, Mr. Seymour, Mr. Rehnquist said as follows:

Mr. Seymour declares that we "are and must be concerned with achieving an integrated society." Once more, it would seem more appropriate for any such broad declaration to come from policy-making bodies who are directly responsible to the electorate rather than from an appointed administrator.

Of course, it is rather obvious, if I might interject here, that Mr. Rehnquist is opposed to such philosophy espoused and promulgated by policymaking bodies. He is opposed to this kind of thing because of the position he took when he was a uniform State law commissioner when an antidiscrimination act was in the process of being promulgated.

Mr. Rehnquist led the effort to degrade that proposal from a uniform act and make it a model act so that he would not be committed to having to go back to Arizona and say, "All right, ladies and gentlemen of the State legislature, we are going to implement this antidiscrimination act."

He continues:

But I think many would take issue with his statement on the merits, . . . I think many would take issue with the statement on the merits, and would feel that we are no more dedicated to an "integrated" society than we are to a "segregated" society.

Mr. President, he said we are no more dedicated to an integrated society than we are to a segregated society. Then he proceeds very deftly by saying that:

We are instead dedicated to a free society in which each man is equal before the law, but in which each man is accorded a maximum amount of freedom of choice in his individual activities.

To be sure, we are dedicated to a free society. To be sure, we want each man to be equal before the law. How much freedom before the law does a black child have who cannot get into the Phoenix school system? How much freedom does a member of a minority group have if he cannot shop where he chooses?

How much freedom does a black family have that cannot find a house in which to live? How much freedom does a black person have who is sick, and who is denied access to the drug stores of Phoenix? How can anyone make a statement like that in light of 200 years of discrimination? Although this is a very well phrased intellectual argument, it completely falls apart on the facts and shows a kind of inhumane quality, and a lack of the sensitivity that any Justice of the Supreme Court must have if he is to deal with equal justice before the law for all of our citizens.

Mr. KENNEDY. Mr. President, the American people are the freest people in the world. When we count our blessings we can count many of them in constitutional terms:

Freedom of speech, of assembly, of religion;

Freedom of the press;

Due process of law before life, liberty, or property can be taken away;

Equal protection of the law without regard to wealth, race, religion, or ethnic origin;

Freedom from unreasonable searches and seizures, from forced self-incrimination, from excessive bail, from cruel and unusual punishment;

Right to counsel and to habeas corpus;

A government of limited powers, constrained by tripartite checks and balances;

An independent judiciary to enforce and vindicate all of these rights.

We take those blessings so much for granted that sometimes we forget that they have real content and make real differences in our lives. But that content does not merely happen. It does not protect itself. It does not exist as an absolute in stable equilibrium.

Though our liberty has persisted for nearly two centuries, preserving it has been a major national challenge. In my own lifetime, at least once each decade the American people have had to prove their love for liberty by defending it against direct challenges, and they have always proved equal to the task.

In the 1940's freedom was challenged by a madman who thought the final solution to the world's problems was to separate and eradicate races and religions he considered inferior, and by another dictator who sought to persuade his people to trade their liberty for an authoritarian government which could make the trains run on time. America mobilized in the name of freedom, and we invested a generation and a treasure and half a decade in preserving liberty for ourselves and for our friends.

In the 1950's, the threat came stealthily from within, and we did not adequately respond until it was almost too late. One man poisoned the environment of liberty with inuendo and insinuations and invective. Yet, in the nick of time, the courage and conscience and concern of the American people for their birthright of freedom were again aroused, and provided a strong antidote to the McCarthyite venom.

In the mid 1960's, a small band of men succeeded in capturing one of the major political parties. But when they tried to sell the American people on the idea that "extremism" was the path to liberty, the people came to the polls by the millions to bury that philosophy—they thought—once and for all.

The first 2 years of this decade have not been happy ones in the history of liberty. We have seen the first prior restraints on our press in history. We have seen soldiers shoot down our children during an antiwar assembly, and we have waited in vain for the convening of a Federal grand jury to fix responsibility. We have seen secret electronic surveillance of dissident domestic groups by fiat

of the Executive. We have seen—and the courts have found—indiscriminate mass arrests, protracted illegal detentions, fraudulent manufacture of evidence, cruel and inhuman punishment, and pursuit of baseless prosecutions as harassment, all in the name of making the buses run on time one morning in Washington. We have seen misuse of investigative agents to intimidate critics of Government on the outside, and blatant pressure to eliminate critics within Government. We have seen civil rights take a back seat to regional politics, and civil liberties take a back seat to the politics of fear.

Oh, yes. We are still the freest people in the world, but if the trend of the 1970's continues as it has begun, then sooner or later we will find ourselves locked in another struggle to maintain liberty. I would rather that it be sooner than later. I would rather not wait to shore up the constitutional foundations of our freedoms until they have been so chipped away and eroded that they are in danger of collapsing. I would rather we, right here in the Senate, take a stand now to preserve our heritage as free men and women. I would rather we draw a line boldly at the boundaries of our democracy and say: This far, Mr. President, and no further.

There will, of course, be other opportunities. There may be other Supreme Court vacancies for this President and the Senate to fill. And there will be the contest in the fall of 1972 in which liberty may be an issue. But the asymmetry of the risk is too great. If we assent to the present nomination, we are saying to Nixon and Mitchell and Kleindienst and Mardian and Rehnquist, "Go ahead, whittle away our Constitution, constrict our liberty, curtail our freedom. We will not only refrain from stopping you, we will reward you by placing you and your ilk in the temple of liberty."

And so the whittling will increase, and the constraints will multiply, and the curtailment will accelerate—all in the pursuit of the highest motives—until one day we may all wake up and find that we have ratified by our silence the embezzlement of our most precious entitlements. By then it may be too late to find a battlefield, let alone win the battle. An exaggerated nightmare? Perhaps, although people in Greece, Northern Ireland, Canada, Chile, East Pakistan, and South Korea probably thought so, too, until one day recently they woke up to find basic rights suspended—for their own good, of course. But why should we take that risk at all? Why should not we repeat, symbolically and pragmatically, the words carved in stone at the Justice Department: "Eternal vigilance is the price of liberty," and effect that vigilance by making sure that the camel of authoritarianism gets his nose no further into the tent of freedom than it is already.

The symbolism is clear. William Rehnquist, as Mr. Nixon himself put it, has been the President's lawyer's lawyer during this whole period of retrogression in human rights and human liberties. Never in the course of American history have so few taken so much from so many, and William Rehnquist was there every step of the way.

When the Attorney General needed someone to validate the legal theory in the Pentagon Papers case, Mr. Rehnquist was happy to oblige, even though he knew that the legal sufficiency of the case depended on the factual situation, and even though he knew he did not know all the facts. And when someone was needed to call the Washington Post and ask it please not to publish the news, Bill Rehnquist was ready and willing.

When someone was needed to defend George Harrold Carswell's pitiful record in civil rights cases, there was Bill Rehnquist attesting to the fact that the Carswell decisions—though they looked racist, and sounded racist and smelled racist—were really only the product of a "consistently applied constitutional conservatism." And there was Bill Rehnquist, ready with a new "reasonableness" label for the tapping and bugging of domestic dissidents when the old "inherent power" label became too much even for the Justice Department to stomach, and there he was designing the "reasonableness" argument without bothering to find out which, or how many, or why, citizens were being electronically spied on in the absence of court orders or probable cause, without knowing, for example, that there are three to nine times as many days of non-court-ordered Federal electronic spying as there are days of court-ordered surveillance.

And it was Bill Rehnquist who sat in to tell the May Day planners what kind of special legal arrangements would have to be made to invoke extraordinary powers, who was silent when such powers were invoked without legal authority, but who nevertheless spoke up promptly in defense of the May Day procedures, again without bothering to ascertain the facts. And after Senator ERVIN had demonstrated clearly and brilliantly that executive branch self-restraint had utterly failed as a limit on military spying on civilians, there was Bill Rehnquist telling Senator ERVIN that executive "self-restraint" was the answer to abusive investigative practices. And there was Bill Rehnquist putting the legal gloss on the administration's efforts to gag dissident Federal employees, and justifying the ex cathedra Presidential expansion of the powers of the Subversive Activities Control Board.

Be careful, we are cautioned. Maybe some of those positions were required of him in his role as advocate. But in most of these instances he was no mere mouthpiece. He was actually or potentially the brains, or the intelligent filter.

Look at the Carswell situation, for example. When I questioned Mr. Rehnquist about his defense of Carswell's civil rights record, he stressed that he did so as an advocate, implying that perhaps his personal views were different from his public views, an implication corroborated by other hints he has given. And yet if Mr. Rehnquist in fact felt personally that Carswell was a racist, then his job was not to persuade the Senate of the contrary, but to persuade the Attorney General to withdraw the nomination. For surely to a dedicated and bright lawyer like William Rehnquist, the appointment of a mediocre racist to the Supreme Court would be a watershed issue of the highest order.

Walter Hickel knew what to do in situations like that. So did the late James Allen. So did Leon Panetta and Terry Lenzner. And in the Justice Department itself the Solicitor General has shown the way by refusing to put his name on important departmental briefs with which he disagreed. So if the nominee really disapproved of the official line on these issues of major national significance, there were ways for him to express that fact, but never once did he avail himself of them.

The defeat—or at least the mustering of a serious showing of opposition to—this nominee is important for far more than its symbolism. The post he aspires to is a seat on the Supreme Court of the United States. There his prejudices and predilections, his sensitivities and sensibilities, his sympathies and secret hopes, will all become the stuff of which justice is made. Perhaps no official of Government has as much unreviewable discretion as a Justice. The simple decision to accept or reject a case for Supreme Court review, a decision which can be one of life or death, is one which each Justice makes arbitrarily, without explanation, without recourse, based on his own sense of priorities.

Sitting as a Circuit Justice on emergency matters, one member of the Court can wield immense power with almost unlimited discretion. And beyond that, on the largest issues of the day, a Justice, especially one who believes as the nominee does that every right must be balanced against other values, must apply his own system of weights and values when he is asked what "due" process, "reasonable" searches, "excessive" bail, "equal" protection, and other constitutional standards should mean in practice.

And he does not have that power and that responsibility just for the term of the man who appoints him. He has it for life. He is likely to be a member of the Court for at least the opening quarter of the third century of our Nation's independence. Thus during a time when we should be rededicating ourselves to liberty, during a time when individual imagination and initiative and spirits should be given another chance to soar, this man who seems to care so little for individual liberty, will be one of the referees between the individual and the state.

During a time when technology will give the Government the tools to intrude on every second of every day of every citizen's life, this man, who appears so congenial to Government intrusion, will be setting the bounds of Government power. During a time when every last vestige of racial discrimination and preference must be erased if our society is not to deteriorate into warring camps, this man, who has repeatedly proven his lack of sensitivity to the human drive for equality, will have his hand on the throttle—and his foot on the brake—of equal protection and equal opportunity.

In short, at the very time when we as a nation may have to decide whether the constitutional precepts which have served us so well for 200 years shall en-

dure for another hundred, this man, who thinks of the defenders of constitutional liberties as "softies," will have a large say in the decision.

Are we men or are we mice? Are we so in awe of the President that we will surrender our own freedom, and that of the people who sent us here, just to avoid offending the President? Do we have so little analytic capacity that we will allow him to pass off a compulsive authoritarian as a judicial conservative? Are we so naive, are we so relieved at the nonnomination of the "Nixon six" that we will let ourselves be taken in by the greatest "bait and switch" ploy in history? Are we so simple minded that we are willing to risk severe constitutional retrogression in hopes that some Peter Pan will fly us to a land without crime, without discord, without dissent?

What are we afraid of? When the President has the veto power over our activities, he does not hesitate to remind us of that fact, and as we saw again last week, we all too frequently yield to his warnings. In the case of Supreme Court appointments, we are trustees of liberty for the people.

We have the veto power, not to mention the constitutional obligation of advice to the President. We have proved the force of that power. But why is it that we do not insist that the President's selections reflect our concept of liberty as well as his own? That is what the framers of the Constitution expected us to do. That is what the Senate has done time and time again over the years. That is what the President does to us when our roles are reversed. And that is what the nominee himself has said we should do.

The suggestion has been made that there may be something "political," and therefore improper, about refusing to confirm William Rehnquist. Is it "political" to fear for liberty? Is it "political" to opt for the kind of racial harmony that will bring domestic tranquility among our people? Is it "political" to vote to preserve the courts as what John Mitchell himself called "the great bulwark against undue assumption of power by another branch," and the "alternative mode for relief of grievances at times when the more active branches seemed stalemated"? I think not. The oath I took on entering the Senate requires me to preserve and protect and defend the Constitution, and that is precisely what I am doing.

Some Senators are taken with the suggestion that the political consequences to progressive Democrats from the defeat of a third conservative nominee might be worse than the damage this nominee could do on the Court to liberal causes. The logic escapes me.

First of all, constitutional liberty is not a "liberal cause." When I learned about American government, the Constitution was supposed to be for all the people, and it was the conservatives who cared most strongly about maximum scope for individual initiative and endeavor and minimum restraint on the power of government.

Secondly, if it is the "political consequences" of a Rehnquist defeat that Senators are worried about, then it is they who are injecting politics into their decisionmaking to override their views on the merits.

Finally, it is important to remember who defeated the previously rejected nominees. Of the 55 Senators who voted against Haynsworth, 17 were Republicans, including the minority leader and minority whip, and of the 51 Senators who voted against Carswell, 13 were Republicans, and at least two more were what are generally described as Southern Democrats. So it was the whole Senate, not any particular political faction, which declined its consent in those cases.

Moreover, I do not think any of us have anything to be ashamed of or embarrassed about in terms of our overall record on Supreme Court nominations. Even if we assume that a President has or should have some ability within limits to give the Supreme Court a cast that reflects a sense of his own outlook, that test has more than been met.

We now have three Nixon appointees, the first two, if labels are necessary, must be called more than conservatives. They have proven themselves to be consistently responsive to the administration's legal positions, except in the field of civil rights, where the Executive position has been too retrogressive on occasion even for them to swallow. The Chief Justice and the Attorney General have been matching each other almost speech for speech on the issues of the day and they are in regular contact. Thus, even if the vacancies had ended there, the President would have had no legitimate complaint that he had not been allowed to leave his imprint on the Court.

Given the present distribution of Justices, we are certainly not required by any notion of fairness or balance or representation to accept uncritically a final nominee whose constitutional approach places him even beyond the extremity of that already broad spectrum:

A person who might well have been the only dissenter had he been a Justice instead of a law clerk when Brown against Board of Education came before the High Court.

A person who has so little concept of the importance and vitality of the Constitution that he thinks of decisions enforcing it as operating not to the benefit of the freedom and dignity of all of us, but rather to the benefit "of criminal defendants, or pornographers, and of demonstrators."

A person who would like to see us not only throw out the recent decisions assuring poor Americans the same quality of justice as rich Americans, but also revert to the 1903 concept that judges should not worry about whether evidence used in court was unconstitutionally obtained.

A person who supports the right to speedy trial—but only if the right to habeas corpus is diluted.

A person who thinks that "liberty" and "property" are interchangeable values, that "integration" and "segregation" are equivalent evils, that there is something wrong with invoking the notion of "insensitivity" as applied to public officials' views of civil liberties.

A person who thinks that the Nation may "now" be faced not with a challenge to reconcile order and liberty, but with a "choice between liberty and order."

A person who, believing that "disobedience cannot be tolerated, whether it be violent or nonviolent disobedience," suggests without limitation that "if force or the threat of force is required to enforce the law, we must not shirk from its employment."

A person who—just 7 years ago—expressed publicly his concern about the "indignity" thrust upon a shopkeeper required to serve black customers, while the Senate was invoking cloture on a bill to open public accommodations to all Americans.

A person who, as Joe Rauh pointed out so persuasively, saw only as "victories" for "Communists, former Communists, and others of like political philosophy," four Supreme Court decisions, two of which were written by, and two concurred in by, Justice Harlan, the same "conservative" Justice Mr. Rehnquist would like to replace, decisions which vigorously applied the first amendment and other constitutional basics to clear the witchhunt atmosphere of the 1950's.

It is true that William Rehnquist never said he was a white supremicist as Carswell did; it is true that he has never had the problems of financial conflicts that Judge Haynesworth had; it is true that no one has suggested that he would represent mediocrity on the Court, as one Senator suggested of a past reject. But are these the only criteria we know how to apply?

To me the relevant criteria are clear. First, as some of my colleagues are fond of saying, the Constitution is not a suicide pact. No matter how erudite and articulate a nominee may be, and Mr. Rehnquist is a most erudite and articulate gentleman, if we are persuaded that he does not place a high priority on rights and liberties that we consider central and vital to the American way of life, if he seems devoted to redistributing freedom away from citizens and to the Government, if his record indicates that he thinks constitutional protections are expendable at the will of the sovereign, then we have an obligation to our constituents, to our oaths, and to ourselves, to keep him as far from the Supreme Court as possible.

I would go beyond that to a second, higher, standard. I believe the Senate has the right at this point in our Nation's history to require an affirmative showing by each Supreme Court nominee of a commitment and dedication to civil rights and constitutional liberties. At a time when we are on the verge of dissolving racial barriers in our society for all time, we have a right to know that our Justices are enthusiastic about that prospect, that whenever this goal of society is appropriately involved in the balancing process, it will weigh at least as heavily as other social goals.

At a time when our freedoms of expression, assembly, and of press, and our protections from unreasonable searches, from denial of liberty without due process, and in general, from arbitrary gov-

ernment interference, are increasingly threatened by executive action, we must be sure that those joining the High Court fully support the constitutional responsibilities of the judiciary to constrain authoritarian interference with the privacy, beliefs, mobility, associations, or any of the other facets of liberty, that make American citizens the freest people on earth.

Perhaps this man as a Justice will turn out to be truly dedicated to constitutional freedom, contrary to all the evidence from his past. Perhaps he will prove himself fully committed to racial equality, in spite of his almost flawless record of obstruction. But the Supreme Court should not be his proving ground.

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

Mr. KENNEDY. I yield.

Mr. BAYH. Mr. President, I must say the Senator from Massachusetts has delivered a very compelling dissertation on why the Senate should reject the nomination of William Rehnquist. If I might, I would like to ask a few questions to try to perhaps expand upon his perceptive points. Earlier in the dialog I had with the Senator from Wisconsin, he suggested that because William Rehnquist was intellectually competent and had not been proved dishonest, he thought the Senate really had very little reason to get involved in turning down a Presidential nominee on what he described as political grounds.

Could the Senator from Massachusetts expand on this question? Questions of mediocrity, conflicts of interest, and white supremacy statements were involved with respect to other nominees. But these particular types of shortcomings are not present in the nominee before us. Could the Senator explain a bit further the right, or the lack of it, or the obligation, or the lack of it, of the Senate to look deeper, to look into the bones of a man to see what he believes and thus to see in what direction the Court will be headed if he is sitting on it?

Mr. KENNEDY. I, of course, will be glad to elaborate on the comments I made here. I think the Senator from Indiana knows full well that the Senate established criteria of judgment in terms of the nominations of Carswell and Haynsworth and rejected both nominees, one on the basis of his clearly demonstrated racial views and the second largely because of conflicts of interests in terms of financial holdings.

It seems to me that, in setting criteria for our own evaluations and judgments on this nominee, we should put in terms of equal value the requirement of a firm commitment to the protections guaranteed under the Constitution in the areas of civil rights and civil liberties.

Particularly in terms of the two areas I have mentioned, as the Senator from Indiana understands so well, having sat through the extensive hearings that were held and being the real leader in terms of the study of this nominee, we have seen, in the nominee's background and experience, in the statements he has made as the President's lawyer's lawyer, and in his position in the Justice Department, and also prior to that, a uniform lack of commitment and concern for the basic human liberties and human rights as guaranteed by the Constitution.

I was suggesting that in terms of affirmative commitment, it is just as reasonable to establish it as a criterion of judgment for the Senate as was the case with respect to the conflicts of interest of Mr. Haynsworth and with respect to the questions of commitment to racial equality of Mr. Carswell.

It seems to me, particularly given the times in which we live and the questions with which this country is confronted, we should expect that each nominee show a sensitivity and a concern for human rights. We should see evidence that he will—in reaching the various balances when considering what equal protection is and what due process is, or what the balances are between the rights of a central government and the rights of individual liberties—have a clear commitment to give individual freedoms their due balance and weight. I think we have seen in this nominee that time and time again, when that balance has been considered, it has been inexplicibly light in terms of human rights and human liberties. So I think the nominee fails to meet that requirement.

As I mentioned, I would establish an additional requirement, and that is, for nominees to go on the Supreme Court they have to display a positive concern in terms of the rights and liberties of the citizens of our Nation. I think that is particularly important now, given the stress that our society is being subjected to, the fact that we are at a time in our history when, hopefully, within the next decade we can put the elements of discrimination behind us for all time, and at a time when we are seeing a constant infringement in the areas of civil liberties both because of the technological progress that has been made over a period of time and a general kind of disdain for the protections of the rights of privacy that we have certainly seen in terms of this administration. With the increasing burden we have to face in terms of meeting our constitutional responsibilities to our country, we must insure that the nominees themselves are going to have a sensitivity and an affirmative commitment in those areas.

I think all of us, in considering our vote on this question, are attempting to ascertain what the criteria ought to be for any nominee. Those of us who express reservations about this nomination realize full well that we may be accused of voting against him for political reasons, but I think we entered this with a very clear understanding that that whip could come back at another time in the course of history and could work, if that were the reason, to the disadvantage of those who might be more progressive. But politics is not the reason.

I think during the course of this debate one of the very important and useful results has been to help the Senate, and help the American people, understand better our responsibility in terms of advising and consenting and of scrutinizing a broad range of considerations which I think are required of us in terms of fulfilling our responsibility under the Constitution.

Mr. BAYH. The Senator struck a chord there that I think is important to reiterate. I suppose all of us, in judging what the impact of the nominee will be on the Court, are quick to consider what the impact of his vote on the Court will be on the significant policy questions that will be laid before him. The Senator from Massachusetts points out, in his characteristic fashion, the fact that at this time we are thinking about more than one vote on the Supreme Court of the United States.

We are indeed in the process of creating a symbol, sending out signals to large numbers of people who wonder, not just what the Supreme Court of the United States thinks about education, free speech, surveillance, and opening up our system and keeping it that way, but what the Senate itself says. They are looking at what an elective body thinks about those key issues, and I suppose it is fair to say that the Senator from Massachusetts is equally distressed about the message that will go forth from this body if a William Rehnquist and what he symbolizes to these large numbers of people is put on the Supreme Court.

Mr. KENNEDY. I certainly am. And I think that the Senator from Indiana, in the course of this debate, has touched upon one of the very serious kinds of crisis that I think we are facing in our country, and that is the whittling away of the liberties of our people, including, as I mentioned in the statement, the first prior restraint of the press of our Nation and the pursuit of a news broadcaster by the Federal Bureau of Investigation who had been highly critical of certain administration programs and positions.

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

Mr. KENNEDY. I yield.

Mr. BAYH. What about those two key issues? Those are important issues, not just to Senators, but to some of our friends in the press who may be listening to this debate. In the judgment of the Senator from Massachusetts, from what we have been able to see in the record and what we have been able to read about what the nominee has said himself, what does the Senator from Massachusetts feel the nominee's position would be on the right of the Federal Government to say to a reporter, "We want to know your sources," or, as in the case that was just handed down by the Court, where an effort was made by the executive branch to muzzle the press, and it was turned down by the Court?

What does the Senator from Massachusetts feel the record shows about the inclinations of the nominee on these two issues?

Mr. KENNEDY. There does not really seem to be much question, since the nominee was instrumental in clearing the development of the Justice Department's position on the application for the prior restraint order. There does not seem to be any kind of question as to what his views would be in terms of more centralized authority and responsibility of the Federal Government. This is really quite clear, as it was in the development of the May Day procedures, which have been struck down by every kind of court review that has taken place with respect to

them—procedures which were defended by the nominee in his speech in North Carolina only a day and a half after their use.

I remember asking the nominee, whether, after he had read, as widely reported throughout the United States, of the young people and other citizens who were unjustly arrested in the indiscriminate mass roundups during the May Day demonstrations, whether he felt there was any added responsibility, on the part of a lawyer in his position, of seeking to insure that justice was provided, not only for the Justice Department but also for those who were affected by Justice Department actions, and whether he felt there was any affirmative responsibility on his part to find out for himself, to go down and take a look at the jails and talk to the people in them and try to find out whether there was any illegal action being taken by the authorities, and to do something about them.

He said, no, he did not feel the necessity for any such affirmative action. I asked him the same question with reference to the Kent State situation, whether, when he read about the young unarmed students who were slaughtered out at Kent State, and when he saw the report of the eminent national commissions that looked into the question—the Scranton Commission report or other kinds of reviews that have pointed out the need of convening a Federal grand jury—whether, when he was the President's lawyer's lawyer charged with an important part of the responsibility for assuring that there was going to be adequate justice for all people as well as the Justice Department, whether he, in such a situation, took the time to go down and talk with the Attorney General and present his own views with respect to the tragedy that took place at Kent State, and urge that there be adequate pursuit of this question by the Justice Department, he again said he felt no positive compulsion on this issue.

As I mentioned in my statement, on the whole question of spying on political rallies, and the whole series of hearings that were held by the Senator from North Carolina (Mr. ERVIN) on the question of surveillance, where once again, as a member of that committee, I heard time and time again talk about this kind of surveillance by agents of the Federal Government, he stated that he did not believe it served to provide any kind of chill to those who were speaking out about the many vital issues facing this country today.

So the Senator is correct; these are not just isolated instances. These are not isolated cases. This is a series of actions taken and supported by the nominee which reach at the very heart of the life and liberty of the people of this Nation.

I would say as well, as the Senator well remembers, at the time we were asking the nominee whether he felt that he could support all these actions, he said:

Well, if they were objectionable, I would not come up and testify in support of the Justice Department's position.

So we have to assume, in the light of the fact that he came up in their support, that he really found very little to object about.

Mr. BAYH. If the Senator will yield——

Mr. KENNEDY. Just let me finish this thought. In spite of the fact that we have seen within this administration examples of individuals who felt sufficiently concerned or outraged by actions that were taken by the administration, in various fields including the rights of individuals in this country—Terry Lenzner, for example, who was forced out of the Legal Service Division of the OEO program; James Allen, from the educational program; Leon Panetta from the HEW civil rights office, and Secretary Hickel from the Interior Department—here were individuals who were sufficiently concerned, who objected strenuously enough to feel that they could not be a part of governmental actions and attitudes that offended their consciences.

But we do not have that kind of courageous conduct by this nominee, in spite of the fact that during the past 3 years, as the Senator from Indiana has pointed out and as I have tried to develop today, there has been the greatest kind of emphasis in terms of seeking to restrict the rights and liberties of the people of this country by governmental action that I think we have seen in at least the last 100 years.

Mr. BAYH. I am glad that the Senator has emphasized the nature of the nominee's employment, and the caliber of his position. It has been argued by some—in fact, it was argued this morning by the Senator from Wisconsin—that the nominee really could not be held accountable for the positions of the administration, because he was just following out orders. Is the Senator from Indiana correct in believing that, at one point in the hearings, the nominee responded that, if he did not like the positions, if he strongly disagreed with them, he would resign?

Mr. KENNEDY. As I recall, he indicated that, if he felt they were sufficiently objectionable, he would not have made them. I must say that is a position that can be understood, that even the lawyer's lawyer on various questions would separate himself from a view with which he strongly disagreed. So I think there is basis to conclude that he did not find that the positions were objectionable or that he would have taken a substantially different course of action on them.

As the Senator will recall, the distinguished Senator from Maryland (Mr. MATHIAS) and I tried to review with the nominee his concept of the elements of due process. We were not trying to probe or to say, "How would you act, given a certain factual situation?" We were trying to elicit from him at least some kind of statement as to how important he thought due process was, as to how strongly he weighed the concept of equal protection as an element to assure justice to the people of this country, about the various considerations in balancing the individual liberties of people versus the central authority.

We tried to elicit that from him, but we were unable to get any kind of development of these concepts, even though we were not trying to ask him how he was going to decide a case. We were trying to elicit from him some kind of response so that we could gather a feeling about his own concern for these vital instruments of the courts and of the law which have been so heavily relied upon to produce progress in terms of liberties. We could not get any kind of comment on that. Yet, at the time when Congress was attempting to reach and share, under the Constitution of the United States, in the area of foreign policy, he was freely willing to go to Pennsylvania to tell a political audience that he felt that the actions that were being considered by Congress to require the President to terminate and set a date for the end of the war in Vietnam were questionable constitutional actions. He was not tonguetied about that.

Once again, I think that shows the continuing thought process of the nominee that what the Central Government and what the executive branch and what the President of the United States wanted to do, he was willing to accept.

That is what troubles me, as I mentioned in the course of my remarks. And it surprises me that many of our friends from different parts of the country, who time and time again take the floor of the Senate and talk about how we do not want the Central Government, the national authority, infringing on the rights and liberties of small communities and towns and States of this Nation, are willing to go along with this. Every time the nominee had the alternative of choosing between the individual rights and liberties and the central authority, he came down on the central authority. Would the Senator from Indiana agree on that?

Mr. BAYH. Yes. I think we have a rather interesting inconsistency. The Senator from Massachusetts touched on this in his remarks.

On one hand, we have the nominee who relies on the almost infinite power of the Federal Government to become involved in those areas where they are confronting the rights of individuals. Take as examples prior restraint of the press, access to the sources of news reporters, the right of peaceful demonstration, the right of jury trial, preventive detention—the whole series of proposals that the nominee not only favors but also has been instrumental in developing for the administration. In these areas he feels that the Federal Government or the central source of Government, the executive branch, is omnipotent.

On the other hand, I find the strange inconsistency because he does not seem to feel Government has the same right—and duty to pursue it diligently—so far as protecting the rights of individuals in the whole civil rights area is concerned. It is all right for the Federal Government to say, "Thou shalt not publish," but it is not right for the governmental authorities to say, "You had better let black people into the drugstore."

Does not the Senator feel that there is a little inconsistency with that sort of thought process?

Mr. KENNEDY. I think the Senator has pointed up one of the real dilemmas.

I mentioned this morning that every time there was a question between the central authority or the National Government's power and that of the individual, the nominee came down on behalf of the central authority.

As the Senator from Indiana has pointed out, when there is a question between the rights of property and the rights of the individual, the nominee came down in terms of the rights of property rather than the rights of the individual.

I think all of us are very much aware of the dilemma and the crisis this Nation went through during the period of the 1960's, when many kinds of changes took place in this country. In many instances there were extraordinary acts of statesmanship and courage exhibited time and time again in the southern parts of this Nation, of individual leaders, of communities, of persons who realized the critical nature of that period and were prepared to put emotionalism aside and to go ahead to fulfill the guarantees of the Constitution of the United States. I am sure the Senator from Indiana has heard example after example, as I have.

Yet that was not the case when this nominee had a chance to speak out while these acts of courage were taking place in much more inflammatory situations than in Arizona. We have a nominee who was born in the North, received an education in the West—not that anyone feels that those parts of the country have any leg up in terms of sensitivity to concern about rights or liberties than any other part of the country; but certainly in the whole movement toward rights and liberties, these issues were in the South much closer to the surface, with much more discussion and debate, than in other parts of the Nation—and every one of his statements in terms of rights and liberties in this country came out—instead of enhancing or expanding them—in terms of opposition to them.

I think this must be a matter of considerable concern for all people, not only the Members of the Senate but also all Americans, when they are trying, as they are in many parts of this country, with extraordinary kinds of difficulties even in the northern communities—I know that in my own city of Boston there recently has been a report on the questions of education—when so many cities of the North and the South are really trying to take some steps to draw out the poison and really come to grips with the problems of discrimination in this country. But all the statements we have been able to find, or that we have had reported to us have been unsympathetic to civil rights—and I would ask the Senator whether he has come across any contrary evidence. The major statements were in the Phoenix letters, and testimony in the 1960's. Then there were his views on the Carswell civil rights decisions in the letter to the Washington Post, when Carswell's nomination was being considered. There was also the record in terms of the model code, on the questions of blockbusting and equal employment opportunity.

These seemed to be the four oustanding incidents, and on each occasion the nominee moved away from the expansion of rights and liberties.

I am asking the Senator, who has provided a great deal of study in this matter, whether he has come across anything that would rebut that; because, in fairness to the nominee, we want to insure that we fully consider any positions which have been assumed by the nominee, either in his official capacity in the Justice Department or prior, that show this kind of sensitivity, as Mr. Powell did in Virginia during the period of the fifties, in terms of opposing massive resistance, when, as I remember as a student in law school in Virginia during that period of time, the emotion involved and the climate of those times made such a position difficult; I wonder whether the nominee's record shows anything like the strong support and initiative in the development of a national legal services program which Mr. Powell showed when he was president of the American Bar Association. I am wondering whether the Senator from Indiana has been able to find any instances such as this which would at least show the kind of sensitivity, concern, and commitment that many of us feel is so essential in terms of a nominee for the Supreme Court?

Mr. BAYH. First of all, I concur with the assessment of the Senator from Massachusetts, that on each occasion when the nominee's position has been articulated, he has been found to be on the wrong side of the individual human question involved. I must say that I did not realize how much to the point the closing paragraph of Mr. Rehnquist's letter to the editor was over this public accommodations law, until I happened to glance down at it just now. Here is what Mr. Rehnquist says when he talks about individual rights and individual liberties:

> It is, I believe, impossible to justify the sacrifice of even a portion of our historic individual freedom for a purpose such as this.

The individual freedom Mr. Rehnquist is unwilling to sacrifice even a portion of is not freedom of speech, not freedom to dissent, not freedom to the right to a trial by jury, not freedom to go in and buy some medicine for your children, or to get a good education, or to live in a decent house, but the individual freedom that Mr. Rehnquist says we dare not sacrifice even a portion of is the right of a proprietor who holds a business place open for public use to say, "You cannot come in if your face is black."

It seems to me that that is hardly the kind of sensitivity, hardly the kind of scale of equity we should demand of one who sits in judgment on us all.

I have searched for the answer to the second question of the Senator from Massachusetts and have had a number of my staff members, as has the Senator from Massachusetts, and a number of volunteers throughout the country, looking and searching, and we have not found any contrary evidence—I have been hoping that some would be uncovered——

Mr. KENNEDY. The Senator has not been able to uncover any evidence in terms of the nominee since he was a law clerk as to his feeling on rights and liberties; is that not correct?

Mr. BAYH. We have not found any evidence that would prove the kind of humane position that the Senator from Massachusetts articulates so well. In fact, the Senator may not know it, but on the opening evening of this debate, after the Powell nomination had been accepted, the Senator from Nebraska was waxing in his normal and eloquent manner in support of the nominee——

Mr. KENNEDY. I remember that.

Mr. BAYH. And I asked him whether he could bring us one word in the debate, give us an article, give us any proposed legislation, give us any example, of the nominee's commitment to human rights. Not only has this not been forthcoming but the Senator from Nebraska refused to answer any further questions and has not proceeded to follow that line of thought. I do not know why it is that the proponents, if they really believe this man is a defender of individual liberties and civil rights, cannot come up with some documentation. It is rather strange.

I want to ask the Senator from Massachusetts:

It has been disclosed in the past 48 hours, debated on the floor of the Senate, and printed in the national press, that Mr. Rehnquist strongly urged Justice Jackson while the nominee was a Supreme Court law clerk, to vote against Brown against Board of Education, and suggested that the Court had no business getting involved in looking into the great social questions, and suggesting that the Court had no right to get involved in protecting minority rights in this way or they would find themselves part of a transient majority of nine.

That hit the press Monday. Is it not rather strange to the Senator from Massachusetts that there has not been one word forthcoming from any proponents of the nominee to try to explain away what I feel is a most unfortunate revelation—not unfortunate that it was revealed, but unfortunate that this seems to characterize and symbolize the position of the nominee in the whole area of educational opportunities?

Mr. KENNEDY. I would agree with the Senator from Indiana. Comments have been made about the time the Senate is taking to consider this nomination. I would certainly hope that those who believe that the nominee has this concern and commitment in terms of human rights and liberties would debate this and put forward a positive case for it. We have not seen that. The Senator from Indiana has been in the Chamber these past few days and I would ask him whether he has seen any evidence of it. The case against Mr. Rehnquist is being made clearly. It has yet to be rebutted. I do not see any of the proponents in the Chamber helping to reach answers to these questions.

Has the Senator, during the time he has been in this Chamber on this debate, heard any explanations about the background of that memorandum that was drafted by Mr. Rehnquist?

Mr. BAYH. None whatsoever, I say to my colleague. Each Senator, of course, has the right, indeed it is our individual responsibility to determine to what extent we become involved in debate. I do not believe that any of us want to drag any of our colleagues kicking and screaming into a debate. But here we are debating a controversial Supreme Court nomination, and there have been some

well-documented and well-substantiated charges made. The only effort made to lay the charges to rest was, "I will have the chance," my friend from Nebraska said, "before this debate is over, to answer these questions at length, but I do not want to answer them now." He suggested to me that he was going to have the opportunity to put in the RECORD substantiation of his belief—and I think he is sincere—that the nominee is not anti-civil rights or anti-individual liberties. But this information has not been forthcoming and before the debate had even warmed—in fact, before the first speech was made, the distinguished minority whip was suggesting that a filibuster was going on. Yesterday, less than 24 hours after the Powell nomination had been accepted—in fact, just about 20 hours after the Powell nomination had been accepted—the distinguished minority leader was up in the Press Gallery telling the members of the press that there was a full-blown filibuster going on. The distinguished Senator from Massachusetts (Mr. BROOKE) had not even had a chance to make his speech. The speech of the Senator from Massachusetts (Mr. BROOKE) was, I thought, a rather dramatic revelation and important to the consideration of our colleagues of this matter.

Then the distinguished Senator from Pennsylvania (Mr. SCOTT) was in the Press Gallery telling the press and the Nation that a filibuster was going on. So I must say, if the Senator from Nebraska has any suggestions to make to the Senator from Indiana as to how we can get those on the other side of this question to rise up and answer some of these questions and provide some of this information, I think the country has a right to know it and I am yearning for the answer to that question.

Mr. KENNEDY. Regarding the so-called filibuster, I think it is valuable to look back at an earlier nomination proceeding, as I pointed out at a Brandeis University dinner in New York a couple of weeks ago. In terms of the time factor, and because it is interesting as to who is labeling whom in terms of a filibuster, here is information about one of the most distinguished nominees and perhaps the greatest Justice who has served on the Supreme Court.

The nomination of Louis D. Brandeis to the Supreme Court on January 28, 1916, ignited one of the most bitter confirmation fights in the history of the Senate. Three sets of hearings were held over a period of 4 months. The record grew to some 1,500 pages in print. The issue became a matter of intense national focus, with the highest of political stakes at risk. When it was all over on June 1, Brandeis had been confirmed 47–22, on almost a straight party line vote.

It is helpful to look back at that experience to learn from it. The single overwhelming fact was that President Wilson had chosen one of the most talented and dedicated men in American history. He was the great crusading lawyer of his times, and then some. In the name of the public good, he had challenged the giant interests that ruled the Nation—the utilities, the railroads, the monopolies. And much too often he had won.

Thus his enemies were legion and powerful, and they left no stone unturned in attempting to persuade the Senate to reject him. But the constitutional mechanism of advice and consent worked well; the Senate reopened its hearings twice to check out all the allegations. The proponents and opponents had full opportunity to weigh the merits and express their views. And truth and justice were the victors.

But, of course, the key was selecting the right person, a man truly committed to fairness, to responsive institutions, and to the public welfare, a person of proven intellect and capacity, a man of whom President Wilson could write:

> He is a friend of all just men and a lover of the right; and he knows more than how to talk about the right—he knows how to set it forward in the face of enemies.

Twice they reopened the hearings to consider that nominee, when various allegations and charges were made and remade by those who wanted to frustrate that nominee.

I am reminded that the time that was taken was welcomed by those who were proponents of Louis Brandeis when the various charges and allegations were made concerning this nominee. It was the proponents who insisted that the record be opened again and that the nominee's record be examined thoroughly so that the allegations and charges could be fully responded to.

Yet here we have, with relation to a vital issue in this case, as the Senator has mentioned, the memorandum that was prepared to express support for the Plessy against Ferguson concept of separate but equal, at a time when the country and the Supreme Court were to embark upon a 9-to-0 decision in Brown against Board of Education and set the whole country on a new course, but we have no answer, no new hearing, no chance to examine the nominee's supporters on this question.

I have not seen the memorandum. Law clerks are charged with preparing various position papers. However, certainly we ought to be able to have some kind of response and have the matter put in some kind of context.

We have had so many examples in the past in the Senate with respect to various charges—and not charges nearly as far-reaching or as extensive in terms of implication as these—where the proponents of the nominee have insisted that the hearings be reopened.

Mr. BAYH. Mr. President, the Senator studied that matter and was aware of that subject. I am glad he brought those comments into the debate, because I think they are pertinent.

I wonder if the Senator could inform me whether there was any discussion about invoking cloture on a filibuster at the time when the hearings were reopened and the record was being made straight.

Mr. KENNEDY. It is my understanding that it was the proponents of the nominee who insisted that these charges and allegations be settled and resolved.

I did not see at that time charges made that there was undue delay in terms of the nominee. But there was a conscious effort made by the proponents to assure that the charges made—and they were a matter of extreme seriousness—were fully and adequately answered.

Mr. BAYH. Mr. President, will the Senator permit me to explore his thoughts relative to the activity and the efforts on the part of the nominee with reference to a Uniform State Law Commission? I would like to have the Senator's opinion on this matter because of the opinion of the Senator from Nebraska when I asked him to give us some support for his views on the nominee's record on civil rights. Does the Senator from Massachusetts recall when the Senator from Indiana asked the nominee to give us some evidence of what he had done affirmatively to get the test established so as to give us evidence of his commitment to human rights?

Does the Senator from Massachusetts recall at that time the fact that the nominee did not mention participating in this Model State Antidiscrimination Act effort?

The reason the Senator from Indiana brings it up is that if, indeed, that was considered in the mind of the nominee and those who support him as a manifestation of his previous pursuit of his commitment to human and civil rights, it would seem to me that in response from Indiana and others asked, that they would not have had to find it out by an investigation of the record itself.

Mr. KENNEDY. I agree with the Senator from Indiana. I do not recall offhand exactly what the nominee stated when the Senator from Indiana asked that question. Does the Senator remember?

Mr. BAYH. What I am trying to point out is, first of all, the nominee did not mention that, in his judgment, participation as a uniform State law commissioner, when it was considering an Antidiscrimination act, was sufficiently important that it should be stated as evidence of his dedication commitment to human rights. It was only when investigators disclosed that as a member of this uniform State law commission on two occasions had tried to eliminate provisions of it, or the entire act, that this matter became public. For the Senator from Nebraska to suggest that finally voting for this, after he had effectively led the effort to lessen its impact from that of a uniform act to that of a model act, I think is not good evidence of commitment to human rights.

I might just read to the Senator from Massachusetts the distinction, and why I feel it is important. First of all, as the Senator realizes, the nominee voted against, and tried to get stricken from the model act, that provision which would have outlawed blockbusting. It was an antiblockbusting provision. He also tried to strike from the model act a provision which would have enabled an employer voluntarily to compensate for hiring practices, for the fact that in the past he had discriminated against those of minority races, and, thus, had a very imbalanced work force.

In addition, when he was unsuccessful in these two efforts, as the Senator re-

calls, he led a successful effort to diminish the standard of the commission's work from that of a uniform act to that of a model act.

I read from the 1966 Handbook of the National Conference of Commissioners on Uniform State Laws here the definition of the distinction between a uniform act and a model act:

> Approval of an act as a uniform act should carry with it the obligation of the commissioners from each State to endeavor to procure its enactment by the legislatures of the States.

That was the thrust of the uniform act, and the nominee led the effort to keep it from being a uniform act so that he would not have to be responsible for going back to the Arizona State Legislature and implementing it. A model act, on the other hand—and I quote from the Handbook again—"shall be applied to any act which does not have a reasonable possibility of ultimate enactment in a substantial number of jurisdictions." So there was a rather obvious effort on the part of the nominee to demean the quality and the responsibility incumbent upon those who participated in the drafting of this act.

I wonder if the Senator from Massachusetts would care to comment relative to how valid the claim is that William Rehnquist's participation in this particular commission is evidence of his commitment to civil rights.

Mr. KENNEDY. I think the Senator from Indiana has made this point and has drawn these distinctions, which I think are extremely compelling. I share the conclusions and the deep concerns that the Senator from Indiana has drawn from this occasion, and as he developed during the course of consideration in committee just prior to the vote.

In reviewing the speeches made here, we have to reach these conclusions and decisions in terms of the rights of the people of this country and especially in terms of minority rights, whether it is the actions taken in Phoenix, the model code referred to, the letter to the Washington Post, or the memorandum prepared for the Supreme Court Justice.

If these actions could be explained as individual acts, that would be one thing, but taken as a series and pattern of actions, I think we are completely justified in concluding that the nominee does not have that firm commitment and dedication to the rights of the people of this country that is so essential for us to find in fulfilling our constitutional responsibilities.

If we take his actions in the Justice Department, whether it be in terms of wiretapping or surveillance—where he was challenged in considerable detail by the Senator from North Carolina (Mr. ERVIN)—or his justification for the program of handling the May Day demonstration, on the whole question of restraint, as separate matters they might be troublesome, but would not be a bar, but taking them together, in terms of the rights of the American people and the liberties of American citizens, in all fairness one has to conclude that this nominee has not shown the kind of sensitivity in terms of the liberties of the people that I think is so essential and which we are challenged to protect.

So I share these concerns with the Senator from Indiana. I think the Senator from Indiana has provided yeoman service in terms of illuminating these matters and examining them in detail. I would welcome, as I am sure the Senator from Indiana would, some kind of response in these areas which have been raised over the period since Monday night last, that we would have a positive response for the Senate, and what is more important, for the people of this country, in order that we may know exactly the kind of concern and commitment this nominee has for the rights of the citizenry of this Nation.

Mr. BAYH. Mr. President, I wish to say one word before the Senator terminates his remarks. I am grateful for the contribution he has made, not only in his speech and his colloquy here today, but also from the very beginning, from the very first instance when the nominee's name was brought before the committee. Throughout the hearings and committee debate the Senator from Massachusetts has suggested a penetrating analysis to find out the facts. He has expressed articulately his concern that the nominee does not meet the standard several of us feel should be met by a member of the Supreme Court.

It is unexplained to me, as it is to the Senator from Massachusetts, why, after the revelation of these facts, there has not been a single proponent of the nominee come forth and say, "I think the man should be on the Supreme Court even if he was against Brown against Board of Education, and here is why."

Hopefully, before the debate is over the country and the Senate will have that explanation from those who think William Rehnquist has the capacity to be a good Supreme Court nominee.

WILLIAM REHNQUIST AND CIVIL RIGHTS

Mr. GOLDWATER. Mr. President, as I came to the Senate floor from time to time yesterday to hear the arguments made by Senators who disagree with the nomination of William Rehnquist, I noticed one predominant theme being repeated over and over. The theme is the allegation that Mr. Rehnquist is not committed to the cause of civil rights, a failing which is said to be evident statements he has made as a private citizen.

It is interesting for me to observe, Mr. President, that none of his opponents question Mr. Rehnquist's integrity. Indeed, his critics earnestly announce their recognition of his high moral character and personal integrity. Yet at the same time they say this, they question the truthfulness of Mr. Rehnquist's personal disavowal of any reluctance to uphold the guarantee of the Constitution and of duly enacted statutes securing equal rights for all citizens. They nitpick his every utterance at the hearing, distort and take out of context his past statements on human rights, and even quote from certain of his writings without giving the complete sentences in which his words are set.

Mr. President, I believe the discussion on the part of Mr. Rehnquist's critics has exceeded the bounds of reasonable debate. I plan to take up two of these incidents today to demonstrate how far his opponents have gone in bending over backward to cast an unfavorable light on Mr. Rehnquist's record. I am going to discuss only two of these matters at the moment because, in truth, there were not many more points raised in the debate yesterday relative to the nominee than these.

One statement which is claimed to indicate an "indifference to the evils of discrimination" is Mr. Rehnquist's position taken in 1964 in opposition to the public accommodation ordinance proposed for the city of Phoenix. The fact that Mr. Rehnquist testified against the ordinance is mentioned time and again by the nominee's opponents, but the full grounds for his past doubts about the ordinance are never explained.

If my colleagues who are opposed to this nomination are sincerely searching for evidence which indicates an absence of hostility toward antidiscrimination efforts, they might have read the complete text of Mr. Rehnquist's comments at the Phoenix hearing in which he made it quite clear that a major reason for his position on the ordinance rests in the fact that when the members of the city council were running for office they took the position there would be no compulsory public accommodation ordinance.

Accordingly, he suggested that now that the members had been elected they should abide by their campaign position and instead of acting on the ordinance refer it for the vote of the people. Thus we see that Mr. Rehnquist appears to have been influenced in his stand by a feeling the city council was under a moral obligation to the people to present the issue to them as a whole for a decision.

Furthermore, Mr. Rehnquist indicated in his letter to the editor of the Arizona Republic on the same ordinance that minorities would have an important interest to be balanced if widespread discrimination against them had actually existed in Phoenix. He said:

> If in fact discrimination against minorities in Phoenix eating-places were well nigh universal, the queston would be posed as to whether the freedom of the property owner ought to be sacrficed in order to give these minorities a chance to have access to integrated eating places at all.

Thus, even in this statement which is being criticized so severely we can see that Mr. Rehnquist gave recognition to the need for the right of minorities to prevail where discrimination was prevalent. These and other comments in his statements at the time show that he was then only speaking about a situation where a small minority of public accommodations did refuse access to minority citizens. Mr. President, I am not trying to explain these comments away or to make it out as if Mr. Rehnquist had declared himself in support of the proposed city ordinance; but I do wish to illustrate that there were certain modifying elements which make his views in 1964 fall far short of outright indifference or hostility toward the use of law to overcome racial injustice, as charged by the minority views signed by four Senators.

Of course, Mr. President, we now have Mr. Rehnquist's statements to the committee declaring that he was wrong in the position he took in 1964. He emphasized to the committee that his personal experience in 1964 was with an environment in which the denial of minority rights in practice was infrequent. He now states that his realization of the depths of feeling of minorities would control his opinion that a public accommodations law is good and necessary, without regard to whether or not the discrimination being attacked is infrequent or whether or not the public in general accepts the law as well as it has been in Phoenix.

Mr. President, if Mr. Rehnquist's integrity is accepted as we are told it is by the minority, then the change in position by the nominee should be accepted at face value and this matter should be closed. Instead, the minority refuses to accept the honesty and sincerity of Mr. Rehnquist's current statements and claim that he does not really mean what he says he does. I believe, however, as does anyone who actually knows Mr. Rehnquist, that he does not have a racist bone in his body and that he is deeply committed to an attitude of respect and recognition of equal rights. I will have more to say on this at the end of my remarks.

Mr. President, a second issue raised by the critics of Mr. Rehnquist yesterday concerned his views on the 1967 school integration program proposed for Phoenix high schools. Mr. Rehnquist told the committee during its hearings that his earlier declaration as a private citizen was aimed at preserving the neighborhood school system. This is borne out by the record because Mr. Rehnquist had said, in his 1967 letter to the editor:

> The great Majority of our citizens are well satisfied with the traditional neighborhood school system.

Of course, as everyone knows, the great threat which is seen by the public as disruptive to neighborhood schools is the idea of forced busing.

This is the same letter in which Mr. Rehnquist stated that—

> Many would feel that we are no more dedicated to an "integrated" society than we are to a "segregated" society; that we are instead dedicated to a free society, in which each man is equal before the law, but in which each man is accorded a maximum amount of freedom of choice in his individual activities.

Now, we have heard a great deal of deploring about the first part of this sentence, but when it is taken in the context of the complete sentence we see that Mr. Rehnquist fully recognizes the equality of each man before the law.

This is certainly not a statement calculated to resist integration of the races. In his 1967 letter Mr. Rehnquist makes it clear he was talking about his interpretation of what additional steps the school superintendant had planned for the schools in order to achieve "an integrated society." His letter was sent in the context of an existing program, then in effect in Phoenix, which called for the step of freedom-of-choice desegregation, with students being permitted to pay their own bus fare to attend other high schools.

With this program of open enrollment to all races already in being in Phoenix, Mr. Rehnquist informed the committee it was his understanding that the only kind of additional busing which the local school superintendent could have had in mind was compulsory, long-distance busing. It should be remembered that the school official, upon questioning in 1967, refused to dismiss the forced busing of students as a possible technique. What is more, Mr. Rehnquist added in his 1971 statement to the committee that he personally was in full agreement with the open enrollment voluntary busing policy as a means of achieving integration.

Once again, Mr. President, the minority Senators simply refuse to give credence to his remarks. Notwithstanding his declaration explaining his mental processes in 1967 and notwithstanding his emphasis on the neighborhood school concept, Mr. Rehnquist's detractors choose to ignore his words and erect an extremely distorted view of his position. In effect, Mr. President, the critics of the nominee refuse to believe anything he has to say on the question of civil rights and human liberty.

However, Mr. Rehnquist's personal character is backed up on the record before the committee by person after person who has known him or worked with him. For example, Judge Walter Craig, a U.S. district judge in Arizona, testified:

> I have never known Bill Rehnquist to be racist, and I know him pretty well, Sir.

Judge Craig also stated:

> I believe this man has a humanity about him and a human warmth that would make him, if anything, more sensitive to the needs of people with respect to the necessity to improve their lives and their society. I don't think that he would be in any way insensitive to the philosophy of civil rights or the Bill of Rights, or any other rights.

Then we have the impressive recommendation to the committee supporting Mr. Rehnquist by Jarril Kaplan, who has served as chairman of the Phoenix Human Relations Commission. Mr. Kaplan writes:

> In all my years of intergroup relations in this community, I never once heard reference to Mr. Rehnquist as bearing hostility toward minority persons . . . I do not profess to know everything Mr. Rehnquist has ever said or done. On the basis of what I do know, however, I believe that it is neither accurate nor fair to label him as a "racist," sophisticated or otherwise.

Dean Phil Neal, at present the dean of the University of Chicago Law School, related to the committee in writing of his observations on Mr. Rehnquist as a former student of his at Stanford Law School. He said:

> I am confident that he is a fair-minded and objective man. Any suggestions of racism or prejudice are completely inconsistent with my recollections of him.

In addition, I would like to offer for consideration the report of the American Bar Association on Mr. Rehnquist which discusses the comments received by the association from over 120 judges and lawyers and 10 law school deans in the seven States of the Ninth Judicial Circuit. Speaking of lawyers and judges who are devoted to expanding concepts of civil rights, the bar association report mentions that—

> A number of leading liberal and civil rights lawyers support the nomination because of his professional competence, intellectual ability, and character. As one of them summed it up, he had "total professional respect for Mr. Rehnquist." He had never known of any reproach to his character. He states he is "not a Bircher, not a racist, but a decent man and a good human being."

Finally, Mr. President, I believe it is important for us to observe what personal acquaintances of Mr. Rehnquist have to say about the manner in which he conducts his personal life. Mr. Joe Tameron, principal of Kenilworth Elementary School, wrote the Judiciary Committee that he knew Mr. Rehnquist had moved his family into the Phoenix Elementary School District because he "wanted his children to have experience and association with children from minority groups, as well as with the different socioecenomic groups."

Also, Mr. Paul Bliklen, a neighbor of Mr. Rehnquist, wrote the committee that during discussions with the Rehnquists he found that they were motivated to move to the downtown area of Phoenix bordering the inner city because they felt their children "would be better exposed to a cross section of America, racially, economically, and philosophically."

Mr. Bliklen added:

> We have worked with Nan and Bill Rehnquist over the years on many school projects and neighborhood undertakings. Working with us was always a cross-section of parents from mixed ethnic, racial, and economic backgrounds. In all of these contacts, never have I heard or seen Mr. Rehnquist act in a negative way towards a person or show preference because of his race, background, or economic disadvantage.

Here, Mr. President, is proof of the essence of a man's character and his true feelings about human dignity. Here is what is known about a man's reputation by those who intimately know him. Here is the day-to-day living philosophy of a man as that philosophy directly touches him and his own family. Here is an unblemished record of personal respect and association in his daily life for all members of society and for any group within it.

Does a man have to belong to the NAACP in order to demonstrate his willingness to support the cause of civil rights? Does a man have to prove his membership in the Americans for Democratic Action in order to show his sensitivity to the protection of individual liberties and equal rights? Or can we judge a man as being sensitive and committed to these rights on the basis of his known reputation and his personal treatment of and experience with other human beings? Mr. President, I believe the answer is self-evident and I believe it is equally obvious that Mr. Rehnquist is an honorable, fairminded member of society, who has a proven record of commitment in his life to the respect and support of human dignity and equal rights.

Mr. BROCK. Mr. President, if the confirmation of nominees to the Supreme

Court were not such serious business, I would find the activities of William Rehnquist's opponents over the last several weeks amusing indeed. Time and again, unfounded accusations have surfaced only to be refuted. In desperation, these opponents have fallen to the tactics they so piously deplored in other times. They have made so many false charges, so often unfairly characterized the nominee's position on issues, and so consistently taken Mr. Rehnquist's statements and conduct out of context that new charges now have a hollow ring. It is like the shepherd boy crying "Wolf" too often.

The point is that Mr. Rehnquist's opponents deplore the fact that he is not a judicial activist with a political philosophy attuned to their own. That is truly the issue. It should be candidly addressed as the sole issue.

The confirmation process is a solemn responsibility of the Senate. With it comes the prerequisite that individuals nominated to the Supreme Court be treated with the respect incumbent with the privilege of nomination and in turn that they act with the same responsibility and respect toward their inquisitors. Mr. Rehnquist has fulfilled this responsibility admirably. In addition to his outstanding credentials, Mr. Rehnquist has been most candid and open in expressing his views before the Judiciary Committee.

Throughout the long hours of questioning, he has maintained the consistency and poise that are a must for the position to which he has been nominated. One by one the counterfeit issues raised by his opponents have been discarded and indeed, his responses to these issues have revealed that he is a man of the highest standards of professional competence, integrity, and judicial temperament.

In conducting its thorough investigation and favorably reporting the nomination of William H. Rehnquist, the Senate Judiciary Committee has proved beyond a doubt that this man is eminently qualified to take his place on the Supreme Court. I look forward with enthusiasm to voting for this worthy man.

Mr. ALLOTT. Mr. President, with an admirable strength of argument Mr. Robert Bartley of the Wall Street Journal has exposed the flimsiness of the arguments currently being used to delay the absolutely certain confirmation of Supreme Court nominee William H. Rehnquist.

So that all Senators can profit from Mr. Bartley's reasoning, I ask unanimous consent that his story be printed in the RECORD.

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

[From the Wall Street Journal, Dec. 6, 1971]

REHNQUIST AND CRITICS: WHO'S EXTREME?

(By Robert L. Bartley)

WASHINGTON.—The most powerful impression to emerge from the microscopic public analysis of the life and works of Supreme Court nominee William H. Rehnquist is that his critics are pretty desperate. At one point the arguments proved too much even for the most critical Senators, and Sen. Edward Kennedy upbraided the witnesses for creating "an atmosphere which I think is rather poisonous."

Now the critical members on the Senate Judiciary Committee—Sens. Bayh, Hart, Kennedy and Tunney—have filed their minority report setting out the responsible case against the nomination. As Sen. Kennedy's remark suggests, it judiciously avoids the less substantial allegations that have appeared in the press in recent weeks. There is, for example, no suggestion that Mr. Rehnquist is guilty until proven innocent of membership in extremist organizations because his name appears on a list compiled by a little old lady and willed to someone else.

OUTSIDE THE MAINSTREAM

The minority report, rather, focuses mostly on Rehnquist's views on certain issues, and as such is an intriguing document. It volunteers that there is no question about Mr. Rehnquist's qualifications in terms of legal standing or personal integrity. On the widely debated question of whether the Senate should consider a nominee's judicial philosophy, it makes the case that indeed the Senate should.

The minority, of course, argues that on this third test Mr. Rehnquist flunks. It says he "has failed to show a demonstrated commitment to the fundamental human rights of the Bill of Rights, and to the guarantees of equality under the law." While not every detail of a nominee's philosophy ought to bear on his Senate confirmation, it suggests, so extreme a deviation should. At one point the text puts it simply: The nominee "is outside the mainstream of American thought and should not be confirmed."

A fascinating proposition, this. How can someone with legal standing and personal integrity fit to grace the Supreme Court be that far out of the mainstream? What would be the opinions of a man who is such a pillar of the bar and still fails to understand the Bill of Rights?

So it is with no little anticipation that one turns to the issues discussed in the minority report to find just which of Mr. Rehnquist's opinions bar him from the Court service. One expects not merely that he will have debatable opinions on debatable topics. Certainly the four Senators disagree on many things with Lewis F. Powell Jr., the other Supreme Court nominee before the Senate, but they voted to approve him. So in Mr. Rehnquist's case one expects more extreme opinions, those further out of the mainstream on the right, say, than Justice William O. Douglas is on the left.

As sort of a benchmark, recall Justice Douglas' popular book arguing, "We must realize that today's establishment is the new George III. Whether it will continue to adhere to his tactics, we do not know. If it does, the redress, honored in tradition, is also revolution." What right-wing outrages has Mr. Rehnquist uttered, one wonders, that are further from the mainstream than *that?*

As the confirmation hearings started, the best bet for that sort of outrage seemed to lie in the Justice Department position on wiretapping. As the department's chief legal adviser, Mr. Rehnquist must bear no small responsibility for that position, and the department has argued that the Executive Branch has an "inherent right" to wiretap without court order in national security cases. This is tantamount to an assertion that neither Congress nor the courts can control executive wiretapping, and certainly does suggest an insensitivity to the spirit of the Bill of Rights.

Alas for Mr. Rehnquist's critics, though, it turns out that on his advice the Justice Department has dropped the "inherent right" argument in current briefs before the Supreme Court. It now merely argues that in the particular instances of the case, the tap in question was not an "unreasonable" search barred by the Fourth Amendment. He says that the effect of the change is "to recognize that the courts would decide whether or not this practice amounted to an unreasonable search."

Mr. Rehnquist declined to give his personal views, as opposed to the Justice Department position, but he did defend the department's current arguments on the grounds that there are substantial legal questions unresolved, and the Executive is obligated to make its side of the case. "Five preceding administrations have all taken the position that the national security type of surveillance is permissible . . . one Justice of the Supreme Court has expressed the view that the power does exist, two have expressed the view that it does not exist . . . one has expressed the view that it is an open question . . . the government is entirely justified in presenting the matter to the court for its determination."

WIRETAPPING OF RADICALS

This did not satisfy the four critical Senators. They noted that the current issues are somewhat different from those of preceding administrations, not least because the current argument is about wiretapping not of foreign agents but of domestic radicals. The change in the department's position is "more cosmetic than real," they argued, because it is still defending wiretapping rules that would not "provide an adequate restraining effect on the Executive Branch, an adequate deterrent to protect the right of privacy."

For those who may find this particular dispute a matter not of extremist opinions but of reasonable men differing, the minority also delves into Mr. Rehnquist's widely quoted opinion on government surveillance of individuals, that is, not wiretapping but the recording of their activities in public places. In warning against overly restricting such surveillance, he once said, "I think it quite likely that self-restraint on the part of the Executive Branch will provide an answer to virtually all of the legitimate complaints against excesses of information gathering."

During the hearings, Mr. Rehnquist noted that in his remark he was addressing the question of whether new legislation is needed in addition to the Bill of Rights and laws already on the books, and that the remark must be understood in that context. In colloquy at the time, he conceded that widespread surveillance should be "condemned," and that an individual might already have legal recourse against a government tail. But in considering the argument that surveillance is unconstitutional because it has a "chilling effect" on freedom of expression, he said any such effect is a question not of constitutional law but of fact. And, "those activities didn't prevent, you know, two hundred, two hundred fifty thousand people from coming to Washington on at least one or two occasions to, you know, exercise their First Amendment rights, to protest the war policies of the President. . . ."

The minority report argues that even if 250,000 appeared, others may have been deterred by surveillance. It agrees that the committee's majority report correctly describes Mr. Rehnquist's attitude: "Information-gathering activity may raise first amendment questions if it is proven that citizens are *actually* deterred from speaking out." The minority argues that this is precisely the problem, "the difficulty of proving a specific chilling effect is obvious, and the notion that a First Amendment question isn't even *raised* until it is 'proven that citizens are *actually* deterred from speaking out' (emphasis in original) is alarming."

But if Mr. Rehnquist's opinions here are outrageously extreme, it would seem, so are the opinions of the majority of the Senate Judiciary Committee. Similarly if his defense of the constitutionality of such laws as "no-

knock" raids and "preventive detention" in the District of Columbia are out of the mainstream, the mainstream does not include the majority of both houses of Congress. So what mostly remains is the question of Mr. Rehnquist's attitudes on the racial issue.

The minority report does not make too much of allegations that Mr. Rehnquist harassed black voters when he was involved in Republican voter challenging teams in Phoenix, but it also does not dismiss them as the majority did. Some of his black opponents have come up with affidavits charging he was personally involved in harassment, and his supporters have come up with a defense of his challenging activities and attitude by a sometime counterpart on the Phoenix Democratic challenging team. The minority report says, "Each Senator will have to decide for himself what weight—if any—to give either the charges or the blanket denial."

On the nominee's general racial attitudes, the majority report also came up with a letter from the principal of the elementary school Mr. Rhenquist's children attended in Phoenix. "Mr. Rhenquist became known to me when I was a teacher here at Kenilworth School. He had moved his family into Phoenix Elementary School District from one of the outlying suburban, and predominantly middle socio-economic, school districts. He wanted his children to have experience and associations with children from minority groups, as well as with the different socio-economic groups."

The minority report argues that "Mr. Rehnquist's record fails to demonstrate any strong affirmative commitment to civil rights, to equal justice for all citizens, let alone a level of commitment which would rebut the strong evidence of insensitivity to such rights." The evidence the report discusses at greatest length is a letter Mr. Rehnquist wrote to The Arizona Republic in 1967, responding to remarks on school integration by Phoenix School Superintendent Howard Seymour.

The minority report says, "The truly alarming aspect of the 1967 letter, however, is Mr. Rehnquist's statement, 13 years after Brown V. Board of Education that 'We are no more dedicated to an "integrated" society than we are to a "segregated" society' . . . Yet at least since the Supreme Court declared that 'separate is inherently unequal,' this nation has not been neutral as between integration and segregation; it stands squarely in favor of the former. And if Mr. Rehnquist does not agree, he is outside the mainstream of American thought and should not be confirmed."

A FREE SOCIETY

The statement in the original letter that must be located with respect to the mainstream runs, "Mr. Seymour declares that we 'are and must be concerned with achieving an integrated society.' . . . But I think many would take issue with his statement on the merits, and would feel that we are no more dedicated to an 'integrated' society than we are to a 'segregated' society; that we are instead dedicated to a free society, in which each man is equal before the law, but in which each man is accorded a maximum amount of freedom of choice in his individual activities."

Mr. Rehnquist's extremist position on civil rights, then, turns out to be nothing more than the familiar proposition that the Constitution is color-blind. On surveillance he believes that at this moment the scales are not tipped in such a way that dissent is "chilled." On wiretapping he believes the government side of the national security question deserves its day in court. These opinions, the minority report suggests, are so outrageous the nominee should be defeated.

As the Senate debates the nomination, it seems, it will have to decide more than whether it's proper to weigh a nominee's philosophy. It also needs to weigh whether words like "extreme" and "out of the mainstream" better describe Mr. Rehnquist's philosophy, or the position his critics have been forced to take to oppose him.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

The PRESIDING OFFICER (Mr. CHILES) 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 the Senate proceedings.)

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had passed the bill (S. 248) for the relief of William D. Pender, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House insisted upon its amendment to the joint resolution (S.J. Res. 176) to extend the authority of the Secretary of Housing and Urban Development with respect to interest rates on insured mortgages, to extend and modify certain provisions of the National Flood Insurance Act of 1968, and for other purposes, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. PATMAN, Mr. BARRETT, Mrs. SULLIVAN, Mr. REUSS, Mr. ST GERMAIN, Mr. ANNUNZIO, Mr. WIDNALL, Mrs. DWYER, Mr. J. WILLIAM STANTON, and Mr. BROWN of Michigan were appointed managers on the part of the House at the conference.

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

H.R. 3786. An act to provide for the free entry of a four octave carillon for the use of Marquette University, Milwaukee, Wis.;

H.R. 4678. An act to provide for the free entry of a carillon for the use of the University of California at Santa Barbara;

H.R. 6912. An act for the relief of William Lucas (also known as Vasilios Loukatis);

H.R. 7316. An act for the relief of Mrs. Norma McLeish; and

H.R. 8540. An act for the relief of Eleonora G. Mpolakis.

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (S. 2007) to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964, and for other purposes.

HOUSE BILLS REFERRED

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

H.R. 3786. An act to provide for the free entry of a four octave carillon for the use of Marquette University, Milwaukee, Wis.; and

H.R. 4678. An act to provide for the free entry of a carillon for the use of the University of California at Santa Barbara; to the Committee on Finance.

H.R. 6912. An act for the relief of William Lucas (also known as Vasilios Loukatis);

H.R. 7316. An act for the relief of Mrs. Norma McLeish; and

H.R. 8540. An act for the relief of Eleanora G. Mpolakis; to the Committee on the Judiciary.

NOMINATION OF WILLIAM H. REHNQUIST

The Senate continued with the consideration of the nomination of William H. Rehnquist to be Associate Justice of the Supreme Court of the United States.

Mr. CRANSTON. Mr. President, I have been on the floor through the amount of time I have been able to be here throughout this debate on the Supreme Court nominations. I have reviewed the Judiciary Committee report and the individual views filed by some of the members of the committee. I have read quite widely on the views and on the record of Mr. Rehnquist.

However, since I am not a member of the committee and was unable to attend the committee sessions and engage in the questioning there and am not as fully informed as I would like to be in considering this nomination and taking my position with full cognizance of all the relevant facts and opinions, I would like at this time to address some questions to the Senator from Indiana (Mr. Bayh), who has probably looked into this matter as deeply as anyone on the Senate floor, who is a member of the committee, who has engaged in the deliberations of the committee, and who, I gather, has been on the floor through virtually all the discussions.

Therefore, I would like to ask the Senators from Indiana if he would respond to some inquiries that I would like to put to him.

Mr. BAYH. Mr. President, I am glad to yield to my colleague from California and to answer as best I can. I have been a member of the Judiciary Committee, and, as a result of that responsibility, have had the opportunity to explore most of the facts, as much as one Senator possibly can do.

Mr. CRANSTON. I thank the Senator. I know that not only has he participated to the fullest extent possible, but that he has the ability to cut through to the heart of each matter. Therefore, I am particularly interested in his view of some aspects of the nomination and the record of the nominee.

First of all, I am correct in my understanding, am I not, that the nominee has actively supported the Nixon administration's wiretapping position?

Mr. BAYH. There is no question about the fact that the nominee has not only supported the administration's wiretapping position, but has been one of the most eloquent spokesmen on various college campuses and before various meetings in articulating the validity and the reasons behind this particular position.

Mr. CRANSTON. What have the courts said on this issue? What is the state of the law at this point in regard to this matter, which I think is one of the most important relating to the liberties of each of us?

Mr. BAYH. Of course, the 1968 act, as the Senator from California knows, provided for wiretapping with court order in certain circumstances. The key question which now presents itself to the country and to the Court is over the limits on uncontrolled executive wiretaps. It has been generally concluded that the President has the right, without a court order, to tap, bug, and provide electronic surveillance in those instances of subversion which are characterized as foreign in nature. The effort now is to suggest that he should also have this unchecked, unfettered right to become involved in those instances where there is no foreign element involved, but where the insurrection comes from within.

I think the best way to describe the distinction between the two groups would be to say one involves foreign nations, where persons are landed by submarine or by parachute and set up a cell in Los Angeles or Indianapolis. It is generally accepted that that is a foreign source and that the President, under past precedent, has the right to bug without court order.

The other would be a band of students who are concerned with the state of the Nation, and for some reason or other they are interpreted by the Justice Department to be cause for surveillance.

That particular example, or one very similar thereto, is presently before the Court, and I might read a couple of quotations from the sixth circuit, which has ruled against the uncontrolled executive authority to tap in the case of domestic insurgency.

The court said as follows:

> The Fourth Amendment was adopted in the immediate aftermath of abusive searches and seizures directed against the American colonists under the sovereign and inherent powers of King George III. The United States Constitution was adopted to provide a check upon such powers. The creation of three coordinate branches of the government by that Constitution was designed to require sharing in the administration of that awesome power.

Here we are talking about one of the basic distinctions between the U.S. Constitution and what had happened in the colonies, which precipitated the quest for independence. The sixth circuit concluded, in ruling against this executive power, by saying:

> The government has not pointed to and we do not find one written phrase in the Constitution, in the statutory law, or in the case law of the United States, which exempts the President, the Attorney General, or Federal law enforcement officers from the restrictions of the Fourth Amendment in the case at hand.

Now, the Supreme Court has granted certiorari in this case, so it is before the Court. It would seem, from looking at the record, that because of the nominee's very personal involvement in helping to write the Government's brief in the case, he will probably not sit on that case. But that is the issue that is drawn now. And I might just add that Mr. Powell, who is now Mr. Justice Powell, or will be as soon as the oath has been given him, displayed at the hearings great sensitivity to the problems involved. It is his judgment that in most cases it would be relatively easy to make a distinction between foreign and domestic subversives, and thus to tell where the line is drawn, and it is Justice-to-be Powell's opinion, as it is mine, that the factors to be considered are quite different before we permit any unchecked bugging of the citizens of this country.

I am not suggesting, and I am sure the Senator from California does not suggest, that there could not be insurrections brewing within sight of the Capitol, and certainly the Government of the United States has the right and the responsibility to protect itself against insurgents from all sources. But it is possible under the present law, unquestionably, for the President of the United States to go to a Federal district court and get a court order, and then to eavesdrop, to bug, or to provide electronic surveillance for the domestic type of insurgency which the Department of Justice is so greatly concerned about.

Mr. CRANSTON. And that could be for something that is a domestic-type insurgency, not necessarily connected with any foreign threat.

Mr. BAYH. Yes; that is the question. If you have foreign agents who land by submarine, as we have had in past times, I think the severity of that threat and the protection to be provided against it is one thing. But if we had citizens of this country who were to be bugged by their own Government, then I just feel that we need to require of the Government a little restraint, a little safeguard, to see that that restraint is followed, and the requirement of a warrant provides this.

To suggest that the Federal Government has an inherent right to bug completely belies the point made by the Sixth Circuit Court. The very purpose of the Bill of Rights, whether it is the fourth amendment, the first amendment, or the 10th amendment—all of the Bill of Rights, those 10 amendments, were specifically designed to provide checks, to deny inherent rights and inherent power to the Government, and I still feel that is good law today.

Mr. CRANSTON. If Mr. Rehnquist's view became the view of the Court, would that mean that there would be a change in the interpretation of the law and the Constitution and a change in the situation as it now prevails, so that in that new, changed circumstance, the Attorney General would have the right, without going to any court, to tap your wire, my wire, any Senator's or Congressman's wire, or any citizen's wire, simply for the alleged purpose of dealing with a domestic threat, without having to prove anything in any court before proceeding on his own power of decision to do that?

Mr. BAYH. I do not think any of us know what the mathematics of the Court is right now on this question.

Mr. CRANSTON. No, I say if his view did prevail on the Court.

Mr. BAYH. If his view did prevail, it would clearly, then, give the President broad, sweeping, unfettered power to conduct electronic surveillance against citizens of this country who he may feel are involved in subversive activities against it.

Again, I think it is important for us to underline the fact that if we are going to have a free government, it must be able to protect itself, and thus I think it would be very naive not to be able to recognize that there could well be, either now or at some future time, a domestic insurrection that requires electronic surveillance, so that the Government can protect itself.

But are we so sterile of thought, are we so lacking in dedication to the principles which put this country on the road as a free nation in the first place, that we believe the only way we can protect our freedoms is by destroying them?

The Senator from Indiana is not willing to accept that philosophy. I believe we can provide protection for the Government at the same time that we provide safeguards against abuses of power by the Executive.

Mr. CRANSTON. Under this circumstance, if we were guided by the thinking of Mr. Rehnquist in these matters, the Attorney General, one man, solely on his own power of decision, could make the decision that he wanted someone wiretapped for reasons that might not be clear to anyone else, and that would not be tested by anyone else's power of decision, and then it would be permissible for the Government to place a tap on that individual's phone. Do I understand the Senator correctly insofar as he understands Mr. Rehnquist's position?

Mr. BAYH. Yes. The Senator's interpretation is accurate. There is some distinction between the President and the Attorney General, but the Government claims, since the Attorney General is acting for the President as the agent and chief lawyer for the President, that he has the same right to do it, because he would not become involved in the question unless he had the approval of the President. That is compounding the danger, it seems to me.

Mr. CRANSTON. There is another aspect of this question which is not directly related to Mr. Rehnquist's nomination, except that he would, if on the Court, perhaps participate in a decision that would change the current circumstances. That relates to the fact that the present Attorney General is the man who served as the President's partisan campaign manager in the election of 1968, and according to press reports he will serve as the President's campaign manager in 1972, and presumably would leave the Department of Justice at that point.

I personally wonder about the desirability of letting one man who has that political responsibility or has held that responsibility in the past and will hold it in the future, and is not totally aloof from politics at the present time, have this authority that is vested in the Attorney General. I must confess that it was a Democrat—it happened to be Harry Truman, a President whom I greatly respected—who made the first appointment, I believe, of an Attorney General to serve as chairman of the Democratic National Committee during the time that

he served as Attorney General, which I think was an unwise move; and the role that Mr. Mitchell plays in the current administration is somewhat analogous to that.

In prior times, the Postmaster General used to be the Cabinet member selected for exercising this great political authority now vested in the Attorney General. I think that was far wiser, because while maybe there might be an invasion of freedom by looking at somebody's mail, I think that is a thing quite apart from the great authority vested in the Attorney General with respect to wiretaps and surveillance, on the exercise of which authority Mr. Rehnquist finds no constitutional restraints.

I ask the Senator from Indiana his feeling about mixing the Attorney General to this degree into political responsibilities, when we are dealing with the vast powers the Attorney General now has and the even vaster powers the Attorney General would have if Mr. Rehnquist had his way.

Mr. BAYH. I share the concern of the Senator from California. In fact, I expressed this concern in the hearings. It seems to me that this makes good logic for providing that safeguard independent from the executive branch.

Interestingly enough, we have had two recent Presidents—we do not have to go back as far as Harry Truman—but President Kennedy appointed his personal political adviser as Attorney General, and President Nixon has done the same. I think that to suggest that this is a political argument in which Democrats are trying to deny this power to Republicans is inaccurate. I do not think that a Democratic or a Republican Attorney General or a Democratic or a Republican President ought to have this so-called vested right to bug unchecked.

If electronic surveillance needs to be conducted in a given situation, I think the President and the Attorney General ought to go to court and say, "Here is probable cause to believe that X, Y, and Z is happening. That is why we need the bug." That is particularly so when you get into the domestic surveillance situation, because there the whole reason for surveillance is that citizens of this country want to overthrow the Government.

Frankly, I may say that I am very much desirous of changing the Government. I would like to see a different President. I had that position back in 1968. I want to use the ballot box, and I want to use lawful means. But the line between those who want to peacefully change the Government and those who may want to take to the streets and resort to violence sometimes is a very narrow line. It seems to me it puts the Government on a sounder basis, and it certainly goes much further to protect the individual liberties of the citizens of this country, to say that the President and his chief law enforcement officer, who is now his chief political adviser, should not make that determination. A judge who has no political ties, who is out of the political syndrome, should make the determination as to whether this is based on fact or on politics.

I suppose the Attorney General, under this authority, if it were granted to him, could begin to wonder whether some people who seemed to be prepared to use the ballot box to achieve change in our Nation are even thinking about the possibility of going in a different direction, by a violent route, so that they can be prepared, and on that ground you could tap almost anybody's wire, and one man would make that decision.

I suppose that in the light of what I have just said about favoring a change of Government, that might be good reason for my wire to be tapped. In fact, it may have been tapped before now. I do not know.

I think it is important for those of us who are concerned about this increased power on the part of the Federal Government not to be naive. We have to recognize that there may, indeed, be circumstances which would require the President to have access to electronic surveillance. I hate to think about it. It is despicable. But in the area of organized crime and in the area of some types of subversive activities, I suppose the Senator from Indiana could stretch his thoughts on that.

On the other hand, as I said a moment ago, I think it is very important for those who are concerned with and have the responsibility for enforcing the law, and thus for protecting our country, not to utilize those tactics to protect our freedom—in essence, take our freedoms away and destroy them. The history of man is filled with well-intentioned pronouncements that this junta is going to take over so that freedom can be restored, or that this dictator, in addition to running the trains on time, is going to restore free government.

I do not suggest that we are presently close to having a junta or a dictator. In my judgment, the freedoms of this country are strong. They are inculcated in the minds of the people. I do not think there is going to be a Benito Mussolini or some general who mounts a white charger at the Pentagon and gallops across the 14th Street bridge and ensconces himself at the White House. I do not think that is the way we will lose our freedoms. If we lose our freedoms—and I hope and pray we do not—I think they will be lost a word at a time, a line at a time, a law at a time, an Executive order at a time—perhaps a Supreme Court decision at a time; and that the people of the country will not know what they have lost until it is too late to do anything about it.

That is why I am concerned about the position of this nominee on the matter of electronic surveillance and the right to privacy, as well as the general area of civil rights and human rights.

Mr. CRANSTON. In the same way that I believe we can defend our Nation from a foreign threat without resorting to atomic weapons, I feel we can preserve and keep secure our Nation from domestic threats without resorting to wiretapping. In my view, that threat of wiretapping erodes the freedoms and a sense of confidence in his individual freedom of every American who is aware of the fact that his wire may be tapped at any moment. I am constantly shocked by the number of people in public life and in private life who are uncertain about the freedom they have when they talk on the telephone. To me that is a very frightening thing, and I totally concur with the Senator that we must do all we can to provide greater confidence in their privacy on the part of individual citizens.

Mr. BAYH. The nominee's philosophy and his beliefs in this general area, as I am sure the Senator from California knows, go beyond the technical area that we have talked about here. Here we have been talking about what are traditionally known as fourth amendment rights, but the nominee's philosophy has expanded broadly into what rapidly becomes at least partially first amendment rights—the right to free speceh, free association, and to petition government for redress of grievance.

If the Senator has the time between now and the vote on this nominee to read the hearings of the Subcommittee on the Judiciary, chaired by the distinguished Senator from North Carolina (Mr. ERVIN) and see the responses of the nominee to some of the questions raised by the Senator from North Carolina, he will see it is a rather frightening thing, because here is a man who says that there is no constitutional question in the right to privacy where surveillance is involved. In my view there is a serious constitutional question in this area. In essence if we put this man on the Court, we will at least provide one additional vote to undermine this view and thus our constitutionally protected right to privacy.

Mr. Rehnquist even went so far as to suggest he saw no constitutional question with respect to putting a tail on the distinguished Senator from North Carolina—a tail that would not be attached, I hasten to say to my colleague, but one which would be in the area of surveillance. This is a matter of grave concern to the Senator from Indiana.

Mr. ERVIN. Mr. President, since my good friend, the Senator from Indiana, has brought me into this colloquy, I hope that the Senator from California will yield to me for some observations concerning those hearings.

Mr. CRANSTON. I am delighted to yield to the distinguished senior Senator from North Carolina. I have great respect for him. I am seeking illumination, and I seek it from him as well as from the Senator from Indiana.

Mr. ERVIN. I had occasion to observe Mr. Rehnquist and listen to his testimony before the Senate Subcommittee on Constitutional Rights, of which I have the honor to be chairman, and before the Senate Subcommittee on Separation of Powers, of which I also have the honor of being chairman. While Mr. Rehnquist did not agree with me on the application of the Constitution to all of the questions which arose in those hearings, I am constrained to say that observing his demeanor while testifying, and listening to his testimony, he left me with the abiding conviction that he is a diligent student of the law, that he is a man of intellectual integrity, that he has a fundamental devotion to the Bill of Rights, and that he possesses what Chief Justice John Marshall declared in Marbury against Madison to be the necessary

qualification to serve on the Supreme Court of the United States, and that is an ability and a willingness to accept the Constitution as the rule for the guidance and control and government of his official actions. I do not know that I can point out the qualifications of any man in any more acceptable fashion than to say that.

It is true Mr. Rehnquist and myself disagreed on several occasions and he did inadvertently remark on one occasion that the Federal Government could even place me under surveillance. I told him that if it did so it would be a waste of time because, unfortunately, the statute of limitations has run on all the really evil things I have ever done. [Laughter.]

Mr. Rehnquist modified that statement later, as I recall, by stating that the Government has no power to place a man under surveillance unless it has reasonable cause to believe that he had committed a crime or is about to commit a crime. I think that is a correct proposition of law.

I was urged by some of my colleagues and friends to oppose the nomination of Mr. Rehnquist on the grounds that he had disagreed with me on the application of constitutional principles under certain circumstances. I said that I could not oppose a man for a position on the Court on that basis. I had the privilege, before coming to the Senate, of serving on the Supreme Court of the State of North Carolina with six other members whom I knew to be great lawyers, great citizens, great patriots, and great Americans.

I am bound to confess that on several occasions I disagreed with one or more, or on some occasions with a majority of the members of the Supreme Court of North Carolina with whom I served. I do not proscribe a man from public office who does not accept my sound views on all matters if he reaches what I consider to be honest conclusions different from mine.

With all due respect to the views of my good friend from Indiana, and his sincere convictions regarding the nominee, which are contrary to mine, I am compelled to say that the Constitution of the United States will be just a little bit safer if we have such a person as Mr. Rehnquist serving on the Court.

I say that notwithstanding the fact that he and I will probably differ on the application of constitutional principles, to certain circumstances, on a number of occasions.

I thank the Senator for yielding to me. I just wanted to interject myself into this colloquy in view of the fact that my friend from Indiana mentioned my name.

Mr. CRANSTON. Let me address a question to the distinguished Senator from North Carolina while he is present. I know of his devotion to the Constitution, his devotion to his country, and I know of his grave concern about the issue of the invasion of the individual privacy of citizens, whether in public or private life, by the Government.

There is one particular statement of Mr. Rehnquist that gave me great concern and I would be very much interested in the Senator's reaction to that particular statement. That was his statement that, in matters of surveillance, he would be quite content to rest or put his faith in the executive branch's exercising self-restraint in this matter, as if the constitutional guarantees and the checks-and-balances system are really not necessary.

Here is the actual quote:

> I think it quite likely that self-restraint on the part of the Executive Branch will provide the answer to virtually all of the legitimate complaints against excesses of information gathering.

Mr. ERVIN. That is an expression of a point of view which is entertained by many people. On a number of occasions when I have joined the Senator from Indiana and the Senator from California, and other Senators, who hold libertarian views on the floor of the Senate I have found on some occasions that a majority of the Senate accepted the thesis which Mr. Rehnquist stated on that subject.

A man who is a member of the executive branch of the Government has more confidence in its capacity for rectitude than those of us who happen to think the greatest threat to individual liberty comes from government.

Mr. CRANSTON. I concur totally on that latter concern.

Mr. ERVIN. For that reason, I am in favor of chaining—as Thomas Jefferson once said—Government officials with the Constitution in order that individual liberties may be safe. But there are a great many people who believe that we can trust the executive branch, or the Congress, or the President, or even the courts with unlimited power, and not subject them to external restraints. I do not share that philosophy, but Mr. Rehnquist said that ordinarily we could rely on the executive branch of the Government to protect the rights of the individual. Fortunately, I think that we can, too, ordinarily, but there do come times, perhaps, in the history of a nation, when ordinary conditions may not prevail.

Mr. CRANSTON. When the Senator was referring to recent statements on this issue on the Senate floor, was it not in reference to the battle over no-knock?

Mr. ERVIN. Yes—no-knock and——

Mr. BAYH. Also preventive detention.

Mr. ERVIN. Yes, also preventive detention.

Mr. CRANSTON. Is that not quite a different situation, particularly no-knock, at least, where a warrant issued by a judicial officer, is required before we can proceed on a no-knock basis?

Mr. ERVIN. The no-knock provision I was fighting was a provision which gave lipservice to the fourth amendment, but failed to comply with its spirit or even its letter.

I have no information whatever about Mr. Rehnquist's activities with regard to no-knock or preventive detention laws. I conducted extensive hearings for the Subcommittee on Constitutional Rights with respect to these matters, and the man who appeared for the administration's point of view was Deputy Attorney General Richard G. Kleindienst, not Mr. Rehnquist. The administration was represented in the House Committee on the District of Columbia by Mr. Donald E. Santarelli, from the Office of the Deputy Attorney General. He was the only official of the Government that appeared before the House committee to advocate the adoption of preventive detention laws.

Mr. CRANSTON. I brought up no-knock only because I thought the Senator was referring to that when he was talking about the recent Senate issue related to this question. I stood with the Senator from North Carolina on every vote on that matter, as he recalls.

Mr. ERVIN. On every occasion since he came to the Senate, the distinguished Senator from California has manifested himself to be a great libertarian, a man who prizes above everything the basic freedoms of the individual. I have stood shoulder to shoulder with him on several occasions fighting for what he and I believe to be those basic rights.

Mr. CRANSTON. We have.

Mr. ERVIN. I can say the same thing for the distinguished Senator from Indiana.

Mr. CRANSTON. My point was that under the 1968 statute you referred to a warrant is required for no-knock.

Mr. ERVIN. Yes, of course, the no-knock statute was an exercise in legal and linguistic absurdity. The fourth amendment requires that a search warrant must be based on probable cause.

The no-knock laws that the Senate passed, over the objections of the Senator from California and myself, gave lipservice to the requirement of probable cause. But under those laws, if an officer appears before a judge or a magistrate and applies for a no-knock warrant, he can obtain a no-knock warrant by engaging in a prophecy in respect to what may happen at the time he undertakes to execute the no-knock warrant at some other time and some other place after the search warrant is obtained. And I consider that to be an absolutely invalid proposition, because probable cause can be based only upon facts existing and known at the time the search warrant is applied for.

A search warrant, in my judgment, cannot be constitutionally issued upon the basis of fears or prophecies or predictions of what might happen at some future time when the officer undertakes to execute the search warrant.

Mr. CRANSTON. Mr. President, as I understand it, on the question of preventive detention, as with no-knock statute, it also deals with the decision of a judicial officer. But, with respect to wiretap or surveillance as Mr. Rehnquist would like it to be, the Attorney General, without consulting any court in any way, shape, of manner, could decide to invade an individual's privacy.

If the fellow who is being wiretapped under such a situation were to discover it, there is no way after the fact that he can get at the problem. Under Mr. Rehnquist's view, he could not get a writ of mandamus against the Attorney General if he felt he was being harassed. It seems to me that Mr. Rehnquist is taking a very extreme view in so narrowly construing the Bill of Rights.

Mr. ERVIN. Mr. President, I do not know what view he has on that subject. However, I have noticed over the years that an Assistant Attorney General, or other lesser legal light in the Department of Justice, usually comes down as an advocate of the position taken by the incumbent administration. His arguments are made to sustain the administration position and do not necessarily express his own views.

There is a remedy for the situation which the Senator from California describes, and that is a motion to suppress the evidence obtained by an illegal search and seizure.

I rejoice in the fact that Judge Edwards, of the Michigan circuit, has written one of the greatest opinions that I have read lately. He repudiates in his opinion, the position of the Department of Justice, that the President has the inherent power to wiretap the conversations of individuals suspected of being engaged in domestic subversion.

I do not know exactly what domestic subversion is, except I have noticed that people who use that term a great deal usually apply it to the people who happen to disagree with them on fundamental matters.

Mr. CRANSTON. Mr. President, the Senator from North Carolina got right at the heart of the matter with that remark.

Mr. BAYH. Mr. President, if the Senator will yield, I want to assure the Senator from North Carolina that the context in which I brought his name into debate was intended to be of a laudatory nature.

Mr. ERVIN. Mr. President, the Senator has been very generous in all references he made to me, even on occasions when he and I had reached diametrically opposed views on certain questions. And I appreciate that attitude on the part of the Senator from Indiana.

Mr. BAYH. I thank the Senator, and I appreciate his remark.

The thing concerning the Senator from Indiana, and the reason I brought the committee and the personal investigation of the Senator from North Carolina into the debate, is that we are now being asked to put a man on the Supreme Court who, like all past and present Supreme Court Justices, will not only sit in judgment of what the Attorney General does, but will also sit in judgment of what each State legislature does in its law enforcement and lawmaking capacity.

There is a general pattern of public statements, speeches, articles and, indeed, in testimony before the Judiciary Committee—not just the subcommittee chaired by the distinguished Senator from North Carolina, but the full Judiciary Committee—when Mr. Rehnquist himself was there, not to express the views of the Attorney General or the President, but to give us the views of William Rehnquist, nominee to Associate Justice of the Supreme Court of the United States, which I find disturbing.

He did say, as the Senator from California accurately noted, that he felt in most instances self-restraint would be sufficient to curtail abuse on the part of the Executive. And he did say in response to the Senator from North Carolina (Mr. ERVIN) at the hearings—and I wish I had mentioned this before the Senator from North Carolina left, because it is on point—when the Senator from North Carolina asked the following question:

Senator ERVIN. I would agree with you to the extent that it would not constitute a violation of the Fourth Amendment where surveillance is had of people in public places because there is no search and there is no seizure, no search of a home or building and no search of papers and no seizure, but do you not concede that government could very effectively stifle the exercise of First Amendment freedoms by placing people who exercise those freedoms under surveillance?

Mr. REHNQUIST. No, I don't think so, Senator. It may have a collateral effect such as that, but certainly during the time when the Army was doing things of this nature, and apparently it was fairly generally known that it was doing things of this nature, those activities didn't prevent, you know, two hundred, two hundred fifty thousand people from coming to Washington on at least one or two occasions to, you know, exercise their First Amendment rights, to protest the war policies of the President.

In other words, when we talk about the right of privacy, we are talking not only about the fourth amendment rights but also first amendment rights, 14th amendment rights, and I think the Supreme Court even said ninth amendment rights. When they said there is a right, They consider this to be an umbrella right.

And when the Senator from North Carolina asked:

Do you not concede that Government could very effectively stifle the exercise of the First Amendment freedoms by placing people who exercise those freedoms under surveillance.

Mr. Rehnquist said:

No, no. I don't think so, Senator.

That is about as plain as it can possibly be. Mr. Rehnquist, Associate Justice-to-be Rehnquist, said at the hearings that he did not believe there was a chilling effect as far as surveillance was concerned. And that, in his view, right of privacy is not involved in this problem.

Mr. President, I perhaps should make clear that the testimony to which I just alluded, the exchange between the Senator from North Carolina and Mr. Rehnquist over the exercise of first amendment rights and the chilling effect, was before the subcommittee of the Senator from North Carolina.

Mr. Rehnquist made other statements concerning his views on the right of privacy and the power of the Executive to engage in surveillance before the full Judiciary Committee when it was holding hearings on his nomination.

Mr. CRANSTON. Mr. President, the Senator from Indiana qualified his language in reference to Mr. Rehnquist's views by saying that he has indicated he felt executive branch good faith would suffice to protect against unwarranted invasions of privacy in most cases.

The quotation I read was that self-restraint on the part of the executive branch will provide an answer to virtually all legitimate complaints against excesses of information gathering.

However, the nominee made a still more extreme statement in a speech entitled, "Private Surveillance," on March 17, 1971, when he said:

I do not believe, therefore, that there should be any judicially enforceable limitations on the gathering of this kind of public information by the executive branch of the government.

He said nothing about virtually no restraint, he said absolutely no restraint at all.

It is my understanding that we have been discussing the first amendment and the chilling effect on free expression and freedom of association as far as individuals are concerned in terms of the surveillance and the harassment that inevitably accompanies it.

I gather that Mr. Rehnquist is more concerned about the chilling effect on the Government if additional restraints were available to be imposed on the executive branch in its surveillance activities.

I had not been aware in any informed way of the involvement of the matter of the fourth, ninth, and 14th amendments. Could the Senator explain how they get into the picture?

Mr. BAYH. The key case on this matter is Griswold against Connecticut, which is a landmark case on the right to privacy. I think it was Justice Goldberg who wrote eloquently in that case, as did other concurring Justices.

I do not have the material in my files before me, but I ask unanimous consent that I may have that case printed in the RECORD.

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

GRISWOLD AGAINST CONNECTICUT, SYLLABUS, GRISWOLD ET AL. AGAINST CONNECTICUT

APPEAL FROM THE SUPREME COURT OF ERRORS OF CONNECTICUT

(No. 496. Argued March 29–30, 1965.—Decided June 7, 1965.)

Appellants, the Executive Director of the Planned Parenthood League of Connecticut, and its medical director, a licensed physician, were convicted as accessories for giving married persons information and medical advice on how to prevent conception and, following examination, prescribing a contraceptive device or material for the wife's use. A Connecticut statute makes it a crime for any person to use any drug or article to prevent conception. Appellants claimed that the accessory statute as applied violated the Fourteenth Amendment. An intermediate appellate court and the State's highest court affirmed the judgment. *Held:*

1. Appellants have standing to assert the constitutional rights of the married people. *Tileston* v. *Ullman*, 318 U.S. 44, distinguished. P. 481.

2. The Connecticut statute forbidding use of contraceptives violates the right of marital privacy which is within the penumbra of specific guarantees of the Bill of Rights. Pp. 481–486.

151 Conn. 544, 200 A. 2d 479, reversed.

Thomas I. Emerson argued the cause for appellants. With him on the briefs was *Catherine G. Roraback.*

Joseph B. Clark argued the cause for appellee. With him on the brief was *Julius Maretz.*

Briefs of *amici curiae,* urging reversal, were filed by *Whitney North Seymour* and *Eleanor M. Fox* for Dr. John M. Adams et al.; by *Morris L. Ernst, Harriet F. Pilpel* and

Nancy F. Wechsler for the Planned Parenthood Federation of America, Inc.; by *Alfred L. Scanlon* for the Catholic Council on Civil Liberties, and by *Rhoda H. Karpatkin, Melvin L. Wulf* and *Jerome E. Caplan* for the American Civil Liberties Union et al.

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Appellant Griswold is Executive Director of the Planned Parenthood League of Connecticut. Appellant Buxton is a licensed physician and a professor at the Yale Medical School who served as Medical Director for the League at its Center in New Haven—a Center open and operating from November 1 to November 10, 1961, when appellants were arrested.

They gave information, instruction, and medical advice to *married persons* as to the means of preventing conception. They examined the wife and prescribed the best contraceptive device or material for her use. Fees were usually charged, although some couples were serviced free.

The statutes whose constitutionality is involved in this appeal are §§ 52–32 and 54–196 of the General Statutes of Connecticut (1958 rev.). The former provides:

"Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned."

Section 54–196 provides:

"Any person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender."

The appellants were found guilty as accessories and fined $100 each, against the claim that the accessory statute as so applied violated the Fourteenth Amendment. The Appellate Division of the Circuit Court affirmed. The Supreme Court of Errors affirmed that judgment. 151 Conn. 544, 200 A. 2d 479. We noted probable jurisdiction. 379 U.S. 926.

We think that appellants have standing to raise the constitutional rights of the married people with whom they had a professional relationship. *Tileston* v. *Ullman*, 318 U.S. 44, is different, for there the plaintiff seeking to represent others asked for a declaratory judgment. In that situation we thought that the requirements of standing should be strict, lest the standards of "case or controversy" in Article III of the Constitution become blurred. Here those doubts are removed by reason of a criminal conviction for serving married couples in violation of an aiding-and-abetting statute. Certainly the accessory should have standing to assert that the offense which he is charged with assisting is not, or cannot constitutionally be, a crime.

This case is more akin to *Truax* v. *Raich*, 329 U.S. 33, where an employee was permitted to assert the rights of his employer: to *Pierce* v. *Society of Sisters*, 268 U.S. 510, where the owners of private schools were entitled to assert the rights of potential pupils and their parents; and to *Barrows* v. *Jackson*, 346 U.S. 249, where a white defendant, party to a racially restrictive covenant, who was being sued for damages by the covenantors because she had conveyed her property to Negroes, was allowed to raise the issue that enforcement of the covenant violated the rights of prospective Negro purchasers to equal protection, although no Negro was a party to the suit. And see *Meyer* v. *Nebraska*, 262 U.S. 392; *Adler* v. *Board of Education*, 342 U.S. 485; *NAACP* v. *Alabama*, 357 U.S. 449; *NAACP* v. *Button*, 371 U.S. 415. The rights of husband and wife, pressed here, are likely to be diluted or adversely affected unless those rights are considered in a suit involving those who have this kind of confidential relation to them.

Coming to the merits, we are met with a wide range of questions that implicate the Due Process Clause of the Fourteenth Amendment. Overtones of some arguments suggest that *Lochner* v. *New York*, 198 U.S. 45, should be our guide. But we decline that invitation as we did in *West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379; *Olsen* v. *Nebraska*, 313 U.S. 236; *Lincoln Union* v. *Northwestern Co.*, 335 U.S. 525; *Williamson* v. *Lee Optical Co.*, 348 U.S. 483; *Giboney* v. *Empire Storage Co.*, 336 U.S. 490. We do not sit as a super-legislature to determine the wisdom, need, and propriety of laws that touch economic problems, business affairs, or social conditions. This law, however, operates directly on an intimate relation of husband and wife and their physician's role in one aspect of that relation.

The association of people is not mentioned in the Constitution nor in the Bill of Rights. The right to educate a child in a school of the parents' choice—whether public or private or parochial—is also not mentioned. Nor is the right to study any particular subject or any foreign language. Yet the First Amendment has been construed to include certain of those rights.

By *Pierce* v. *Society of Sisters*, *supra*, the right to educate one's children as one chooses is made applicable to the States by the force of the First and Fourteenth Amendments. By *Meyer* v. *Nebraska*, *supra*, the same dignity is given the right to study the German language in a private school. In other words, the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge. The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read (*Martin* v. *Struthers*, 319 U.S. 141, 143) and freedom of inquiry, freedom of thought, and freedom to teach (see *Wieman* v. *Updegraff*, 344 U.S. 183, 195)—indeed the freedom of the entire university community. *Sweezy* v. *New Hampshire*, 354 U.S. 234, 249–250, 261–263; *Barenblatt* v. *United States*, 360 U.S. 109, 112; *Baggett* v. *Bullitt*, 377 U.S. 360, 369. Without those peripheral rights the specific rights would be less secure. And so we reaffirm the principle of the *Pierce* and the *Meyer* cases.

In *NAACP* v. *Alabama*, 357 U. S. 449, 462, we protected the "freedom to associate and privacy in one's associations," noting that freedom of association was a peripheral First Amendment right. Disclosure of membership lists of a constitutionally valid association, we held, was invalid "as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association." *Ibid.* In other words, the First Amendment has a penumbra where privacy is protected from governmental intrusion. In like context, we have protected forms of "association" that are not political in the customary sense but pertain to the social, legal, and economic benefit of the members. *NAACP* v. *Button*, 371 U. S. 415, 430–431. In *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, we held it not permissible to bar a lawyer from practice, because he had once been a member of the Communist Party. The man's "association with that Party" was not shown to be "anything more than a political faith in a political party" (*id.*, at 244) and was not action of a kind proving bad moral character. *Id.*, at 245–246.

Those cases involved more than the "right of assembly"—a right that extends to all irrespective of their race or ideology. *De Jonge* v. *Oregon*, 299 U. S. 353. The right of "association," like the right of belief (*Board of Education* v. *Barnette*, 319 U. S. 624), is more than the right to attend a meeting; it includes the right to express one's attitudes or philosophies by membership in a group or by affiliation with it or by other lawful means. Association in that context is a form of expression of opinion; and while it is not expressly included in the First Amendment its existence is necessary in making the express guarantees fully meaningful.

The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. See *Poe* v. *Ullman*, 367 U.S. 497, 516–522 (dissenting opinion). Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers "in any house" in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The Fourth and Fifth Amendments were described in *Boyd* v. *United States*, 116 U.S. 616, 630, as protection against all governmental invasions "of the sanctity of a man's home and the privacies of life."[1] We recently referred in *Mapp* v. *Ohio*, 367 U.S. 643, 656, to the Fourth Amendment as creating a "right to privacy, no less important than any other right carefully and particularly reserved to the people." See Beaney, The Constitutional Right to Privacy, 1962 Sup. Ct. Rev. 212; Griswold, The Right to be Let Alone, 55 Nw. U. L. Rev. 216 (1960).

We have had many controversies over these penumbral rights of "privacy and repose." See, *e.g.*, *Breard* v. *Alexandria*, 341 U.S. 622, 644; *Public Utilities Comm'n* v. *Pollak*, 343 U.S. 451; *Monroe* v. *Pape*, 365 U.S. 167; *Lanza* v. *New York*, 370 U.S. 139; *Frank* v. *Maryland*, 359 U.S. 360; *Skinner* v. *Oklahoma*, 316 U.S. 535, 541. These cases bear witness that the right of privacy which presses for recognition here is a legitimate one.

The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the *use* of contraceptives rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a "governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." *NAACP* v. *Alabama*, 377 U.S. 288, 307. Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding marriage relationship.

We deal with a right of privacy older than the Bill of Rights—older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

Reversed.

MR. JUSTICE GOLDBERG, whom THE CHIEF JUSTICE and MR. JUSTICE BRENNAN join, concurring.

I agree with the Court that Connecticut's birth-control law unconstitutionally intrudes upon the right of marital privacy, and I join

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Footnotes at end of article.

in its opinion and judgment. Although I have not accepted the view that "due process" as used in the Fourteenth Amendment incorporates all of the first eight Amendments (see my concurring opinion in *Pointer* v. *Texas* 380 U.S. 400, 410, and the dissenting opinion of Mr. JUSTICE BRENNAN in *Cohen* v. *Hurley*, 366 U. S. 117, 154), I do agree that the concept of liberty protects those personal rights that are fundamental, and is not confined to the specific terms of the Bill of Rights. My conclusion that the concept of liberty is not so restricted and that it embraces the right of marital privacy though that right is not mentioned explicitly in the Constitution [2] is supported both by numerous decisions of this Court, referred to in the Court's opinion, and by the language and history of the Ninth Amendment. In reaching the conclusion that the right of marital privacy is protected, as being within the protected penumbra of specific guarantees of the Bill of Rights, the Court refers to the Ninth Amendment, *ante*, at 484. I add these words to emphasize the relevance of that Amendment to the Court's holding.

The Court stated many years ago that the Due Process Clause protects those liberties that are "so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder* v. *Massachusetts*, 291 U. S. 97, 105. In *Gitlow* v. *New York*, 268 U.S. 652, 666, the Court said:

"For present purposes we may and do assume that freedom of speech and of the press—which are protected by the First Amendment from abridgement by Congress—are among the *fundamental* personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the States." (Emphasis added.)

And, in *Meyer* v. *Nebraska*, 262 U.S. 390, 399, the Court, referring to the Fourteenth Amendment, stated:

"While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also [for example,] the right . . . to marry, establish a home and bring up children . . . ."

This Court, in a series of decisions, has held that the Fourteenth Amendment absorbs and applies to the States those specifics of the first eight amendments which express fundamental personal rights.[3] The language and history of the Ninth Amendment reveal that the Framers of the Constitution believed that there are additional fundamental rights, protected from governmental infringement, which exist alongside those fundamental rights, protected from governmental infringement, which exist alongside those fundamental rights specifically mentioned in the first eight constitutional amendments.

The Ninth Amendment reads, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The Amendment is almost entirely the work of James Madison. It was introduced in Congress by him and passed the House and Senate with little or no debate and virtually no change in language. It was proffered to quiet expressed fears that a bill of specifically enumerated rights [4] could not be sufficiently broad to cover all essential rights and that the specific mention of these rights would be interpreted as a denial that others were protected.[5]

In presenting the proposed Amendment, Madison said:

"It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration; and it might follow by implication, that those rights which were not singled out, were intended to be assigned into the hands of the General Government, and were consequently insecure. This is one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system; but, I conceive, that it may be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the fourth resolution [the Ninth Amendment]." I Annals of Congress 439 (Gales and Seaton ed. 1834).

Mr. Justice Story wrote of this argument against a bill of rights and the meaning of the Ninth Amendment:

"In regard to . . . [a] suggestion, that the affirmance of certain rights might disparage others, or might lead to argumentative implications in favor of other powers, it might be sufficient to say that such a course of reasoning could never be sustained upon any solid basis. . . . But a conclusive answer is, that such an attempt may be interdicted (as it has been) by a positive declaration in such a bill of rights that the enumeration of certain rights shall not be construed to deny or disparage others retained by the people." II Story, Commentaries on the Constitution of the United States 626–627 (5th ed. 1891).

He further stated, referring to the Ninth Amendment:

"This clause was manifestly introduced to prevent any perverse or ingenious misapplication of the well-known maxim, that an affirmation in particular cases implies a negation in all others; and, *e converso*, that a negation in particular cases implies an affirmation in all others." *Id.*, at 651.

These statements of Madison and Story make clear that the Framers did not intend that the first eight amendments be construed to exhaust the basic and fundamental rights which the Constitution guaranteed to the people.[6]

While this Court has had little occasion to interpret the Ninth Amendment,[7] "[i]t cannot be presumed that any clause in the Constitution is intended to be without effect." *Marbury* v. *Madison*, 1 Cranch 137, 174. In interpreting the Constitution, "real effect should be given to all the words it uses." *Myers* v. *United States*, 272 U.S. 52, 151. The Ninth Amendment to the Constitution may be regarded by some as a recent discovery and may be forgotten by others, but since 1791 it has been a basic part of the Constitution which we are sworn to uphold.

To hold that a right so basic and fundamental and so deep-rooted in our society as the right of privacy in marriage may be infringed because that right is not guaranteed in so many words by the first eight amendments to the Constitution is to ignore the Ninth Amendment and to give it no effect whatsoever. Moreover, a judicial construction that this fundamental right is not protected by the Constitution because it is not mentioned in explicit terms by one of the first eight amendments or elsewhere in the Constitution would violate the Ninth Amendment, which specifically states that "[t]he enumeration in the Constitution, of certain rights, shall not be *construed* to deny or disparage others retained by the people." (Emphasis added.)

A dissenting opinion suggests that my interpretation of the Ninth Amendment somehow "broaden[s] the powers of this Court." *Post*, at 520. With all due respect, I believe that it misses the import of what I am saying. I do not take the position of my Brother BLACK in his dissent in *Adamson* v. *California*, 332 U.S. 46, 68, that the entire Bill of Rights is incorporated in the Fourteenth Amendment, and I do not mean to imply that the Ninth Amendment is applied against the States by the Fourteenth.

Nor do I mean to state that the Ninth Amendment constitutes an independent source of rights protected from infringement by either the States or the Federal Government. Rather, the Ninth Amendment shows a belief of the Constitution's authors that fundamental rights exist that are not expressly enumerated in the first eight amendments and an intent that the list of rights included there not be deemed exhaustive. As any student of this Court's opinions knows, this Court has held, often unanimously, that the Fifth and Fourteenth Amendments protect certain fundamental personal liberties from abridgment by the Federal Government or the States. See, *e.g.*, *Bolling* v. *Sharpe*, 347 U.S. 497; *Aptheker* v. *Secretary of State*, 378 U.S. 500; *Kent* v. *Dulles*, 357 U.S. 116; *Cantwell* v. *Connecticut*, 310 U.S. 296; *NAACP* v. *Alabama*, 357 U.S. 449; *Gideon* v. *Wainwright*, 372 U.S. 335; *New York Times Co.* v. *Sullivan*, 376 U.S. 254. The Ninth Amendment simply shows the intent of the Constitution's authors that other fundamental personal rights should not be denied such protection or disparaged in any other way simply because they are not specifically listed in the first eight constitutional amendments. I do not see how this broadens the authority of the Court; rather it serves to support what this Court has been doing in protecting fundamental rights.

Nor am I turning somersaults with history in arguing that the Ninth Amendment is relevant in a case dealing with a *State's* infringement of a fundamental right. While the Ninth Amendment—and indeed the entire Bill of Rights—originally concerned restrictions upon *federal* power, the subsequently enacted Fourteenth Amendment prohibits the States as well from abridging fundamental personal liberties. And, the Ninth Amendment, in indicating that not all such liberties are specifically mentioned in the first eight amendments, is surely relevant in showing the existence of other fundamental personal rights, now protected from state, as well as federal, infringement. In sum, the Ninth Amendment simply lends strong support to the view that the "liberty" protected by the Fifth and Fourteenth Amendments from infringement by the Federal Government or the States is not restricted to rights specifically mentioned in the first eight amendments. Cf. *United Public Workers* v. *Mitchell*, 330 U.S. 75, 94–95.

In determining which rights are fundamental, judges are not left at large to decide cases in light of their personal and private notions. Rather, they must look to the "traditions and [collective] conscience of our people" to determine whether a principle is "so rooted [there] . . . as to be ranked as fundamental." *Snyder* v. *Massachusetts*, 291 U.S. 97, 105. The inquiry is whether a right involved "is of such a character that it cannot be denied without violating those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions'. . . ." *Powell* v. *Alabama*, 287 U.S. 45, 67. "Liberty" also "gains content from the emanations of . . . specific [constitutional] guarantees" and "from experience with the requirements of a free society." *Poe* v. *Ullman*, 367 U. S. 497, 517 (dissenting opinion of MR. JUSTICE DOUGLAS).[8]

I agree fully with the Court that, applying these tests, the right of privacy is a fundamental personal right, emanating "from the totality of the constitutional scheme under which we live." *Id.*, at 521. Mr. Justice Brandeis, dissenting in *Olmstead* v. *United States*, 277 U. S. 438, 478, comprehensively summarized the principles underlying the Constitution's guarantees of privacy:

"The protection guaranteed by the [Fourth and Fifth] Amendments is much broader in scope. The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect.

Footnotes at end of article.

They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men."

The Connecticut statutes here involved deal with a particularly important and sensitive area of privacy—that of the marital relation and the marital home. This Court recognized in *Meyer* v. *Nebraska, supra,* that the right "to marry, establish a home and bring up children" was an essential part of the liberty guaranteed by the Fourteenth Amendment. 262 U.S., at 399. In *Pierce* v. *Society of Sisters,* 268 U.S. 510, the Court held unconstitutional an Oregon Act which forbade parents from sending their children to private schools because such an act "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control." 268 U.S., at 534–535. As this Court said in *Prince* v. *Massachusetts,* 321 U.S. 158, at 166, the *Meyer* and *Pierce* decisions "have respected the private realm of family life which the state cannot enter."

I agree with Mr. Justice Harlan's statement in his dissenting opinion in *Poe* v. *Ullman,* 367 U.S. 497, 551–552: "Certainly the safeguarding of the home does not follow merely from the sanctity of property rights. The home derives its pre-eminence as the seat of family life. And the integrity of that life is something so fundamental that it has been found to draw to its protection the principles of more than one explicitly granted Constitutional right. . . . Of this whole 'private realm of family life' it is difficult to imagine what is more private or more intimate than a husband and wife's marital relations."

The entire fabric of the Constitution and the purposes that clearly underlie its specific guarantees demonstrate that the rights to marital privacy and to marry and raise a family are of similar order and magnitude as the fundamental rights specifically protected.

Although the Constitution does not speak in so many words of the right of privacy in marriage, I cannot believe that it offers these fundamental rights no protection. The fact that no particular provision of the Constitution explicitly forbids the State from disrupting the traditional relation of the family—a relation as old and as fundamental as our entire civilization—surely does not show that the Government was meant to have the power to do so. Rather, as the Ninth Amendment expressly recognizes, there are fundamental personal rights such as this one, which are protected from abridgment by the Government though not specifically mentioned in the Constitution.

My Brother STEWART, while characterizing the Connecticut birth control law as "an uncommonly silly law," *post,* at 527, would nevertheless let it stand on the ground that it is not for the courts to " 'substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws.' " *Post,* at 528. Elsewhere, I have stated that "[while I quite agree with Mr. Justice Brandeis that . . . 'a . . . State may . . . serve as a laboratory; and try novel social and economic experiments,' *New State Ice Co.* v. *Liebmann,* 285 U.S. 262, 280, 311 (dissenting opinion), I do not believe that this includes the power to experiment with the fundamental liberties of citizens. . . ."[9] The vice of the dissenters' views is that it would permit such experimentation by the States in the area of the fundamental personal rights of its citizens. I cannot agree that the Constitution grants such power either to the States or to the Federal Government.

Footnotes at end of article.

The logic of the dissents would sanction federal or state legislation that seems to me even more plainly unconstitutional than the statute before us. Surely the Government, absent a showing of a compelling subordinating state interest, could not decree that all husbands and wives must be sterilized after two children have been born to them. Yet by their reasoning such an invasion of marital privacy would not be subject to constitutional challenge because, while it might be "silly," no provision of the Constitution specifically prevents the Government from curtailing the marital right to bear children and raise a family. While it may shock some of my Brethren that the Court today holds that the Constitution protects the right of marital privacy, in my view it is far more shocking to believe that the personal liberty guaranteed by the Constitution does not include protection against such totalitarian limitation of family size, which is at complete variance with our constitutional concepts. Yet, if upon a showing of a slender basis of rationality, a law outlawing voluntary birth control by married persons is valid, then, by the same reasoning, a law requiring compulsory birth control also would seem to be valid. In my view, however, both types of law would unjustifiably intrude upon rights of marital privacy which are constitutionally protected.

In a long series of cases this Court has held that where fundamental personal liberties are involved, they may not be abridged by the States simply on a showing that a regulatory statute has some rational relationship to the effectuation of a proper state purpose. "Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling," *Bates* v. *Little Rock,* 361 U.S. 516, 524. The law must be shown "necessary, and not merely rationally related, to the accomplishment of a permissible state policy." *McLaughlin* v. *Florida,* 379 U.S. 184, 196. See *Schneider* v. *Irvington,* 308 U.S. 147, 161.

Although the Connecticut birth-control law obviously encroaches upon a fundamental personal liberty, the State does not show that the law serves any "subordinating [state] interest which is compelling" or that it is "necessary . . . to the accomplishment of a permissible state policy." The State, at most, argues that there is some rational relation between this statute and what is admittedly a legitimate subject of state concern—the discouraging of extramarital relations. It says that preventing the use of birth-control devices by married persons helps prevent the indulgence by some in such extra-marital relations.

The rationality of this justification is dubious, particularly in light of the admitted widespread availability to all persons in the State of Connecticut, unmarried as well as married, of birth-control devices for the prevention of disease, as distinguished from the prevention of conception, see *Tileston* v. *Ullman,* 129 Conn. 84, 26 A. 2d 582. But, in any event, it is clear that the state interest in safeguarding marital fidelity can be served by a more discriminately tailored statute, which does not, like the present one, sweep unnecessarily broadly, reaching far beyond the evil sought to be dealt with and intruding upon the privacy of all married couples.

See *Aptheker* v. *Secretary of State,* 378 U.S. 500, 514; *NAACP* v. *Alabama,* 377 U.S. 288, 307–308; *McLaughlin* v. *Florida, supra,* at 196. Here, as elsewhere, "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *NAACP* v. *Button,* 371 U.S. 415, 438. The State of Connecticut does have statutes, the constitutionality of which is beyond doubt, which prohibit adultery and fornication. See Conn. Gen. Stat. §§ 53–218, 53–219 *et seq.* These statutes demonstrate that means for achieving the same basic purpose of protecting marital fidelity are available to Connecticut without the need to "invade the area of protected freedoms." *NAACP* v. *Alabama, supra,* at 307. See *McLaughlin* v. *Florida, supra,* at 196.

Finally, it should be said of the Court's holding today that it in no way interferes with a State's proper regulation of sexual promiscuity or misconduct. As my Brother Harlan so well stated in his dissenting opinion in *Poe* v. *Ullman, supra,* at 553.

"Adultery, homosexuality and the like are sexual intimacies which the State forbids . . . but the intimacy of husband and wife is necessarily an essential and accepted feature of the institution of marriage, an institution which the State not only must allow less but which always and in every age it has fostered and protected. It is one thing when the State exerts its power either to forbid extra-marital sexuality . . . or to say who may marry, but it is quite another when, having acknowledged a marriage and the intimacies inherent in it, it undertakes to regulate by means of the criminal law the details of that intimacy."

In sum, I believe that the right of privacy in the marital relation is fundamental and basic—a personal right "retained by the people" within the meaning of the Ninth Amendment. Connecticut cannot constitutionally abridge this fundamental right, which is protected by the Fourteenth Amendment from infringement by the States. I agree with the Court that petitioners' convictions must therefore be reversed.

MR. JUSTICE HARLAN, concurring in the judgment.

I fully agree with the judgment of reversal, but find myself unable to join the Court's opinion. The reason is that it seems to me to evince an approach to this case very much like that taken by my Brothers BLACK and STEWART in dissent, namely: the Due Process Clause of the Fourteenth Amendment does not touch this Connecticut statute unless the enactment is found to violate some right assured by the letter or penumbra of the Bill of Rights.

In other words, what I find implicit in the Court's opinion is that the "incorporation" doctrine may be used to *restrict* the reach of Fourteenth Amendment Due Process. For me this is just as unacceptable constitutional doctrine as is the use of the "incorporation" approach to *impose* upon the States all the requirements of the Bill of Rights as found in the provisions of the first eight amendments and in the decisions of this Court interpreting them. See, *e. g.,* my concurring opinions in *Pointer* v. *Texas,* 380 U.S. 400, 408, and *Griffin* v. *California,* 380 U.S. 609, 615, and my dissenting opinion in *Poe* v. *Ullman,* 367 U.S. 497, 522, at pp. 539–545.

In my view, the proper constitutional inquiry in this case is whether this Connecticut statute infringes the Due Process Clause of the Fourteenth Amendment because the enactment violates basic values "implicit in the concept of ordered liberty," *Palko* v. *Connecticut,* 302 U.S. 319, 325. For reasons stated at length in my dissenting opinion in *Poe* v. *Ullman, supra,* I believe that it does. While the relevant inquiry may be aided by resort to one or more of the provisions of the Bill of Rights, it is not dependent on them or any of their radiations. The Due Process Clause of the Fourteenth Amendment stands, in my opinion, on its own bottom.

A further observation seems in order respecting the justification of my Brothers BLACK and STEWART for their "incorporation" approach to this case. Their approach does not rest on historical reasons, which are of course wholly lacking (see Fairman, Does the Fourteenth Amendment Incorporate the Bill of Rights? The Original Understanding, 2 Stan. L. Rev. 5 (1949)), but on the thesis that by limiting the content of the Due Process Clause of the Fourteenth Amendment to the protection of rights which can be found elsewhere in the Constitution, in this instance in the Bill of Rights, judges will thus be confined to "interpretation" of

specific constitutional provisions, and will thereby be restrained from introducing their own notions of constitutional right and wrong into the "vague contours of the Due Process Clause." *Rochin* v. *California*, 342 U.S. 165, 170.

While I could not more heartily agree that judicial "self restraint" is an indispensable ingredient of sound constitutional adjudication, I do submit that the formula suggested for achieving it is more hollow than real. "Specific" provisions of the Constitution, no less than "due process," lend themselves as readily to "personal" interpretations by judges whose constitutional outlook is simply to keep the Constitution in supposed "tune with the times" (*post*, p. 522). Need one go further than to recall last Term's reapportionment cases, *Westberry* v. *Sanders*, 376 U.S. 1, and *Reynolds* v. *Sims*, 377 U.S. 533, where a majority of the Court "interpreted" "by the People" (Art. I, § 2) and "equal protection" (Amdt. 14) to command "one person, one vote," an interpretation that was made in the face of irrefutable and still unanswered history to the contrary? See my dissenting opinions in those cases, 376 U.S., at 20; 377 U.S., at 589.

Judicial self-restraint will not, I suggest, be brought about in the "due process" area by the historically unfounded incorporation formula long advanced by my Brother BLACK, and now in part espoused by my Brother STEWART. It will be achieved in this area, as in other constitutional areas, only by continual insistence upon respect for the teachings of history, solid recognition of the basic values that underlie our society, and wise appreciation of the great roles that the doctrines of federalism and separation of powers have played in establishing and preserving American freedoms. See *Adamson* v. *California*, 332 U.S. 46, 59, (Mr. Justice Frankfurter, concurring). Adherence to these principles will not, of course, obviate all constitutional differences of opinion among judges, nor should it. Their continued recognition will, however, go farther toward keeping most judges from roaming at large in the constitutional field than will the interpolation into the Constitution of an artificial and largely illusory restriction on the content of the Due Process Clause.[10]

MR. JUSTICE WHITE, concurring in the judgment.

In my view this Connecticut law as applied to married couples deprives them of "liberty" without due process of law, as that concept is used in the Fourteenth Amendment. I therefore concur in the judgment of the Court reversing these convictions under Connecticut's aiding and abetting statute.

It would be unduly repetitious, and belaboring the obvious, to expound on the impact of this statute on the liberty guaranteed by the Fourteenth Amendment against arbitrary or capricious denials or on the nature of this liberty. Suffice it to say that this is not the first time this Court has had occasion to articulate that the liberty entitled to protection under the Fourteenth Amendment includes the right "to marry, establish a home and bring up children," *Meyer* v. *Nebraska*, 262 U.S. 390, 399, and "the liberty . . . to direct the upbringing and education of children," *Pierce* v. *Society of Sisters*, 268 U.S. 510, 534–535, and that these are among "the basic civil rights of man." *Skinner* v. *Oklahoma*, 316 U.S. 535, 541. These decisions affirm that there is a "realm of family life which the state cannot enter" without substantial justification. *Prince* v. *Massachusetts*, 321 U.S. 158, 166. Surely the right invoked in this case, to be free of regulation of the intimacies of the marriage relationship, "come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements." *Kovacs* v. *Cooper*, 336 U.S. 77, 95 (opinion of Frankfurter, J.).

The Connecticut anti-contraceptive statute deals rather substantially with this relationship. For it forbids all married persons the right to use birth-control devices, regardless of whether their use is dictated by considerations of family planning, *Trubek* v. *Ullman*, 147 Conn. 633, 165 A. 2d 158, health, or indeed even of life itself *Buxton* v. *Ullman*, 147 Conn. 48, 156 A. 2d 508. The anti-use statute, together with the general aiding and abetting statute, prohibits doctors from affording advice to married persons on proper and effective methods of birth control. *Tileston* v. *Ullman*, 129 Conn. 84, 26 A. 2d 582.

And the clear effect of these statutes, as enforced, is to deny disadvantaged citizens of Connecticut, those without either adequate knowledge or resources to obtain private counseling, access to medical assistance and up-to-date information in respect to proper methods of birth control, *State* v. *Nelson*, 126 Conn. 412, 11 A. 2d 856; *State* v. *Griswold*, 151 Conn. 544, 200 A. 2d 479. In my view, a statute with these effects bears a substantial burden of justification when attacked under the Fourteenth Amendment. *Yick Wo* v. *Hopkins*, 118 U.S. 356; *Skinner* v. *Oklahoma*, 316 U.S. 535; *Schware* v. *Board of Bar Examiners*, 353 U.S. 232; *McLaughlin* v. *Florida*, 379 U.S. 184, 192.

An examination of the justification offered, however, cannot be avoided by saying that the Connecticut anti-use statute invades a protected area of privacy and association or that it demeans the marriage relationship. The nature of the right invaded is pertinent, to be sure, for statutes regulating sensitive areas of liberty to, under the cases of this Court, require "strict scrutiny," *Skinner* v. *Oklahoma*, 316 U.S. 535, 541, and "must be viewed in the light of less drastic means for achieving the same basic purpose." *Shelton* v. *Tucker*, 364 U.S. 479, 488. "Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling." *Bates* v. *Little Rock*, 361 U.S. 516, 524. See also *McLaughlin* v. *Florida*, 379 U.S. 184. But such statutes, if reasonably necessary for the effectuation of a legitimate and substantial state interest, and not arbitrary or capricious in application, are not invalid under the Due Process Clause, *Zemel* v. *Rusk*, 381 U.S. 1.[11]

As I read the opinions of the Connecticut courts and the argument of Connecticut in this Court, the State claims but one justification for its anti-use statute. Cf. *Allied Stores of Ohio* v. *Bowers*, 358 U.S. 522, 530; *Martin* v. *Walton*, 368 U.S. 25, 28 (DOUGLAS, J., dissenting). There is no serious contention that Connecticut thinks the use of artificial or external methods of contraception immoral or unwise in itself, or that the anti-use statute is founded upon any policy of promoting population expansion. Rather, the statute is said to serve the State's policy against all forms of promiscuous or illicit sexual relationships, be they premarital or extramarital, concededly a permissible and legitimate legislative goal.

Without taking issue with the premise that the fear of conception operates as a deterrent to such relationships in addition to the criminal proscriptions Connecticut has against such conduct. I wholly fail to see how the ban on the use of contraceptives by married couples in any way reinforces the State's ban on illicit sexual relationships. See *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 239. Connecticut does not bar the importation or possession of contraceptive devices; they are not considered contraband material under state law, *State* v. *Certain Contraceptive Materials*, 126 Conn. 428, 11 A. 2d 863, and their availability in that State is not seriously disputed. The only way Connecticut seeks to limit or control the availability of such devices is through its general aiding and abetting statute whose operation in this context has been quite obviously ineffective and whose most serious use has been against birth-control clinics rendering advice to married, rather than unmarried, persons. Cf. *Yick Wo* v. *Hopkins*, 118 U.S. 356.

Indeed, after over 80 years of the State's proscription of use, the legality of the sale of such devices to prevent disease has never been expressly passed upon, although it appears that sales have long occurred and have only infrequently been challenged. This "undeviating policy . . . throughout all the long years . . . bespeaks more than prosecutorial paralysis." *Poe* v. *Ullman*, 367 U. S. 497, 502. Moreover, it would appear that the sale of contraceptives to prevent disease is plainly legal under Connecticut law.

In these circumstances one is rather hard pressed to explain how the ban on use by married persons in any way prevents use of such devices by persons engaging in illicit sexual relations and thereby contributes to the State's policy against such relationships. Neither the state courts nor the State before the bar of this Court has tendered such an explanation. It is purely fanciful to believe that the broad proscription on use facilitates discovery of use by persons engaging in a prohibited relationship or for some other reason makes such use more unlikely and thus can be supported by any sort of administrative consideration.

Perhaps the theory is that the flat ban on use prevents married people from possessing contraceptives and without the ready availability of such devices for use in the marital relationship, there will be no or less temptation to use them in extramarital ones. This reasoning rests on the premise that married people will comply with the ban in regard to their marital relationship, nothwithstanding total nonenforcement in this context and apparent nonenforcibility, but will not comply with criminal statutes prohibiting extramarital affairs and the anti-use statute in respect to illicit sexual relationships, a premise whose validity has not been demonstrated and whose intrinsic validity is not very evident.

At most the broad ban is of marginal utility to the declared objective. A statute limiting its prohibition on use to persons engaging in the prohibited relationship would serve the end posited by Connecticut in the same way, and with the same effectiveness, or ineffectiveness, as the broad anti-use statute under attack in this case. I find nothing in this record justifying the sweeping scope of this statute, with its telling effect on the freedoms of married persons, and therefore conclude that it deprives such persons of liberty without due process of law.

MR. JUSTICE BLACK, with whom MR. JUSTICE STEWART joins, dissenting.

I agree with my Brother STEWART'S dissenting opinion. And like him I do not to any extent whatever base my view that this Connecticut law is constitutional on a belief that the law is wise or that its policy is a good one. In order that there may be no room at all to doubt why I vote as I do, I feel constrained to add that the law is every bit as offensive to me as it is to my Brethren of the majority and my Brothers HARLAN, WHITE and GOLDBERG who, reciting reasons why it is offensive to them, hold it unconstitutional. There is no single one of the graphic and eloquent strictures and criticisms fired at the policy of this Connecticut law either by the Court's opinion or by those of my concurring Brethren to which I cannot subscribe—except their conclusion that the evil qualities they see in the law make it unconstitutional.

Had the doctor defendant here, or even the nondoctor defendant, been convicted for doing nothing more than expressing opinions to persons coming to the clinic that certain contraceptive devices, medicines or practices would do them good and would be de-

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sirable, or for telling people how devices could be used, I can think of no reasons at this time why their expressions of views would not be protected by the First and Fourteenth Amendments, which guarantee freedom of speech. Cf. *Brotherhood of Railroad Trainmen* v. *Virginia ex rel. Virginia State Bar*, 377 U.S. 1; *NAACP* v. *Button*, 371 U.S. 415. But speech is one thing; conduct and physical activities are quite another. See, *e.g.*, *Cox* v. *Louisiana*, 379 U.S. 536, 554–555; *Cox* v. *Louisiana*, 379 U.S. 559, 563–564; *id.*, 575–584 (concurring opinion); *Giboney* v. *Empire Storage & Ice Co.*, 336 U.S. 490; cf. *Reynolds* v. *United States*, 98 U.S. 145, 163–164. The two defendants here were active participants in an organization which gave physical examinations to women, advised them what kind of contraceptive devices or medicines would most likely be satisfactory for them, and then supplied the devices themselves, all for a graduated scale of fees, based on the family income.

Thus these defendants admittedly engaged with others in a planned course of conduct to help people violate the Connecticut law. Merely because some speech was used in carrying on that conduct—just as in ordinary life some speech accompanies most kinds of conduct—we are not in my view justified in holding that the First Amendment forbids the State to punish their conduct. Strongly as I desire to protect all First Amendment freedoms, I am unable to stretch the Amendment so as to afford protection to the conduct of these defendants in violating the Connecticut law. What would be the constitutional fate of the law if hereafter applied to punish nothing but speech is, as I have said, quite another matter.

The Court talks about a constitutional "right of privacy" as though there is some constitutional provision or provisions forbidding any law ever to be passed which might abridge the "privacy" of individuals. But there is not. There are, of course, guarantees in certain specific constitutional provisions which are designed in part to protect privacy at certain times and places with respect to certain activities. Such, for example, is the Fourth Amendment's guarantee against "unreasonable searches and seizures." But I think it belittles that Amendment to talk about it as though it protects nothing but "privacy." To treat it that way is to give it a niggardly interpretation, not the kind of liberal reading I think any Bill of Rights provision should be given. The average man would very likely not have his feelings soothed any more by having his property seized openly than by having it seized privately and by stealth. He simply wants his property left alone. And a person can be just as much, if not more, irritated, annoyed and injured by an unceremonious public arrest by a policeman as he is by a seizure in the privacy of his office or home.

One of the most effective ways of diluting or expanding a constitutionally guaranteed right is to substitute for the crucial word or words of a constitutional guarantee another word or words, more or less flexible and more or less restricted in meaning. This fact is well illustrated by the use of the term "right of privacy" as a comprehensive substitute for the Fourth Amendment's guarantee against "unreasonable searches and seizures." "Privacy" is a broad, abstract and ambiguous concept which can easily be shrunken in meaning but which can also, on the other hand, easily be interpreted as a constitutional ban against many things other than searches and seizures.

I have expressed the view many times that First Amendment freedoms, for example, have suffered from a failure of the courts to stick to the simple language of the First Amendment in construing it, instead of invoking multitudes of words substituted for those the Framers used. See, *e. g.*, *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 293 (concurring opinion); cases collected in *City of El Paso* v. *Simmons*, 379 U.S. 497, 517, n. 1 (dissenting opinion); Black, The Bill of Rights, 35 N.Y. U.L. Rev. 865.

For these reasons I get nowhere in this case by talk about a constitutional "right of privacy" as an emanation from one or more constitutional provisions.[12] I like my privacy as well as the next one, but I am nevertheless compelled to admit that government has a right to invade it unless prohibited by some specific constitutional provision. For these reasons I cannot agree with the Court's judgment and the reasons it gives for holding this Connecticut law unconstitutional.

This brings me to the arguments made by my Brothers HARLAN, WHITE and GOLDBERG for invalidating the Connecticut law. Brothers HARLAN [13] and WHITE would invalidate it by reliance on the Due Process Clause of the Fourteenth Amendment, but Brother GOLDBERG, while agreeing with Brother HARLAN, relies also on the Ninth Amendment. I have no doubt that the Connecticut law could be applied in such a way as to abridge freedom of speech and press and therefore violate the First and Fourteenth Amendments. My disagreement with the Court's opinion holding that there is such a violation here is a narrow one, relating to the application of the First Amendment to the facts and circumstances of this particular case.

But my disagreement with Brothers HARLAN, WHITE and GOLDBERG is more basic. I think that if properly construed neither the Due Process Clause nor the Ninth Amendment, nor both together, could under any circumstances be a proper basis for invalidating the Connecticut law. I discuss the due process and Ninth Amendment arguments together because on analysis they turn out to be the same thing—merely using different words to claim for this Court and the federal judiciary power to invalidate any legislative act which the judges find irrational, unreasonable or offensive.

The due process argument which my Brothers HARLAN and WHITE adopt here is based, as their opinions indicate, on the premise that this Court is vested with power to invalidate all state laws that it considers to be arbitrary, capricious, unreasonable, or oppressive, or on this Court's belief that a particular state law under scrutiny has no "rational or justifying" purpose, or is offensive to a "sense of fairness and justice." [14] If these formulas based on "natural justice," or others which mean the same thing,[15] are to prevail, they require judges to determine what is or is not constitutional on the basis of their own appraisal of what laws are unwise or unnecessary. The power to make such decisions is of course that of a legislative body.

Surely it has to be admitted that no provision of the Constitution specifically gives such blanket power to courts to exercise such a supervisory veto over the wisdom and value of legislative policies and to hold unconstitutional those laws which they believe unwise or dangerous. I readily admit that no legislative body, state or national, should pass laws that can justly be given any of the invidious labels invoked as constitutional excuses to strike down state laws. But perhaps it is not too much to say that no legislative body ever does pass laws without believing that they will accomplish a sane, rational, wise and justifiable purpose.

While I completely subscribe to the holding of *Marbury* v. *Madison*, 1 Cranch 137, and subsequent cases, that our Court has constitutional power to strike down statutes, state or federal, that violate commands of the Federal Constitution, I do not believe that we are granted power by the Due Process Clause or any other constitutional provision or provisions to measure constitutionality by our belief that legislation is arbitrary, capricious or unreasonable, or accomplishes no justifiable purpose, or is offensive to our own notions of "civilized standards of conduct." [16] Such an appraisal of the wisdom of legislation is an attribute of the power to make laws, not of the power to interpret them.

The use by federal courts of such a formula or doctrine or whatnot to veto federal or state laws simply takes away from Congress and States the power to make laws based on their own judgment of fairness and wisdom and transfers that power to this Court for ultimate determination—a power which was specifically denied to federal courts by the convention that framed the Constitution.[17]

Of the cases on which my Brothers WHITE and GOLDBERG rely so heavily, undoubtedly the reasoning of two of them supports their result here—as would that a number of others which they do not bother to name, *e.g.*, *Lochner* v. *New York*, 198 U.S. 45, *Coppage* v. *Kansas*, 236 U.S. 1, *Jay Burns Baking Co.* v. *Bryan*, 264 U.S. 504, and *Adkins* v. *Children's Hospital*, 261 U.S. 525. The two they do cite and quote from, *Meyer* v. *Nebraska*, 262 U.S. 390, and *Pierce* v. *Society of Sisters*, 268 U.S. 510, were both decided in opinions by Mr. Justice McReynolds which elaborated the same natural law due process philosophy found in *Lochner* v. *New York*, *supra*, one of the cases on which he relied in *Meyer*, along with such other long-discredited decisions as, *e.g.*, *Adams* v. *Tanner*, 244 U.S. 590, and *Adkins* v. *Children's Hospital*, *supra*.

Meyer held unconstitutional, as an "arbitrary" and unreasonable interference with the right of a teacher to carry on his occupation and of parents to hire him, a state law forbidding the teaching of modern foreign languages to young children in the schools.[18] And in *Pierce*, relying principally on *Meyer*, Mr. Justice McReynolds said that a state law requiring that all children attend public schools interfered unconstitutionally with the property rights of private school corporations because it was an "arbitary, unreasonable and unlawful interference" which threatened "destruction of their business and property." 268 U.S., at 536.

Without expressing an opinion as to whether either of those cases reached a correct result in light of our later decisions applying the First Amendment to the States through the Fourteenth,[19] I merely point out that the reasoning stated in *Meyer* and *Pierce* was the same natural law due process philosophy which many later opinions repudiated, and which I cannot accept. Brothers WHITE and GOLDBERG also cite other cases, such as *NAACP* v. *Button*, 371 U.S. 415, *Shelton* v. *Tucker*, 364 U.S. 479, and *Schneider* v. *State*, 308 U.S. 147, which held that States in regulating conduct could not, consistently with the First Amendment as applied to them by the Fourteenth, pass unnecessarily broad laws which might indirectly infringe on First Amendment freedoms.[20] See *Brotherhood of Railroad Trainmen* v. *Virginia ex rel. Virginia State Bar*, 377 U.S. 1, 7–8.[21] Brothers WHITE and GOLDBERG now apparently would start from this requirement that laws be narrowly drafted so as not to curtail free speech and assembly, and extend it limitlessly to require States to justify any law restricting "liberty" as my Brethren define "liberty." This would mean at the very least, I suppose, that every state criminal statute—since it must inevitably curtail "liberty" to some extent—would be suspect, and would have to be justified to this Court.[22]

My Brother GOLDBERG has adopted the recent discovery [23] that the Ninth Amendment as well as the Due Process Clause can be used by this Court as authority to strike down all state legislation which this Court thinks violates "fundamental principles of liberty and justice," or is contrary to the

Footnotes at end of article.

"traditions and [collective] conscience of our people." He also states, without proof satisfactory to me, that in making decisions on this basis judges will not consider "their personal and private notions." One may ask how they can avoid considering them.

Our Court certainly has no machinery with which to take a Gallup Poll.[24] And the scientific miracles of this age have not yet produced a gadget which the Court can use to determine what traditions are rooted in the "[collective] conscience of our people." Moreover, one would certainly have to look far beyond the language of the Ninth Amendment[25] to find that the Framers vested in this Court any such awesome veto powers over lawmaking, either by the States or by the Congress.

Nor does anything in the history of the Amendment offer any support for such a shocking doctrine. The whole history of the adoption of the Constitution and Bill of Rights points the other way, and the very material quoted by my Brother GOLDBERG shows that the Ninth Amendment was intended to protect against the idea that "by enumerating particular exceptions to the grant of power" to the Federal Government, 'those rights which were not singled out, were intended to be assigned into the hands of the General Government [the United States], and were consequently insecure."[26] That Amendment was passed, not to broaden the powers of this Court or any other department of "the General Government," but, as every student of history knows, to assure the people that the Constitution in all its provisions was intended to limit the Federal Government to the powers granted expressly or by necessary implication.

If any broad, unlimited power to hold laws unconstitutional because they offend what this Court conceives to be the "[collective] conscience of our people" is vested in this Court by the Ninth Amendment, the Fourteenth Amendment, or any other provision of the Constitution, it was not given by the Framers, but rather has been bestowed on the Court by the Court. This fact is perhaps responsible for the peculiar phenomenon that for a period of a century and a half no serious suggestion was ever made that the Ninth Amendment, enacted to protect state powers against federal invasion, could be used as a weapon of federal power to prevent state legislatures from passing laws they consider appropriate to govern local affairs. Use of any such broad, unbounded judicial authority would make of this Court's members a day-to-day constitutional convention.

I repeat so as not to be misunderstood that this Court does have power, which it should exercise, to hold laws unconstitutional where they are forbidden by the Federal Constitution. My point is that there is no provision of the Constitution which either expressly or impliedly vests power in this Court to sit as a supervisory agency over acts of duly constituted legislative bodies and set aside their laws because of the Court's belief that the legislative policies adopted are unreasonable, unwise, arbitrary, capricious or irrational.

The adoption of such a loose, flexible, uncontrolled standard for holding laws unconstitutional, if ever it is finally achieved, will amount to a great unconstitutional shift of power to the courts which I believe and am constrained to say will be bad for the courts and worse for the country. Subjecting federal and state laws to such an unrestrained and unrestrainable judicial control as to the wisdom of legislative enactments would, I fear, jeopardize the separation of governmental powers that the Framers set up and at the same time threaten to take away much of the power of States to govern themselves which the Constitution plainly intended them to have.[27]

Footnotes at end of article.

I realize that many good and able men have eloquently spoken and written, sometimes in rhapsodical strains, about the duty of this Court to keep the Constitution in tune with the times. The idea is that the Constitution must be changed from time to time and that this Court is charged with a duty to make those changes. For myself, I must with all deference reject that philosophy. The Constitution makers knew the need for change and provided for it. Amendments suggested by the people's elected representatives can be submitted to the people or their selected agents for ratification. That method of change was good for our Fathers, and being somewhat old-fashioned I must add it is good enough for me.

And so, I cannot rely on the Due Process Clause or the Ninth Amendment or any mysterious and uncertain natural law concept as a reason for striking down this state law. The Due Process Clause with an "arbitrary and capricious" or "shocking to the conscience" formula was liberally used by this Court to strike down economic legislation in the early decades of this century, threatening, many people thought, the tranquility and stability of the Nation. See, *e. g., Lochner* v. *New York*, 198 U. S. 45.

That formula, based on subjective considerations of "natural justice," is no less dangerous when used to enforce this Court's views about personal rights than those about economic rights. I had thought that we had laid that formula, as a means for striking down state legislation, to rest once and for all in cases like *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379; *Olsen* v. *Nebraska ex rel. Western Reference & Bond Assn.*, 313 U. S. 236, and many other opinions.[28] See also *Lochner* v. *New York*, 198 U. S. 45, 74 (Holmes, J., dissenting).

In *Ferguson* v. *Skrupa*, 372 U. S. 726, 730, this Court two years ago said in an opinion joined by all the Justices but one[29] that—

"The doctrine that prevailed in *Lochner, Coppage, Adkins, Burns*, and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws."

And only six weeks ago, without even bothering to hear argument, this Court overruled *Tyson & Brother* v. *Banton*, 273 U.S. 418, which had held state laws regulating ticket brokers to be a denial of due process of law.[30] *Gold* v. *DiCarlo*, 380 U.S. 520. I find April's holding hard to square with what my concurring Brethren urge today. They would reeinstate the *Lochner, Coppage, Adkins, Burns* line of cases, cases from which this Court recoiled after the 1930's, and which had been I thought totally discredited until now. Apparently my Brethren have less quarrel with state economic regulations than former Justices of their persuasion had. But any limitation upon their using the natural law due process philosophy to strike down any state law, dealing with any activity whatever, will obviously be only self-imposed.[31]

In 1798, when this Court was asked to hold another Connecticut law unconstitutional, Justice Iredell said:

"[I]t has been the policy of all the *American* states, which have, individually, framed their state constitutions since the revolution, and of the people of the *United States*, when they framed the Federal Constitution, to define with precision the objects of the legislative power, and to restrain its exercise within marked and settled boundaries. If any act of Congress, or of the Legislature of a state, violates those constitutional provisions, it is unquestionably void; though, I admit, that as the authority to declare it void is of a delicate and awful nature, the Court will never resort to that authority, but in a clear and urgent case. If, on the other hand, the Legislature of the Union, or the Legislature of any member of the Union, shall pass a law, within the general scope of their constitutional power, the Court cannot pronounce it to be void, merely because it is, in their judgment, contrary to the principles of natural justice. The ideas of natural justice are regulated by no fixed standard: the ablest and the purest men have differed upon the subject; and all that the Court could properly say, in such an event, would be, that the Legislature (possessed of an equal right of opinion) had passed an act which, in the opinion of the judges, was inconsistent with the abstract principles of natural justice." *Calder* v. *Bull*, 3 Dall. 386, 399 (emphasis in original).

I would adhere to that constitutional philosophy in passing on this Connecticut law today. I am not persuaded to deviate from the view which I stated in 1947 in *Adamson* v. *California*, 332 U.S. 46, 90–92 (dissenting opinion):

"Since *Marbury* v. *Madison*, 1 Cranch 137, was decided, the practice has been firmly established, for better or worse, that courts can strike down legislative enactments which violate the Constitution. This process, of course, involves interpretation, and since words can have many meanings, interpretation obviously may result in contraction or extension of the original purpose of a constitutional provision, thereby affecting policy. But to pass upon the constitutionality of statutes by looking to the particular standards enumerated in the Bill of Rights and other parts of the Constitution is one thing; to invalidate statutes because of application of 'natural law' deemed to be above and undefined by the Constitution is another. 'In the one instance, courts proceeding within clearly marked constitutional boundaries seek to execute policies written into the Constitution: in the other, they roam at will in the limitless area of their own beliefs as to reasonableness and actually select policies, a responsibility which the Constitution entrusts to the legislative representatives of the people." *Federal Power Commission* v. *Pipeline Co.*, 315 U.S. 575, 599, 601, n. 4.[32]

The late Judge Learned Hand, after emphasizing his view that judges should not use the due process formula suggested in the concurring opinions today or any other formula like it to invalidate legislation offensive to their "personal preferences,"[33] made the statement, with which I fully agree, that:

"For myself it would be most irksome to be ruled by a bevy of Platonic Guardians even if I knew how to choose them, which I assuredly do not."[34]

So far as I am concerned, Connecticut's law as applied here is not forbidden by any provision of the Federal Constitution as that Constitution was written, and I would therefore affirm.

MR. JUSTICE STEWART, whom MR. JUSTICE BLACK joins, dissenting.

Since 1879 Connecticut has had on its books a law which forbids the use of contraceptives by anyone. I think this is an uncommonly silly law. As a practical matter, the law is obviously unenforceable, except in the oblique context of the present case. As a philosophical matter, I believe the use of contraceptives in the relationship of marriage should be left to personal and private choice, based upon each individual's moral, ethical, and religious beliefs. As a matter of social policy, I think professional counsel about methods of birth control should be available to all, so that each individual's choice can be meaningfully made. But we are not asked in this case to say whether we think this law is unwise, or even asinine. We are asked to hold that it violates the United States Constitution. And that I cannot do.

In the course of its opinion the Court refers to no less than six Amendments to the Constitution: the First, the Third, the Fourth, the Fifth, the Ninth, and the Fourteenth. But the Court does not say which of these Amendments, if any, it thinks is infringed by this Connecticut law.

We are told that the Due Process of the Fourteenth Amendment is not, as such, the "guide" in this case. With that much I agree. There is no claim that this law, duly enacted by the Connecticut Legislature, is unconstitutionally vague. There is no claim that the appellants were denied any of the elements of procedural due process at their trial, so as to make their convictions constitutionally invalid. And, as the Court says, the day has long passed since the Due Process Clause was regarded as a proper instrument for determining "the wisdom, need, and propriety" of state laws. Compare *Lochner* v. *New York*, 198 U.S. 45, with *Ferguson* v. *Skrupa*, 372 U.S. 726. My Brothers HARLAN and WHITE to the contrary, "[w]e have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws." *Ferguson* v. *Skrupa, supra* at 730.

As to the First, Third, Fourth, and Fifth Amendments, I can find nothing in any of them to invalidate this Connecticut law, even assuming that all those Amendments are fully applicable against the States.[35] It has not even been argued that this is a law "respecting an establishment of religion, or prohibiting the free exercise thereof."[36] And surely, unless the solemn process of constitutional adjudication is to descend to the level of a play on words, there is not involved here any abridgment of "the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."[37] No soldier has been quartered in any house.[38] There has been no search, and no seizure.[39] Nobody has been compelled to be a witness against himself.[40]

The Court also quotes the Ninth Amendment, and my Brother GOLDBERG's concurring opinion relies heavily upon it. But to say that the Ninth Amendment has anything to do with this case is to turn somersaults with history. The Ninth Amendment, like its companion the Tenth, which this Court held "states but a truism that all is retained which has not been surrendered," *United States* v. *Darby*, 312 U.S. 100, 124, was framed by James Madison and adopted by the States simply to make clear that the adoption of the Bill of Rights did not alter the plan that the *Federal* Government was to be a government of express and limited powers, and that all rights and powers not delegated to it were retained by the people and the individual States. Until today no member of this Court has ever suggested that the Ninth Amendment meant anything else, and the idea that a federal court could ever use the Ninth Amendment to annul a law passed by the elected representatives of the people of the State of Connecticut would have caused James Madison no little wonder.

What provision of the Constitution, then, does make this state law invalid? The Court says it is the right of privacy "created by several fundamental constitutional guarantees." With all deference, I can find no such general right of privacy in the Bill of Rights, in any other part of the Constitution, or in any case ever before decided by this Court.[41]

At the oral argument in this case we were told that the Connecticut law does not "conform to current community standards." But it is not the function of this Court to decide cases on the basis of community standards. We are here to decide cases "agreeably to the Constitution and laws of the United States." It is the essence of judicial duty to subordinate our own personal views, our own ideas of what legislation is wise and what is not. If, as I should surely hope, the law before us does not reflect the standards of the people of Connecticut, the people of Connecticut can freely exercise their true Ninth and Tenth Amendment rights to persuade their elected representatives to repeal it. That is the constitutional way to take this law off the books.[42]

FOOTNOTES

[1] The Court said in full about this right of privacy:

"The principles laid down in this opinion [by Lord Camden in *Entick* v. *Carrington*, 19 How. St. Tr. 1029] affect the very essence of constitutional liberty and security. They reach farther than the concrete form of the case then before the court, with its adventitious circumstances; they apply to all invasions on the part of the government and its employes of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offence—it is the invasion of this sacred right which underlies and constitutes the essence of Lord Camden's judgment. Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods, is within the condemnation of that judgment. In this regard the Fourth and Fifth Amendments run almost into each other." 116 U.S., at 630.

[2] My Brother STEWART dissents on the ground that he "can find no . . . general right of privacy in the Bill of Rights, in any other part of the Constitution, or in any case ever before decided by this Court." *Post*, at 530. He would require a more explicit guarantee than the one which the Court derives from several constitutional amendments. This Court, however, has never held that the Bill of Rights or the Fourteenth Amendment protects only those rights that the Constitution specifically mentions by name. See, *e.g., Bolling* v. *Sharpe*, 347 U.S. 497; *Aptheker* v. *Secretary of State*, 378 U.S. 500; *Kent* v. *Dulles*, 357 U.S. 116; *Carrington* v. *Rash*, 380 U.S. 89, 96; *Schware* v. *Board of Bar Examiners*, 353 U.S. 232; *NAACP* v. *Alabama*, 360 U.S. 240; *Pierce* v. *Society of Sisters*, 268 U.S. 510; *Meyer* v. *Nebraska*, 262 U.S. 390. To the contrary, this Court, for example, in *Bolling* v. *Sharpe, supra*, while recognizing that the Fifth Amendment does not contain the "explicit safeguard" of an equal protection clause, *id.*, at 499, nevertheless derived an equal protection principle from that Amendment's Due Process Clause. And in *Schware* v. *Board of Bar Examiners, supra*, the Court held that the Fourteenth Amendment protects from arbitrary state action the right to pursue an occupation, such as the practice of law.

[3] See, *e.g., Chicago, B. & Q. R. Co.* v. *Chicago*, 166 U.S. 226; *Gitlow* v. *New York, supra; Cantwell* v. *Connecticut*, 310 U.S. 296; *Wolf* v. *Colorado*, 338 U.S. 25; *Robinson* v. *California*, 370 U.S. 660; *Gideon* v. *Wainwright*, 372 U.S. 335; *Malloy* v. *Hogan*, 378 U.S. 1; *Pointer* v. *Texas, supra; Griffin* v. *California*, 380 U.S. 609.

[4] Madison himself had previously pointed out the dangers of inaccuracy resulting from the fact that "no language is so copious as to supply words and phrases for every complex idea." The Federalist, No. 37 (Cooke ed. 1961), at 236.

[5] Alexander Hamilton was opposed to a bill of rights on the ground that it was unnecessary because the Federal Government was a government of delegated powers and it was not granted the power to intrude upon fundamental personal rights. The Federalist, No. 84 (Cooke ed. 1961), at 578–579. He also argued,

"I go further, and affirm that bills of rights, in the sense and in the extent in which they are contended for, are not only unnecessary in the proposed constitution, but would even be dangerous. They would contain various exceptions to powers which are not granted; and on this very account, would afford a colourable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why for instance, should it be said, that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power; but it is evident that it would furnish, to men disposed to usurp, a plausible pretence for claiming that power." *Id.* at 579.

The Ninth Amendment and the Tenth Amendment, which provides, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," were apparently also designed in part to meet the above-quoted argument of Hamilton.

[6] The Tenth Amendment similarly made clear that the States and the people retained all those powers not expressly delegated to the Federal Government.

[7] This Amendment has been referred to as "The Forgotten Ninth Amendment," in a book with that title by Bennett B. Patterson (1955). Other commentary on the Ninth Amendment includes Redlich, Are There "Certain Rights . . . Retained by the People"? 37 N. Y. U. L. Rev. 787 (1962), and Kelsey The Ninth Amendment of the Federal Constitution, 11 Ind. L. J. 309 (1936). As far as I am aware, until today this Court has referred to the Ninth Amendment only in *United Public Workers* v. *Mitchell*, 330 U. S. 75, 94–95; *Tennessee Electric Power Co.* v. *TVA*, 306 U. S. 118, 143–144; and *Ashwander* v. *TVA*, 297 U. S. 288, 330–331. See also *Calder* v. *Bull*, 3 Dall. 386, 388; *Loan Assn.* v. *Topeka*, 20 Wall. 655, 662–663.

In *United Public Workers* v. *Mitchell, supra*, at 94–95, the Court stated: "We accept appellants' contention that the nature of political rights reserved to the people by the Ninth and Tenth Amendments [is] involved. The right claimed as inviolate may be stated as the right of a citizen to act as a party official or worker to further his own political views. Thus we have a measure of interference by the Hatch Act and the Rules with what otherwise would be the freedom of the civil servant under the First, Ninth and Tenth Amendments. And, if we look upon due process as a guarantee of freedom in those fields, there is a corresponding impairment of that right under the Fifth Amendment."

[8] In light of the tests enunciated in these cases it cannot be said that a judge's responsibility to determine whether a right is basic and fundamental in this sense vests him with unrestricted personal discretion. In fact, a hesitancy to allow too broad a discretion was a substantial reason leading me to conclude in *Pointer* v. *Texas, supra*, at 413–414, that those rights absorbed by the Fourteenth Amendment and applied to the States because they are fundamental apply with equal force and to the same extent against both federal and state governments. In *Pointer* I said that the contrary view would require "this Court to make the extremely subjective and excessively discretionary determination as to whether a practice, forbidden the Federal Government by a fundamental constitutional guarantee, is, as viewed in the factual circumstances surrounding each individual case, sufficiently repugnant to the notion of due process as to be forbidden the States." *Id.*, at 413.

[9] *Pointer* v. *Texas, supra*, at 413. See also the discussion of my Brother DOUGLAS, *Poe* v. *Ullman, supra*, at 517–518 (dissenting opinion).

[10] Indeed, my Brother BLACK, in arguing his thesis, is forced to lay aside a host of cases in which the Court has recognized fundamental rights in the Fourteenth Amendment without specific reliance upon the Bill of Rights. *Post*, p. 512, n. 4.

[11] Dissenting opinions assert that the liberty guaranteed by the Due Process Clause is limited to a guarantee against unduly vague statutes and against procedural unfairness at trial. Under this view the Court is without authority to ascertain whether a challenged statute, or its application, has a permissible purpose and whether the manner of regulation bears a rational or justifying relationship to this purpose. A long line of cases makes very clear that this has not been the view of this Court. *Dent* v. *West Virginia*, 129 U.S. 114; *Jacobson* v. *Massachusetts*, 197 U.S. 11; *Douglas* v. *Noble*, 261 U.S. 165; *Meyer* v. *Nebraska*, 262 U.S. 390; *Pierce* v. *Society of Sisters*, 268 U.S. 510; *Schware* v. *Board of Bar Examiners*, 353 U.S. 232; *Aptheker* v. *Secretary of State*, 378 U.S. 500; *Zemel* v. *Rusk*, 381 U.S. 1.

The traditional due process test was well articulated, and applied, in *Schware* v. *Board of Bar Examiners*, *supra*, a case which placed no reliance on the specific guarantees of the Bill of Rights.

"A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. *Dent* v. *West Virginia*, 129 U.S. 114. Cf. *Slochower* v. *Board of Education*, 350 U.S. 551; *Wieman* v. *Updegraff*, 344 U.S. 183. And see *Ex parte Secombe*, 19 How. 9, 13. A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. *Douglas* v. *Noble*, 261 U.S. 165; *Cummings* v. *Missouri*, 4 Wall. 277, 319–320. Cf. *Nebbia* v. *New York*, 291 U.S. 502. Obviously an applicant could not be excluded merely because he was a Republican or a Negro or a member of a particular church. Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory." 353 U.S., at 238–239. Cf. *Martin* v. *Walton*, 368 U.S. 25, 26 (DOUGLAS, J., dissenting).

[12] The phrase "right to privacy" appears first to have gained currency from an article written by Messrs. Warren and (later Mr. Justice) Brandeis in 1890 which urged that States should give some form of tort relief to persons whose private affairs were exploited by others. The Right to Privacy, 4 Harv. L. Rev. 193. Largely as a result of this article, some States have passed statutes creating such a cause of action, and in others state courts have done the same thing by exercising their powers as courts of common law. See generally 41 Am. Jur. 926–927. Thus the Supreme Court of Georgia, in granting a cause of action for damages to a man whose picture had been used in a newspaper advertisement without his consent, said that "A right of privacy in matters purely private is . . . derived from natural law" and that "The conclusion reached by us seems to be . . . thoroughly in accord with natural justice, with the principles of the law of every civilized nation, and especially with the elastic principles of the common law . . ." *Pavesich* v. *New England Life Ins. Co.*, 122 Ga. 190, 194, 218. 50 S. E. 68, 70, 80. Observing that "the right of privacy . . . presses for recognition here," today this Court, which I did not understand to have power to sit as a court of common law, now appears to be exalting a phrase which Warren and Brandeis used in discussing grounds for tort relief, to the level of a constitutional rule which prevents state legislatures from passing any law deemed by this Court to interfere with "privacy."

[13] Brother HARLAN'S views are spelled out at greater length in his dissenting opinion in *Poe* v. *Ullman*, 367 U.S. 497, 539–555.

[14] Indeed, Brother White appears to have gone beyond past pronouncements of the natural law due process theory, which at least said that the Court should exercise this unlimited power to declare state acts unconstitutional with "restraint." He now says that, instead of being presumed constitutional (see *Munn* v. *Illinois*, 94 U.S. 113, 123; compare *Adkins* v. *Children's Hospital*, 261 U.S. 525, 544), the statute here "bears a substantial burden of justification when attacked under the Fourteenth Amendment."

[15] A collection of the catchwords and catch phrases invoked by judges who would strike down under the Fourteenth Amendment laws which offend their notions of natural justice would fill many pages. Thus it has been said that this Court can forbid state action which "shocks the conscience," *Rochin* v. *California*, 342 U.S. 165, 172, sufficiently to "shock itself into the protective arms of the Constitution," *Irvine* v. *California*, 347 U.S. 128, 138 (concurring opinion). It has been urged that States may not run counter to the "decencies of civilized conduct," *Rochin*, *supra*, at 173, or "some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental," *Snyder* v. *Massachusetts*, 291 U.S. 97, 105, or to "those canons of decency and fairness which express the notions of justice of English-speaking peoples," *Malinski* v. *New York*, 324 U.S. 401, 417 (concurring opinion), or to "the community's sense of fair play and decency," *Rochin*, *supra*, at 173. It has been said that we must decide whether a state law is "fair, reasonable and appropriate," or is rather "an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty or to enter into . . . contracts," *Lochner* v. *New York*, 198 U.S. 45, 56. States, under this philosophy, cannot act in conflict with "deeply rooted feelings of the community," *Haley* v. *Ohio*, 332 U.S. 596, 604 (separate opinion), or with "fundamental notions of fairness and justice," *id.*, 607. See also, *e.g.*, *Wolf* v. *Colorado*, 338 U.S. 25, 27 ("rights . . . basic to our free society"); *Hebert* v. *Louisiana*, 272 U.S. 312, 316 ("fundamental principles of liberty and justice"); *Adkins* v. *Children's Hospital*, 261 U.S. 525, 561 ("arbitrary restraint of . . . liberties"); *Betts* v. *Brady*, 316 U.S. 455, 462 ("denial of fundamental fairness, shocking to the universal sense of justice"); *Poe* v. *Ullman*, 367 U.S. 497, 539 (dissenting opinion) ("intolerable and unjustifiable"). Perhaps the clearest, frankest and briefest explanation of how this due process approach works is the statement in another case handed down today that this Court is to invoke the Due Process Clause to strike down state procedures or laws which it can "not tolerate." *Linkletter* v. *Walker*, *post*, p. 618, at 631.

[16] See Hand, The Bill of Rights (1958) 70: "[J]udges are seldom content merely to annul the particular solution before them; they do not, indeed they may not, say that taking all things into consideration, the legislators' solution is too strong for the judicial stomach. On the contrary they wrap up their veto in a protective veil of adjectives such as 'arbitrary,' 'normal,' 'reasonable,' 'inherent,' 'fundamental,' or 'essential,' whose office usually, though quite innocently, is to disguise what they are doing and impute to it a derivation far more impressive than their personal preferences, which are all that in fact lie behind the decision." See also *Rochin* v. *California*, 342 U.S. 165, 174 (concurring opinion). But see *Linkletter* v. *Walker*, *supra*, n. 4, at 631.

[17] This Court held in *Marbury* v. *Madison*, 1 Cranch 137, that this Court has power to invalidate laws on the ground that they exceed the constitutional power of Congress or violate some specific prohibition of the Constitution. See also *Fletcher* v. *Peck*, 6 Cranch 87. But the Constitutional Convention did on at least two occasions reject proposals which would have given the federal judiciary a part in recommending laws or in vetoing as bad or unwise the legislation passed by the Congress. Edmund Randolph of Virginia proposed that the President

". . . and a convenient number of the National Judiciary, ought to compose a council of revision with authority to examine every act of the National Legislature before it shall operate, & every act of a particular Legislature before a Negative thereon shall be final; and that the dissent of the said Council shall amount to a rejection, unless the Act of the National Legislature be again passed, or that a particular Legislature be again negatived by * * * [original wording illegible] of the members of each branch." 1 The Records of the Federal Convention of 1787 (Farrand ed. 1911) 21.

In support of a plan of this kind James Wilson of Pennsylvania argued that:

". . . It had been said that the Judges, as expositors of the Laws would have an opportunity of defending their constitutional rights. There was weight in this observation; but this power of the Judges did not go far enough. Laws may be unjust, may be unwise, may be dangerous, may be destructive; and yet not be so unconstitutional as to justify the Judges in refusing to give them effect. Let them have a share in the Revisionary power, and they will have an opportunity of taking notice of these characters of a law, and of counteracting, by the weight of their opinions the improper views of the Legislature." 2 *id.*, at 73.

Nathaniel Gorham of Massachusetts "did not see the advantages of employing the Judges in this way. As Judges they are not to be presumed to possess any pecular knowledge of the mere policy of public measures." *Ibid.*

Elbridge Gerry of Massachusetts likewise opposed the proposal for a council of revision:

". . . He relied for his part on the Representatives of the people as the guardians of their Rights & interests. it [the proposal] was making the Expositors of the Laws, the Legislators which ought never to be done." *Id.*, at 75.

And at another point:

"Mr. Gerry doubts whether the Judiciary ought to form a part of it [the proposed council of revision], as they will have a sufficient check agst. encroachments on their own department by their exposition of the laws, which involved a power of deciding on their Constitutionality. . . . It was quite foreign from the nature of ye. office to make them judges of the policy of public measures." 1 *Id.*, at 97–98.

Madison supported the proposal on the ground that "a Check [on the legislature] is necessary." *Id.*, at 108. John Dickinson of Delaware opposed it on the ground that "the Judges must interpret the Laws they ought not to be legislators." *Ibid.* The proposal for a council of revision was defeated.

The following proposal was also advanced:

"To assist the President in conducting the Public Affairs there shall be a Council of State composed of the following officers— 1. The Chief Justice of the Supreme Court, who shall from time to time recommend such alterations of and additions to the laws of the U.S. may in his opinion be necessary to the due administration of Justice, and such as may promote useful learning and inculcate sound morality throughout the Union . . . ." 2 *id.* at 342. This proposal too was rejected.

[18] In *Meyer*, in the very same sentence quoted in part by my Brethren in which he asserted that the Due Process Clause gave

an abstract and inviolable right "to marry, establish a home and bring up children," Mr. Justice McReynolds also asserted the heretofore discredited doctrine that the Due Process Clause prevented States from interfering with "the right of the individual to contract." 262 U.S., at 399.

[19] Compare *Poe* v. *Ullman*, 367 U.S. at 543–544 (HARLAN, J., dissenting).

[20] The Court has also said that in view of the Fourteenth Amendment's major purpose of eliminating state-enforced racial discrimination, this Court will scrutinize carefully any law embodying a racial classification to make sure that it does not deny equal protection of the laws. See *McLaughlin* v. *Florida*, 379 U.S. 184.

[21] None of the other cases decided in the past 25 years which Brothers WHITE and GOLDBERG cite can justly be read as holding that judges have power to use a natural law due process formula to strike down all state laws which they think are unwise, dangerous, or irrational. *Prince* v. *Massachusetts*, 321 U.S. 158, *upheld* a state law forbidding minors from selling publications on the streets. *Kent* v. *Dulles*, 357 U.S. 116, recognized the power of Congress to restrict travel outside the country so long as it accorded persons the procedural safeguards of due process and did not violate any other specific constitutional provision. *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, held simply that a State could not, consistently with due process, refuse a lawyer a license to practice law on the basis of a finding that he was morally unfit when there was no evidence in the record, 353 U.S., at 246–247, to support such a finding. Compare *Thompson* v. *City of Louisville*, 362 U.S. 199, in which the Court relied in part on *Schware*. See also *Konigsberg* v. *State Bar*, 353 U.S. 252. And *Bolling* v. *Sharpe*, 347 U.S. 497, merely recognized what had been the understanding from the beginning of the country, an understanding shared by many of the draftsmen of the Fourteenth Amendment, that the whole Bill of Rights, including the Due Process Clause of the Fifth Amendment, was a guarantee that all persons would receive equal treatment under the law. Compare *Chambers* v. *Florida*, 309 U.S. 227, 240–241. With one exception, the other modern cases relied on by my Brethren were decided either solely under the Equal Protection Clause of the Fourteenth Amendment or under the First Amendment, made applicable to the States by the Fourteenth, some of the latter group involving the right of association which this Court has held to be a part of the rights of speech, press and assembly guaranteed by the First Amendment. As for *Aptheker* v. *Secretary of State*, 378 U.S. 500, I am compelled to say that if that decision was written or intended to bring about the abrupt and drastic reversal in the course of constitutional adjudication which is now attributed to it, the change was certainly made in a very quiet and unprovocative manner, without any attempt to justify it.

[22] Compare *Adkins* v. *Children's Hospital*, 261 U.S. 525, 568 (Holmes, J., dissenting):

"The earlier decisions upon the same words [the Due Process Clause] in the Fourteenth Amendment began within our memory and went no farther than an unpretentious assertion of the liberty to follow the ordinary callings. Later that innocuous generality was expanded into the dogma, Liberty of Contract. Contract is not specially mentioned in the text that we have to construe. It is merely an example of doing what you want to do, embodied in the word liberty. But pretty much all law consists in forbidding men to do some things that they want to do, and contract is no more exempt from law than other acts."

[23] See Patterson, The Forgotten Ninth Amendment (1955). Mr. Patterson urges that the Ninth Amendment be used to protect unspecified "natural and inalienable rights." P. 4. The Introduction by Roscoe Pound states that "there is a marked revival of natural law ideas throughout the world. Interest in the Ninth Amendment is a symptom of that revival." P. iii.

In Redlich, Are There "Certain Rights . . . Retained by the People"?, 37 N. Y. U. L. Rev. 787, Professor Redlich, in advocating reliance on the Ninth and Tenth Amendments to invalidate the Connecticut law before us, frankly states.

"But for one who feels that the marriage relationship should be beyond the reach of a state law forbidding the use of contraceptives, the birth control case poses a troublesome and challenging problem of constitutional interpretation. He may find himself saying, 'The law is unconstitutional—but why?' There are two possible paths to travel in finding the answer. One is to revert to a frankly flexible due process concept even on matters that do not involve specific constitutional prohibitions. The other is to attempt to evolve a new constitutional framework within which to meet this and similar problems which are likely to arise." *Id.*, at 798.

[24] Of course one cannot be obvious to the fact that Mr. Gallup has already published the results of a poll which he says show that 46% of the people in this country believe schools should teach about birth control. Washington Post, May 21, 1965, p. 2, col. 1. I can hardly believe, however, that Brother GOLDBERG would view 46% of the persons polled as so overwhelming a proportion that this Court may now rely on it to declare that the Connecticut law infringes "fundamental" rights, and overrule the long-standing view of the people of Connecticut expressed through their elected representatives.

[25] U.C. Const., Amend. IX, provides:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

[26] 1 Annals of Congress 439. See also II Story, Commentaries on the Constitution of the United States (5th ed. 1891): "This clause was manifestly introduced to prevent any perverse or ingenious misapplication of the well-known maxim, that an affirmation in particular cases implies a negation in all others; and, *e converso*, that a negation in particular cases implies an affirmation in all others. The maxim, rightly understood, is perfectly sound and safe; but it has often been strangely forced from its natural meaning into the support of the most dangerous political heresies." *Id.*, at 651 (footnote omitted).

[27] Justice Holmes in one of his last dissents, written in reply to Mr. Justice McReynolds' opinion for the Court in *Baldwin* v. *Missouri*, 281 U.S. 586, solemnly warned against a due process formula apparently approved by my concurring Brethren today. He said: "I have not yet adequately expressed the more than anxiety that I feel at the ever increasing scope given to the Fourteenth Amendment in cutting down what I believe to be the constitutional rights of the States. As the decisions now stand, I see hardly any limit but the sky to the invalidating of those rights if they happen to strike a majority of this Court as for any reason undesirable. I cannot believe that the Amendment was intended to give us *carte blanche* to embody our economic or moral beliefs in its prohibitions. Yet I can think of no narrower reason that seems to me to justify the present and the earlier decisions to which I have referred. Of course the words 'due process of law,' if taken in their literal meaning, have no application to this case; and while it is too late to deny that they have been given a much more extended and artificial signification, still we ought to remember the great caution shown by the Constitution in limiting the power of the States, and should be slow to construe the clause in the Fourteenth Amendment as committing to the Court, with no guide but the Court's own discretion, the validity of whatever laws the States may pass." 281 U.S., at 595. See 2 Holmes-Pollock Letters (Howe ed. 1941) 267–268.

[28] *E.g.*, in *Day-Brite Lighting, Inc.*, v. *Missouri*, 342 U.S. 421, 423, this Court held that "Our recent decisions make plain that we do not sit as a superlegislature to weigh the wisdom of legislation nor to decide whether the policy which it expresses offends the public welfare."

Compare *Gardner* v. *Massachusetts*, 305 U.S. 559, which the Court today apparently overrules, which held that a challenge under the Federal Constitution to a state law forbidding the sale or furnishing of contraceptives did not raise a substantial federal question.

[29] Brother HARLAN, who has consistently stated his belief in the power of courts to strike down laws which they consider arbitrary or unreasonable, see, *e.g.*, *Poe* v. *Ullman*, 367 U.S. 497, 539–555 (dissenting opinion), did not join the Court's opinion in *Ferguson* v. *Skrupa*.

[30] Justice Holmes, dissenting in *Tyson*, said: "I think the proper course is to recognize that a state legislature can do whatever it sees fit to do unless it is restrained by some express prohibition in the Constitution of the United States or of the State, and that Courts should be careful not to extend such prohibitions beyond their obvious meaning by reading into them conceptions of public policy that the particular Court may happen to entertain." 273 U.S., at 446.

[31] Compare *Nicchia* v. *New York*, 254 U.S. 228, 231, upholding a New York dog-licensing statute on the ground that it did not "deprive dog owners of liberty without due process of law." And as I said concurring in *Rochin* v. *California*, 342 U.S. 165, 175, "I believe that faithful adherence to the specific guarantees in the Bill of Rights insures a more permanent protection of individual liberty than that which can be afforded by the nebulous standards" urged by my concurring Brethren today.

[32] *Gideon* v. *Wainwright*, 372 U.S. 335, and similar cases applying specific Bill of Rights provisions to the States do not in my view stand for the proposition that this Court can rely on its own concept of "ordered liberty" or "shocking the conscience" or natural law to decide what laws it will permit state legislatures to enact. *Gideon* in applying to state prosecutions the Sixth Amendment's guarantee of right to counsel followed *Palko* v. *Connecticut*, 302 U.S. 319, which had held that specific provisions of the Bill of Rights, rather than the Bill of Rights as a whole, would be selectively applied to the States. While expressing my own belief (not shared by MR. JUSTICE STEWART) that all the provisions of the Bill of Rights were made applicable to the States by the Fourteenth Amendment, in my dissent in *Adamson* v. *California*, 332 U.S. 46, 89, I also said:

"If the choice must be between the selective process of the *Palko* decision applying some of the Bill of Rights to the States, or the *Twining* rule applying none of them, I would choose the *Palko* selective process."

Gideon and similar cases merely followed the *Palko* rule, which in *Adamson* I agreed to follow if necessary to make Bill of Rights safeguards applicable to the States. See also *Pointer* v. *Texas*, 380 U.S. 400; *Malloy* v. *Hogan*, 378 U.S. 1.

[33] Hand, The Bill of Rights (1958) 70. See note 5, *supra*. See generally *id.*, at 35–45.

[34] *Id.*, at 73. While Judge Hand condemned as unjustified the invalidation of state laws under the natural law due process formula, see *id.*, at 35–45, he also expressed the view that this Court in a number of cases had gone too far in holding legislation to be in violation of specific guarantees of the Bill of Rights. Although I agree with his criticism of use of the due process formula, I do not agree with all the views he expressed about

construing the specific guarantees of the Bill of Rights.

[35] The Amendments in question were, as everyone knows, originally adopted as limitations upon the power of the newly created Federal Government, not as limitations upon the powers of the individual States. But the Court has held that many of the provisions of the first eight amendments are fully embraced by the Fourteenth Amendment as limitations upon state action, and some members of the Court have held the view that the adoption of the Fourteenth Amendment made every provision of the first eight amendments fully applicable against the State. See *Adamson* v. *California*, 332 U.S. 46, 68 (dissenting opinion of Mr. JUSTICE BLACK).

[36] U. S. Constitution, Amendment I. To be sure, the injunction contained in the Connecticut statute coincides with the doctrine of certain religious faiths. But if that were enough to invalidate a law under the provisions of the First Amendment relating to religion, then most criminal laws would be invalidated. See, *e. g.*, the Ten Commandments. The Bible, Exodus 20:2–17 (King James).

[37] U. S. Constitution, Amendment I. If all the appellants had done was to advise people that they thought the use of contraceptives was desirable, or even to counsel their use, the appellants would, of course, have a substantial First Amendment claim. But their activities went far beyond mere advocacy. They prescribed specific contraceptive devices and furnished patients with the prescribed contraceptive materials.

[38] U. S. Constitution, Amendment III.

[39] U. S. Constitution, Amendment IV.

[40] U. S. Constitution, Amendment V.

[41] Cases like *Shelton* v. *Tucker*, 364 U. S. 479 and *Bates* v. *Little Rock*, 361 U. S. 516, relied upon in the concurring opinions today, dealt with true First Amendment rights of association and are wholly inapposite here. See also, *e. g.*, *NAACP* v. *Alabama*, 357 U. S. 449; *Edwards* v. *South Carolina*, 372 U. S. 229. Our decision in *McLaughlin* v. *Florida*, 379 U. S. 184, is equally far afield. That case held invalid under the Equal Protection Clause, a state criminal law which discriminated against Negroes.

The Court does not say how far the new constitutional right of privacy announced today extends. See, *e. g.*, Mueller, Legal Regulation of Sexual Conduct, at 127; Floscowe, Sex and the Law, at 189. I suppose, however, that even after today a State can constitutionally still punish at least some offenses which are not committed in public.

[42] See *Reynolds* v. *Sims*, 377 U. S. 533, 562. The Connecticut House of Representatives recently passed a bill (House Bill No. 2462) repealing the birth control law. The State Senate has apparently not yet acted on the measure, and today is relieved of that responsibility by the Court. New Haven Journal-Courier, Wed., May 19, 1965, p. 1, col. 4, and p. 13, col. 7.

Mr. BAYH. I do recall reading the case, and I have read it extensively. The Court stresses importance of privacy and freedom to all individuals. We are talking about due process, we are talking about equal protection, and we are talking about first amendment freedoms.

Now on a more general level, it would take a pretty brave soul to be willing to stand up and say, "Senator CRANSTON, Senator BAYH, et cetera, et cetera," if they are surrounded by government agents taking pictures, or if they know someone is following them in and out of the shopping center and this type of thing.

It is pretty hard for the Senator from California or me to envision how others might feel about free speech because he and I say pretty much what we wish to say and let the sticks, stones, and brickbats fall where they may.

The Supreme Court has said that the average citizen shall have his right to free speech unhampered and unharassed by government activity. Harassment, continually putting an individual under surveillance, is a violation of the right to privacy. There is sort of an umbrella of protection for those rights.

Mr. CRANSTON. I would appreciate it if the Senator, in addition to placing in the RECORD the material to which he referred, at a future time would develop for me the significance of the Griswold case and the significance or lack of significance of it with respect to Mr. Rehnquist's statements and views. That would be of great benefit to those of us who are considering the matter, as well as the entire matter of the right of privacy which is involved here.

Mr. BAYH. Let me point out that Mr. Rehnquist declined to comment specifically on Griswold, when I inquired of him.

Mr. CRANSTON. His lack of argument in favor of such a case may be of some significance here.

Mr. BAYH. He did not comment on the Griswold case. Let me make clear that he declined to comment on the doctrine of that case.

Mr. CRANSTON. Is it possible that a nominee of his intellectual capacity and scholarly background is not aware of the Griswold decision?

Mr. BAYH. I doubt that very much. And if his memory ever did slip him, you may be sure that the Senator from Indiana would remind him. It is just that philosophically the Senator believes that the nominee is not fully cognizant of this, as well as the importance of several other rights.

Mr. CRANSTON. On another matter that I noted in looking at the committee report, and a matter I am not entirely clear on, Mr. Rehnquist's proponents in the committee report cite that his vote in favor of the Model State Antidiscrimination Act as significant in terms of his news on human rights. I would like to inquire is to what significance the Senator from Indiana places upon it, and how he interprets it.

Mr. BAYH. I appreciate the Senator asking that question because this is an important point. When I asked some of the supporters of the nominee to come forward with evidence that the nominee did in fact have the kind of sensitivity in human rights and civil rights they said he did, this was the only thing that has been forthcoming. I think it is a very thin reed on which to base one's commitments to human rights.

In the hearings I asked the nominee for evidence of activity and interest he previously expressed that showed a commitment to equal rights or civil rights. The nominee apparently did not feel his participation in this uniform commission was of such importance to cause him to mention it. It was not until it was brought to light—in fact, it was in the discussion of the Committee on the Judiciary at the time we voted on the nominee—that suddenly one of the proponents said the fact that he finally voted for this is evidence of the fact he believes now in a major commitment to human rights.

The record will show that Mr. Rehnquist represented the State of Arizona on the Uniform Commission. Before the commission was a Model Antidiscrimination Act. The transcript of the record shows that on one occasion Mr. Rehnquist sought to strike from the Model Act the provision which would make it unlawful to participate in blockbusting, that insidious tactic followed by a few unscrupulous realtors to make a fast buck.

I have cited several times for the RECORD that members of the commission felt that Mr. Rehnquist's argument was that not only a policy matter, but also a constitutional law matter, was involved in this provision. That is example No. 1.

Example No. 2 was the fact that Mr. Rehnquist also tried to strike from the provisions of the Model Act a section that would permit employers voluntarily—not mandatorily but voluntarily—to compensate in future hiring practices for discrimination that had gone on in previous hiring practices to try to sustain some balance in the work force. This is sort of a Philadelphia plan in the embryo stage, and Mr. Rehnquist, although he states he was an advocate of the Philadelphia plan, when this plan was before the Commissioners he tried to wipe out that provision. He was defeated on both of those occasions.

Point three is that he succeeded in leading an effort that made the Antidiscrimination Act a model act instead of a uniform act. The distinction between a uniform act and a model act, I think is relevant. A uniform act binds each Commissioner to go forth to his own State legislature at home and try to get the uniform act enacted. A model act is one proposed where there is little chance of a substantial number of the States enacting such provision. So here on two occasions did he not only try to strike the provision but he also tried to make it into a model act.

In the final analysis he did, along with all other Commissioners, except the Commissioners of Mississippi and Alabama, vote for the act. But that is hardly the kind of major commitment to human rights or even tacit commitment to human rights that would be expected. It is like the fellow who does everything he can to derail the train and then when he sees he is going to be defeated he rushes to jump on the back platform before the train gets out of the station.

Mr. CRANSTON. As I understand it, the action of Mr. Rehnquist in voting for that model act was not significant in the way the committee report would indicate it was, first, because before he finally cast a vote for it, he tried his best to get the act transformed from a more sweeping measure as a uniform law into a model law.

Second, he did not place significance on it because he apparently did not even remember it when he was testifying and citing his record in the field.

Third, I would like to point out to the Senator that the President stated, be-

fore making the two nominations, one of which has been disposed of and one of which is still pending, that he proposed to nominate men to the Supreme Court who reflected his own philosophy, and he said that was a conservative philosophy.

Given what the Senator from Indiana has said, the facts now appear to be that Mr. Rehnquist does not even reflect the President's philosophy in this specific matter. In fact, Mr. Rehnquist's philosophy represents a more conservative, radical, extreme view, because the equal employment opportunities procedures mandated by President Nixon in a Federal Employment Executive order promulgated in 1969 required affirmative action to redress past discrimination in hiring whereas what Mr. Rehnquist actually opposed having done at the local level was to permit individual private employers, if they wished, to adopt such equal employment plans.

Mr. BAYH. And the President has also said he was against blockbusting.

Mr. CRANSTON. Yes. So here we have a nominee who is more extreme by far than Mr. Nixon in his attitudes on this matter.

Mr. BAYH. I appreciate the fact that the Senator from California brought that up, because I think to submit that a Supreme Court nominee is a great humanitarian, or meets even the minimum standards of human sensitivity that a Supreme Court judge should have, when he has a rather bad record as a commissioner of uniform laws, is to base the case, as I said a moment ago on a rather shaky reed.

Mr. EASTLAND. Mr. President, I have received a letter from the nominee about something which has been mentioned in the debate—the memorandum which he wrote to Mr. Justice Jackson. I did not think that he needed to write this letter, because the memorandum was certainly what was the law at that time, which was in 1952. I judge that he wrote this letter to be perfectly fair with the Senate. The letter is addressed to me:

DEAR MR. CHAIRMAN: A memorandum in the files of Justice Robert H. Jackson bearing my initials has become the subject of discussion in the Senate debate on my confirmation, and I therefore take the liberty of sending you my recollection of the facts in connection with it. As best I can reconstruct the circumstances after some nineteen years, the memorandum was prepared by me at Justice Jackson's request; it was intended as a rough draft of a statement of *his* views at the conference of the Justices, rather than as a statement of my views.

At some time during the October Term, 1952, when the School Desegregation Cases were pending before the Supreme Court, I recall Justice Jackson asking me to assist him in developing arguments which he might use in conference when cases were discussed. He expressed concern that the conference should have the benefit of all of the arguments in support of the constitutionality of the "separate but equal" doctrine, as well as those against its constitutionality. In carrying out this assignment, I recall assembling historical material and submitting it to the Justice, and I recall considerable oral discussion with him as to what type of presentation he would make when the cases came before the Court conference.

The particular memorandum in question differs sharply from the normal sort of clerk's memorandum that was submitted to Justice Jackson during my tenure as a clerk. Justice Jackson expected case submissions from his clerks to analyze with some precision the issues presented by a case, the applicable authorities, and the conflicting arguments in favor either of granting or denying *certiorari*, or of affirming or reversing the judgments below. While he did expect his clerks to make recommendations based on their memoranda as to whether *certiorari* should be granted or denied, he very definitely did not either expect or welcome the incorporation by a clerk of his own philosophical view of how a case should be decided.

In other words, right there, Justice Jackson gave assignments to his clerk, and this was an assignment which he gave to Mr. Rehnquist, the nominee.

I read further:

The memorandum entitled "Random Thoughts on the Segregation Cases" is consistent with virtually none of these criteria. It is extremely informal in style, loosely organized, largely philosophical in nature, and virtually devoid of any careful analysis of the legal issues raised in these cases. The type of argument made is historical, rather than legal. Most important, the tone of the memorandum is not that of a subordinate submitting his own recommendations to his superior (which was the tone used by me, and I believe by the Justice's other clerks, in their submissions), but instead quite imperious—the tone of one equal exhorting other equals.

Because of these facts, I am satisfied that the memorandum was not designed to be a statement of *my* views on these cases. Justice Jackson not only would not have welcomed such a submission in this form, but he would have quite emphatically rejected it and, I believe, admonished the clerk who had submitted it. I am fortified in this conclusion because the bald, simplistic conclusion that "*Plessy* v. *Ferguson* was right and should be re-affirmed" is not an accurate statement of my own views at the time.

I believe that the memorandum was prepared by me as a statement of Justice Jackson's tentative views for his own use at conference. The informal nature of the memorandum and its lack of any introductory language make me think that it was prepared very shortly after one of our oral discussions of the subject. It is absolutely inconceivable to me that I would have prepared such a document without previous oral discussion with him and specific instructions to do so.

In closing, I would like to point out that during the hearings on my confirmation, I mentioned the Supreme Court's decision in *Brown* v. *Board of Education* in the context of an answer to a question concerning the binding effect of precedent. I was not asked my views on the substantive issues in the *Brown* case. In view of some of the recent Senate floor debate, I wish to state unequivocally that I fully support the legal reasoning and the rightness from the standpoint of fundamental fairness of the *Brown* decision.

Yours very truly,
WILLIAM H. REHNQUIST,
Assistant Attorney General,
Office of Legal Counsel.

Mr. BAYH subsequently said: I read a recent letter from Mr. Rehnquist received by our distinguished chairman of the Committee on the Judiciary, and since it has been introduced into the RECORD, I will not ask that it be introduced. But I would hope that each Member of this Senate will read that letter and then judge the veracity of it for himself, so that each Senator may do so in proper perspective.

Mr. President, I ask unanimous consent that immediately following the letter from the nominee, the memorandum from the nominee to Justice Jackson be printed in the RECORD.

Thus, each of us will have the opportunity to look at the wording of the memorandum and of the letter which attempts to explain it.

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

A RANDOM THOUGHT ON THE SEGREGATION CASES

One-hundred fifty years ago this Court held that it was the ultimate judge of the restrictions which the Constitution imposed on the various branches of the national and state government. *Marbury* v. *Madison*, other than the personal predilections of the Justices.

As applied to questions of inter-state or state-federal relations, as well as to inter-departmental disputes within the federal government, this doctrine of judicial review has worked well. Where theoretically co-ordinate bodies of government are disputing, the Court is well suited to its role as arbiter. This is because these problems involve much less emotionally charged subject matter than do those discussed below. In effect, they determine the skeletal relations of the governments to each other without influencing the substantive business of those governments.

As applied to relations between the individual and the state, the system has worked much less well. The Constitution, of course, deals with individual rights, particularly in the First Ten and the Fourteenth Amendments. But as I read the history of this Court, it has seldom been out of hot water when attempting to interpret these individual rights. *Fletcher* v. *Peck*, in 1810, represented an attempt by Chief Justice Marshall to extend the protection of the contract clause to infant business. *Scott* v. *Sanford* was the result of Taney's effort to protect slaveholders from legislative interference.

After the Civil War, business interest came to dominate the Court, and they in turn ventured into the deep water of protecting certain types of individuals against legislative interference. Championed first by Field, then by Peckham and Brewer, the high water mark of the trend in protecting corporations against legislative influence was probably *Lochner* v. *N.Y.* To the majority opinion in that case, Holmes replied that the Fourteenth Amendment did not enact Herbert Spencer's Social Statics. Other cases coming later in a similar vein were *Adkins* v. *Children's Hospital*, *Hammer* v. *Dagenhart*, *Tyson* v. *Banton*, *Ribnik* v. *McBride*. But eventually the Court called a halt to this reading of its own economic views into the Constitution. Apparently it recognized that where a legislature was dealing with its own citizens, it was not part of the judicial function to thwart public opinion except in extreme cases.

In these cases now before the Court, the Court is, as Davis suggested, being asked to read its own sociological views into the Constitution. Urging a view palpably at variance with precedent and probably with legislative history, appellants seek to convince the Court of the moral wrongness of the treatment they are receiving. I would suggest that this is a question the Court need never reach; for regardless of the Justice's individual views on the merits of segregation, it quite clearly is not one of those extreme cases which commands intervention from one of any conviction. If this Court, because its

members individually are "liberal" and dislike segregation, now chooses to strike it down, it differs from the McReynolds court only in the kinds of litigants it favors and the kinds of special claims it protects. To those who would argue that "personal" rights are more sacrosanct than "property" rights, the short answer is that the Constitution makes no such distinction. To the argument made by Thurgood, not John Marshall that a majority may not deprive a minority of its constitutional right, the answer must be made that while this is sound in theory, in the long run it is the majority who will determine what the constitutional rights of the minority are.

One hundred and fifty years of attempts on the part of this Court to protect minority rights of any kind—whether those of business, slaveholders, or Jehovah's Witnesses—have all met the same fate. One by one the cases establishing such rights have been sloughed off, and crept silently to rest. If the present Court is unable to profit by this example, it must be prepared to see its work fade in time, too, as embodying only the sentiments of a transient majority of nine men.

I realize that it is an unpopular and unhumanitarian position, for which I have been excoriated by "liberal" colleagues, but I think *Plessy* v. *Ferguson* was right and should be re-affirmed. If the Fourteenth Amendment did not enact Spencer's Social Statics, it just as surely did not enact Myrdahl's American Dilemma.

Mr. EASTLAND. Mr. President, I have noticed that the Senators who have read from this memorandum did not know where it came from, and did not realize the facts that were behind it.

Of course, a clerk is not going to give the judge that he works for his own views on a subject. In this instance, he was simply given an assignment, and he fulfilled that assignment, which he was bound to do. It was just like the administrative assistant of a Senator. They do not come in unsolicited, at least mine do not, and try to influence me. But I do give them assignments and expect them to fulfill those assignments.

Mr. Rehnquist is being mistreated here, and being badly mistreated, because there was no attempt to get the facts, but just to read a bald statement that appeared in Justice Jackson's papers, when, after all, this was an assignment which the judge had instructed Mr. Rehnquist to perform.

Mr. SCOTT. Mr. President, will the distinguished chairman of the committee yield, without losing his right to the floor?

Mr. EASTLAND. I yield.

Mr. SCOTT. I would like it to be noted that this letter is in accordance with what I said publicly yesterday, and I would like to repeat those comments now.

First of all, I agree that it is customary for Senators as well as Justices to ask their staffs to prepare points of view on one side or another of a case. We have often had the experience that we ask our staffs to prepare separate memorandums on each side, and then we make up our own minds. It is perfectly clear that this is what was done here, and I am informed reliably that Mr. Justice Jackson had already informed himself on one side of the issue in discussions with the other members of his staff, but that he wished some additional commentary and light on the opposing point of view, namely, the point of view of stare decisis: Shall we stand by the decisions? As law clerks have done from time immemorial——

Mr. EASTLAND. After all, is that not what that statement was? That statement to Justice Jackson was just simply a reiteration of what the law was at that time.

Mr. SCOTT. That is what he was doing, as law clerks have done from time immemorial.

Mr. EASTLAND. And the doctrine of stare decisis certainly applied.

Mr. SCOTT. At that point the doctrine of stare decisis clearly applied, and law clerks, I suspect, as far back as Coke and Blackstone were supplying memorandums on one side or the other to their principals.

I happen to be one who strongly disagreed with Plessy against Ferguson when I read it as a lawyer. But it was the law of the land for 75 years. The Court was in the process of reviewing and considering whether to arrive at new directions. A law clerk is asked to survey the status of the law: What is the law where we are now, what does it say? And he did that.

I was concerned about something else, and I mentioned this publicly yesterday:

Some of the press said to me:

Oh, yes, Mr. Rehnquist says that Brown against Board of Education is the law of the land. But is he for it?

I said:

I have talked to him. He said he expected it to continue to be the law of the land, that it was a humane decision, and he says it is his judgment that it was good law.

Immediately my friends from the press leapt on me almost as one man, and said:

Oh, yes, but does he really believe it is good law? Now he says so.

Senator after Senator has stood up here and testified to the integrity of this man. The Senators who criticize him support his integrity and his reputation for truthfulness. He says it is good law, it is a good case, he believes in it. And then someone asks me:

Oh, yes, but does he think it is morally right?

Well, we fought that issue out for over a year 20 years ago, and if necessary, I will ask him whether it is morally right or not. But he says it is fair; he says it is forthright; he says in his letter he fully supports the legal reasoning and the rightness from the standpoint of fundamental fairness of the Brown decision. I do not see how you can go any farther than that.

It seems to me that this knocks into a cocked hat all of this skillfully constructed house of cards—this lonely effort, largely by a very few people, to create a condition which does not exist, to create in the minds of the Senate and the public the fact that there is something in the record which, if they could only get it out, would be detrimental.

Here is the answer. He was a law clerk. The Senators who criticize him would fire members of their own staffs if they told them how to vote. This law clerk said he would not dare tell the Justice how to vote, and he wrote this as a memorandum, so far as his recollection certifies, to be used by equals among equals. As a matter of fact, as we all know, Mr. Justice Jackson voted in the unanimous opinion of the court in Brown against Board of Education.

Mr. EASTLAND. That was 2 years later.

Mr. SCOTT. It was 2 years later. But it seems to me that we are going through a charade here. We are going through a charade where those who are devoid of a case are using time as a substitute for logic. They are using the days of the week as an alternative to reason. They are using the clock in lieu of conceding the right to other Senators to proceed with the business of the Nation.

We can be through; we can be out of here Saturday. There is now pending an agreement which is not for me to state, but we are very close to an agreement whereby the other body and the Senate can agree on everything pending before us which we undertook to take up this year. We can agree on it and be out of here Friday or Saturday.

But, here or there, a lone objector stands up and says:

You can't go home until I can continue my fruitless search. You can't leave this Chamber until my bootless effort to find some reason for my arguments somehow succeeds because somewhere, somehow, some other newspaper or magazine is going to come up with another flash bulletin and it will take two or three days to demolish it.

This is only an effort to gain time. It is unfortunate, and there is a way to stop it. The way to stop it is by cloture. The way to stop it is to file a cloture motion, and I feel like filing that cloture motion. It will be filed—a motion to get out of here by Saturday—because we have finished our business, if we can vote on this nomination.

I cannot believe that one, two, or three Senators really want to keep the rest of the Senators here until Christmas. If they do, let them bear the onus. There is onus enough to go around, and I will bring in a large package of onus each day and distribute it generally and apply it where it will do the most good, I hope. If they are going to keep Senators here until Christmas, all right; I will join in that; and if necessary I will file a cloture motion every day from now to the end of the session. I do not believe it will be necessary. I think Senators want to finish their business. I think they want to proceed responsibly. I do not think they want to lead the rest of their colleagues into an unwilling residence in a Chamber in which we have become far too much accustomed to the company of each other, for the good of the Nation or for our own good.

So let us see what happens. A cloture motion will be filed. It may be this afternoon; it may be tomorrow morning. Senators will have a chance to vote on Friday; on Saturday; on Monday, if necessary, and Tuesday, Wednesday, Thursday, Friday, and Saturday. I can call the days of the week too; I can count, too, and I can read time, too.

I know what is going on around here. Let us find out. There is no cause for

extended further debate here. Every issue has been raised except the latest flash excitements; and as these excitements arise, they can be put out—these brush fires—one by one. We will not run out of water to extinguish the brush fires that have no reason to be ignited in the first place. But we can do better than that. We can be responsible. We can be responsible and vote for cloture. We can say to those who have nothing to say in this cause, and we can say to those who having nothing to add to this cause, and we can say to those who have nothing to contribute to this cause, except their suspicion that they do not like what the nominee will do on the bench, let the Senate exercise its constitutional duty and vote on the President's nominee.

I probably will not like some things this nominee or that nominee or the other may do on the Bench. I never wholly agreed with a Supreme Court Justice yet. That is not proof that they are wrong and I am right.

As the Romans said, "Carpe diem." We will seize this day. We will seize it by cloture.

But wait until the day when another President comes in with another Supreme Court Justice nominee, with a different philosophy, and then the argument will be made, if we are so unwise as to make it a precedent:

No, we don't agree with his opinions. We don't know what they will be. He has changed them in 20 years.

I know Members of the other body—two from a single State, for example—who have changed their views on busings in 1 year. By golly, if Representatives and Senators can change their views in a year—and I know some Senators, including myself, who have changed them in 5 minutes when we have found evidence to support it—why cannot he change his views in 20 years?

They say they believe him. But they are afraid he will not agree with them on the Bench. That is the most murderous, antilibertarian theory I have ever heard. I am a Jeffersonian. The room I occupy here was first occupied by Thomas Jefferson, and I believe in his point of view—the freedom of the mind to explore, to generate ideas, to change, to quest, to look, and to look with wonder, on the changes of the world, and to meet them as the need comes.

This man can be a good judge. In my opinion, he will be. He certainly can help to mold the interpretation of the law. But what law is there that says that a man must agree with the Senate?

As the Senator from Wisconsin said this morning, if we are going to reject nominees because of disagreement with their views:

We will have a court of political weathervanes. We do not need another U.S. Senate interpreting the law.

In terms of changing one's mind, I think we have had some illustrations of that, illustrations which the critics of this nominee have cited with great approval and approbation. The President of the United States, for years, was one of the leaders in opposition to U.S. relations with Communist China. He changed his mind and said:

I will go out there and meet with Mao Tse-tung.

The very people who denominated themselves as liberals cheered to the heavens and said:

How wonderful! This is great! He has changed his mind. How noble it is, how good it is, how refreshing it is that a man has changed his mind!

Well, I say that those who criticize this nominee are not going to change any minds, except against them. I said yesterday that I understand there are some Senators who were going to vote against the nominee but are now going to vote for him because they do not like these tactics and they do not like this delay and they think it is unwarranted.

It is within the privilege of the Senators; we know that. But there is a time when the exercise of one person's privilege impinges on the privileges of all, and there is a time when the individual's commitment to his singular point of view operates with singular unfairness toward the collective point of view of the body in which he serves. We all have enough selfishness to be tempted to do just this. The reason the Senate functions is that most of us withhold most of the time what we privately think of each other when these occurrences develop.

So let it be understood that if there are to be brush fires, they will be fought with something more than brush fires; they will be fought with the rules of the Senate.

Having made perfectly clear my commitment to Brown against Board of Education, my commitment to civil rights and to civil liberties, I hope this nominee will share my point of view. I would welcome him. I would do my best, if I were before the bench, to persuade him that that is right. He says to me and to all of us, in this letter, that that is right. I welcome him to the company of those who wear the white hats, and I would hope for other white-hat decisions accordingly. But whether he decides one way or another, if he decides according to his conscience, in strict obligation as a sworn upholder of the law, and if he acts with fairness and with integrity, he is entitled to be on that bench.

Here I have to disagree with people with whom I have agreed over and over many times. I believe that you cannot try a man for what you think he thinks or what you suspect he may say. That is antiliberalism.

I thank the distinguished Senator from Mississippi.

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

Mr. EASTLAND. I yield.

Mr. HRUSKA. Mr. President, this memorandum of 1952, written by Mr. Rehnquist for Mr. Justice Jackson under the circumstances discussed in the letter just alluded to, should be considered in light of the context of the time. At that moment four cases were pending in the Supreme Court from lower courts, one of which was the Brown case. In three cases there was absolute reliance upon a case that had been decided in 1896. That was 56 years prior to the time the memorandum was drawn. In one of the pending matters, the Delaware case, there was a partial disavowal of Plessy against Ferguson, but in the other three cases the opinions below said that "We rely on Plessy against Ferguson and the petitions of the plaintiffs are denied"—an application for an injunction in each instance. Against that background, Justice Jackson said,

I want all the arguments for sustaining the logic and constitutionality of Plessy vs. Ferguson and the proposition of law which it contains.

So Mr. Rehnquist, being a law clerk, subject to that kind of order and mandate, complied with the request of the Justice.

Writing memoranda or briefs or opinions for the use of others is not a new position for a nominee to the Supreme Court to find himself in where he acts in a representative capacity.

An attempt was made some time ago to say that this is the first time the relationship of attorney-client or related forms of privilege has been relied on by a nominee for the Supreme Court.

That is not so.

In 1967, during the hearings on Thurgood Marshall there was brought out the fact that Thurgood Marshall had drawn up the brief in one of the Miranda cases—there were four in that series of cases—the Westover case. At the hearing that nominee refused to answer any questions about the brief or of the substance which it contained.

At a later time, attention was called to a speech he made at the Texas University School of Law, to the students there, in which he discussed this case. He was asked why the case—in discussing this at the Texas University Law School with the students there—was different from the position he took in the hearings. He said he was not privileged to discuss the case before the committee because, as he put it:

Judge MARSHALL. Well, the answer to Senator Kennedy is that once the President announced the nomination, I have not made any statements to anybody about anything.

That was his attitude during the course of the hearings. However, the Senator from Massachusetts (Mr. KENNEDY) was there as a member of the committee, and he said this to Mr. Marshall at the time when he was asked about the Texas Law School lecture:

Senator KENNEDY. Actually, Mr. Solicitor General, there would have been nothing improper for you to express an opinion down in Texas Law School, because you were not nominated to the Supreme Court at that time.

Judge MARSHALL. That was the position I took.

Senator KENNEDY. So, actually, now having received the nomination, then I assume that you have a different responsibility as far as commenting on these matters.

And then ensued some further dialog. Senator KENNEDY at a later point said:

Senator KENNEDY. But the point that I am driving at is that you have, as a nominee, a different responsibility, as I understand it, as to commenting on questions that might come up before the Court——

At another juncture in the hearings, the Senator from Massachusetts said this:

I am submitting for the record briefs filed by Solicitor General Marshall in the Court criminal cases which were heard by the Supreme Court during the past two terms.

* * * * *

In putting this material into the record, I think we ought to offer it for the permanent committee files, I emphasize that these were briefs filed by Judge Marshall in his role as an Advocate. I respect the point which you made yesterday, that he is perfectly willing that this committee examine and consider all the statements of record and it reflects his briefs as filed and opinions as written, but does not believe in his present status as a nominee that he should express any opinion concerning specific issues which are likely to come before him in the future as a Justice.

On this point, the Senator from Michigan (Mr. HART) also said:

The dilemma is that as a lawyer, we are free to make an expression of whether a court opinion is good or bad. We may or may not have read the briefs and records, but that does not inhibit us. As a judge, you speak only after reading the briefs and records and listening to the argument, and that is all you say. You put it in writing, period.

Now, as a lawyer nominated to the Court, you are hung with this dilemma. You do not want to box yourself in by a statement here, because after you read the briefs and records and arguments, you may find that your intellectual training suggests that you might have been wrong here, that there is additional illumination developed as a result of the argument. Yet, you would be hung on exactly what you are saying, having told us that your impression as a lawyer is such and such about a case. If as a judge later you discover that if you had known now what you knew then, your answer would have been different, you are inhibited from reaching a right judgment as a judge because you are afraid somebody in this committee will confront you with your previous statement.

That is the dilemma I am afraid we are facing here.

So, Mr. President, we have a situation that is not new at all. Always we on the committee have heard nominees decline to answer for a variety of reasons. This instance is no different.

There are always in these cases the matter of a nominee being called upon to forego and forswear loyalties that he has previously held and placing in their stead loyalty to the Supreme Court and the duties devolving on Associate Justices, which will also devolve upon Mr. Rehnquist by his nomination and confirmation.

That occurred with Justice Goldberg, with Justice Marshall—with everyone. That is the case here.

Let me read into the RECORD an excerpt from a letter dated November 18, 1971, to the Chairman of the Judiciary Committee, the distinguished Senator from Mississippi (Mr. EASTLAND), written by Benno C. Schmidt, Jr. I ask unanimous consent that the entire letter be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HRUSKA. Mr. President, the excerpt I wish to read is as follows:

I do not doubt that Mr. Rehnquist's positions on matters before the Supreme Court will be opposed, often diametrically, to my understanding of the mandates of our Constitution. One who reveres the person and performance of Chief Justice Warren, as I do, cannot but look forward to Mr. Rehnquist's likely decisions with some misgivings. But protecting the independence of the Supreme Court by subjecting nominees to an outcome determining test is self-defeating. Ultimately, those who believe in the essential role of the Supreme Court as an active and principled protector of individual liberties trust rest their faith on process, not on outcome. Candor, force of logic, attention to pertinent detail, openmindedness in approaching the discrete and varied problems which come before the Court—these are the conditions of independence and purpose in our judicial institutions. They are attributes which I believe Mr. Rehnquist possesses in abundance.

Mr. President, again we come to the proposition: Where does he stand in regard to the attributes that really count in considering a person for the position of Associate Justice of the Supreme Court? A few comments on that point may be in order considering some of the unfounded charges that have been made during this debate.

Now, Mr. President, those who oppose Mr. Rehnquist's appointment to the Supreme Court do so, because of his alleged lack of sensitivity to civil rights and individual liberties. When all the embellishments are removed, this is what it amounts to. On all other aspects of his record of achievement he is unassailable, of course, and his opponents recognize this. They believe, however, that in civil rights they have found Mr. Rehnquist's Achilles heel, the one area in which they feel he is vulnerable.

I have said before that this is nonsense, Mr. President, a conclusion borne out by the majority section of the report by which Mr. Rehnquist's nomination was presented to the full Senate. As the floor debate continues, however, it is clear to me that further comments by this Senator are necessary to balance the record. I do this not out of fear that Mr. Rehnquist's confirmation will be defeated. On the contrary, I have full confidence in the ability of my colleagues to separate the wheat from the chaff. Rather, I would like the record to be plain as to the real Mr. Rehnquist, the man the Senate will shortly place on the Supreme Court.

Mr. President, the man who has been described by a principal detractor as one who "has persistently been hostile to efforts by court or legislature to use law to correct the racial injustices of the past two centuries" is not the candidate before us for consideration. That description fits only the straw man who has been set up by the opponents of this nomination. Having set the straw man up as a person "of persistent indifference to the evils of discrimination" with a record that "reveals a dangerous hostility to the great principles of individual freedom under the Bill of Rights," these opponents now propose to knock such a man down. Such a description would no doubt alarm any thinking person, were it true. Fortunately, it is not. I will now proceed to discuss why Mr. Rehnquist is not such a man.

Let us examine the negative aspects first, Mr. President. What objective evidence exists to support the claim that Mr. Rehnquist is, at the least, insensitive to civil rights of minority groups and, at the worst, opposed to the granting of these rights.

Three events have been relied upon by those who are resisting confirmation: Mr. Rehnquist's opposition to a Phoenix public accommodations ordinance in 1964, his concern about two provisions in a 1966 Model State Antidiscrimination Act, and a 1967 letter to the Arizona Republic in support of the neighborhood school concept.

I believe anyone reading the discussion of these three incidents in both the majority and minority portions of the committee report on Mr. Rehnquist, plus those portions of the hearing record which relate to them, could only come to the conclusion that they do not represent a persistent hostility or indifference to civil rights issues. To ascribe such a pattern to these three events is to create a fiction which is both inaccurate and unjust. It eliminates every other reasonable hypothesis for Mr. Rehnquist's actions on these occasions.

These instances have now been joined by a fourth, in the form of a memorandum written by Mr. Rehnquist to Mr. Justice Jackson while serving as the Justice's law clerk in 1952. This memorandum expressed the view that Plessy against Ferguson was right and should be sustained as the law of the land. Plessy was, of course, overturned in 1954 when the Supreme Court decided Brown against Board of Education.

Mr. Rehnquist has since responded in a letter to the chairman of the Judiciary Committee, which is now a matter of record. It is obvious that Mr. Rehnquist's response, which affirms that the memo was done at Justice Jackson's request to discuss a particular point of view which was not the nominee's, completely eliminates this document as a basis on which to base objections to Mr. Rehnquist's position on civil rights. On the contrary, special note should be made of the nominee's strong support of the decision in Brown against Board of Education and, in his words, "the legal reasoning and the rightness from the standpoint of fundamental fairness."

Examined objectively, these points do not in fact by themselves support the conclusion that Mr. Rehnquist is unsympathetic or insensitive to civil rights. But there is another and more serious aspect to this criticism of the nominee. It is alleged that the unrelated events on which Mr. Rehnquist's opponents rely are, in their words, "unrelieved by actions showing an affirmative commitment to racial justice." It is here, Mr. President, that they overextend themselves factually and tactically.

By this statement they have revealed their true objections to the nominee. They would like Mr. Rehnquist to be a civil rights activist, one who will use the Constitution and the law to correct

improper practices. I emphasize the word "use," Mr. President, because it has been employed on several occasions by those who would not see the candidate confirmed. This is the real test being applied to the nominee. He has not done enough to advance the cause of civil rights.

I urge my colleagues to consider the impracticability and even danger involved in such a standard. A nominee must now come forward and demonstrate his deeds in a particular area of interest to show he is worthy to sit on the Highest Court. He must place his activities on a ledger sheet, to be checked off against those deeds which a select group of people believe he should perform. Who then adds up the totals? How many acts of good faith are enough? What about other areas? May unions now come forward and ask the nominee to show what he has done for labor? May farmers ask to see his accomplishments in their field? And so on, ad infinitum.

Certainly civil rights is a vital matter, and certainly there is something there for all of us. But we are talking about a man who is to sit on a court of law, not one of equity. Everyone is entitled to know whether a candidate is antagonistic to issues that will be brought before him. But I believe this cannot and should not be done by requiring an affirmative showing in certain areas.

This brings me to the nominee himself. It is time to discuss the true man, the living William Rehnquist—not some caricature created by those who see patterns where they do not exist, who choose to apply great significance to certain words and deeds while totally ignoring others.

We are talking about a man who was described by Walter Craig, distinguished jurist and former ABA president, as having "a humanity about him and a human warmth that would make him, if anything, more sensitive to the needs of the people—and the necessity—of improving their life and their society." A man about whom Prof. Benno Schmidt of Columbia Law School, a former clerk to Chief Justice Warren and a former coworker with Mr. Rehnquist, said:

> In our work together, he was open to reasoned persuasion, tolerant and respectful of my quite different constitutional and political outlook, and ever willing to examine his position in the light of the fullest possible analysis of facts and legal principle.

This is a man who chose to move into an integrated neighborhood in Phoenix and to send his children to an integrated school. It is a practice which he still follows. In the words of a former principal of his children, he wanted "his children to have experience and associations with children from minority groups, as well as with the different socioeconomic groups." He and his children had this opportunity many times in school and neighborhood undertakings. And as a neighbor has stated:

> Working with us was always a cross-section of parents from mixed ethnic, racial, and economic backgrounds. In all of these contacts, never have I heard or seen Mr. Rehnquist act in a negative way towards a person or show preference because of his race, background, or economic disadvantage.

Mr. President, the Senate is considering a nominee who wrote the opinion for the Justice Department upholding the Philadelphia plan, an arrangement to secure greater employment of minority workers. A man who, only last year, rendered the opinion providing the legal basis for the present requirement in regulations of the Law Enforcement Assistance Administration that States provide a nondiscrimination pledge before receiving LEAA grants. This opinion was rendered even though the relevant statute is silent on this point.

This is a man who went out of his way to help two black messengers in his office by upgrading their positions from GS–1 to GS–2 in one case and GS–3 in the other. Both of these men had been GS–1 at the Department of Justice for over 20 years. He has also gone out of his way to hire women lawyers for the Office of Legal Counsel, which now has 4 out of 17 attorneys who are female.

Mr. President, the Senator from Indiana has said on this floor that "the issues involved in this nomination are subtle." He has pointed out that there is no headline making controversy. In this we completely agree. Until his nomination, William Rehnquist was not a national figure. He is not a headline maker. He has been a practicing lawyer, and now a public servant. Indeed, he has not openly and publicly demonstrated an affirmative commitment to civil rights—he has merely lived this way. This type of fair, balanced approach to life does not get headlines. All it does is make believers out of those who know such a person.

In my individual views on this nomination I pointed out that those who know Mr. Rehnquist best have the best things to say about him. I cannot overemphasize this point. Certainly we have to look at the cold record, at past events, and at written statements—even those rendered as an advocate. But all these things must be viewed with the perspective that comes from knowing what kind of man William Rehnquist really is. Those who know him best can tell us the most about this, and they have—including those like Jarril F. Kaplan of the Arizona Bar, or Congressman PAUL MCCLOSKEY, whose political views differ widely from those of the nominee.

Mr. President, I take strong exception to the idea voiced by Mr. Rehnquist's opponents that "if you're not for me you're against me." It is a gross oversimplification to say that if you do not actively and publicly support civil rights issues you oppose them. Every day in this Chamber Senators who vote their consciences oppose bills that have been proposed to accomplish high purposes or cure substantial ills. They oppose them for a number of reasons, but never because of the goals these measures pursue. And so it has been with the nominee.

William Rehnquist is, first and foremost, a servant of the law. He is the living example of what we try to convince our people to do every May 1 on Law Day, for he is dedicated to the rule of law and not the rule of man. This does not mean that he is insensitive to any one area of human concern; it means that he is equally sensitive to all of them.

Why, for example, would he vote in favor of the 1966 Model State Antidiscrimination Act if he were so against minority progress. Much is made of his concern, as a lawyer, over two provisions of this act. But if he were so against them, why did he vote in favor of the act which included them on final passage? Where was his "persistent hostility" then? Did he predict his current nomination?

And why, just last year, did he support the requirement of a nondiscrimination pledge from States receiving LEAA grants? The law is silent on this requirement. His persistency should have led him to direct his talents against such a requirement.

Mr. President, the balanced and reasoned approach which this nominee will bring to the Supreme Court has been lacking in that body in recent years. It is that very balance which has been lacking in the arguments advanced by Mr. Rehnquist's opponents, who chose to place great emphasis on certain words and deeds, while ignoring others. I have full confidence, however, that my colleagues will consider the entire record and place this nominee on the Court without undue delay.

Mr. President, I yield the floor.

EXHIBIT 1

COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK,
New York, N.Y., November 18, 1971

HON. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, Washington, D.C.

DEAR SENATOR EASTLAND: I am writing to you as Chairman of the Senate Judiciary Committee to state my hope that the Committee will recommend and the Senate will confirm the appointment of William H. Rehnquist to the Supreme Court of the United States. Ordinarily, I would not think my impressions of a nominee to the Supreme Court were worthy of any special interest by the Committee. However, Mr. Rehnquist has been subjected to such extravagant denunciation by groups and persons with whom I am usually in accord that I feel justified in making my views a matter of record.

In assessing what weight to give my views, it may be helpful for you to know that I am Associate Professor of Law at Columbia University School of Law. My primary teaching interest and responsibility is Constitutional Law. After graduating from Yale Law School in 1966, I served for one year as law clerk to Chief Justice Earl Warren, and then for the next two years I served as Special Assistant to the Assistant Attorney General in charge of the Office of Legal Counsel.

In that latter capacity, I had the bulk of my working relationship with Mr. Frank M. Wezencraft, Mr. Rehnquist's gifted predecessor as Assistant Attorney General. When Mr. Rehnquist became Assistant Attorney General, I remained in the Office of Legal Counsel at his request for about five months while he became acquainted with the operations and responsibilities of the Office. During that time I worked closely with him on a daily basis on a variety of constitutional and other legal problems. I should make clear that my impressions of Mr. Rehnquist were formed solely on the basis of this close association over a relatively short period of time.

In working with Mr. Rehnquist, I developed clear impressions of his attributes of character and intellect which seem to me most

relevant in assessing his qualifications to be a Justice of the Supreme Court. First, and most important, Mr. Rehnquist is a person of great intelligence. He is a painstaking legal craftsman with a lively and subtle interest in the interplay of constitutional law and social policy. I will not elaborate this point, since I believe no fairminded person could doubt Mr. Rehnquist's exceptional intellectual qualifications to sit at the highest level of our judicial system. Instead, I want to address myself to Mr. Rehnquist's fairness and objectivity.

In my work with Mr. Rehnquist he seemed to me unusually openminded and free of reliance upon dogma in dealing with constitutional questions. His approach to legal problems is highly discriminating; few persons in my experience have exhibited more alert skepticism as to the utility of sweeping generalizations and ideological positions. Always I had the impression that careful analysis governed his response to legal questions.

Mr. Rehnquist approaches legal issues with the utmost forcefulness and honesty. In our work together, he was open to reasoned persuasion, tolerant and respectful of my quite different constitutional and political outlook, and ever willing to examine his position in the light of the fullest possible analysis of facts and legal principle. He is an independent, even iconoclastic, thinker.

Candor, openness to argument, and forcefulness of logic and expression are critically important to the performance of the Supreme Court, with its unique and delicate power of constitutional review. I believe Mr. Rehnquist's appointment will help restore these necessities of judicial process, sadly diminished by recent events and losses from the Court.

I do not doubt that Mr. Rehnquist's positions on matters before the Supreme Court will be opposed, often diametrically, to my understanding of the mandates of our Constitution. One who reveres the person and performance of Chief Justice Warren, as I do, cannot but look forward to Mr. Rehnquist's likely decisions with some misgivings. But protecting the independence of the Supreme Court by subjecting nominees to an outcome determining test is self-defeating. Ultimately, those who believe in the essential role of the Supreme Court as an active and principled protector of individual liberties must rest their faith on process, not on outcome. Candor, force of logic, attention to pertinent detail, openmindedness in approaching the discrete and varied problems which come before the Court—these are the conditions of independence and purpose in our judicial institutions. They are attributes which I believe Mr. Rehnquist possesses in abundance.

I respectfully urge the Judiciary Committee to recommend confirmation of William H. Rehnquist to the Supreme Court.

Respectfully,

BENNO C. SCHMIDT, Jr.

Mr. HART. Thurgood Marshall, as distinguished from the present nominee, told the committee that the briefs that had been filed during the period he was the Solicitor General, and which were in question before the committee, indeed did reflect his views. That is the meat and potatoes of this perhaps important, perhaps subsidiary argument.

I have not looked at the record of the recent past, but even the excerpt that the Senator from Nebraska read, as I heard it, had Thurgood Marshall saying, "And those are my views."

Mr. Rehnquist says with respect to some of those pleadings and positions of the department that because of an attorney-client relationship he could not give us his view on those questions. To the extent that we ought to look at the precedent set in the Thurgood Marshall case, I suggest that the precedent makes overwhelming the proposition that Mr. Rehnquist was not acting, and is not acting, as did Thurgood Marshall in responding to the inquiry of the committee.

Mr. BAYH. Mr. President, I have been here almost continuously observing and participating in the debate during its entirety, but being only human, a Senator on occasion has to leave the floor for personal reasons. I regret that, when I was briefly absent, the distinguished minority leader decided to gain the floor and to berate at some length the effort that some of us are making to try to present a case.

Mr. President, I think it would be wrong to become involved in personalities. I have the greatest respect for the minority leader as an individual, as a dedicated human being, and I think that the RECORD would show that on most instances we vote similarly.

Indeed, on the first Supreme Court nomination battle that was waged here in recent history, the distinguished minority leader joined with the Senator from Indiana and 53 other Members of the Senate—some 15 or 16 or 17 of whom were Members of his party—to reject the Haynsworth nomination. Although there was significant minority opposition to the Carswell nomination, the minority leader felt disposed to vote for Judge Carswell. I do not know whether he was quoted accurately or not, but I understand that shortly thereafter he said he thought he made "a damn fool mistake" in doing so. Thus, at least in hindsight, the distinguished minority leader and the Senator from Indiana have been on the same side up to this point on five Nixon nominations: Burger, Haynsworth, Carswell, Blackmun, and Powell.

I find it ironic that in the second full day of debate on this controversial question the minority leader comes to the floor of the Senate and accuses some of us who are in opposition of arbitrary tactics, dilatory tactics, of lonely vigils, and then is not present to let us discuss this matter.

It seemed patently unfair to me that the distinguished minority leader decided to gather the clan in the press corps and tell them that a filibuster was being conducted exactly when the time the distinguished junior Senator from Massachusetts was making one of the most eloquent appeals of the last 2 days in opposition to the Rehnquist nomination. In fact, on yesterday morning before the Senator from Indiana even had a chance to commence his opening speech, the minority whip rose and expressed his opinion that a filibuster was in process and we had better be prepared not to leave the floor, or the question would be put.

Mr. President, I think it is a sad day if Members of this Senate cannot take each other at their words. I have not participated in a filibuster in the 9 years I have been a Member of this body, and I am not inclined now to participate in a filibuster. I defy the minority leader, or anyone else, to find any legitimate basis, any objective evidence, that debating a matter as critical as this—putting a man on the Supreme Court for 30 years—debating that for 2 days, 3 days, or 4 days is a filibuster. If that is a filibuster, and if the minority leader wants to shut off the debate, why does he not stop talking about it and come on the floor of the Senate and put in a cloture motion? Let the people of the country see what is happening—that they are trying to stick a Supreme Court nominee down the throats of the Senate at a time when we all want to go home and be with our families, at a time when the world is filled with turmoil, and the news of this nomination has not yet reached the public. It is rather obvious that those who are supporting the Rehnquist nomination seem to fear that with the passage of a little time, and the passage of free debate—which is characteristic of this body—that something else might be disclosed.

Let me turn our attention to Mr. Rehnquist's recent response to the Newsweek article. The news of this Newsweek article and the memorandum, which disclosed for the first time Mr. Rehnquist's memorandum to Justice Jackson on Brown against Board of Education, came to me on Sunday.

The Justice Department also knew of this on Sunday. Yet it took until Wednesday afternoon, about 2:15 or 2 p.m., for the first effort on the part of the Justice Department or the nominee to explain it to be forthcoming.

Always before we have had an immediate response. I think it is fair to ask: Why do we go through Monday, Tuesday, and almost through Wednesday before we received an explanation, an explanation which I think, if anyone would read it carefully, raises questions in my mind. I am dubious about its veracity.

I know that is not a light charge to make; I nevertheless feel it is accurate.

ANNOUNCEMENT OF CONFERENCE ON THE ELECTION REFORM BILL

Mr. PASTORE. Mr. President, as in legislative session, I should like to announce that the committee of conference on the disagreeing votes of the two Houses on S. 382, the election reform bill, will meet at 2 o'clock tomorrow afternoon, in room H–326.

THE NOMINATION OF WILLIAM H. REHNQUIST TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT

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

Mr. BAYH. I yield.

Mr. PASTORE. The Senator mentioned this Rehnquist letter read into the RECORD today. I have not been able to be in the Chamber during the entire debate. As the Senator will notice, I was a conferee yesterday on the supplemental appropriation bill. We met at 11:30 a.m. and left at quarter of 7 last night, which was about an hour and a half later than the Senate recessed. But I have sought to keep abreast of the discussion.

Referring to the letter, on page 3, I am looking at the final paragraph which states:

In closing, I would like to point out that during the hearings on my confirmation, I mentioned the Supreme Court's decision in *Brown* v. *Board of Education* in the context of an answer to a question concerning the binding effect of precedent. I was not asked my views on the substantive issues in the *Brown* case. In view of some of the recent Senate floor debate, I wish to state unequivocally that I fully support the legal reasoning and the rightness from the standpoint of fundamental fairness of the *Brown* decision.

Does the Senator from Indiana question this man's veracity?

Mr. BAYH. The Senator from Rhode Island does not reach the same conclusion in looking at the same facts. We can all look at the record, but the Senator from Indiana believes there was ample opportunity for the nominee to suggest here his views on the principles of Brown long before this. I cannot imagine why he waited so long.

At the hearings he was asked to explain his position on Brown. He said that it was the law of the land, which is as simple as the nose on my face, because it is the law of the land. In discussing whether he would overrule Brown, he talked of the weight he would give to a nine-man decision and that a unanimous decision should be given more weight than a 5-to-4 vote.

Mr. PASTORE. But he said "a question concerning the binding effect of precedent."

Does the Senator have the question that was asked Mr. Rehnquist in a hearing and the answer?

Mr. BAYH. We can get it.

Mr. PASTORE. I have been following this debate by reading the RECORD very carefully. I review the RECORD every morning on the debate.

I was wondering here if we are raising a question of doubt in the last paragraph. That is all I would like to know. What was the question asked of him?

Mr. BAYH. The question was a more generalized question relative to what the nominee's opinion was and his position would be on Brown against Board of Education.

If you look at his discussion of precedent on this and anticipate how he might vote, then you have to look at his discussion elsewhere in the RECORD on precedent.

He did say it was the law of the land, and elsewhere that a nine-man precedent was more significant than a 5-to-4 precedent.

Mr. PASTORE. The reason I asked the question is that here he states unequivocally;

I was not asked my views on the substantive issues in the Brown case.

Can we raise a question about that? Was he or was he not asked?

Mr. BAYH. I do not know. I will look at the RECORD to see the specific wording.

Mr. PASTORE. Then he states in the letter:

In view of some of the recent Senate floor debate, I wish to state unequivocally that I fully support the legal reasoning and the rightness from the standpoint of fundamental fairness of the Brown decision.

He goes beyond his capacity as a lawyer; he is speaking now as a man. "The rightness from the standpoint of fundamental fairness." Not fundamental jurisprudence, but a fundamental fairness of the Brown decision. I repeat I have not made up my mind, but I would like to hear from those opposing the nomination in order to help us make up our minds in a rightful way, what do they think of this last paragraph? Do they question this man's statement here? Do they doubt his veracity, or is there anything in the RECORD to contradict his affirmation?

Mr. BAYH. I appreciate the fact that my colleague from Rhode Island is struggling with this. I have struggled with it for some time now.

Mr. PASTORE. I am not struggling. I am asking a question. The Senator should see me when I am really struggling.

Mr. BAYH. I have seen the Senator when he is struggling.

Mr. PASTORE. When I struggle, I struggle.

Mr. BAYH. Yes, sir; pound for pound more than anybody in this body.

The Senator from Indiana feels the question asked by the Senator from Rhode Island is a good question. If we are really trying to explore the feelings of Mr. Rehnquist on Brown against Board of Education and about the entire issue of quality education and integrated education, I feel disposed to suggest that the letter before us is a rather self-serving effort to disavow a most persuasive and compelling indicator of his feelings on civil rights before the Senate.

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

Mr. BAYH. I will yield gladly but first I would like to take about 2 additional minutes to complete my statement.

I would ask the Senator from Rhode Island as he is deliberating upon this, to look not only at the letter which has arrived and not only at the 1952 memorandum. I earnestly hope that he will read, on page 307 of the hearings, the letter to the editor that Mr. Rehnquist wrote to the Phoenix newspaper in opposition to a plan of voluntary integration of the Phoenix school system.

I asked the nominee how he could rationalize his letter if he did believe in Brown against Board of Education and letting minority students have access to the educational system. How could he write this letter to the editor criticizing the superintendent of schools of Phoenix under the circumstances?

He replied, "I did so, because I was against long-distance busing."

I suggest to my friend from Rhode Island that long-distance busing was not in question. He simply avoided the issue in replying. The superintendent of schools said he was opposed to arbitrary forced, long-distance busing. This plan represented an effort to open the school system. The desegregation plan in question was a freedom of choice plan. For the nominee to state his letter to the editor was written, because he was against long-distance busing is not supportable on the facts.

Mr. PASTORE. In other words, the Senator is saying that he does question the veracity of the last paragraph.

Mr. BAYH. That is exactly what I am saying.

Mr. PASTORE. That is what I asked the first time. Does the Senator from Indiana question this man's veracity?

Mr. BAYH. I cannot know what was in Mr. Rehnquist's mind in 1952. I suppose it is a reasonable conclusion that if he wrote a letter to the editor in 1967 that was what he meant and that was in his mind. Well, Brown against Board of Education was written when he was a 28-year-old law clerk. I would not venture to demean law clerks, but 28 is an age when you should know what you are discussing. But at the age of 43 or 44, when he was a leading member of the bar in Phoenix, he wrote this letter to the editor and now he attributes the motive to long-distance busing, but long-distance forced busing was not in question at the time.

I shall be glad to yield to my distinguished committee chairman. I appreciate his patience in waiting so long.

Mr. EASTLAND. Am I right that my friend from Indiana has been stating on the floor that Mr. Rehnquist was a man of integrity?

Mr. BAYH. That is right.

Mr. EASTLAND. A man of unimpeachable integrity?

Mr. BAYH. The Senator from Indiana has not said "unimpeachable integrity."

Mr. EASTLAND. I asked the Senator a question.

Mr. BAYH. No.

Mr. EASTLAND. But he is a man of integrity?

Mr. BAYH. The Senator from Indiana said he thought Mr. Rehnquist had acceptable integrity, and he was not questioning that. But the more certain documents are disclosed, the more questions the Senator from Indiana has.

Mr. EASTLAND. The thing that gets me is that Mr. Powell was not asked anything about Brown against Board of Education by anyone. He was not asked what his views were on the law in 1952 and 1964. He was not challenged at all, was he?

Mr. BAYH. I must say, if the chairman remembers the record, and I ask this with all due respect. I know the Senator from Indiana asked Mr. Powell many questions. He was not handled with kid gloves. We asked him detailed and explicit questions about past decisions and past cases and the minutia of his actions when he was on the city and State school boards. We asked him whether he opposed that decision in 1954. We asked him what exactly he did to implement it. We asked him what he did to oppose the growing pressure to meet the Brown decision with massive resistance. His actions left us with no doubt about his views.

Mr. EASTLAND. Frankly, I do not recall that he was asked a question about his view on the Brown against Board of Education case. Am I right or wrong?

Mr. BAYH. Frankly, I do not think we had any evidence that he wrote a memorandum to a Justice.

Mr. EASTLAND. Will the Senator answer the question?

Mr. BAYH. I do not remember asking him that. In those words there was no

need to do so. I asked him a lot more basic questions, myself. I asked him a number of questions about why he took a number of certain positions as a member of the school board of Richmond and as a member of the school board of Virginia. That was his post. He was never a law clerk to a Supeme Court Justice, as Mr. Rehnquist was.

May I read from page 277 of the hearings and call the attention of my chairman to the fact that the Senator from Indiana did ask Mr. Powell questions concerning Brown against Board of Education?

Mr. EASTLAND. Yes.

Mr. BAYH. As it appears on page 277 of the hearings I asked him the following question:

> May I ask you, please, to just give your thoughts relative to how some of the following programs or strategies fit into or should be excluded from the provisions of the Constitution, which seem to be laudatory, very similar to the doctrine put down in *Brown* v. *Board of Education*. You were serving in an official capacity in the educational system at the time that *Brown* v. *Board* came down?

Then I go down to a whole series of questions relative to Brown against Board of Education and the decisions he was making on the local scene to implement Brown against Board of Education.

Mr. EASTLAND. My question was, Did the Senator ask him what his views were on that decision?

Mr. BAYH. Very frankly, it never occured to me—perhaps it should have—that either one of these nominees would have been a part of a memorandum the likes of which we have here.

Mr. EASTLAND. It just takes a simple yes or no answer.

Mr. BAYH. The Senator is not going to deny me the use of three or four other words, is he?

Mr. EASTLAND. No, or 3 or 4 hours more.

Mr. BAYH. I wish the Senator would speak to the minority leader about that.

Mr. EASTLAND. The fact is that Mr. Powell was not asked that question by any member of the committee. Is not that a fact?

Mr. BAYH. I respectfully——

Mr. EASTLAND. The Senator has brought up a lot of matters against Rehnquist that were not brought up against Powell. Nobody asked Mr. Powell what he thought the law was or what he thought of the law before 1964.

Mr. BAYH. I respectfully suggest that I do not think the chairman is right on that. I know he thinks he is, but if he will start reading on page 277 of the hearings, he will see that a number of questions were asked by Mr. BAYH of Mr. Powell relative to Brown against Board of Education, and then, if he will look at another place in the record, he will see similar questions directed to Mr. Rehnquist. I think the questions directed to Mr. Powell were more specific relative to Brown against Board of Education than the questions that were directed to Mr. Rehnquist. The reason is that Mr. Powell was in an official capacity in the school system of Virginia, both as a school board member and as a member of the State school system. His actions told us of his views in concrete, irrebuttable terms. I was interested in learning how he looked at Brown against Board of Education. If the Senator will look at the transcript, he will see I asked him about the Gray Commission report and his position on that.

Mr. EASTLAND. Did the Senator ask him about his law firm representing the State of Virginia in the Brown case?

Mr. BAYH. I am sure it was a matter of knowledge.

Mr. EASTLAND. It was not in the record. Did anybody ask him that question?

Mr. BAYH. I am not responsible for all the questions——

Mr. EASTLAND. Those questions were not relevant against Mr. Powell?

Mr. BAYH. I should say, to the contrary, that they were relevant.

Mr. EASTLAND. I think this is being blown into a big balloon about Mr. Rhenquist, and I do not think it is justified.

Mr. BAYH. Of course, all of us are entitled to our own individual rights.

Mr. EASTLAND. Of course, the Senator is entitled to his rights.

Mr. BAYH. I know the Senator never has and I do not think he ever will want to have any difference in our relations, but I think if anyone would care to read the number of questions that were addressed to the nominee Powell on the whole area of Brown against Board of Education and his involvement and whether his acts were indeed consistent with Brown against Board of Education—in fact, if the Senator would read the statement that I made when I finally reached the decision to support Mr. Powell—he will see that the Senator from Indiana questioned Mr. Powell about these matters. Now, I did not agree with all of the positions assumed by Mr. Powell in that capacity on the school boards. But if we look not only at the Rehnquist memorandum of 1952, and the so-called explanation of it now, but if we look at what has happened since, if we look at the letter to the editor relative to opposition to opening the schoolhouse door in Phoenix in 1967, if we look at his opposition to letting black people in drugstores in 1964, and if we look at the clear pattern of the preference of property rights over individual rights, there is a great consistency, I say to my friend and my chairman, between what appears in the 1952 memorandum and what appears in the letters to the editor which appear under the name of Mr. Rehnquist, which he has not denied.

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

Mr. BAYH. I yield.

Mr. PASTORE. I think, in maintaining fairness in the discussion, there is a distinction between the two. Either the question was not asked or it was not raised.

Mr. EASTLAND. It was not raised.

Mr. PASTORE. It was not raised, and I can understand why it was not raised relative to Mr. Powell.

There have been some items in the record of Mr. Rehnquist that have raised some questions, justifiably so in the minds of many people, including myself, matters which I think need explanation and justification.

I am not one of those who maintains that every man of 50 looks at life in the same light he did when he was in his twenties. We all change. To me it is of little moment how this man thought when he was in his twenties. I want to know how he feels now, because now is the time when he is being considered for the Court.

That is why I asked the question about the last paragraph. I am not too deeply interested in the memorandum of 1952. Perhaps he was wrong. Perhaps he did write a memorandum then that today he regrets. I have seen a man on the floor of the Senate vote consistently against civil rights bills and then, when he became President, score the finest record on civil rights this country has ever known. That happened in my time.

After all, how far can you go in making a man carry his past on his back when he has reached the point of making atonement and declares. "I do not look at it the same any more, and this is how I feel now?"

That is the reason why I asked the question. If the Senator from Indiana questions the credibility of the last paragraph in the letter in which Mr. Rehnquist declares, "I wish to state unequivocally that I fully support the legal reasoning and the rightness." He is talking as a man, and not as a lawyer, not as a judge. He as talking as a human being, because to me there are two requisites to making a fine judge. First of all, he has to be learned in the law; but above everything else, he has to be a man.

To be a good judge you have to be a whole man. I do not care how smart you are. We have gone through several wars where the people who perpetrated them were brilliant, but their minds were twisted. It is not a question of how brilliant a man is; the bigger question is, how fair is the man? How well does he understand human nature? How deeply does he love people? How much does he love his family? How much does he love this great country of ours?

Those are the questions we have to ask.

If this man, in 1952, said something that today he regrets, and he stands up like a man and says, "I was wrong, but today this is the way I feel," it is as of today we must make judgment. If you believe the man, if we have a man who has made his own act of contrition, if we have a man who has made atonement, it may well be that we have a good man.

That is what I am truly interested in, and I keep searching this record to find out what kind of a man he is today. That is the important question, and I hope to be enlightened on that.

We keep dragging out the things that happened 20 years ago. I would like to know a little more about what kind of a man he is today, and whether his conduct is inconsistent with this allegation in the last paragraph. If it is, he has to explain it to me. If he really means what he said, I say that has to be given serious consideration.

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

Mr. BAYH. Mr. President, if the Senator will permit me to respond——

Mr. GOLDWATER. Yes, indeed.

Mr. BAYH. I feel that the logic of the Senator's argument is well taken. It is a logic which I share and agree with. It is the same kind of struggle I went through, and I am going to call it a struggle, because as far as I was concerned, I struggled with it in the decisionmaking process, not only on this nomination, but on the Carswell nomination.

As Senators will recall, there we had a case that Judge Carswell, when he was 28—the same age as Mr. Rehnquist when this memorandum was written—when Mr. Carswell was 28, he made that statement: "I yield to no man in my belief in white supremacy."

Some said that ought to disqualify him without further consideration. It is a pretty terrible statement, but the Senator from Indiana thought that perhaps he was a little wiser at 43 than he had been at 28, and that we should examine the record further; and it was not until we saw the clear pattern in Judge Carswell's cases in the other instances that came to the attention of the Senate and the committee that I was convinced he had not changed his views.

I can honestly say, I say to the Senator from Rhode Island, that no one can tell what thoughts the nominee possesses now. He alone is in possession of those thoughts. We are familiar with the fact that some such pronouncements are self-serving. I would prefer to look and see what the nominee said before he was nominated as a Supreme Court Justice, to see what he really believed.

I ask my friend from Rhode Island, as he considers this important issue, to look, not just at the context of the 1952 memorandum, but at what William Rehnquist has done long after he was 28.

In 1964, when he was 40 years of age, he testified before the Phoenix City Council in opposition to an equal accommodations ordinance to let black people into the drugstores of Phoenix. He was the only one to so testify. The city council unanimously overrode his objection, and passed the ordinance, after which Mr. Rehnquist was not satisfied, and wrote a very strong letter to the editor of the newspaper, decrying this fact; and in the final analysis, his whole argument was the importance of property rights over individual rights.

Now, a copy of that testimony, for those who care to look at it, will be found on page 305 of the hearings record. He was 40 years of age then.

In 1966, when he was 42 years of age, he was a commissioner on Uniform State Laws, and in the meeting of the commission, he moved to strike the anti-blockbusting provision out of the Model Act.

The Senator from Rhode Island knows what blockbusting is. That is the unscrupulous act of a few unscrupulous individuals who go in and try to wreck neighborhoods.

Mr. Rehnquist argued that he had a policy question on this—in other words, that he thought it was bad policy to say it should be against the law—and also a constitutional question.

Mr. ERVIN. Mr. President, may I ask the Senator a question?

Mr. BAYH. May I just finish? Then I shall be glad to yield for a question. But I think the Senator from Rhode Island has asked a very real question, and I am prepared to try to answer it.

The chairman of the committee studying the act was a fellow by the name of Robert Braucher, who was a Harvard law professor, and is now on the Supreme Judicial Court of the State of Massachusetts. Here is how he responded to that effort to say that we are not going to outlaw blockbusting:

> However, I would like to speak for just a moment to the merits of this. The practices that are dealt with in this provision are practices that have no merit whatever. They are vicious, evil, nasty, and bad. These are people who go around—and this is not a hypothetical situation; this is something that has happened in every big city in the United States—and run up a scare campaign to try to depress the value of real estate. They will, if possible, buy one house, and then they will throw garbage out on the street; they will put up "For Sale" signs; they will perhaps hire twenty badly clad and decrepit-looking Negroes to occupy a single-family house, and so forth, and then they go around to the neighbors and say: Wouldn't you like to sell before the bottom drops out of your market?

This is not a hypothetical situation, as the Senator from Rhode Island knows very well. It is something that has happened in every big city of the United States.

Braucher concludes by saying:

> And the notion that type of conduct should be entitled to some kind of protection under the bans of free speech is a thing which doesn't appeal to me a tiny bit.

That was what happened in 1966. In 1967—as I mentioned to my friend from Rhode Island, at that time Mr. Rehnquist was aged 43—he was a leading attorney in Phoenix. He wrote a letter, the letter to the editor I referred to a moment ago, entitled "De Facto Schools Seem Serving Well," in which he took isssue with then Superintendent of Schools Seymour, who was trying to open a door with a voluntary freedom of choice proposal, not the arbitrary 2.2-percent long-distance busing schemes that have been proposed by some now, but a voluntary effort. Here is one paragraph, in Mr. Rehnquist's own words, when he was 43 years of age, which reads as follows:

> Mr. Seymour declares that we "are and must be concerned with achieving an integrated society." Once more, it would seem more appropriate for any such broad declarations to come from policy-making bodies who are directly responsible to the electorate, rather than from an appointed administrator. But I think many would take issue with his statement on the merits, and would feel that we are no more dedicated to an "integrated" society than we are to a "segregated" society;

Mr. PASTORE. I read that.

Mr. BAYH. Well, then I shall not include it.

Several Senators addressed the Chair.

Mr. BAYH. I am not afraid of losing the floor. I yield to the Senator from North Carolina.

Mr. ERVIN. The Senator from Indiana has laid great stress on the supposed iniquity of the views which Mr. Rehnquist, as a law clerk to Justice Jackson, expressed to Justice Jackson in regard to the constitutional question relating to school segregation based on race.

I would like to point out that 15 years before that, namely, in 1927, in the unanimous decision in *Gong Lum* v. *Rice* 275 U.S. 78, which was still the interpretation placed on the Constitution at the time Rehnquist wrote the memorandum, the Supreme Court, in an opinion written by Chief Justice William Howard Taft, ruled that it was perfectly consistent with the 14th amendment in general and the Equal Protection Clause in particular for a State to operate segregated schools. So I cannot understand why it is a manifestation of iniquity on the part of Mr. Rehnquist to take a position which a unanimous Supreme Court had taken just 15 years before on this question. And that Supreme Court, which was unanimous on this question, included among its membership such great liberals as Oliver Wendell Holmes, Jr., and Louis D. Brandeis.

With respect to blockbusting, I want to ask the Senator from Indiana whether a blockbuster is not a real estate agent who attempts to make a profit by integrating racially segregated residential sections, and why the activity of a blockbuster is not absolutely consistent with those who desire a compulsorily integrated society?

It seems to me that the Senator from Indiana ought to be praising blockbusters who seek to integrate racially segregated residential areas instead of condemning them, because their action appears to be in harmony with the views he is expounding.

Mr. BAYH. May I answer the question, if indeed that was a question by the Senator from North Carolina, by posing another one?

Mr. ERVIN. There is a questionmark after what I said.

Mr. BAYH. I want to get the record clear. Perhaps the Senator from North Carolina can serve as my leader in answering that question. Is he in favor of the tactics of blockbusting for Winston-Salem and Greensboro and other places in his State? Does he feel that this is the kind of tactic he wants to support on any grounds?

Mr. ERVIN. I agree with Mr. Rehnquist in the statement that our Constitution does not contemplate a compulsorily integrated society any more than it contemplates a compulsorily segregated society. It contemplates a free society in which men shall live in freedom.

Mr. BAYH. The Senator from Indiana is not suggesting a compulsorily integrated society. What the Senator is suggesting is that when you have a Supreme Court nominee—who just is not anybody we drag in off the street—who is a fellow who graduated magna cum laude, a great intellect, nobody is arguing with that, and uses the sophisticated reasoning he used in that letter, that suggests that everybody should have a maximum of

freedom in a free society, how free is a black child in a society that will not let him in the schoolhouse?

Mr. ERVIN. The Supreme Court decision in Brown versus Board of Education of Topeka was not handed down until 2 years after Mr. Rehnquist wrote his letter to Justice Jackson. While the Brown case adjudged for the first time that no child can be excluded from a public school on account of his race, neither it nor any other case holds that the Constitution requires a State to compulsorily mingle the races. Moreover, nothing in the Constitution says that a man cannot attempt to desegregate racially segregated residential sections, as a blockbuster undertakes to do.

Mr. BAYH. The Senator from North Carolina has not answered my question, I say with all respect. Is he in favor of blockbusting? Is he in favor of that kind of insidious tactic, where you play on fears and frustrations and hatreds?

Mr. ERVIN. I am in favor of any American being allowed to sell his property to any person of his choice and that is the reason why I do not support open-occupancy bills. I am in favor of freedom, and I am in favor of allowing a man to sell his property to any person he pleases, and I am in favor of any person being permitted to buy property where he can find a willing seller to sell him property.

Mr. BAYH. I think we have strayed somewhat from the thrust of the actual reality of blockbusting.I will not read the very dramatic and accurate description by Justice Braucher as to how this blockbusting proceeds—playing on the fears and frustrations. It is the kind of practice which makes it absolutely impossible to have a free, integrated society, because it plays on hatred, fear that you are going to lose the value of your mortgage, fear that you are going to have somebody living next door to you who has disease, fear that you are going to have somebody living next door to you who is going to have a teenage son who is going to molest your teenage daughter. There is nothing in this country for the U.S. Senate to rationalize that kind of tactic.

Mr. ERVIN. I do not know that Judge Braucher ever heard any real estate agents saying that. But I did hear it suggested on one occasion that the devil was the the first real estate agent. The Bible informs us that the devil took the Lord to the top of a high mountain and showed him all the lands of earth; and told the Lord, "If you will bow down and worship me, I will give you all those lands." And the devil did this even though he did not own a damn foot of them.

Mr. BAYH. With all respect to the Senator, I would hate to argue the Bible with him, but I think the Good Lord, who created the earth, was the first real estate agent.

Mr. ERVIN. He may have done a little blockbusting Himself because he made a number of different races and left them to dwell on the same earth. So He might be alleged to be the original blockbuster.

Mr. BAYH. I am not too sure that we should give Him that title without letting Him be here to have a chance to defend Himself.

I should like to suggest that one point raised by the Senator from North Carolina is a bit far afield of what we are talking about here. We are looking at some of the things Mr. Rehnquist said. We got into the blockbusting business. But the original discussion between the Senator from Indiana and the Senator from Rhode Island—and I am glad that the Senator from North Carolina and the Senator from Mississippi joined in it—was relative to the memorandum of Mr. Rehnquist to Justice Jackson on the merits of Brown against Board of Education.

Mr. ERVIN. Rehnquist was a young fellow at that time, but he did have enough legal erudition at the time he wrote that memorandum to know that what he was saying was in complete harmony with what the Supreme Court had held just a few years before, in a unanimous opinion which had not been reversed up to that time. The opinion was written by Chief Justice Taft, and was concurred in by all the other eight Justices, including such recognized liberals as Holmes and Brandeis.

Mr. BAYH. And he was so out of touch with the direction in which the country was going and the problems which confronted the Court that nine members of the Court, including his own former boss, Justice Jackson, voted the other way, when they decided the case, which was argued contrarywise by Mr. Rehnquist.

Mr. ERVIN. Yes, but until the time they voted the other way the equal protection clause had always been interpreted by the Congress, the President, and the Supreme Court in the manner advocated by Mr. Rehnquist in his memorandum.

Mr. BAYH. It is a little more than setting precedent. There is a great deal of personal conviction involved in this memorandum:

> I would suggest that this is a question the Court need never reach; for regardless of the Justice's individual views on the merits of segregation, it quite clearly is not one of the extreme cases which commands intervention from one of any conviction.

That is a rather broad, reaching statement. The merits of segregation are not important enough for the Court to get involved. So if you take that passage, put it together with everything else in that memorandum, you get the impression that Mr. Rehnquist does not feel that striking down segregation and opening the doors on opportunity is proper ground for the Court to consider.

Mr. ERVIN. And 2 years later, as great a lawyer as ever lived on the North American Continent, John W. Davis, stood before the Supreme Court in the Clarendon County case and argued the same position Mr. Rehnquist had taken as being a correct exposition of the Constitution, which had been appealed from a ruling made by Chief Judge John J. Parker conforming to what Mr. Rehnquist said.

Mr. BAYH. I say to my colleague, lawyers are lawyers. We can find one on each side of every issue, and perhaps in between.

But the question before us is that nine lawyers who happened to wear the black robes of the Supreme Court of the United States voted the other way, contrary to the recommendation of Mr. Rehnquist.

I think there is rather compelling logic in the question asked by the Senator from Rhode Island. This was a statement made back in 1952. Here was a young man 28 years of age. Has he changed his mind?

Unfortunately, the record of change is not written. We cannot look only to statements or pronouncements of policy and beliefs after he was appointed to the Supreme Court. We must also look to views expressed before he was nominated for the Supreme Court, when, say, he was 43, when a man should be fairly mature. If he is not, then perhaps at 47, as he is now, he will be, though I wonder. I would suggest that he should be held subject, liable, and accountable for what he said when he was 43. Yet he wrote that letter to the editor, not opposing long distance busing as we now understand it, as he testified before the Senate Committee. I have a question about what was going on in his mind when he was asked by the Senator from Indiana, "Why did you write that letter?" And he said, "I was against long distance busing." But compulsory long-distance busing was not involved in that issue. This was a voluntary integration plan and the nominee was even opposed to voluntary integration of the schools.

Mr. ERVIN. Mr. President, will the Senator from Indiana yield for a question?

Mr. BAYH. I am glad to yield.

Mr. ERVIN. It was not voluntary on the part of the little children who were made the pawns for the busing. It also was not voluntary on the part of the parents.

Mr. BAYH. On the contrary. It was freedom of choice.

Mr. ERVIN. It was imposed on them by the school board. Does the Senator from Indiana take the position that little children should be bused all over the place merely to integrate their bodies rather than to enlighten their minds?

Mr. BAYH. Not necessarily.

Mr. ERVIN. I say frankly to the Senator that I do not believe in the busing of little children. It is contrary to the Constitution as I read it. I will tell the Senator why, if he will let me have enough time.

Mr. BAYH. I shall be glad to let the Senator have as much time as he wants to discuss the constitutionality of busing.

Mr. GOLDWATER. Mr. President, will the Senator from Indiana yield for a question?

Mr. ERVIN. I will not aid or abet the filibuster much longer.

Mr. BAYH. Which one, yours or mine?

Mr. ERVIN. Yours.

Mr. GOLDWATER. Mr. President, will the Senator from Indiana yield for a question?

Mr. ERVIN. The equal protection clause of the 14th amendment says that no State shall deny any person within its jurisdiciton the equal protection of the laws. That has always been interpreted to place upon a State the obligation to treat everyone in like circumstances in like manner and to forbid the State from treating differently persons similarly situated.

When the Federal court says to a school board, "You must deny a part of the children in this school district the right to attend their neighborhood school but let the other children attend their neighborhood school," the Court is ordering the board to violate the equal protection clause because it is requiring the school board to treat in a different manner children who are similarly situated. When the Court says to the school board, "We are requiring you to treat little children in a different manner in respect to attendance at neighborhood schools because we are ordering you to bus some of them to schools in other areas, either to decrease the number of children of their race in their neighborhood school or to increase the number of children of their race in schools elsewhere," it is ordering the school board to deny them the equal protection of the law. No kind of legal sophistry can erase the plain fact that such action on the part of the Court requires the school board to deny the children being bused admission to their neighborhood schools on account of their race in violation of the equal protection clause as it is interpreted in Brown against Board of Education, Topeka.

I thank the Senator very much for yielding.

Mr. BAYH. The Senator from North Carolina must always feel free to interject his thoughts here because, although I do not always agree with him, I know that he feels them strongly and he expresses them very well. But I think it is important, before we move on, and I will be glad then to yield to the distinguished chairman of the committee, the Senator from Mississippi (Mr. EASTLAND), who wants me to yield to him, as well as the distinguished Senator from Arizona (Mr. GOLDWATER), when I shall be very glad to yield to them both, but before that, it is important before we leave this 1967 school question to understand what we are talking about. We are not talking about a school that was ordered to integrate under a Federal court order. This was an effort on the part of local school authorities to broaden the opportunity and accessibility of the school system. There was no court order pending.

Here is the program right here as reported in the Arizona Republic of September 1, 1967, and if anyone cares to look beyond the minority report, take a look at page 19 of the newspaper.

These points are:

Appointment of a policy adviser skilled in interpersonal relations and urban problems;

Organization of a citywide advisory committee representing minority groups;

Formation of a Human Relations Council at each high school;

Promotion of voluntary exchanges of pupils among racially imbalanced schools in various ways, including the location of special enrichment programs and extra-curricular activities;

In the long run, a series of seminars on the nature of prejudice;

Curriculum changes designed to accent the contributions of various ethnic groups and individuals;

Without setting a ratio of minority teachers at each school, the assignment of staff in a way which redressed the existing imbalance.

Further, in the public proclamation, the superintendent of schools came out himself and said that he did not think busing was a panacea and resisted the very kind of long-range busing to which the nominee alludes. He said further:

It is much more preferable for us to demonstrate a willingness to broaden the spectrum of school populations through such actions as voluntary transfers, a local peace corps of students and teachers, . . . and other devices intended to lift the aspirations of those who live and learn without them.

The research evidence tentatively supports the premise that minority pupils achieve more in an atmosphere of high motivation.

Mr. President, that was the school plan and the purpose of Superintendent Seymour, and to suggest that this is a forced long distance busing plan, which is the reason the nominee gave for opposing it, it seems to me, is absolutely either to be ignorant of the facts or to attempt to distort them.

Now I am happy to yield to the Senator from Arizona.

Mr. GOLDWATER. I would like for the Senator from Indiana to get clear, as well as to get my own mind clear, as to the situation here. There was one high school and one grammar school at which this particular movement was aimed. That was the grammar school and the high school which I attended. Back in those days, we did not have segregated schools, of course, in Arizona. However, during the war, that particular school district was segregated and the high school was filled with black children. When we took this to court in 1940, and I was glad to participate in breaking this down, the Court ruled that segregation was improper. So the school became integrated. But at that time the families of the black students refused to allow their children to attend the Phoenix Union High School, because the Phoenix Union High School had become largely peopled with children of Mexican-American extraction. Eventually, by the way, we had to make a warehouse out of that high school which we built for the black children, and it is still a school warehouse.

The question came up, because the black people and the Mexican-American people—I hate to say this but they have never gotten along too well, they get along but not so well as we would like to see them get along—objected strenuously to this "mix," so Mr. Seymour of the school board proposed that the students be voluntarily bused. We did not use the term "busing" in those days—I forget what it was—but immediately there began to develop a hue and cry against it, not from the white people but from the people of black and Mexican-American extraction, none of them wanted their children to go to the school outside their district.

My hometown is like most other hometowns, I suppose. We have an area where the Mexican-Americans prefer to live and we have an area where the black people have always lived and prefer to live together because they live together. They did not want their children being bused, not because they did not want them to mingle with white children, but because they did not want them moved great distances. I am talking about great distances, and that is exactly what I mean.

At that time the nearest high school to my old high school was 10 or 11 miles away. Others have been built since then that might be closer.

That is the whole gist of the argument that the Senator from Indiana keeps bringing up about Mr. Rehnquist and the situation that developed in Phoenix.

I do have a question, because I notice on page 60 that the Senator stated, "I am more concerned about what you believe now than what you may have believed 2 years ago."

Yet, in the last several days since Newsweek magazine has published an article prepared by Mr. Rehnquist back in 1952, the Senator from Indiana has indicated he wants to go back into ancient history.

If the Senator believes this is a man of honesty—and I can attest from 18 years of personal knowledge of him, that there is no more honorable man that I have ever known—why can he not believe what Mr. Rehnquist said in the last paragraph of his letter written today relative to his memo for the then Justice Jackson?

This is what baffles me. I do not know what more justification we can give unless we bring him down here and put his hand on the Bible and make him swear to it.

As the Senator from Indiana knows, I did not vote for the Civil Rights Act of 1964 because I felt that two parts of it were unconstitutional. The Supreme Court has since ruled me wrong on one. And Lawyer Rehnquist ruled me wrong on the other and convinced me of it. I made a public statement on that matter long ago.

Furthermore, both in the case of the legislation and the Brown decision, when I felt that the Federal Government did not have the right to take away from the States the separation of their local schools, he convinced me that the Supreme Court did say that, whether it was in that language or not, and that I was wrong.

I mention these things because of personal experience. No one suspects me of being a lawyer. I do not know whether I would like that or not. However, I do know a man when I see one, and I know a man who is dedicated to his church, his family, and his friends, and who is a very honest and sincere man. And I do not like to hear a man whom I know to be above reproach constantly questioned when he has repeatedly said the things that I think needed saying to bring us up to date.

I thank the Senator for yielding to me.

Mr. BAYH. Mr. President, I am glad that the Senator expressed his thoughts on this matter. I find it a little difficult for me to be able to resolve in my own mind. If I may, I will pursue it a bit further, because the Senator is sincere and the Senator does know Mr. Rehnquist personally. He is familiar with the whole issue involving the school integration.

First of all, the Senator from Indiana is more concerned about what Mr. Rehnquist seems to think now than what he thought 2 or 12 or certainly 20 years ago. But I think we had a responsibility to look at everything he says he believes in now and compare that to everything that he has done in the past in order to decide the matter.

Mr. GOLDWATER. Mr. President, no one is denying the Senator that right. It is his duty. However, when the Senator says that he is not interested in what he said 2 years ago——

Mr. BAYH. That is not what I said.

Mr. GOLDWATER. And yet the Senator dwells on the past. He has referred many times to the memorandum prepared for then Associate Justice Jackson that was reported by Newsweek magazine without any questioning of Mr. Rehnquist as to what it was and why it was written.

I cannot understand why it is we have to keep on bringing up these points that the Senator says he is not interested in.

Mr. BAYH. That is not what the Senator said, with all due respect, and that is not what the Senator from Arizona said he said.

Mr. GOLDWATER. According to page 60, I have just read.

Mr. BAYH. Will the Senator read it again?

Mr. GOLDWATER. The Senator said:

> I am more concerned about what you believe now than what you may have believed 2 years ago.

Mr. BAYH. That is exactly what I said. I did not say that I was not concerned with what he said 2 years ago. I said that I was more concerned with what he believes now than I was with what he believed 2 years ago.

I think it is within the realm of reason to look at everything that the man has said and done over the past 4 or 5 years as a basis for what he believes now.

The Senator discussed Phoenix and the integration program. It is difficult for me to understand why there was resistance to a busing situation that was voluntary when the Mexican Americans and the blacks were the people that opposed the voluntary busing.

Mr. GOLDWATER. The Senator is correct.

Mr. BAYH. How in the world could I, as a parent, be opposed to busing if it is a voluntary program and no one could force the child to be bused?

Mr. GOLDWATER. Mr. President, I would like to clarify that at the time that letter was written by Mr. Rehnquist, there was a voluntary freedom of choice plan in effect in Phoenix and Mr. Rehnquist supported that. A plan had been proposed to permit students to pay their own bus fare to attend other high schools and it had already been adopted by the authorities.

The opposition however—and I have to say it was violent opposition—got so violent that the police had to patrol the high school that the senior Senator from Arizona (Mr. FANNIN) and I attended some years ago because of the constant fights between these two groups of people that historically have not gotten along together as well as I would like to see them get along.

It was not that the white people in the other schools objected to it. My own school district is about 15 miles from this. We thought it was a good idea, but nothing ever came of it, because we could not get the people involved in the basic school to even agree to bus or go any place else, and they would not go together. It is not some sectional problem. It is something that we would find in Muncie, Ind., or in any other city in Indiana.

It took place in a very peculiar, historic circumstance that we in Arizona all understand personally. Everyone understands it.

Mr. BAYH. Mr. President, I appreciate the explanation of the Senator from Arizona. However, I must say that as I read that letter to the editor and it is hard to believe that, as the Senator just said, it was a voluntary busing program.

Mr. GOLDWATER. It was a voluntary busing program then in effect.

Mr. BAYH. It was a voluntary busing program and there was no mandatory law on busing or no mandatory busing of any kind.

Mr. SCOTT. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. BAYH. I yield.

CHANGE OF CONFEREE

Mr. SCOTT. Mr. President, as in legislative session, I ask unanimous consent that for the conference on Senate Joint Resolution 176, to be held tomorrow, the Senator from Delaware (Mr. ROTH), be substituted for the Senator from Utah (Mr. BENNETT), who is absent due to illness.

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

THE NOMINATION OF WILLIAM H. REHNQUIST TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. BAYH. Mr. President, I appreciate the fact that the Senator from Pennsylvania is participating in our "filibuster" here. I am glad to have his contribution as well.

Mr. SCOTT. Mr. President, the Senator from Indiana may be sure that I would not do anything voluntarily to help him. These unanimous-consent requests have to be made from time to time.

I will help the Senator to get off the floor, however, at any time he is ready.

Mr. BAYH. I am glad the Senator is finally having an opportunity to observe some of the debate that is going on here, inasmuch as he did not have the courtesy to inform me about the statement he was making concerning the "arbitrary," "Lone Ranger" tactics we were engaged in.

I was trying to suggest to the Senator as he was leaving that I would respond, and I did so. In the RECORD I suggested that I had nothing but love and kindness for the Senator as a human being, but that I thought he was rather ill-advised and misinformed to suggest that we were participating in a filibuster.

I hope that since that time the Senator would have had an opportunity to witness this debate, and to settle it in his own mind.

Mr. SCOTT. Mr. President, if the Senator will yield, at the very moment that it became clear that the supporters of the nominee were going to rise in debate, the Senator from Indiana absented himself, although I thought he saw the chairman of the Judiciary Committee seeking recognition. Perhaps he did not. However, the Senator is constantly informed as to what is going on, on the floor. The Senator seemed to be well aware of the fact that we were taking after him. I would be glad to repeat it if the Senator feels it would serve any purpose. However, I have only love and affection for him at any time when he is not talking.

Mr. BAYH. Mr. President, with all of these notes of love and harmony, it is almost like Dear Abbey going back and forth. It is almost unfair for the Senator from Pennsylvania to suggest that the Senator from Indiana ran, turned tail, and ran.

Mr. SCOTT. I did not suggest that.

Mr. BAYH. Mr. President, all morning I sat here until nature and other personal concerns caused me to absent myself.

Maybe it was only ironic, unfortunate, and coincidental that this whole thing started at that one particular moment when I was off the floor. And when I came back I grabbed with affection the arm of my friend, the Senator from Pennsylvania and said, "You have been saying things about me and I am going to take off after you."

But the Senator did not remain in the Chamber. Perhaps the Senator was following the same calling that caused me to absent myself.

Mr. SCOTT. On the contrary, the Senator from Pennsylvania is more continent in all regards.

Mr. BAYH. Mr. President, will the official reporter please read the last statement by the Senator from Pennsylvania. I was unable to hear what was said.

The official reporter (G. Russell Walker) read as follows:

> Mr. SCOTT. On the contrary, the Senator from Pennsylvania is more continent in all regards.

Mr. BAYH. I though there might have been some content involved, but I did not get it all.

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

Mr. BAYH. I yield the floor.

Mr. HARRIS. Mr. President, I rise in opposition to the nomination of Mr. William Rehnquist for membership on the Supreme Court. I feel as a Senator that one of my basic duties is to scrutinize closely every nominee placed before this body by the President. When the nomination is to the Supreme Court of the United States, I feel that duty especially strongly; for, as we well know, once confirmed, a Supreme Court Justice is virtually free from review—not totally free, but virtually free from review.

The distinguished Senator from Indiana (Mr. BAYH) has inserted copies of Mr. Rehnquist's public statements and excerpts from the hearings of the Subcommittee on Constitutional Rights into the RECORD for our individual study. Each person in the Senate is free to decide for himself whether or not William Rehnquist should be appointed to the Supreme Court. I use the word "appointed" advisedly.

We all recall in regard to an earlier nomination that was turned down by the Senate, the President had ill-advisedly used the word "appoint" in respect to his powers, and it was called to his attention and the attention of the public that the President does not have the power to appoint. He has the power to nominate—but only, by and with the advice and consent of the Senate, to appoint.

Therefore, Mr. President, each of us is free to decide whether or not William Rehnquist should be appointed to the Supreme Court. I made my own decision and my decision is that he should not be. There has been considerable discussion in the Senate since I have been here about what sort of restrictions or limitations there are on Senators in respect to going into the philosophy or ideology of a nominee to the Supreme Court.

Mr. President, I do not believe that a Senator deciding whether or not to vote to confirm a person for the Supreme Court is under any greater restriction or limitation than was the President of the United States in making the nomination.

President Nixon has said several times that he has chosen the nominees he sent up for the Supreme Court precisely because of their ideology and conservatism or what has been called strict constructionist views, and that he feels the Court should be turned more in that direction.

I believe if the President of the United States can choose a nominee because of his legal ideology, then Members of the Senate can reject him for the same reason.

Mr. Rehnquist has made it very clear that he is committed to an almost indefinite extension of Government powers, with a corresponding minimizing of constitutional safeguards designed to insure the rights of individual citizens. In case after case he weighed the needs of the Government against the rights of citizens and concluded that these rights must be sacrificed.

He sees no constitutional prohibition of pretrial detention, or as it is customary now to say in more euphonistic terms, preventive detention.

He considers there to be no restriction on governmental surveillance of citizens. In fact, he opposes, in his own words, "any legislation which, whether by an opening the door to unnecessary and unmanageable judicial supervision of such activities or otherwise, would effectively impair this extraordinary important function of the Federal Government."

He opposes that kind of legislation. I think that is a very serious matter since anyone who is appointed, if the Senate should agree, serves on the Supreme Court for the rest of his life.

Mr. Rehnquist views the expansion of civil liberties as a "further expansion of the constitutional rights of criminal defendants, of pornographers and of demonstrators"—to use some of his own words, and I do not think out of context.

To Mr. Rehnquist, those who protest against the Government are "barbarians"; and he feels that such protests are a threat "every bit as serious as the 'crime wave' in our cities."

But there has been one instance in which William Rehnquist has been an outspoken advocate of individual rights. While fighting, with amazing tenacity, integration and civil rights laws in Phoenix, Rehnquist spoke articulately of his dedication to a "free society—in which every man is accorded a maximum of freedom of choice in his individual activities." The "freedom" spoken of by Mr. Rehnquist, refers to the freedom to avoid attending integrated schools. In 1967 he asserted that "we are no more dedicated to an 'integrated' society than we are to a 'segregated' society." In 1967, Mr. President, only 5 years ago, there was an overwhelming concurrence, on the part of State and national legislatures and courts, that we were, in fact, committed to an integrated society.

I served as a member of the National Advisory Commission on Civil Disorders. I have been one of those who felt that the Supreme Court of the United States should have acted when it did, at a very crucial time in the history of this country, when the President of the United States would not act and when the Congress of the United States would not act to make real the basic rights of all Americans, for black people, and other minority groups. These had been denied even basic rights like voting rights. When those other branches of the Government, the executive and legislative, failed to act—and we had come upon increasingly disruptive and divisive days in this country—the Supreme Court of the United States headed by one of the great Chief Justices of all time, Chief Justice Earl Warren, began to hold that the Constitution of the United States extended to all people, including black people. And the Court held that the Constitution applied to little black children in America who were being denied their constitutional rights insofar as an equal education was concerned, the right to attend schools irrespective of their color. I believe that it would be a terrible thing now to move backward from that.

I read the memorandum, which first appeared in Newsweek, which was purported to have been written by Mr. Rehnquist. The letter read in the Senate today by the distinguished Senator from Mississippi (Mr. EASTLAND) was received by him from Mr. Rehnquist concerning the Brown against Board of Education decision.

I find the letter singularly unconvincing. I think the nominee would probably have been better off not to have written it at all, because it does not state very much in a factual way, but it looks almost like a judicial interpretation or construction of a document or a piece of legislation by one who is not himself the author of the document, whereas it is admitted that Mr. Rehnquist did write that document. I must say that I find singularly unconvincing the statement in the letter that he does not know precisely why it was written, but he feels he never would have done what Newsweek charges he did. This is particularly true when we note Mr. Rehnquist does not say he did not do what Newsweek contends.

The Ripon Society, the progressive Republican organization, has urged in its publication "The Ripon Forum" that the Rehnquist nomination be rejected. Its article on Mr. Rehnquist, I think, is very well and carefully reasoned. The article appeared on November 15, 1971, and it is entitled "The Weak Constitution of a 'Legal Giant'." The article states in part:

> The Senate faces severe limitations in resisting a President determined to remake the Supreme Court. The President has the initiative, and as in nuclear strategy, the advantage is with the offense. The President can merely keep submitting names; the Senate must mobilize its somewhat cumbersome machinery and political resources to investigate, disqualify and reject each one. Now, moreover, in the age of MIRV, when the President may launch as many as six bombs at once—or fill the air with chaff and decoys—the role of the defense is further complicated.

The article goes on to say:

> It is somewhat difficult to muster a struggle against a man like William Rehnquist when lined up behind him are men like Robert Byrd and women like Sylvia Bacon and when the President maintains his nominations have something to do with "respect for the law" or reducing crime.
>
> Still we believe it is just as well that we know what we are doing. Approval of William Rehnquist's nomination will for the first time give credence to what has until recently seemed an alarmist fear: that we are moving into an era of repression, in which the U.S. democracy gives up its most noble enterprise—the maintenance of a free and open society.

I call the attention of Senators again to the fact that this is not an article written by the Democratic Party or by members of the Democratic Party. It is not some partisan attack upon President Nixon and his government and his appointment of Supreme Court Justices. This is an article which appears in the regular publication of the Ripon Society, a progressive Republican society, written by people of the President's own party.

The article goes on:

> A scenario may be envisaged. The Communist party and other political action organizations that can be alleged to advocate revolution would be blacklisted and outlawed. Wiretapping and other even more sophisticated modes of individual surveillance would be extended without judicial review. All but the most flagrant acts of discrimination and collusion against blacks would be permitted. The courts would return to the unedifying business of poring over pornography, and arbitrarily incarcerating improvident writers, photographers, and bookstore proprietors. The "third-degree"—extorted confessions and the like—would be effectively authorized. Ever larger numbers of dissenters and other noncomformists who affront the police or marginally violate the law would be imprisoned for long periods. Police brutality and lawlessness, on the other hand, would be condoned. At a time when the government provides an ever larger pro-

portion of available jobs, the firing of dissenters from federal employment would be legitimized. And finally the Executive, in illicit tandem with the judiciary, would reduce the legislative branch to inconsequence on vital matters of war and peace and to irrelevance in the always elastic realm of "national security." And, of course, the real problems of crime and instability in our society would persist.

Mr. President, that is the scenario which this organization is able to envisage. I do not envisage it, but I think it is based upon some very legitimate fears about the background and beliefs and ideology of this nominee. For he can, together with others like him, who now or soon may serve on the Supreme Court of the United States and constitute for the next many, many years a majority on that court. And his views must cause many to have very real fears regarding the Court's role in the future in the field of civil rights and civil liberties..

Not too long ago, CBS made a poll around the United States concerning the Bill of Rights. People were asked whether or not they believed in specific provisions of the Bill of Rights, but the question was couched in such a way as to fail to reveal that the question had anything to do with the Bill of Rights. In most cases, it turned out that the person questioned disagreed with the Bill of Rights provision in question. For example, if he were asked, "Do you believe that a person has a right just to sit silent and not to be required to answer one way or another as to whether that person is guilty of a crime with which he is charged?" most people would say that the person should not have that kind of right.

There were similarly alarming opinions about other provisions of the Bill of Rights—the right to speak out as one wants to, the right of organizations, even in peacetime when the security of the country was not in jeopardy or not threatened by the actions of the organization, to freely promote their own programs and beliefs. All those things were questioned.

It is alarming enough that people who are not trained in the law would not be knowledgeable about the civil liberties and civil rights embraced in the Bill of Rights, which had been won at such dear cost throughout the years during the history of this country.

That is alarming enough. But what is more alarming is that people trained in the law should have such little regard for similar and equally fundamental and basic civil rights and civil liberties. I speak, Mr. President, of legislation which has passed this body in the past having to do with what is called preventive detention, meaning that a person's liberties can be taken away if the judge finds that he or she is likely to commit a crime.

That, I think, is in violation of the Constitution. Mr. Rehnquist does not believe it is. That would not be so alarming, Mr. President, if Mr. Rehnquist were going to continue to be in the executive branch of the Government; but if he is approved by a majority of this body, Mr. Rehnquist will be making decisions upon whether or not preventive detention is allowable under the Constitution of the United States, because the Supreme Court is going to be, over and over, required to rule on just that kind of civil liberties question.

I find it very alarming that he would have that power, and he will not have that power with my vote.

Mr. President, I continue with this article from the Ripon Forum, because I think it is right on target here with what we are faced with in this Rehnquist nomination.

It states:

Such developments are not, of course, inevitable.

Here the writer is referring to that scenario he envisages about the gradual slipping away of civil liberties:

They will occur only if the Supreme Court abandons its role as ultimate guarantor of the Constitution and the legislative branch refuses to recognize the new responsibilities such as the judicial abdication would impose on the Congress.

But the entire scenario of repression consists of measures that Rehnquist, on the record, has strongly and explicitly invited; and most of them are not strongly opposed by the other three Nixon appointees.

So even if, in view of the President's determination to transform the Court, it proves tactically necessary for the Senate to accept Rehnquist, we want to register our opinion that he is Nixon's most dangerous nominee yet. Younger and smarter than the others, he will have a longer and more deleterious impact on our political and social order.

I interject right there, Mr. President, that a noted attorney in this town, who has been a considerable part of the national conscience as far as the approval or disapproval of Supreme Court nominations in the past is concerned, has said to me that, as strongly as he opposed the nominations of Mr. Haynsworth and Mr. Carswell, both of whom, as we know, were rejected by this body, he feels that the nomination of Mr. Rehnquist is the worst nomination that he has seen come before the Senate for the Supreme Court in his lifetime.

I continue with the article:

There has been much nonsense written in recent weeks on Rehnquist's good character and legal expertise, as if these qualities alone justify confirmation. In fulfilling its Constitutional responsibility for advice and consent, however, the Senate does not stand, like the Bar Associations Committee on Judiciary, as a mere judge of ethical and professional credentials. The Senate must also consider the impact of such judicial appointments on the balance between the executive and legislative branches and on the direction of America over the next decades.

Mr. President, I agree with that statement very strongly. As I said awhile ago, I do not believe that a Senator is any more restricted or limited regarding the factors that enter into his decision about whether or not to confirm a nomination than the President of the United States is restricted in making the decision to nominate the person in the first place.

I wish to refer to another paragraph of this Ripon article, because it has to do with the nomination of Lewis Powell, which I voted against:

Applying such standards to the current Supreme Court nominations, the Ripon Society supports, with some reservations, the confirmation of Richmond attorney Lewis Powell, a former President of the ABA.

Although his writings do not display a staunch concern with preserving individual liberties, his persistent advocacy of the legal services for the poor, his mediating role in Virginia's school integration controversy, and his continuing reputation for fairness allay many of our fears.

Even for the Ripon Society, Mr. President, all fears were not allayed, and in my case that was true as well, and I did not vote for that nomination. I particularly did not vote for that nomination because, with the one now before us, we will now begin to see a majority on the Court which alines itself with President Nixon's conservative legal ideology, and which in my view will begin to turn this country back to those days preceding the Warren Court, when no one in the land stood up for civil rights and civil liberties until the Court moved in. Now I am afraid we are going to see it move back, and therefore I think it is terribly important that this nominee, at least, not be confirmed.

The article then goes on:

William Rehnquist, on the other hand, has remorselessly allowed his personal prejudices to supersede legal precedent. Unlike Lewis Powell's career of moderate judicial conservatism, Rehnquist's record does not show a consistent and scrupulous application of legal principle; rather it shows a consistent and unabashed manipulation of legal rhetoric in the service of right-wing social and political objectives. His voluminous public statements and his private comments of which we are aware show him to be a thoroughgoing authoritarian, a nearly absolute believer in executive supremacy over the legislature, and a slack reconstructionist of the Constitution.

Mr. President, I believe that people throughout this country feel powerless. They feel almost inconsequential in the face of concentrated political and, I believe, economic power. We have got to begin to decentralize the decisionmaking, to do away with executive government by bureaucracy and regulations, and, whereever we can, make the market operate, rather than have the Government intervening.

That is why, Mr. President, I voted against an extension of the Economic Stabilization Act, which gives the President, I think, unwarranted and totally unprecedented powers to change our economic management system in radical ways, with far more Government intervention.

I believe the Government ought to intervene in wage and price and related decisions, as I said during that debate, when the market does not work. But it ought to try to limit those instances where the market does not work by breaking up the concentrations of economic power which prevent it from working.

I was really rather surprised, Mr. President, to see this wave of socialism from the right that was evidenced by Mr. Nixon's program in regard to these seemingly permanent across-the-board wage and price controls. I think that is wrong, as I think it was equally wrong to bail out Lockheed—I think that Lockheed ought to have the right to fail as well as to succeed—and as I think it was wrong to build the kind of socialized

SST which, luckily, eventually the Senate did turn down.

Now we are involved with the powerlessness of people. We are involved with the right of the Government to take away people's liberties with regard to wiretapping, with regard to preventive detention, with regard to what was called the no-knock law, which was passed here—another unconstitutional intervention into private lives in my opinion.

Rather than move in the direction of greater individual power, greater attention to individual rights, this nomination would mean that we would be moving more toward Government control of the lives of people and less power of the individuals over their own lives.

The Ripon Society says in that article:

Rehnquist's authorization bent is not tempered by judicial conservatism. Unlike such believers in judicial restraint as the late Justice Felix Frankfurter and former Justice John Marshall Harlan, Rehnquist is a militant judicial activist, who explicitly rejects the doctrine of *stare decisis*. Writing in the *Harvard Law Record* in 1959 Rehnquist stated: "It is high time that those critical of the present Court recognize with the late Charles Hughes that for 175 years the Constitution has been what the judges say it is. If greater judicial self-restraint is desired, or a different interpretation of the phrases 'due process of law' or 'equal protection of the laws,' then men sympathetic to such desires must sit upon the high court."

In a letter that he wrote in 1959 Rehnquist then in private practice in Phoenix, made clear the "different interpretation" of the Constitution he had in mind: "a judicial philosophy which consistently applied would reach a conservative result."

The kind of "conservative" result which Rehnquist would seek is diametrically opposed to the American conservative tradition of vigorously opposing the extension of governmental powers.

To justify the Justice Department's policy of encouraging indiscriminate mass arrests of Mayday demonstrators and bystanders (with the charges against them filled in randomly by police who had often never seen the accused or the crime), and of having thousands of patently spurious cases litigated with virtually no convictions, Rehnquist invented after the fact the doctrine of "qualified martial law."

Now even if one believe the Capitol was in dire jeopardy on Mayday, the Rehnquist rationale is legally slovenly. Rehnquist would have us believe that government can commit countless violations and then sanction them by some flip post-facto improvisation.

Rehnquist was also a major strategic in the preparation of the controversial "no knock" and "preventive detention" provisions of the D.C. Crime Bill.

Mr. President, I voted against and spoke against that bill. I believe it was terribly ill advised, and I believe that it is an unwarranted and unconstitutional interference and intervention into the rights of individual citizens. I hope it will be knocked down by the courts, and promptly. That will be very much in question if we put men such as Mr. Rehnquist on the Court.

The article states:

He has strongly asserted a governmental right to fire employees, even if covered by civil service, when they question Administration War policies. Furthermore he has maintained that the executive has the right to engage in wiretapping and other electronic surveillance without court supervision as long as it claims a "national security" justification.

Mr. President, George Wallace is a candidate for President on a third-party ticket, the American Party ticket. I find most of what he stands for abhorrent; and as the 1968 elections show so do the overwhelming majority of Americans. Mr. Wallace, however, is in many ways plugged in with a great deal of the deep feelings of powerlessness that many people in the country feel. I was interested to see the other day that he spoke out against wiretapping. I believe that does not show that Mr. Wallace is a great constitutional lawyer because I do not think he is; but it does show something about what he hears as he goes around this country. I have heard the same. People feel that the Government is far too powerful, that it is entangled with their lives far too much.

Mr. Rehnquist does not agree with that and has advocated legislation, which as a Supreme Court Justice he would pass upon, that would interfere further in the lives of people; and he has been one of those who have justified rather extensive wiretapping and other electronic surveillance of citizens.

The article states:

If we contend that such unaccountable government powers might become a threat to individual liberty and privacy, Rehnquist tells us to rely on the "self restraint" of the Executive—which might be conceivable if we could forget that in recent years the Attorney General's arbiter on such matters was one William Rehnquist.

In only one area in all his career has Rehnquist shown any opposition to the extension of governmental powers.

Mr. President, this is a situation in Arizona to which I referred earlier.

While an attorney in Phoenix he was a vocal and insistent opponent of legislation to outlaw racial discrimination in public accommodations. It is a truly remarkable fact, worthy of contemplation by the Senate, that nowhere in his extensive writings has he displayed a keen concern for any individual liberty except what he quaintly calls the "traditional freedom" to discriminate against blacks.

Mr. President, the distinguished Senator from Mississippi (Mr. EASTLAND), as I said earlier, read into the RECORD a letter dated December 8 from Mr. Rehnquist, explaining his role in the memorandum to Justice Jackson in opposition to Brown against Board of Education. As I said earlier, I find that letter singularly unconvincing and, as a matter of fact, rather confusing about what it says or reports to us about what Mr. Rehnquist was thinking at the time that memorandum was written.

But I do think we get a very important clue as to what his thinking was at that time, as pointed out by the distinguished Senator from Indiana (Mr. BAYH), when he read a letter to the editor of the Phoenix newspaper on that subject—that is, the subject of integration of schools—which indicated that even voluntary integration of schools was repugnant to Mr. Rehnquist, who now would sit on the Court, if the Senate agrees, and have enormous power for the rest of his life in just those kinds of decisions.

Mr. President, the article goes on:

Rehnquist now says he has reconsidered his attitude toward the public accommodations ordinance of 1964; this is understandable since even Barry Goldwater endorsed it seven years ago and it has worked smoothly, contrary to Rehnquist's lugubrious expectations. Before we rejoice too readily, however, we should note that he has only endorsed the local ordinance, not the Civil Rights Bill of 1964, and that in 1965 and 1967, virtually alone among prominent Arizonans he opposed other civil rights legislation.

Now to another subject. I was pleased by press reports yesterday that the Committee on Foreign Relations is going to bring before Congress proposed legislation which would limit the power of the President to send troops into other countries without prior approval by Congress. I think that is greatly needed legislation. The country has come to believe as strongly as does the majority of the Senate that the power of the executive in relationship to the power of the legislative branch is far too great. The Congress must take back much of that power which was either given away or eroded away over the years.

Mr. BAYH. Mr. President, will the Senator from Oklahoma yield?

Mr. HARRIS. I yield.

Mr. BAYH. I could not help observing that the Senator from Oklahoma, in his usual perceptive manner, has gone straight to the heart of one of the matters of deep concern to me about the qualifications of the nominee. I, too, have been concerned about the position Mr. Rehnquist has taken and urged upon the President so far as the President's warmaking power is concerned.

Earlier in colloquy with the distinguished Senator from Massachusetts (Mr. KENNEDY), we discussed the general philosophical bent of the nominee when apportioning the power among the various branches of Government. At almost every turn of the road there has been the Rehnquist argument supporting the President, the Attorney General, and, indeed, helping to formulate policy that, when it comes to competition among the executive branch, the Federal Government, and others, the Federal Government should be given the benefit of the doubt and should be permitted to move unchecked and unrestrained.

A moment ago the Senator from Oklahoma aptly described the argument about the warmaking power, that the President should not be restrained by a Cambodian border, a Laotian border, or, indeed, a North Vietnamese border.

This shows the same philosophical bent that has caused concern in my mind in other areas. As to the right of privacy, the executive branch should not be restrained by law, the Federal Government has the constitutional right to move in and take pictures and to provide surveillance and, thus, to erode away the individual's right to privacy, to chill—in the famous words of the Griswold case—the right to free spech.

The same way with bugging. It is the Federal Government again—Big Brother. It is such an unusual argument to be espoused by one presented to the Senate as being of conservative bent, because

historically it has been the great conservative Justices who have stood up and said, "Thou shalt not encroach upon the right of the individual." Thus, we have a clear and steady pattern that is not only inconsistent with past conservative philosophy but which, in my judgment, is dangerous if we feel that the individual still has important rights that should not be transgressed upon.

I will say to my friend from Oklahoma that the nominee departs from the rights of the individual theory in the letter to the editor over the equal accommodations ordinance, when he argued that black people should not be prohibited—allowed to use drugstores. When the rights of minorities needed protecting, he said that the Government should not intervene. There, he said that individual rights of the store owners were important. But, interestingly enough, there he said that individual property rights should be given precedence over individual human rights. It is this philosophical bent and what that might mean on the Court if Mr. Rehnquist becomes Mr. Justice Rehnquist, that has led the Senator from Indiana to express his concern and his opposition to the nominee.

I appreciate the tack the Senator from Oklahoma is taking. I also appreciate his patience in letting me interrupt him.

Mr. HARRIS. Mr. President, I appreciate very much that intervention by the distinguished Senator from Indiana. He has made the important points that should require a vote against this nomination.

I want to say, too, that I appreciate the valiant fight he has led in this regard against this nomination, as he has in regard to others.

As did I, he voted for the confirmation of Justice Blackmun. He led the fight against Mr. Haynsworth and Mr. Carswell. He voted for the nomination of Lewis F. Powell. I think that indicates a selectivity on his part and not blind opposition. Even some of those are close cases, in my opinion, when we are talking about the Supreme Court, which is what I thought in regard to the Powell nomination, for example. But the Senator from Indiana has been selective. It is only when the President goes outside the bounds of the kind of qualifications that a man should have to go on the Court that he has risen on this floor in opposition to this nomination. I honor him for that.

I want to ask the Senator from Indiana if he would respond to the statement in an editorial, published in the Washington Evening Star today, which I ask unanimous consent to have printed in the RECORD at this point.

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

[From the Evening Star, Dec. 8, 1971]

ONE APPROVED, ONE TO GO

The Senate's overwhelming confirmation of Lewis F. Powell Jr.'s nomination to the Supreme Court by a vote of 89–1 was entirely expected, most welcome and a tribute to the Virginia nominee's stature and qualifications. Moreover, it says something refreshing about the American system of selecting and confirming members of the nation's highest court.

In sharp contrast to the heated Senate struggles that led to the defeat of President Nixon's first two Southern nominees, Clement F. Haynsworth Jr. and G. Harrold Carswell, next to no opposition was voiced to Powell in this week's debate. The Senate's action thus puts the lie to the notion that a Southern conservative cannot get confirmation to fill a Supreme Court vacancy. A Southern conservative can, and has, just as a Negro has, and Jews and Catholics have, and a woman undoubtedly will, before too long.

In all probability, Powell would have met more opposition than he did had his nomination been the only one under consideration. But the President had two vacancies to fill, and it is upon his second nominee, William H. Rehnquist, that a number of Senate liberals, together with an assortment of civil rights organizations, have chosen to focus their fire. We'll be hearing a lot more about that as the Senate debate on Rehnquist unfolds.

Rehnquist's opponents have depicted him throughout as an enemy of minority rights and civil liberties. As evidence, they have cited a number of statements he made and stands he took over the years. The latest revelation goes back to 1952, when Rehnquist was 28 and a clerk to Supreme Court Justice Robert H. Jackson. In a memo entitled "A Random Thought on the Segregation Cases," he is said to have argued that the separate-but-equal doctrine of public schools should be reaffirmed.

The memo says no more, no less about Rehnquist's probity or competence than the earlier disclosure that in 1964 he opposed a Phoenix open accommodations ordinance. In the light of subsequent court decisions, he was off the mark. In the context of the times, his views were consistent with a defensible and honorable—albeit thoroughly conservative—constitutional philosophy.

In all likelihood, as a member of the court, Rehnquist will not be among those eager to expand the constitutional frontiers of civil rights and individual liberties. But neither, in all probability, will Powell. The point is that this is not the prime criterion, nor is it a very tenable criterion, for the Senate to use in passing judgment on a President's nominee to the court. What the Senate should be looking for are integrity, intellectual strength and legal qualifications. On these counts, Rehnquist merits speedy and decisive approval.

Mr. HARRIS. Let me quote the last paragraph, in part:

In all likelihood, as a member of the court, Rehnquist will not be among those eager to expand the constitutional frontiers of civil rights and individual liberties. But neither, in all probabilities, will Powell. The point is that this is not the prime criterion, nor is it a very tenable criterion, for the Senate to use in passing judgment on a President's nominee to the court. What the Senate should be looking for are integrity, intellectual strength and legal qualifications.

I want to ask the Senator, is there anything in the constitutional history of this country, or in the traditions of the Senate, that restrict a Senator just to those considerations, or if the President chooses a person to be a Justice because of his legal ideology, does not a Senator have as much power to reject him for that ideology?

I know that the Senator has gone into this in the past, and I would appreciate any comments he might have to make about that.

Mr. BAYH. Mr. President, I think that is an important point the Senator raises because that, indeed, is the foundation for our being here. If, indeed, there is no responsibility or right, as the case may be, just to go beyond the intellect or the integrity of the man, then I think the time spent in debating is wasted.

I hope that those who wrote this editorial down at the Star will ask someone to look a little bit further and do some research, because they will find that historically the Senate has considered almost everything relative to a Supreme Court nominee's background as cause to vote against him. There have been about 25 percent of all Supreme Court nominees in the history of this country who have been nominated by the President who never reached the bench.

If we look back in history, there have been some moments when the reasoning of the Senate has not been good. Nominations have been rejected not on philosophical grounds, but on political grounds. Really, if there are those in this body who were to argue that the Senate should not consider philosophy, they would find themselves in a somewhat inconsistent position, because some Senators who now argue this point are the ones who led the opposition to the nomination of Justice Fortas to be elevated to Chief Justice and to Judge Thornberry being made a Justice. Theirs was not a philosophical argument; it was purely a political argument. "There is to be an election in a few months," it was said, "so let us put these nominations off." No effort was made to cloak that position.

So we do not have to go back to Civil War days or to earlier days, such as the days of President Jackson, when there really were some disputes about Court nominees. President Ulysses Grant had three consecutive Supreme Court nominations turned down.

I think the Senator from Oklahoma is right in suggesting that the Senate has a broader responsibility.

Indeed, the nominee himself thinks that we have. Nobody really has argued more persuasively that a nominee's philosophy should be considered than William H. Rehnquist himself. Let me quote one paragraph from an article published in the Harvard Law Record of October 8, 1959. Lawyer Rehnquist said:

Specifically until the Senate restores its practice of thoroughly informing itself on the judicial philosophy of a Supreme Court nominee, before voting to confirm him, it will have a hard time convincing doubters that it could make effective use of any additional part in the selection process.

So the man whose nomination is now before us was writing then as one of the chief proponents of the Senate's considering philosophy.

I am sure the Senator from Oklahoma is also aware of one of the most bitter controversies that the Senate has experienced in considering Supreme Court nominations—the nomination in the 1930's, I think, of Judge Parker, of the Fourth Circuit, to the Supreme Court. There was a great outpouring of opposition from civil rights leaders and labor leaders. One of the major sins for which he was held accountable was his position on the "yellow dog" contracts. The forces got so strong that they kept Judge Park-

er off the Supreme Court. But in the debate of that hour some of the real—I say this respectfully—old tigers of the Senate spoke rather eloquently of the need to look at philosophy.

Senator Borah, for example, said:

Upon some judicial tribunals it is enough perhaps that there be men of integrity and of great learning in the law, but upon this tribunal—

The Supreme Court—

something more is needed; something more is called for. Here the widest, broadest, deepest questions of government and governmental politics are involved.

Another distinguished Senator of that time, Senator George Norris, of Nebraska, spoke eloquently to the question raised by the Senator from Oklahoma when he said:

When we are passing on a judge, we not only ought to know whether he is a good lawyer, not only whether he is honest—and I admit that the nominee possesses both of these qualifications—but we ought to know how he approaches the great questions of human liberty.

It is these questions, the questions of human liberty, that concern the Senator from Indiana, and I can tell by the perceptive argument of the Senator from Oklahoma that he is equally concerned about putting someone on the Supreme Court of the United States who does not realize the delicate balance that exists today—as it always has—between the rights of government, on the one hand, and the rights of the individual citizens of the country, on the other.

Mr. HARRIS. I thank the distinguished Senator from Indiana very much. I was intrigued, too, by what he said about how it seemingly is inconsistent for this nominee, or anyone else, to call himself a conservative in terms of the rights of individual citizens as against big government, and then consistently to support wiretapping for rather broad purposes, preventive detention, and no-knock legislation.

I am particularly reminded of the work done in the Senate and in committee by the distinguished Senator from North Carolina (Mr. ERVIN). He and I do not agree on many governmental programs and policies, and I suppose most people—at least many people—would call the Senator from North Carolina a conservative. One of the things that distinguishes him in that regard is that he has made it a very important Senate work of his to oppose the awful increase in surveillance—the Army going out, following people around, taking pictures of and reporting about demonstrators, and even following political figures—things that have nothing to do with the security or insecurity of the country. That is the kind of regard for individual rights as against powers of big government that one would expect from a true conservative. But, as the Senator from Indiana has pointed out quite well, that kind of conservatism is not the kind of conservatism which the nominee's actions and philosophy exemplify.

Mr. BAYH. I have been impressed with this inconsistency. I must say, having a few scars from past disagreements with our President, about Supreme Court nominees, that I have not been totally insensitive to the politics of the matter. As I said earlier to my friend the Senator from Oklahoma, this is not the first time that politics have been injected into the choice of nominees; but to my knowledge this is the first time in modern history when during a presidential campaign the candidate declared as one of his major thrusts and major reasons for which he should be chosen that he was going to revamp and reorient and redirect the Supreme Court of the United States, and that he was going to appoint men like Brandeis and Holmes and Frankfurter.

That, it seems to me, is a bit different from the qualifications and the great record of those three giants. I think maybe he even included former Judge Cardozo at one time in his list of examples.

Then we went through the strict constructionist syndrome when we considered the nominations of Judge Haynsworth and former Judge Carswell. These men were presented as strict constructionists. I do not know what a strict constructionist is. I went to some pains, as the Senator can imagine, when we first got hit by that word, to try to find out what a strict constructionist is. If we read what Webster says about a strict constructionist, we will find that he is one who would construe narrowly and strictly the law as interpreted in past cases by precedent, and apply it to present cases or future cases.

We did not have this problem with Judge Carswell. He was a man who was going off, as we learned in freshman law "on a toot." He was making law irrespective of what the high courts said. Yet this is a strict constructionist. When the President came on television the other evening, we were told that his two nominees are judicial conservatives. I do not know what judicial conservatives are. Certainly a judicial conservative is one who establishes his thoughts and follows the clear tradition of the great Justices, such as the Justice whose seat is now vacant. Justice Harlan could be called a great conservative, and other Justices could be called great conservatives.

These men certainly were the ones who stood up and said, "Thou shall not transgress on the individual." Indeed, I think it is important. I am not an alarmist, but regardless of who the President is, and regardless of the day in which we live, we need to have someone on the Court who realizes there are necessary restraints that must be placed on the executive branch.

We are looking now, as the Senator knows, at a long period of time. He and I are relatively young Members of this body. We are being asked to place on the Supreme Court a man who is only slightly older than we are. The operative life of a Supreme Court Justice is slightly longer than that of a typical United States Senator. So it is fair to say that that Justice will be there for a longer period of time than most of us who have the good fortune to serve in this body. We do not know who will be there. Maybe it will be someone of our political beliefs, someone of our views; or maybe someone who wants to use the machinery of government in the way to transgress on individual freedom.

I say we need a Justice for the next 20 to 30 years who will say, "We have to examine this carefully and put the individual and his or her rights in proper perspective and not subordinate them to the Executive."

Mr. HARRIS. I thank the Senator again for that statement, which is very helpful. I think it is very persuasive with respect to the decision which is now before the Senate.

I recall that in the 1968 presidential campaign, which has been mentioned by the Senator from Indiana, the successful candidate, President Nixon, made as a major issue the kinds of nominees he would send to the Senate for the Supreme Court. That was a campaign in which George Wallace, the candidate of the American Party, was saying that, "There is not a dime's worth of difference between the nominee of the Republican Party and the nominee of the Democratic Party." There were some disappointed Democrats on the left who were also at that time saying there is not really any difference between HUMPHREY and Nixon and that there was not really much choice.

I recall a speech that then Vice President HUMPHREY made during the campaign to an AFL–CIO convention in Sacramento in the last days of the campaign. What he said was not the most popular thing to say to them, but he said that the President of the United States would probably wind up appointing a majority of the Court, he discussed the age of the justices, and we all knew there would be vacancies.

He said that the path this country decides to travel—and this is not a quote but, in effect, what he said—with respect to civil rights and civil liberties would be determined for a generation by who was selected President.

Unfortunately, many people did not perceive that to be a critical issue; or if they did, they did not say so. So he was elected and that prediction has now come true.

With the approval of Mr. Rehnquist—and I hope we will not do so—we would place on that Court a majority of men who are strict constructionists, as President Nixon views that term, or judicial conservatives, as he uses that term. Whatever those terms mean, they do not mean we are going to continue to have a Court which will stand up to the Executive and the Congress and the country in the field of civil rights and civil liberties. I find that to be a very distressing prospective that will not occur with my vote, if I can help it.

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

Mr. HARRIS. I yield.

Mr. BAYH. If I may take the statement the Senator made in paraphrasing then Vice President HUMPHREY, I think that is a statement that is broader when it transcends the political connotations of the campaign.

This is the thing that has been burning at the very entrails of the Senator from Indiana. Is it an exaggeration, and

are we being overly concerned to say that the nominees that go on that Court will determine the course the entire country goes in the area of human rights and civil rights?

For example, if we have a nominee on the Court who in the midsixties was still opposed to letting black people in the drugstores of his hometown, what does this portend about future legislative efforts with respect to discrimination? What does that portend about the standards we are establishing in the future?

Mr. HARRIS. It does not portend well, in my view. I must say I believe that a nominee for the Supreme Court should not be someone forced to fight off attacks on his relatively negative record on civil rights and civil liberties. I think that a nominee should instead have an exemplary record in the field of civil rights and civil liberties. So my test would be far stronger, but at the very least it seems to me even by the most mild kind of test, the background and beliefs, very recent ones, as the Senator pointed out, of this nominee do not stand the test.

Mr. BAYH. If the Senator will permit me to proceed further, I think he has struck a very relevant point here. I wish we had the chance to get this statement before all of our colleagues, an astute group of individuals, and let them listen to this line of reasoning presented by the Senator from Oklahoma.

One of the problems that confronts us today is the fact that there are far too many of our citizens who are out of the opportunity scale, or out of the opportunity section of our society. Whether we call them below the poverty line or welfare recipients, for one reason or another they have not been able to harness the resources, the capacity, to make it on their own.

The Senator from Oklahoma has been one of the most articulate advocates to get these people on their feet so they may become producing members of society, so that there may be a restoration of pride in themselves.

As I have discussed this on platforms over the last year or two, I have found that the generally accepted reason or goal—goal is much better—that seems to be accepted by most of our people as being at the foundation of whatever program one might want to put on to get these people to be better-producing members of society, was for better educational opportunity, whether elementary school, secondary school, vocational programs, higher education, or advanced education.

Even the most conservative citizens of this country will say, "If you can get them a good education that is the place to put the emphasis." But if we are to accept this as one basic tool in order to open the door of opportunity for all of our citizens, does the Senator from Oklahoma have concern when he looks at the objections that this nominee had to the efforts of the school system in Phoenix in 1967? This was not back at the time of Brown against Board of Education. In 1967 he even opposed a voluntary free choice busing system.

Mr. HARRIS. I find that to be absolutely unacceptable. It is terribly objectionable to me that the President of the United States would send down here the name of a man like that, particularly when we think of the traditional civil rights, the right to eat, or live, or work where one wants to live. I think we have to go beyond those rights.

I believe that most people think that there are other kinds of rights—rights to enough income, to decent health, to a decent education, to a decent house and a decent neighborhood; that these are American rights. To say the very least, it seems to me we ought not to be going backward on traditional civil rights; we ought to be going forward in regard to rights in a much broader context.

The late Senator Robert Taft, who served in this body 25 or 30 years ago, was talking about the rights of a child who grows up in America to a decent standard of life. We ought to be talking about rights, and not charity. People are not going to let charity be inflicted on them any more.

Yet we have a nominee who does not subscribe to the philosophy even of traditional rights that we have in terms of American citizens.

Mr. BAYH. We are talking about the right of quality education. In the State of Indiana it is a constitutional right, guaranteed by the State constitution, and it is in most other States today. But if that is the right we want to see protected—the individual's opportunity and right—what about a nominee who says what he said in debating the question of an open school system in Phoenix? Again I want to emphasize that this was not court-ordered integration. This was completely voluntary. There was no long-range busing involved. There was no arbitrary placing of pupils involved. Given that situation, nevertheless, the nominee said as follows in 1967:

Mr. Seymour—

the School Superintendent of Phoenix—

declares that "we are and must be concerned with achieving an integrated society." Once more, it would seem more appropriate for any such broad declarations to come from policymaking bodies who are directly responsible to the electorate rather than from an appointed administrator. But I think many would take issue with this statement on the merits, would feel that we are no more dedicated to an "integrated" society than we are to a "segregated" society; that we are instead dedicated to a free society in which each man is equal before the law, but in which each man is accorded a maximum amount of freedom of choice in his individual activities.

Given 150 years of slavery, given discrimination which had been a part of a law of the land for all too long, and then to place that type of philosophic interpretation on the need to open our school system and provide educational opportunities, what does that bode for the educational opportunity of children if Mr. Rehnquist is confirmed.

Mr. HARRIS. It bodes us ill. I think it is appalling that so many people in this country, who have for so very long denied quality education to black people and other minorities and deprived them of their real chance in life, then turn around and say, "Why don't you pull yourself up by your own bootstraps?" You either believe in individual efforts and people's responsibilities to make the best of themselves or you do not, and if you do, as I do and as this country does, you have to give people an equal chance at the starting line.

It is just because of men like Mr. Rehnquist that so many generations of little black children and other minority children in this country and poor children in America have had no chance and have had their lives destroyed. It is not enough to say we are not any longer affirmatively discriminating. The Supreme Court said in a recent case in Mississippi that we violate the constitutional rights of peoples unless we show the Government is taking affirmative, positive steps to redress the wrongs of the past. I do not see that kind of philosophy evidenced by this nominee. In fact, as the Senator from Indiana knows, in his very recent record he does not have that philosophy. I think that bodes ill for the country.

Mr. BAYH. I thank the Senator for permitting me to interrupt.

Mr. HARRIS. I appreciate the Senator's contribution, and particularly what he said about nominees and the lack of restriction on the Senate in making up its mind, just as there is no restriction on the part of the President in making up his mind on Supreme Court nominations.

I want to read further from the article to which I referred earlier from the Ripon Society.

In nearly all of his public statements and in a number of private comments, Rehnquist has revealed himself as a brilliant authoritarian idealogue who sees the law or the Constitution as mere instruments for imposing his beliefs on the body politics. It may in fact be questioned whether a man who, like Rehnquist, defines a conservative judicial philosophy as an approach "that consistently applied reaches a conservative (political) result" can be correctly said to have a judicial philosophy at all.

For this reason the Ripon Society believes that his elevation to the nation's highest court would be a dangerous mistake. If one is to have excessive judicial activism it is far safer to have it at the expense of the executive rather than in concert with an already exorbitant Presidency.

This concern is greater than ever today, when the expanding technology of personal surveillance evokes with renewed menace the Orwellian vision of 1984 (when Rehnquist will be 59).

The article in the Ripon Forum further notes:

The Senate is especially bound to consider the philosophies of Supreme Court appointees when a President publicly enunciates a policy of choosing nominees largely because of their political leanings.

I call attention to that sentence. The Ripon Forum believes, as pointed out in this article, that it is not just within the power of the Senate to look into the philosophies of nominees for the Supreme Court, but that the Senate is bound to consider the philosophies of nominees to the Supreme Court when the President has said he has chosen those nominees for precisely their philosophic leanings.

The article continues:

Unlike most other Presidents of the twentieth century, President Nixon has made it clear that the principal qualification for his nominees is concurrence with his Administration's policies, especially in civil liberties. The Senate should exercise close scrutiny over nominees of such a politicized Presidential selection process.

I agree with the philosophy expressed in that sentence. I think that where a President has politicized the selection of Supreme Court nominees and has decided not to make balanced appointments, but to make appointments or nominations all from one political conservative cast, for that reason he seeks out nominees having conservative ideological leanings just like his own. Thus it is clear that the Senate must give special care to the confirmation process.

The Senate has a special kind of burden in cases like the present to give the closest possible scrutiny to those nominees.

The Ripon Society concludes:

And if we really must have extremists on the Court, may they be in the defense of liberty.

To which, Mr. President, I say "Amen."

Mr. President, I rise today not only to oppose the appointment of a man to the Court, but also to support the Senate's reaffirmation of its constitutional powers of advice and consent.

There are two ways to view the Senate's role in confirming Presidential nominees. The first holds that the Senate is little more than an independent investigative agency, whose role is simply to weed out those blatantly unfit to serve on America's highest court for the most basic and fundamental of reasons.

I take it that this is the view of the Washington Evening Star, as expressed in its editorial of Wednesday, December 8, 1971, to which I have previously referred. In that editorial, the operative sentence is:

What the Senate should be looking for are integrity, intellectual strength, and legal qualifications.

In other words, that is all that ought to come within the scrutiny of the Senate's confirmation process. I disagree with the Star.

The second view recognizes that the Senate's authority of advice and consent is an essential part of the network of checks and balances which protects our representative form of government.

I think, Mr. President, I have made it abundantly clear that it is that view with which I agree, and which causes me to stand here now in opposition to this very ill-advised nomination.

Mr. President, if the Chief Executive places before this body for consideration a man or woman who is unfit to serve, it is our universally recognized duty to reject the nomination. But it would be extremely dangerous for us to consider our role to be limited to this sort of determination.

Our role is far more important than that in the view of those who wrote the Constitution, and in the view of a majority of this body, now and in the past. Our burden is far heavier than that rather easy burden; our responsibility is far broader.

We have seen, in the past few decades, a significant and alarming shift of power to the executive branch of government since 1933, when President Roosevelt was granted emergency powers by a hastily assembled Congress to deal with an extraordinary economic situation. The Senator from Maryland (Mr. MATHIAS), in an article entitled "The Optional Congress," has described in great detail the subsequent history of so-called emergency powers through a succession of six Presidents. The Senator says, and rightly so, that these six Presidents:

Have been as one on the question of when the country is in a state of national emergency and when the Congress, on a wide range of issues, is optional. Their answer, quite simply put—in a word—is always. In the last 37 years, the country has passed through many vicissitudes of war and peace, but Presidential powers have been continuously "at war."

A lower court did judicially acknowledge—in 1962—that the depression had ended. But no authority has yet recognized the end of the Korean emergency, proclaimed by President Truman on December 16, 1950, and still in effect today. (Ripon *Forum* Guest editorial, Vol. VII, No. 13, at 3.)

Mr. President, I ask unanimous consent that that article, entitled "The Optional Congress," which appeared as a guest editorial in the Ripon Forum, volume III, No. 13, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HARRIS. In more recent times, Mr. President, an unchecked exercise of authority on the part of the Executive has led to our tragic involvement in Indochina; an involvement undertaken by a series of Presidents with a minimum of congressional knowledge or approval. More recently, this administration has asked us to approve unaltered its phase II economic program—a program which gives broad and virtually unchecked authority to the President.

I spoke earlier about the unrestricted powers that we have given to the President. The distinguished Senator from Wisconsin and I, and others, stood on this floor and attempted to prevent that act from being passed as recommended by the President, or at the very least, to cut back the extension of time from April 1973, when the act will now end, to June 30, 1972, because we thought that those unprecedented powers should not be granted to the President for that long a period of time, if they were to be granted at all.

Mr. President, as a U.S. Senator I feel it is my constitutional duty to question not only the legal and moral qualifications of any nominee to the Supreme Court; but also the impact of the nomination upon the Court itself. I am convinced that the addition of William Rehnquist to the Court would extend to dangerous proportions a trend of disregard for the rights of the individual. For that reason, I feel that it is my responsibility to vote against the appointment of Mr. Rehnquist.

Mr. President, as I have traveled about this country, I find a rising tide of cynicism and hopelessness, and a despair about whether or not the political process is going to deliver on people's legitimate complaints about their lives and their society. One reason why that is so is that the Government is so big and all pervasive, and is so much involved in the lives of so many of our people, is often so remote, impersonal, and faceless. Consequently, people do not really feel that through the political process they have control over the decisions that are made.

I think it is terribly important, Mr. President, that we try to respond to that cynicism and feeling of despair and hopelessness. Therefore, as I say, even if Mr. Rehnquist's record was not as bad in the field of civil rights and civil liberties as it is, I would be very careful to scrutinize his record and his beliefs, because I believe that anyone who goes on that Court ought to have an exemplary record. It ought to be an outstandingly affirmative and positive record in the field of civil rights and civil liberties. It is not even enough, any more, just to say that one is not doing anything any more against the rights and liberties of others, or that he has refrained from doing anything against the rights and liberties of others. I believe it is required, in these days particularly, of a man who would go on the Supreme Court of the United States that he be able to show that he is acting in an affirmative and positive way to preserve and promote the civil rights and civil liberties of others.

That is one reason, Mr. President, why I think it is terribly unfortunate that instead of this nominee, Mr. Rehnquist, the President did not send to the Senate the nomination of a woman to be on the Supreme Court of the United States. There are nine places on that Court, not a single one of which is now or ever has been occupied by a woman. There are plenty of well-qualified women lawyers and judges, the names of many of whom several Senators, I, and others brought to the attention of the President of the United States.

For a time before this nomination President Nixon floated the names of several candidates for the Court position and finally a whole list of candidates was published. There were names of women who were said to be under consideration, and there was a widespread feeling among women throughout the country that the President, at long last, did really intend to send to the Senate the nomination of at least one woman to be on the Supreme Court of the United States.

If a qualified woman had been nominated, Mr. President, I think it would help to make the Court more representative of the judicial and legal profession as it exists in this country, and furthermore I think it would help to humanize the law a great deal.

More than that, I think it would give a great number of people in this country who presently feel that their interests are not properly represented on the Court or in Government a better reason to believe that they are, indeed, represented or better represented than has been true in the past. The President did not do that; and with the nomination of Mr.

Rehnquist, he did not do it with regard to black people or other minorities; he did not do that in regard to poor people. Instead, we did not make it better; we made it worse by this nomination. And the Senate will be a part of that if it agrees with this nomination and joins in the appointment. I do not think the Senate ought to do that; and I hope that the Senate, therefore, will not advise and consent to the nomination of Mr. William H. Rehnquist to be a member of the Supreme Court of the United States.

EXHIBIT 1

THE OPTIONAL CONGRESS

(By Senator CHARLES McC. MATHIAS)

The President's New Economic Policies represent a bold and necessary response to a serious crisis and they have my support. At the same time, the emergency powers he was able to invoke dramatize anew the scope of constitutional authority which Congress has over the years relinquished to the office of the President.

This process has a long history, that unfortunately continues to transpire in the headlines of today. But perhaps the crucial moment in establishing these emergency powers came in the midst of the Depression almost 40 years ago.

On May 9, 1933, in a moment of genuine crisis, President Franklin D. Roosevelt convened the Congress and demanded, in effect, that it revamp the Constitution before midnight. The purpose of his proposed reforms was, in effect, to make Congress, and consequently the Constitution, optional at the discretion of the President, as the national interest required.

The demand came as part of the Emergency Banking Act, an omnibus bill reorganizing the Nation's then collapsing banking system and retroactively legitimizing the President's Bank Holiday proclamation of 3 days before.

It was referred to the Committee on Banking and Currency with instructions that it be reported in an hour. The bill was never printed and it was not available for Senators to read prior to action on the floor of the Senate. The then Senator from Louisiana, Mr. Huey Long, complained that he did not know what was in it until it was read by the clerk. Most Senators indicated that they had grave reservations about what they understood to be the bill's provisions and Senator Long protested the extraordinary powers it granted to the President. But in the extremity of the crisis at hand, Congress felt it had to act immediately as the President demanded. The bill was passed by both Houses before midnight and the American constitutional Republic has been in its Damoclean shadow ever since.

The key provision, not much remarked by the Congress at the time, came in an amendment to section 5b of the Trading With the Enemy Act of 1917. As enacted in 1917, section 5b shifted from Congress to the President the power to regulate trade and financial transactions between Americans and foreigners in wartime. The 1933 amendment to 5b authorized the President—by the simple expedient of declaring a national emergency—to assume in peacetime the extensive wartime emergency powers associated with the Office of President as Commander-in-Chief.

In this little noticed enactment, Congress established a principle with reverberations going far beyond the legislation at hand. For the courts have interpreted the amendment as creating a virtually unlimited Executive prerogative that now applies to some 200 laws granting special powers to the President during national emergencies. But neither Congress nor the courts have set criteria for invocation of these multifarious powers.

In accord with President Roosevelt's approach, the President alone decides when a national emergency exists and when it ends, when he should share power with Congress as the Constitution prescribes, and when Congress can be made optional by proclamation.

This assignment of emergency powers has worked very smoothly over the years. Since that dire extremity of 1933, there have been six Presidents—four Democrats and two Republicans. But they have been as one on the question of when the country is in a state of national emergency and when the Congress, on a wide range of issues, is optional. Their answer, quite simply put—in a word—is always. In the last 37 years, the country has passed through many vicissitudes of war and peace, but Presidential powers have been continuously "at war." The result, described by Jeffrey G. Miller and John R. Garson in an excellent article in the February 1970 issue of the Boston College Industrial and Commercial Law Review, is that "some 60 percent of the nation's population have lived their entire lives under a continuous unbroken chain of national emergencies."

A lower court did judicially acknowledge—in 1962—that the depression had ended. But no authority has yet recognized the end of the Korean emergency, proclaimed by President Truman on December 16, 1950, and still in effect today. Since the President declared with reference to Korea that "world conquest by Communist imperialism is the goal of the forces of aggression," the State Department has interpreted the emergency to mean the duration of the cold war, whatever definition they may apply.

This interpretation, however, has not limited the emergency powers to military matters affecting the protracted conflict with the Communists. Before the recent Nixon monetary actions, the Korean authority, in fact, was most recently invoked in 1968 in relation to our economic competition with our European allies.

President Johnson felt he would have difficulty securing from Congress the broad powers he needed to deal with the deficit which had been emerging for several years in the nation's balance of payments. Yet the Constitution clearly reserves to the legislative branch all powers for regulating foreign commerce. So the President invoked the emergency powers granted in 1950 in relation to the Korean war and signed Executive Order 11387: Governing Certain Transfers Abroad. The Department of Commerce immediately issued the foreign direct investment regulations—FDIR. The Executive order and the FDIR restrict the amounts of capital that American investors may transfer to or accumulate in foreign affiliates, and compel repatriation of short-term liquid balances such as foreign bank deposits.

EXECUTIVE ENCROACHMENT

Without citation of the Korean war powers, these measures clearly represent an unconstitutional encroachment on legislative authority. The courts have upheld them, however, and they remain the law of the land. It is currently the law of the land, therefore, that the state of national emergency proclaimed by President Truman in 1950 in relation to the Korean conflict can be invoked in relation to a balance-of-payments deficit 18 years later. Similarly, regulations against gold hoarding, activated by the depression emergency, are continued under the 1950 proclamation.

Other measures thus invoked under 5b include, respectively, the foreign, Egyptian, and Cuban Assets Control Regulations. The Cuban trade embargo was also based in part on the 1950 emergency, as was the recent suspension of the Davis-Bacon Act, requiring the government to pay prevailing wages on construction contracts.

Among the nearly 200 other emergency laws are several that seem immediately pertinent today as we consider the future of the draft and the Executive's latitude to act alone in Southeast Asia. The President's emergency powers seem to permit him both to detain enlisted troops beyond the terms of their contracts and to detail military men to the governments of other countries. Also pertinent are his powers to sell stocks of strategic materials, revoke leases on real and personal property, suspend rules and regulations applicable to broadcasting stations, exercise control over consumer credit, and, as we know, assume sweeping authority in the world monetary realm.

CONTINUOUS EMERGENCY

These powers infringe on so many crucial constitutional rights and principles that collectively they may be seen as placing our system of democratic government in jeopardy. Certainly the deprivation of rights and property is authorized without due process. But perhaps most important, these measures threaten the constitutional balance of powers between the executive and legislative branches. Because a state of official emergency has obtained continuously since 1933—and has been upheld by the courts to validate actions unrelated to the original crisis—the national emergency powers have accumulated and become institutionalized in the executive. The Presidency, already enhanced by modern trends, has been further aggrandized by the paradox of the continuous emergency.

Unless we accept the principle of an optional Constitution and an optional Congress we must reject the concept of national emergencies declared by the President at his discretion in peacetime without termination dates. Since this concept has been upheld in essence by the courts, it is up to the Congress to recover by legislation the constitutional role that it has allowed the executive to usurp. We must reassert the principle that emergency powers are available only for brief periods when Congress is unable to act and for purposes directly related to the emergency at hand.

ROOTED IN

This is easier said than done. We discover that the continous and cumulative and institutionalized emergency is also almost irrevocable. So many executive agencies and procedures are rooted in emergency powers that it is extremely difficult to rescind them without major administrative disruptions. With this in mind, the distinguished majority leader, Mr. Mansfield, joined with me during the last session in Senate Joint Resolution 166, a resolution which, among other things, proposed the creation of a special committee to explore with the executive the consequences of terminating the Korean emergency. In the aftermath of the Cambodia incursion, however, our proposals were not acted upon. And so I have reintroduced the proposal as a Senate concurrent resolution. It calls for the establishment of a commission to study and make recommendations terminating the state of national emergency.

It is to be expected that the commission's recommendations would at least have the effect of restoring to Congress its full constitutional authority to regulate commerce, and would clearly define a national emergency. Together with S–731, an act to regulate undeclared war, which was introduced in February by the distinguished Senator from New York, Mr. Javits, this would serve to assure that emergency powers would only be applied for the duration of genuine emergencies. The Constitution did not envision a state of national emergency to be the normal state of affairs.

Under the best of circumstances, the Congress will not find it easy to maintain its

historical constitutional role in the modern age. Modern communications, national interdependence, and international involvement converge to enhance the Presidency; real emergencies continually arise requiring the kind of decisive response the Executive is best equipped to give. But if the Congress allows these National Executive advantages to be expanded by special emergency powers responding to unspecified emergencies without termination or limit, the balance of powers between the branches of our Government may be irreparably broken.

I believe that we do face today a national emergency—even a paradoxically continuous one. It emerged during the depression and has been with us for several decades. It is a crisis that throws our whole system of constitutional government into jeopardy. This emergency—if I may use the term so loosely—is the atrophy of Congress. It is not an emergency which calls for the decisive exercise of executive powers. It calls for the decisive recovery of legislative powers. Only Congress can redeem itself; but in serving itself, it can also save the Constitution.

Mr. FANNIN. Mr. President, on Monday just before we confirmed the nomination of Lewis F. Powell, Jr. to the Supreme Court, I noted that it took an awful lot of repetition to carry that discussion for 2 days.

We now are in the third day of discussion on the nomination of William H. Rehnquist to the Supreme Court. Again, I would observe, we are hearing nothing more than repetition.

We are hearing the same arguments—arguments that already have been disproven—from the opponents of Mr. Rehnquist. Those of us who support this nomination repeatedly have cited the excellent qualifications of Mr. Rehnquist. We have patiently answered the questions raised about the nomination.

Mr. President, I would like to call to the attention of my colleagues an editorial in today's editions of the Evening Star. Considering the Rehnquist nomination, the Star says:

What the Senate should be looking for are integrity, intellectual strength and legal qualifications.

Mr. Rehnquist certainly meets the test of having "integrity, intellectual strength, and legal qualifications."

Mr. President, I ask unanimous consent to insert in the RECORD at this point the Star editorial urging "speedy and decisive approval" of the Rehnquist nomination.

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

[From the Evening Star, Dec. 8, 1971]

ONE APPROVED, ONE TO GO

The Senate's overwhelming confirmation of Lewis F. Powell Jr., nomination to the Supreme Court by a vote of 89–1 was entirely expected, most welcome and a tribute to the Virginia nominee's stature and qualifications. Moreover, it says something refreshing about the American system of selecting and confirming members of the nation's highest court.

In sharp contrast to the heated Senate struggles that led to the defeat of President Nixon's first two Southern nominees, Clement F. Haynsworth Jr. and G. Harrold Carswell, next to no opposition was voiced to Powell in this week's debate. The Senate's action thus puts the lie to the notion that a Southern conservative cannot get confirmation to fill a Supreme Court vacancy. A Southern conservative can, and has, just as a Negro has, and Jews and Catholics have, and a woman undoubtedly will, before too long.

In all probability, Powell would have met more opposition than he did had his nomination been the only one under consideration. But the President had two vacancies to fill, and it is upon his second nominee, William H. Rehnquist, that a number of Senate liberals, together with an assortment of civil rights organizations, have chosen to focus their fire. We'll be hearing a lot more about that as the Senate debate on Rehnquist unfolds.

Rehnquist's opponents have depicted him throughout as an enemy of minority rights and civil liberties. As evidence, they have cited a number of statements he made and stands he took over the years. The latest revelation goes back to 1952, when Rehnquist was 28 and a clerk to Supreme Court Justice Robert H. Jackson. In a memo entitled "A Random Thought on the Segregation Cases," he is said to have argued that the separate-but-equal doctrine of public schools should be reaffirmed.

The memo says no more, no less about Rehnquist's probity or competence than the earlier disclosure that in 1964 he opposed a Phoenix open accommodations ordinance. In the light of subsequent court decisions, he was off the mark. In the context of the times, his views were consistent with a defensible and honorable—albeit thoroughly conservative—constitutional philosophy.

In all likelihood, as a member of the court, Rehnquist will not be among those eager to expand the constitutional frontiers of civil rights and individual liberties. But neither, in all probability, will Powell. The point is that this is not the prime criterion, nor is it a very tenable criterion, for the Senate to use in passing judgment on a President's nominee to the court. What the Senate should be looking for are integrity, intellectual strength and legal qualifications. On these counts, Rehnquist merits speedy and decisive approval.

ORDER FOR RECOGNITION OF SENATOR BYRD OF WEST VIRGINIA TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senator from West Virginia (Mr. BYRD) be recognized for not to exceed 15 minutes tomorrow morning after the joint leadership has been recognized.

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

ORDER FOR RECOGNITION OF SENATOR WILLIAMS ON FRIDAY, DECEMBER 10

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senator from New Jersey (Mr. WILLIAMS) be recognized for not to exceed 15 minutes Friday morning after the joint leadership has been recognized.

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

RETIREMENT SECURITY—REFERRAL OF MESSAGE FROM THE PRESIDENT (H. DOC. NO. 92–182)

Mr. MANSFIELD. Mr. President, I ask unanimous consent that a message received from the President today on private pension plans be jointly referred to the Committee on Finance and the Committee on Labor and Public Welfare, since this message involves subject matter falling within both committees.

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

The message is as follows:

To the Congress of the United States:

Self-reliance, prudence and independence are qualities which our Government should work to encourage among our people. These are also the qualities which are involved when a person chooses to invest in a retirement savings plan, setting aside money today so that he will have greater security tomorrow. In this respect, pension plans are a direct expression of some of the finest elements in the American character. Public policy should be designed to reward and reinforce these qualities.

The achievements of our private pension plans are a tribute to the cooperation and creativeness of American labor and management. Over 4 million retired workers are now receiving benefits from private plans and these benefits total about $7 billion annually. More than $140 billion has been accumulated by these plans to pay retirement benefits in the future. But there is still much room for expanding and strengthening our private pension system.

Three groups in our society have a tremendous direct stake in the growth and improvement of private pensions. The first is made up of that 50 percent of American wage earners who are *not* in private group plans at the present time and who have no tax incentive for investing in retirement savings as individuals. The second group includes those who are enrolled in group plans which provide benefits for their retirement needs which they regard as insufficient or which do not ensure that the benefits which are accumulating while they work will actually be made available when they retire. If we meet the problems of these two groups today, we will also be taking a giant stride toward improving the quality of life tomorrow for an important third segment of our population to which they will eventually belong: the retired Americans whose independence and dignity depend in large measure on an adequate post-retirement income.

Older persons have spoken eloquently about the need for pension reform, especially at the White House Conference on Aging, which was recently held in Washington. It is clear that our efforts to reform and expand our income maintenance systems must now be complemented by an effort to reform and expand private retirement programs.

The five-point program I present today includes three new legislative proposals, a renewed endorsement of an earlier proposal, and a major study project which could lead to further legislation.

1. *Employees who wish to save independently for their retirement or to supplement employer-financed pensions should be allowed to deduct on their income tax returns amounts set aside for these purposes.*

Today only 30 million employees are covered by private retirement plans. This

fact alone demonstrates the need to encourage greater private saving for retirement.

Under present law, both the contributions which an *employer* makes to a qualified private retirement plan on behalf of his employees and the investment earnings on those contributions are generally not subject to taxes until they are paid to the employee or to his beneficiaries. The tax liability on investment earnings is also deferred when an *employee* contributes to a group plan, though in this case the contribution itself is taxable. But when an employee saves independently for his own retirement, both his contribution and the investment earnings on such savings are currently subject to taxes.

This inequity discourages individual self-reliance and slows the growth of private retirement savings. It places an unfair burden on those employees (especially older workers) who want to establish a pension plan or augment an employer-financed plan. To provide such persons with the same opportunities now available to others, I therefore ask the Congress to make contributions to retirement savings programs by individuals deductible up to the level of $1500 per year or 20% of income, whichever is less. Individuals would retain the power to control the investment of these funds, channeling them into bank accounts, mutual funds, annuity or insurance programs, government bonds, or into other investments as they desire. Taxes would also be deferred on the earnings from these investments.

This provision would be especially helpful to older workers who are most interested in retirement. The limitation I propose would direct benefits primarily to employees with low and moderate incomes, while preserving an incentive to establish employer-financed plans. The limit is nevertheless sufficiently high to permit older employees to finance a substantial retirement income. For example, a person whose plan begins at age 40, with contributions of $1,500 a year, could still retire at age 65 with an annual pension of $7,500, in addition to social security benefits.

This proposed deduction would be available to those already covered by employer-financed plans, but in this case the upper limit of $1,500 would be reduced to reflect pension plan contributions made by the employer. An appropriate adjustment would also be made in the case of individuals who do not contribute to the Social Security System or the Railroad Retirement System.

2. *Self-employed persons who invest in pension plans for themselves and their employees should be given a more generous tax deduction than they now receive.*

Under present law, self-employed persons may establish pension plans covering themselves and their employees. However, deductible contributions are limited annually to $2,500 or 10 percent of earned income, whichever is less. There are no such limits to contributions made by corporations on behalf of their employees.

This distinction in treatment is not based on any difference in reality, since self-employed persons and corporate employees often engage in substantially the same economic activities. One result of this distinction has been to create an artificial incentive for the self-employed to incorporate; another result has been to deny benefits to the employees of those self-employed persons who do not wish to incorporate which are comparable to those of corporate employees.

To achieve greater equity, I propose that the annual limit for deductible contributions by the self-employed be raised to $7,500 or 15 percent of income, whichever is less. This provision would encourage and enable the self-employed to provide more adequate benefits for themselves and for their workers.

3. *A minimum standard should be established in law for the vesting of pensions—i.e., for preserving pension rights of employees even though they leave their jobs before retirement.*

A basic problem in our present pension system is the situation of the worker who loses his pension when he is discharged, laid off, resigns or moves to another job. A person who is discharged just before retirement, for example, sometimes finds that the retirement income on which he has been relying—and which has been accumulating for many years—simply is no longer due him.

Preservation of the pension rights of employees who leave their jobs—vesting—is essential to a growing and healthy private pension system. A pension is fully vested when an employee is entitled to receive all benefits accumulated up to a certain date regardless of what happens in the period between that date and his retirement. Despite encouraging increases in the degree of vesting, the pensions of more than two-thirds of all current participants in private pension plans are not now vested. Even among older employees, whose need for vesting is most acute, many pensions are not now vested. Forty percent of participants age 45 or older, 34 percent of participants age 50 or older, and 26 percent of participants age 55 or older do not have vested pension rights.

This problem can be corrected by requiring that pensions be fully vested at an appropriate specified point in a worker's career. But how should that point be determined? If it were set at too early a point, so that too many younger workers were vested, it could create a considerable burden for employers and reduce the level of benefits for retiring workers. On the other hand, if too long a wait were allowed before vesting begins, then many older workers would receive little if any assistance. Both of these pitfalls can be avoided, however, through a carefully drawn formula which provides a shorter waiting period before vesting begins for older workers.

The formula that I propose to the Congress is based upon what I shall call the "Rule of 50." Under this standard, every pension would be considered half vested when an employee's age plus the number of years he has participated in the pension plan equals 50. The vesting process would begin with this jump to half-vested status. After this point has been reached, an additional 10 percent of the pension would be vested every year—so that the pension would be fully vested 5 years later.

Under this standard, which must apply to workers who are 30 years of age or older, anyone joining a plan when he is 30 years old would find that his pension would begin to vest at age 40, when his years of participation—10—plus his age—40—would equal 50. The pension of an employee joining at age 40 would begin to vest at age 45, and that of an employee joining at age 50 would begin to vest immediately. And in each case, the degree of vesting would increase from 50 percent to 100 percent over the subsequent 5-year period.

This plan gives older workers the advantage of more rapid vesting, a fact which could limit somewhat new employment opportunities for older workers. To help alleviate this danger, I recommend that a 3-year waiting period be allowed before a new employee must be permitted to join a pension plan, and also that employees hired within 5 years of retirement need not fall under this vesting rule. These safeguards would insure that older workers are not disadvantaged by this program.

This "Rule of 50" would raise the share of participants in private pension plans with vested pensions from 31 percent to 46 percent. Even more importantly, among participants age 45 and older the percentage with vested pensions would rise from 60 percent to 92 percent. Overall, the number of employees with vested rights would increase by 3.6 million, of whom 3 million would be age 45 and older.

To avoid excessive cost increases in pension plans which might lead to reduction of benefits, this new law would apply only to benefits earned after the bill becomes effective. The average cost increase for plans with no vesting provision now would be about 1.8 cents per hour for each covered employee.

4. *The Employee Benefits Protection Act which I proposed to the Congress in March of 1970 should promptly be enacted into law.*

This legislation was designed to protect American workers against abuses by those who administer pension funds. As I pointed out when I first made this proposal, "the control of these funds is shared by employers, unions, banks, insurance companies, and many others." Most of these funds are honestly and effectively managed. But on occasion, some are not. By requiring administrators to manage such funds exclusively in the interest of the employee beneficiaries, the proposed law would provide a Federal remedy against carelessness, conflict of interest, and a range of corrupt practices.

The proposed law would also broaden reporting and disclosure requirements and strengthen investigatory and enforcement powers. There would be no interference, however, with State laws which now regulate the insurance, banking and securities fields.

It was 21 months ago that I asked the Congress "to give urgent priority to the Employee Benefits Protection Act." I described it then as an action which "further expands my program to protect the

American worker as he works, when he is out of work, and after his working career is over." I now renew my request for action in this field—and am resubmitting this legislation in slightly revised form so that it will be even more effective. I urge that the Congress act promptly. There is no excuse for further procrastination.

5. *I have directed the Departments of Labor and the Treasury to undertake a one-year study to determine the extent of benefit losses under pension plans which are terminated.*

When a pension plan is terminated, an employee participating in it can lose all or a part of the benefits which he has long been relying on, even if his plan is fully vested. The extent to which terminations occur, the number of workers who are affected, and the degree to which they are harmed are questions about which we now have insufficient information. This information is needed in order to determine what Federal policy should be on questions such as funding, the nature of the employer's liability, and termination insurance.

Even the best data now available in this field is itself incomplete and questionable. It was gathered for the period from 1955 to 1965 and it indicates that less than one-tenth of one percent of all workers then covered by pension plans were affected by terminations in any given year. It should also be noted that some workers who are affected by terminations may not actually lose their benefits. The wrong solution to the terminations problem could do more harm than good by raising unduly the cost of pension plans for the many workers who are not adversely affected by terminations.

Nevertheless, even one worker whose retirement security is destroyed by the termination of a plan is one too many. It is important, therefore, that the nature and scope of this problem be carefully and thoroughly investigated. I have directed the Departments of Labor and the Treasury to complete their study within one year.

* * * * *

The proposals which I offer today would enhance substantially the retirement security of America's work force. These who are not members of group pension plans and those who have only limited coverage would be encouraged to obtain individual coverage on their own. The self-employed would have an incentive to arrange more adequate coverage for themselves and their employees. All participants would have greater assurance that they will actually receive the benefits which are coming to them. And they could also be far more certain that their pension funds were being administered under strict fiduciary standards.

There is sometimes a tendency for Government to neglect or take for granted the "little man" in this country, the average citizen who lives a quiet, responsible life and who constitutes the backbone of our strength as a nation. "He can take care of himself," we say, and there is a great deal of truth in that statement. The self-reliance of the average American is an extremely important national asset.

The fact that a man is self-reliant, however, does not mean that Government should ignore him. To the contrary, Government should do its part to cultivate individual responsibility, to provide incentives and rewards to those who "take care of themselves." Only in this way can we be sure that the self-reliant way of life will be a continuing and growing part of the American experience.

My pension reform program would help do this. It builds on traditional strengths which have always been at the root of our national greatness.

The private pension system has contributed much to the economic security of American workers. We can be proud of its growth and its accomplishments. The proposals I offer will strengthen and stimulate its further development.

I hope this program will receive the prompt and favorable consideration of the Congress. For it can do a great deal to protect the rights of the average American during his working years and to enhance the quality of his life when he has retired.

RICHARD NIXON.

THE WHITE HOUSE, *December 8, 1971.*

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistance legislative clerk proceeded to call the roll.

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

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

CLOTURE MOTION

Mr. SCOTT. Mr. President, I send to the desk a cloture motion, presently signed by 26 Senators. I ask unanimous consent, first, that the name of the Senator from Ohio (Mr. TAFT) may be added during the evening.

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

Mr. SCOTT. Second, I ask unanimous consent that the time shall begin to run on this matter at noon on Friday next, notwithstanding rule XXII.

The PRESIDING OFFICER. Is there objection?

Mr. BAYH. Mr. President, reserving the right to object, the Senator from Indiana would like to have the Parliamentarian or somebody else in this body—perhaps the Senator who has made the motion—explain the difference between the way the time would presently run and the way it would run under the request of the Senator from Pennsylvania.

Mr. SCOTT. I am glad to do that. It is intended, I understand, in view of the earlier statements made by the distinguished majority leader, that the Senate convene each morning at 9 o'clock. Under the rule, we have to proceed to vote, and that, in turn, is preceded by a quorum call 1 hour after the convening of that session of the Senate.

I have no objection to changing this to ask that the time begin to run at 11 o'clock rather than noon. That would be a further convenience to certain Senators. Otherwise, we would have to vote at 10 o'clock. It is not all that important to me. I am just trying to work out a convenient time.

Mr. BAYH. I understand. I do not object.

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

Mr. SCOTT. I yield.

Mr. PASTORE. Does this mean that the vote will occur on Friday?

Mr. SCOTT. On Friday. Since I have been told that some Senators can more readily make the vote at noon, I ask unanimous consent that the time on Friday on the cloture motion begin to run at 11 a.m., notwithstanding rule XXII.

Mr. BAYH. Mr. President, I object for the time being.

I say to the Senator from Pennsylvania that I feel that inasmuch as he has had all day to canvass his side, and has some idea about what is convenient to them, at least I have a similar obligation to check the schedules of some Senators on this side who might take a contrary position on this issue, and I certainly will be glad to try to accommodate the Senator from Pennsylvania.

Mr. SCOTT. Then, I withdraw the request, and we will have to vote, as I understand it, automatically at 10 o'clock on Friday morning.

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

Mr. SCOTT. I yield.

Mr. MANSFIELD. Ordinarily, the Senate would come in at noon, and ordinarily the vote, as the Senator knows, would occur at 1 o'clock—1 hour after the Senate convenes. We already have an agreement for the Senator from New Jersey to speak for 15 minutes. After the joint leaders have been recognized, we would like to conduct some morning business and continue the debate up to the time, and it might allow both sides a little more leeway in that respect.

So if the Senator would reconsider, I would appreciate it. If not, we would have to do it at 10 o'clock.

Mr. BAYH. I misunderstood. I thought the thrust of the previous unanimous-consent request was that the time would start running at 12 o'clock, and thus the vote would be at 1 o'clock.

Mr. SCOTT. That is right. Then I revised that request, at the request of certain Senators who were hoping that we could vote a little earlier on Friday, and suggested that the time begin at 11 o'clock and that we vote at noon. I cannot see how that is any great injustice to the Senator from Indiana, and it does act as a slight convenience to certain other Senators, some of whom may be prepared to support his position. But I would be delighted to have him block this, if he wishes, because then he will assume the responsibility, and I will tell the Senators.

Mr. BAYH. I must say that the Senator from Pennsylvania knows the Senator from Indiana well enough that that is a rather feeble threat. I only feel a responsibility to check with some of our

colleagues over here. I want to accommodate the leader.

Is there any way we can make this decision tomorrow? I am not trying to delay this. Suppose we have a Senator who will be coming back from the west coast——

The PRESIDING OFFICER. If the Senator will withhold, the rule requires that the motion when filed be stated immediately. The motion for cloture having been filed, the clerk will state the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the confirmation of the nomination of William Rehnquist, to be an Associate Justice of the Supreme Court of the United States:

1. Hugh Scott
2. Paul Fannin
3. Clifford Hansen
4. Bill Brock
5. William Saxbe
6. Marlow Cook
7. Howard Baker
8. James Pearson
9. Roman Hruska
10. Glenn Beall
11. Robert Dole
12. Barry Goldwater
13. Henry Bellmon
14. Carl Curtis
15. Ted Stevens
16. Norris Cotton
17. Mark Hatfield
18. Robert Griffin
19. James Eastland
20. Gordon Allott
21. Ernest Hollings
22. John Tower
23. James Buckley
24. Edward J. Gurney
25. Len B. Jordan
26. Lowell Weicker

Mr. TAFT subsequently said: Mr. President, I ask unanimous consent that the permanent RECORD be corrected to show that the Senator from Ohio (Mr. TAFT) was one of the original signers of the cloture motion on the confirmation of the nomination of William Rehnquist to be an Associate Justice of the Supreme Court of the United States.

The PRESIDING OFFICER. Without objection, the correction will be made.

Mr. MANSFIELD. Mr. President, would the distinguished minority leader agree to withholding the time until tomorrow morning, at which time I am sure we can agree on a time certain?

Mr. SCOTT. I would be glad to withhold the request as to time. I do have some problems with 10 o'clock. I do not have problems with 12 o'clock, really, if the Senator wants to agree on that. I have no objection. We will see. We can work it out tomorrow. I will be glad to withhold that part of the request.

Mr. MANSFIELD. We will do that.

Mr. SCOTT. Without in any way interfering with the right to have a vote sometime on Friday.

Mr. MANSFIELD. Absolutely; because if nothing is done, the vote will come at 10 o'clock Friday morning, under the present situation. But we will try to work out something that will be satisfactory to both sides and I think we can do that.

Mr. SCOTT. I think so.

Mr. BAYH. Mr. President, I reiterate that I am willing to cooperate in every way I can. We will have a much better understanding tomorrow as to where everyone will be, and they will be on notice. If they have not advised us, then it is their responsibility.

Mr. SCOTT. That is perfectly all right with me.

REPAIR OF CERTAIN MEDICAL CARE FACILITIES

Mr. MANSFIELD. Mr. President, as in legislative session, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1237.

The PRESIDING OFFICER (Mr. CHILES) laid before the Senate the amendment of the House of Representatives to the bill (S. 1237) to provide Federal financial assistance for the reconstruction or repair of private nonprofit medical care facilities which are damaged or destroyed by a major disaster, which was, on page 2, line 24, strike out "625" and insert "645".

Mr. MANSFIELD. Mr. President, I move that the Senate concur in the amendment of the House.

The motion was agreed to.

QUORUM CALL

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

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

NOMINATION OF WILLIAM H. REHNQUIST

The Senate continued with the consideration of the nomination of William H. Rehnquist to be Associate Justice of the Supreme Court of the United States.

Mr. BAYH. Mr. President, I have not had the good fortune to be a Member of this body as long as many other of my colleagues, but I have had the opportunity both while here and prior to my arriving to assume the honor of representing my State to study the Senate and the institutions which make it the body that it is.

I remember well, when I was in college, hearing about filibusters in the Senate and hearing for the first time that funny word "cloture." At that time, of course, I did not know its meaning.

Since coming to the Senate, however, I have learned the meaning of that term on more than one occasion. I do not recall an instance since I came to the Senate, nor do I recall reading of past instances where a cloture motion, calling for the mandatory termination of debate, has been utilized under the present circumstances.

It is impossible to see how what has gone on here today could be described as a filibuster. In fact, it was today, for the first time, that those who are supporting the nomination of Mr. Rehnquist dared to rise to defend some of the allegations the opposition has made. To suggest that a decision as important as this, placing on the Supreme Court a controversial nominee who could serve there for 25 or 30 years should be made with no more debate than we have had here so far, when the normal increments of a filibuster are totally lacking, is I think setting a sorry precedent for this body.

I think it is setting a precedent that some Members of this body will live to regret.

As one of my colleagues said to me a moment ago, "Why not? We have the votes."

Mr. President, if there is ever a better example of the tyranny of the majority, of the tyranny of numbers, of the lack of the respect for a minority, the very ingredients of which caused some of us to be concerned about this nominee, it is the fact that the Senate is about to try to impose cloture on the shakiest grounds that it has been my opportunity to observe.

QUORUM CALL

Mr. BAYH. Mr. President, I respectfully suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ENROLLED BILLS AND JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that today, December 8, 1971, he presented to the President of the United States the following enrolled bills and joint resolution:

S. 952. An act to declare that certain public lands are held in trust by the United States for the Summit Lake Paiute Tribe, and for other purposes;

S. 2007. An act to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964, and for other purposes; and

S.J. Res. 149. A joint resolution to authorize and request the President to proclaim the year 1972 as "International Book Year."

AUTHORIZATION FOR ALL COMMITTEES TO FILE REPORTS UNTIL MIDNIGHT TONIGHT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees may have until midnight tonight to file reports.

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

ADJOURNMENT TO 9 A.M.

Mr. MANSFIELD. 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, as in legislative session, until 9 a.m. tomorrow.

The motion was agreed to; and (at 5 o'clock and 18 minutes p.m.) the Senate adjourned until tomorrow, Thursday, December 9, 1971, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate December 8, 1971:

U.S. District Courts

William Terrell Hodges, of Florida, to be a U.S. district judge for the Middle District of Florida, vice Joseph P. Lieb, deceased.

Diplomatic and Foreign Service

Robert Strausz-Hupé, of Pennsylvania, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Belgium.

National Labor Relations Board

John A. Penello, of Maryland, to be a member of the National Labor Relations Board for the term of 5 years expiring August 27, 1976, vice Gerald A. Brown, term expired.

U.S. Army

The following-named person for reappointment in the active list of the Regular Army of the United States with grade as indicated, from the temporary disability retired list, under the provisions of title 10, United States Code, sections 1211 and 3447:

TO COLONEL, REGULAR ARMY, AND BRIGADIER GENERAL, ARMY OF THE UNITED STATES

Tigertt, William D. [redacted]

In the Navy

The following-named lieutenant commanders of the line and staff corps of the Navy for temporary promotion to the grade of commander pursuant to title 10, United States Code, section 5787, while serving in, or ordered to, billets for which the grade of commander is authorized and for unrestricted appointment to the grade of commander when eligible pursuant to law and regulation subject to qualification therefor as provided by law:

LINE

Ackart, Leon E.
Alexander, Edward E., Jr.
Baldwin, Edwin M.
Calkins, Delos S., Jr.
Chadick, Wayne L.
Christian, Richard A.
Comer, Robert F.
Cox, David R.
Cullen, Charles W.
Disney, Donald G.
Doe, Ralph F.
Felderman, John L.
Flynn, Gerrish C.
Freakes, William
Harbrecht, Raymond J.
Heck, Alger R.
Kihune, Robert K. U.
Lamoureux, Robert J.
Lewis, Marwood D.
Major, James A.
O'Neill, Cornelius T.
Owens, Ramon R.
Pizinger, Donald D.
Rauch, Leo A.
Richardson, Daniel C.
Salmon, Walter W.
Susag, Gary R.

SUPPLY CORPS

Cone, Paul J.

CIVIL ENGINEER CORPS

Sayner, William V., Jr.

In the Marine Corps

The following-named officers of the Marine Corps for permanent appointment to the grade of chief warrant officer (W–4):

Robert M. Black.
Talmadge Clark.
Robert L. Clay.
Kenneth L. Davis.
Edward J. Duerr.
Roy K. Harris.
Philip N. Healey, Jr.
William J. Hill.
Samuel J. Jones.
Thomas E. Jordan.
Stephen M. Myorski.
Henry E. Noonkester.
Lawrence Parretti
Richard T. Powell, Jr.
Thomas F. Swearengen.
James O. Watson.

The following-named officers of the Marine Corps for permanent appointment to the grade of chief warrant officer (W–3):

James M. Barnes.
Timothy C. Bell.
William A. Biggers.
Delmar G. Booze.
Norman D. Braden.
Shella R. Bray, Jr.
Lionel H. Bridges.
Edwin J. Brown.
William L. Buck III.
Kenneth F. Burris.
Donald R. Cameron.
James J. Castonguay.
Wayland D. Chavers.
William J. Clancy, Jr.
Jessie R. Clark.
Jack N. Clow.
Donald E. Collier.
Roger J. Combs.
Allen D. Crosier.
Ralph W. Deaver.
Charles F. Denison, Jr.
Roland A. Desjarlais.
James H. Divis.
Peter Dobon, Jr.
Paul J. Donley.
John Doyle.
William E. Duke.
Roger A. Essi.
Thomas E. Evans.
Gerald D. Fabricius.
James P. Fleming.
Harry A. Florence, Jr.
Bill R. Freeman
Bernard C. Glinka
Donald W. Gregory
Glenn R. Hammond
Robert H. Hanevik
Herbert G. Hase
Charles H. Henderson, Jr.
Guy M. Howard
Jack R. Hoy
Henderson B. Jones
William Kasten
Robert E. Katz
Ronald R. Kendall
James J. Knocke
Donald C. Lanson
William P. Lepore, Jr.
Willard R. Lewis
Robert L. Lord
Carl K. Lunn
Enrique L. Machado
Harry B. Malnicof
Edmund J. Mazzei
Paul O. McAvoy, Jr.
Roger A. McIntosh
John L. Meyers
Jacques L. Miller
Dorne A. Millis
Robert J. Moony
Richard C. Moran
Charles L. Morrow
William E. Muirhead
Richard A. Nailor
Monte V. Nelson
Donald D. Nimmow
Billy W. Owens
Porter G. Pallett
Charles D. Parker
Fred R. Parry
Leonard J. Patchin
Dean C. Padlar
George A. Pelletier
Billy E. Perry
Robert G. Pontillas
Richard L. Porter
Joseph C. Raymond
Donald D. Redmond
Carroll J. Riley
Robert D. Rogers
Robert J. Romano
Roger L. Runkle
Arthur I. Swanson, Jr.
Gary R. Thompson
Charles G. True
Morton Vaserberg
Alan E. Wickens
Jack A. Wilder
Sydney M. Wire
William C. Wright
Robert H. Yoder
David A. Zeferjohn
James H. Zimmerman

The following-named officers of the Marine Corps for permanent appointment to the grade of chief warrant officer (W–2):

Ronald Achten.
Carmen Adams.
David S. Aldrich.
Robert E. Allinger, Jr.
James L. Allingham.
Constantine G. Ambrose.
Curtis E. Anderson.
Joseph N. Anderson.
Russell P. Armstrong.
James B. Ash.
Allan K. Austin.
Glenn R. Avey.
Welles D. Bacon.
Wayne D. Bahr.
Claude R. Baldwin, Jr.
Ronald L. Bender.
Charles S. Bennett.
Illuminado Berrios, Jr.
Neal S. Bezoenik.
Robert L. Blake.
Victor H. Bode.
Gerald J. Bolick.
Robert W. Bostwick.
Henry C. Boucher, Jr.
Lescoe R. Bourne.
Frank E. Box.
Donald B. Braun.
Francis W. Brewer, Jr.
Bruce Brightwell
Victor E. Browning, Jr.
Murray W. Bryant.
Bernard C. Burke.
Thomas R. Burnham.
Harold D. Byerly.
William G. Byrne, Jr.
Billy R. Campbell.
Donald L. Caroway.
Francis J. Carr.
Michael J. Carroll
Ray A. Casterline
John D. Cauble, Jr.
Robert J. Caulfield
Barbara J. Chovanec
Bartley W. Christian
Hershel G. Chronister
Owen D. Clark
Michael J. Clarke
George C. Cleveland
Rayborn S. Clifton, Jr.
Jose T. Coccovaldez
James E. Collette
Garnet E. Cope
Robert R. Corcoran
Jose N. Corderotorres, Jr.
William B. Corley, Jr.
Lazaro Corpus, Jr.
James A. Cothran
Harry S. Cotton
William H. Cox
Hilton Craig, Jr.
Oscar E. Creech, Jr.
Douglas J. Danley
Kenneth V. Davis
Louis D. Dearman
Jesse A. Dobson
Howard G. Dodd
Charles J. Dotson
Steven J. Draper
Samuel E. Driggers
Sidney B. Edwards
Robert D. Embesi
Robert R. Epps
Riley S. Ethington
Jack H. Evans
John E. Fales
Michael D. Fazio.
Bobby L. Ferguson.
Harold D. Ferguson.
Charles L. Ferko.
Roy A. Ferrell.
Nelson R. Fincher.
Joe M. Floyd.
Ronald R. Fraizer.
George M. Francis.
Donald L. Galvin.
William C. George.
Craig D. Gibbons.
Leon E. Gingras, Jr.
Robert L. Goller.
Ellwood D. Gordon.
Edward B. Guckert.
Pedro Gutierrez.
Arnold S. Hageman.
Gerald E. Hanscom.
Donald L. Hansom.
John A. Harris.
Frank R. Hart.
James E. Haskins.
Joseph B. Hatfield.
John D. Henry.
Harold L. Henry.
Donald L. Herpy.
Herbert O. Hicks, Jr.
Francis A. Higginson.
William A. Higgs, Jr.
Paul R. Hoffman.
Julius B. Hopkins.
Bobby E. Humeston.
Edward W. Humphrey.
Holland C. Hutchinson.
Barton E. Immings.
Lowell B. Jackson.
Arthur L. Johnson.
Ronald L. Jones.
Gene C. Kamplain.
Harold A. Keith.
Joseph E. Kelly.
Michael B. Kennedy.
Carl E. King.
Thomas F. King, Jr.
Ray E. Kittilstved.
Joseph Kochuba.
Leroy A. Kramvik.
George D. Krebs.
Raymond L. Kunkle.
William A. Kuykendall.
Aurel E. Lafreniere.
Donald A. Lane.
Robert L. Laudun.
Thomas L. Laws.
Juan M. Lem.
Donald C. Lewins.
Babre Lewis.
Donald R. Ladnier.
Donald C. Long.
Roger L. Lorenz.
Gary L. Losey.
Patrick J. Lynch.
Jose Magallan.
Paul L. Malone.
John R. Marcucci
William T. Maroney III.
Harold T. Martin.
Jerry L. Massey.
Aove E. Mattox.
Roger L. Mauldin.
Bryan M. McGill.
James F. McLean.
James R. McRae, Jr.
William D. Meadors III.
Daniel E. Miller.
Robert M. Miller.
William F. Milton, Jr.
Eugene E. Montgomery
Earl F. Morris, Jr.
Thomas W. Morris.
James Muschette, Jr.
Louis Myers.
Ronald C. Newman.
William G. Nickels.
John A. Nowicki.
Sam G. Ochoco.
Jerry W. Odell.
Joseph N. Parisi.
Roger B. Peterson.
Ronald J. Peterson.
Jesse P. Pullin.
Froncis B. Quallen.
Paul F. Quinn.
Virgil G. Rhoads.
Gordon A. Rice.
Carl S. Richardson.
Joseph F. Rizzo.
Richard J. Roberts.
Dorsey Robinson, Jr.
Charles R. Roden.
Ramon Roman, Jr.
Robert A. Roquemore
Paul A. Rossano.
James F. Ryan.
Stephan C Salamack.
Dale F. Saunders.
Peter B. Sawin.
Eileen R. Scanlon.
John L. Schell.
Richard J. Schmidt.
William F. Schrider.
Walter R. Schuette.
Thomas R. Sellers.
Jimmie R. Shafer.
Michael L. Shanklin.
David F. Shewmake.
William F. Shreve, Jr.
Edwin P. Simpson III.
Theron Simpson, Jr.
Robert M. Skidmore.
Lloyd L. Skinner.
Thomas L. Slaughter.
Francis C. Slavin, Jr.
Robert R. Sloan.
Charles L. Smith.
Alan J. Southard.
Herbert B. Stafford.
Patrick L. Stevens.
John F. Stewart.
Kimble H. Stoltz.
Robert L. Strawser.
Richard C. Stricklin.
Robert R. Stutler.
Bobby G. Taylor.
Robert E. Taylor.
Gary G. Thomas.
James M. Thomas.
Frank C. Towers.
Terry N. Tracy.
Louis G. Troutman.
James A. Turner.
Larry F. Vance.
Robert L. Vincent.
Kenneth E. Weadbrock.
Jesse L. Webb.
Ronald E. Webb.
Wayne D. Wildgrube.
Clarence F. Williams.
Gene R. Williams, Sr.
George E. Williams.
Leroy Williams.
Gaines L. Willis.
Joseph C. Wilson.
Bruce M. Windsor, Jr.
Stanley G. Woinoski.
James E. Woodruff, Jr.
Barbara A. Wynnyk.
James J. Yantorn.
Richard L. Yoerk.
William C. Young.
Kenneth P. Zrubek.

CONFIRMATIONS

Executive nominations confirmed by the Senate December 8, 1971:

Diplomatic and Foreign Service

Robert Foster Corrigan, of Ohio, a Foreign Service officer of class 1, to be Ambassador

Extraordinary and Plenipotentiary of the United States of America to the Republic of Rwanda.

William A. Stoltzfus, Jr., of New Jersey, a Foreign Service officer of class 2, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the State of Kuwait, and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to the State of Bahrain and to the State of Qatar.

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.

HOUSE OF REPRESENTATIVES—*Wednesday, December 8, 1971*

The House met at 11 o'clock a.m.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Let not your heart be troubled: believe in God.—John 12: 1.

Almighty God, our Heavenly Father, giver of all spiritual grace and the author of everlasting life, who art waiting to receive each simple and sincere prayer, we turn to Thee in our need asking for light in our darkness, strength for our weakness, and comfort in our sorrow.

Especially do we pray for our beloved John McCormack who mourns the passing of his wife. We call to remembrance their devotion to each other and their loyalty to our land of liberty. Comfort him with Thy presence and give him courage and faith for the years that lie ahead.

Help us to truly live all our lives and ere we depart this mortal scene may we ever work for truth and righteousness and good will. Therefore to Thee we come in this our morning prayer. 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.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the resolution (S. Con. Res. 6) entitled "Concurrent resolution to express the sense of Congress relative to certain activities of Public Health Service hospitals and outpatient clinics."

The message also announced that the Senate disagrees to the amendment of the House to the joint resolution (S.J. Res. 176) entitled "Joint resolution to extend the authority of the Secretary of Housing and Urban Development with respect to interest rates on insured mortgages, to extend and modify certain provisions of the National Flood Insurance Act of 1968, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. SPARKMAN, Mr. PROXMIRE, Mr. WILLIAMS, Mr. MCINTYRE, Mr. TOWER, Mr. BENNETT, and Mr. BROOKE to be the conferees on the part of the Senate.

APPOINTMENT OF CONFEREES ON SENATE JOINT RESOLUTION 176, AMENDING FLOOD INSURANCE ACT OF 1968

Mr. PATMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the joint resolution (S.J. Res. 176), to extend the authority of the Secretary of Housing and Urban Development with respect to interest rates on insured mortgages, to extend and modify certain provisions of the National Flood Insurance Act of 1968, and for other purposes, with a House amendment thereto, insist on the House amendment, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Texas? The Chair hears none, and appoints the following conferees: Messrs. PATMAN and BARRETT, Mrs. SULLIVAN, Messrs. REUSS, ST GERMAIN, ANNUNZIO, and WIDNALL, Mrs. DWYER, Messrs. J. WILLIAM STANTON, and BROWN of Michigan.

TRIBUTE TO THE LATE HARRIET McCORMACK

(Mr. BARRETT asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. BARRETT. Mr. Speaker, a few days ago, our beloved former Speaker, the Honorable John W. McCormack, suffered a great personal loss. His dear, devoted wife, Harriet, passed away.

We know of the great love and devotion that John and Harriet shared. A love so beautiful that only the poets might describe.

We know of the long vigil at her bedside during her last illness and of the grief he now suffers.

I recall his concern and counsel when my wife passed away and I want him to know of my deepest sympathy at this time.

Hopefully he can take some measure of comfort from the following verse by an unknown author:

Like a ship that left its moorings
And sails bravely out to sea,
So someone dear has sailed away
In calm serenity;

But there's promise of a greater joy
Than earth could have in store;
For God has planned a richer life
Beyond the Unseen Shore.

HARD EVIDENCE OF SUCCESS OF PRESIDENT'S NEW ECONOMIC POLICY

(Mr. WIDNALL asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. WIDNALL. Mr. Speaker, hard evidence of the success of the President's new economic policy is coming in. From October to November the wholesale price index of all commodities rose only one-tenth of 1 percent on a seasonally adjusted basis. Almost all of the increase was attributable to an increase in prices for farm products, processed foods and feeds which are not price controlled. In the 3-month period from September through November, which corresponds closely to phase I, the WPI actually declined at a seasonally adjusted annual rate of 0.8 percent.

November was also a good month for the auto industry. For the third consecutive month, new car sales set a record. The auto industry sold almost a million cars, compared to slightly more than a half million units sold during the month of November 1970, when GM was just resuming operations after a lengthy strike.

Because of recent favorable news concerning such important economic indicators as auto and housing activity, increases in consumer installment credit and retail sales, and business projections of proposed expenditures for new plant and equipment, a number of economists of sharply divergent philosophical views have expressed similar optimism about the economic outlook for 1972. For example, Walter W. Heller recently told the annual conference of the National Association of Manufacturers that he believed inflation would be reduced to approximately 3 percent by the end of 1972. He said:

The shock therapy Nixon applied was just what the doctor ordered.

Before the same group Henry C. Wallich predicted an increase in GNP during 1972 of approximately $85 billion, which in his opinion "would still allow for meeting the President's disinflation target of less than 3 percent by the end of 1972 while attaining 5 percent real growth."

Mr. Speaker, these should be encouraging words for all of us.

CALL OF THE HOUSE

Mr. BOW. 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 fol-